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9:00 a.m.–Noon

WHERE: Office of the Federal Register
Conference Room, Suite 700
800 North Capitol Street, NW.
Washington, DC 20002

RESERVATIONS: (202) 741-6008



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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 932

[Docket No. AMS-FV-07-0155; FV08-932-1 FIR]

Olives Grown in California; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting as a final rule, without change, an interim final rule which decreased the assessment rate established for the California Olive Committee (committee) for the 2008 and subsequent fiscal years from \$47.84 to \$15.60 per assessable ton of olives handled. The committee locally administers the marketing order which regulates the handling of olives grown in California. Assessments upon olive handlers are used by the committee to fund reasonable and necessary expenses of the program. The fiscal year began January 1 and ends December 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: *Effective Date:* June 9, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer R. Garcia, Marketing Specialist, or Kurt J. Kimmel, Regional Manager, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA; Telephone: (559) 487-5901, Fax: (559) 487-5906; or E-mail: Jen.Garcia@usda.gov or Kurt.Kimmel@usda.gov.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence

Avenue, SW., STOP 0237, Washington, DC 20250-0237; Telephone: (202) 720-2491, Fax: (202) 720-8938, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 148 and Order No. 932, both as amended (7 CFR part 932), regulating the handling of olives grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California olive handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable olives beginning on January 1, 2008, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues in effect the action that decreased the assessment rate established for the committee for the 2008 and subsequent fiscal years from \$47.84 to \$15.60 per ton of assessable olives from the applicable crop years.

The California olive marketing order provides authority for the committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The fiscal year, which is the 12-month period between January 1 and December 31, begins after the corresponding crop year, which is the 12-month period beginning August 1 and ending July 31 of the subsequent year. Fiscal year budget and assessment recommendations are made after the corresponding crop year olive tonnage is reported. The members of the committee are producers and handlers of California olives. They are familiar with the committee's needs and with costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2007 and subsequent fiscal years, the committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal year to fiscal year unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other information available to USDA.

The committee met on December 5, 2007, and unanimously recommended 2008 fiscal year expenditures of \$1,588,552 and an assessment rate of \$15.60 per ton of assessable olives. In comparison, last year's budgeted expenditures were \$965,396. The assessment rate of \$15.60 is \$32.24 lower than the 2007 rate. The committee recommended the lower assessment rate because the 2007-08 assessable olive receipts as reported by the California Agricultural Statistics Service (CASS) are 108,059 tons, which compares to 16,270 tons in 2006-07. The 2006-07 crop was unusually small in size due to unusual weather conditions.

The major expenditures recommended by the committee for the 2008 fiscal year include \$500,000 for research, \$750,000 for marketing activities, and \$288,552 for administration. Budgeted expenditures for these items in 2007 were \$365,775, \$347,450, and \$252,171, respectively. The committee recommended a larger 2008 research budget so it can expand

its ongoing research to develop a mechanical olive harvesting method. The committee also recommended an increase in the 2008 marketing budget to allow for a restructuring of its marketing program, which will focus on a new Web site and trade advertisements. Recommended increases in the administrative budget are due mainly to a necessary office move and increases in employee benefits. Another \$50,000 is budgeted for 2008 for a possible inspection-related research project.

The assessment rate recommended by the committee was derived by considering anticipated fiscal year expenses, actual olive tonnage received by handlers during the 2007–08 crop year, and additional pertinent factors. Actual assessable tonnage for the 2008 fiscal year is expected to be higher than the 2007–08 crop receipts of 108,059 tons reported by CASS because some olives may be diverted by handlers to uses that are exempt from marketing order requirements. Income derived from handler assessments, along with funds from the committee's authorized reserve and interest income, should be adequate to cover budgeted expenses. Funds in the reserve should be kept within the maximum permitted by the order of approximately one fiscal year's expenses (\$ 932.40).

The assessment rate will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the committee or other available information.

Although this assessment rate is effective for an indefinite period, the committee will continue to meet prior to or during each fiscal year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of committee meetings are available from the committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The committee's 2008 budget and those for subsequent fiscal years will be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly,

AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 745 producers of olives in the production area and 2 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than \$750,000, and small agricultural service firms are defined as those whose annual receipts are less than \$6,500,000.

Based upon information from the committee, the majority of olive producers may be classified as small entities. Both of the handlers may be classified as large entities.

This rule continues in effect the action that decreased the assessment rate established for the committee and collected from handlers for the 2008 and subsequent fiscal years from \$47.84 to \$15.60 per ton of assessable olives. The committee unanimously recommended 2008 expenditures of \$1,558,552 and an assessment rate of \$15.60 per ton. The assessment rate of \$15.60 is \$32.24 lower than the 2007 rate. The lower assessment rate is necessary because assessable olive receipts for the 2007–08 crop year were reported by CASS to be 108,059 tons, compared to 16,270 tons for the 2006–07 crop year. Actual assessable tonnage for the 2008 fiscal year is expected to be lower because some of the receipts may be diverted by handlers to exempt outlets on which assessments are not paid.

Income generated from the \$15.60 per ton assessment rate should be adequate to meet this year's expenses when combined with funds from the authorized reserve and interest income. Funds in the reserve should be kept within the maximum permitted by the order of about one fiscal year's expenses (\$ 932.40).

Expenditures recommended by the committee for the 2008 fiscal year include \$500,000 for research, \$750,000 for marketing activities, and \$288,552 for administration. Budgeted expenditures for these items in 2007 were \$365,775, \$347,450, and \$252,171, respectively. The committee recommended a larger 2008 research budget so it can expand its ongoing

research to develop a mechanical olive harvesting method. The committee also recommended an increase in the 2008 marketing budget to allow for a restructuring of its marketing program, which will focus on a new website and trade advertisements. Recommended increases in the administrative budget are due mainly to a necessary office move and increases in employee benefits. Another \$50,000 is budgeted for a possible inspection-related research project.

Prior to arriving at this budget, the committee considered information from various sources, such as the committee's Executive, Market Development, and Research Subcommittees. Alternative spending levels were discussed by these groups, based upon the relative value of various research and marketing projects to the olive industry. The assessment rate of \$15.60 per ton of assessable olives was derived by considering anticipated expenses, the volume of assessable olives, and additional pertinent factors.

A review of historical information indicates that the grower price for the 2007–08 crop year was approximately \$1,007.78 per ton for canning fruit and \$378.51 per ton for limited-use sizes, leaving the balance as unusable cull fruit. Approximately 81 percent of a ton of olives are canning fruit sizes and 18 percent are limited use sizes, leaving the balance as unusable cull fruit. Grower revenue on 108,059 total tons of canning and limited-use sizes would be \$95,322,099 given the current grower prices for those sizes. Therefore, the assessment revenue for the 2007–08 fiscal year is expected to be approximately 2 percent of grower revenue.

This action continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers. In addition, the committee's meeting was widely publicized throughout the California olive industry and all interested persons were invited to attend the meeting and participate in committee deliberations on all issues. Like all committee meetings, the December 5, 2007, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This action imposes no additional reporting or recordkeeping requirements on either small or large California olive handlers. As with all Federal marketing order programs, reports and forms are

periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

An interim final rule concerning this action was published in the **Federal Register** on February 7, 2008, (73 FR 7199). Copies of that rule were also e-mailed or sent via facsimile to all commodity handlers. Finally, the interim final rule was made available through the Internet by USDA and the Office of the **Federal Register**. A 60-day comment period was provided for interested persons to respond to the interim final rule. The comment period ended on April 7, 2008, and no comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab/html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 932

Olives, Marketing agreements, Reporting and recordkeeping requirements.

PART 932—OLIVES GROWN IN CALIFORNIA

■ Accordingly, the interim final rule amending 7 CFR part 932 which was published at 73 FR 7199 on February 7, 2008, is adopted as a final rule without change.

Dated: May 6, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8-10426 Filed 5-8-08; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1005 and 1007

[AMS-DA-07-0059; AO-388-A22 and AO-366-A51; Docket No. DA-07-03-A]

Milk in the Appalachian and Southeast Marketing Areas; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Correcting amendments.

SUMMARY: This document contains corrections to the regulations that were published in the March 17, 2008 **Federal Register** (73 FR 14153). The regulations inadvertently omitted language in § 1005.13 paragraphs (d)(3) and (d)(4), and § 1007.13 paragraphs (d)(3) and (d)(4) that provide for a zero diversion limit standard on loads of milk requesting transportation credits. This document corrects the final regulations by revising these sections.

DATES: *Effective Date:* May 9, 2008.

FOR FURTHER INFORMATION CONTACT:

Gino M. Tosi, Associate Deputy Administrator, USDA/AMS/Dairy Programs, Order Formulation and Enforcement Branches, STOP 0231—Room 2971, 1400 Independence Avenue, SW., Washington, DC 20250-0231, (202) 690-1366, e-mail address: gino.tosi@usda.gov.

SUPPLEMENTARY INFORMATION: This document provides correcting amendments to the regulations of the Appalachian and Southeast milk marketing orders, found respectively at 7 CFR part 1005 and 7 CFR part 1007.

List of Subjects in 7 CFR Parts 1005 and 1007

Milk marketing orders.

■ Accordingly, 7 CFR parts 1005 and 1007 are corrected by making the following correcting amendments:

■ 1. The authority citation for 7 CFR parts 1005 and 1007 continues to read as follows:

Authority: 7 U.S.C. 601–674, and 7253.

PART 1005—MILK IN THE APPALACHIAN MARKETING AREA

■ 2. In § 1005.13, paragraphs (d) (3) and (4) are revised to read as follows:

§ 1005.13 Producer Milk.

* * * * *

(d) * * *

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July

through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1005.7(d)) during the month, excluding the quantity of producer milk received from handler described in § 1000.9(c) and excluding the total pounds of bulk milk received directly from producers meeting the conditions as described in § 1005.82(c)(2)(ii) and (iii), and for which a transportation credit is requested.

* * * * *

PART 1007—MILK IN THE SOUTHEAST MARKETING AREA

■ 3. In § 1007.13, paragraphs (d)(3) and (4) are revised to read as follows:

§ 1007.13 Producer milk.

* * * * *

(d) * * *

(3) The total quantity of milk so diverted during the month by a cooperative association shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June, of the producer milk that the cooperative association caused to be delivered to, and physically received at, pool plants during the month, excluding the total pounds of bulk milk received directly from producers meeting for conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

(4) The operator of a pool plant that is not a cooperative association may divert any milk that is not under the control of a cooperative association that

diverts milk during the month pursuant to paragraph (d) of this section. The total quantity of milk so diverted during the month shall not exceed 25 percent during the months of July through November, January, and February, and 35 percent during the months of December and March through June of the producer milk physically received at such plant (or such unit of plants in the case of plants that pool as a unit pursuant to § 1007.7(e)) during the month, excluding the quantity of producer milk received from a handler described in § 1000.9(c), excluding the total pounds of bulk milk received directly from producers meeting for conditions as described in § 1007.82(c)(2)(ii) and (iii), and for which a transportation credit is requested;

* * * * *

Dated: May 6, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 08–1239 Filed 5–6–08; 2:32 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0524; Directorate Identifier 2007–SW–77–AD; Amendment 39–15519; AD 2007–26–52]

RIN 2120–AA64

Airworthiness Directives; Agusta S.p.A. Model A109C, A109E, and A109K2 Helicopters

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Final rule; request for comments.

SUMMARY: This document supersedes Airworthiness Directive (AD) 2001–24–07 R1 and adopts AD 2007–26–52, which was sent previously to all known U.S. owners and operators of Agusta S.p.A. (Agusta) Model A109C, A109E, and A109K2 helicopters by individual letters. This AD requires inspections for swelling, deformation, bonding separation, or a crack on each main rotor blade (MRB) with a certain tip cap installed, and if any of these conditions are found that exceed the prescribed limits, replacing the MRB before further flight. This amendment is prompted by a report of the in-flight loss of part of a tip cap. The actions specified in this AD are intended to prevent an increase in

vibration of the MRB and subsequent loss of control of the helicopter.

DATES: Effective May 27, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD 2007–26–52, issued on December 20, 2007, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 2008. The Director of the Federal Register approved the incorporation by reference of Agusta Alert Bollettino Tecnico No. 109–106, No. 109K–22, and No. 109EP–1, all Revision B and all dated December 19, 2000, listed in the AD as of January 7, 2002 (66 FR 60144, December 3, 2001).

Comments for inclusion in the Rules Docket must be received on or before July 8, 2008.

ADDRESSES: Use one of the following addresses to submit comments on this AD:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* 202–493–2251.

- *Mail:* U.S. Department of

Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

You may get the service information identified in this AD from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

Examining the Docket: You may examine the docket that contains the AD, any comments, and other information on the Internet at <http://www.regulations.gov>, or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Operations office (telephone (800) 647–5527) is located in Room W12–140 on the ground floor of the West Building at the street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Safety Management Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: On June 16, 2004, the FAA issued AD 2001–24–07 R1, Amendment 39–13687 (69 FR 35511, June 25, 2004). That AD required inspecting each MRB, part number (P/N) 709–0103–01, tip cap, for either bonding separation or a crack, and provided a terminating action for the requirements of the AD by replacing each tip cap with an airworthy tip cap, P/N 709–0103–29–109.

Since issuing that AD, there has been one report of in-flight loss of part of a tip cap, P/N 709–0103–29–109, resulting in an emergency landing due to an increase in vibrations. There has also been one report of cracking on the tip cap leading edge. Therefore, on December 20, 2007, we issued Emergency AD 2007–26–52, which superseded AD 2001–24–07 R1 (69 FR 35511, June 25, 2004), to remove the terminating action of replacing a tip cap with tip cap, P/N 709–0103–29–109, and to remove the serial number limitation of AD 2001–24–07 R1. The Emergency AD requires inspecting and replacing certain MRBs, if necessary.

The European Aviation Safety Agency (EASA), which is the Technical Agent for Italy, a Member State of the European Community, notified us that an unsafe condition may exist on Agusta Model A109C, A109E, and A109K2 helicopters. The EASA advises that an incident occurred in which a Model A109E helicopter lost part of the tip of the MRB due to fracture of the welded bead (joint line of shells). The manufacturer advises that the investigation relating to this tip cap failure is still ongoing.

Agusta has issued Alert Bollettino Tecnico No. 109–106 for the Model A109C, No. 109K–22 for the Model A109K2, and No. 109EP–1 for the Model A109E, all Revision B and all dated December 19, 2000, which describe inspecting the MRB tip cap for bonding separation and a crack; a tap inspection of the tip cap for bonding separation in the blade bond; and a dye-penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack. Since then, Agusta has issued Bollettino Tecnico No. 109–125 for the Model A109C, No. 109EP–85 for the Model A109E, and No. 109K–48 for the Model A109K2, all dated December 13, 2007, which describe procedures for inspecting the tip cap, P/N 709–0103–29–109, for cracks and for damage on the tip cap leading edge at the welded bead (joint line of shells). The EASA classified these bollettino tecnicos as mandatory and issued EASA Emergency AD No. 2007–0306–E, dated December 14, 2007, to ensure the continued

airworthiness of these helicopters in Italy.

These helicopter models are manufactured in Italy and are type certificated for operation in the United States under the provisions of 14 CFR 21.29 and the applicable bilateral agreement. Pursuant to the applicable bilateral agreement, the EASA, the agent for Italy, has kept the FAA informed of the situation described above. The FAA has examined the findings of the EASA, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other Agusta Model A109C, A109E, and A109K2 helicopters of the same type designs, the FAA issued Emergency AD 2007-26-52 to prevent an increase in vibration of the MRB and subsequent loss of control of the helicopter. The AD requires, for any MRB with a serial number with a prefix of either "EM-" or "A5-", except a MRB with a tip cap, P/N 709-0103-29-109, within 10 hours TIS and thereafter at intervals not to exceed 25 hours time-in-service (TIS):

- A tap inspection of the upper and lower sides of each tip cap for bonding separation and in the tip cap to blade bond area;

- A visual inspection of the upper and lower side of each blade tip cap for swelling or deformation; and

- A dye-penetrant inspection of the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack.

The AD also requires visually inspecting each MRB with a tip cap, P/N 709-0103-29-109, for a crack on the leading edge at the welded bead (joint line of shells) using a 10x or higher power magnifying glass, and if there is damage other than a crack, inspecting the area using a dye-penetrant inspection method, within the following compliance times:

- For a tip cap, P/N 709-0103-29-109, with 600 or more hours TIS, inspect within the next 5 hours TIS or 30 days, whichever occurs first, and thereafter at intervals not to exceed 50 hours TIS; or

- For a tip cap with less than 600 hours TIS, inspect before reaching 600 hours TIS, and thereafter, at intervals not to exceed 50 hours TIS.

If dwelling, deformation, a crack, or bonding separation that exceeds the prescribed limits is found in a MRB with an affected prefix, except a MRB with a tip cap, P/N 709-0103-29-109, the MRB must be replaced with an airworthy MRB before further flight. If a

crack is found in a MRB with tip cap, P/N 709-0103-29-109, then before further flight the MRB must be replaced with an airworthy MRB. The actions must be accomplished in accordance with the bollettino tecnici described previously.

The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the structural integrity and controllability of the helicopter. Therefore, the applicable inspections of each affected MRB and replacing any unairworthy MRB are required before further flight, and this AD must be issued immediately.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on December 20, 2007 to all known U.S. owners and operators of Model A109C, A109E, and A109K2 helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to 14 CFR 39.13 to make it effective to all persons.

The FAA estimates that this AD will affect 101 helicopters of U.S. registry (44 without a tip cap, P/N 709-0103-29-109, plus 57 with that tip cap), and will take, for MRBs with any tip cap, except tip cap, P/N 709-0103-29-109, approximately 6 work hours per helicopter to accomplish the initial and 24 25-hour TIS repetitive inspections (assuming they include dye-penetrant inspections), and for MRBs with tip cap, P/N 709-0103-29-109, installed, approximately 8 work hours per helicopter to accomplish the initial and 12 50-hour TIS repetitive inspections, assuming that these inspections require using a dye-penetrant method also, at an average labor rate of \$80 per work hour. Based on these figures, we estimate the total cost impact of the AD on U.S. operators to be \$495,360.

Comments Invited

This AD is a final rule that involves requirements that affect flight safety and was not preceded by notice and an opportunity for public comment; however, we invite you to submit any written data, views, or arguments regarding this AD. Send your comments to an address listed under **ADDRESSES**. Include "Docket No. FAA-2008-0524; Directorate Identifier 2007-SW-77-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of

the AD. We will consider all comments received by the closing date and may amend the AD in light of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this AD. Using the search function of our docket Web site, you can find and read the comments to any of our dockets, including the name of the individual who sent the comment. You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477-78), or you may visit <http://docketsinfo.dot.gov>.

Regulatory Findings

We have determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared an economic evaluation of the estimated costs to comply with this AD. See the AD docket to examine the economic evaluation.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, "General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition

that is likely to exist or develop on products identified in this rulemaking action.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

■ 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

■ 2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2007–26–52 Agusta S.p.A.: Amendment 39–15519, Docket No. FAA–2008–0524; Directorate Identifier 2007–SW–77–AD. Supersedes AD 2001–24–07 R1, Amendment 39–13687, Docket No. 2001–SW–15–AD.

Applicability: Model A109C, A109E, and A109K2 helicopters, with a main rotor blade (MRB), Part Number (P/N) 709–0103–01—all dash numbers, certificated in any category.

Compliance: Required as indicated.

(a) For a MRB with a serial number that has a prefix of either “EM–” or “A5–”, except a MRB with a tip cap, P/N 709–0103–29–109, installed, within 10 hours time-in-service (TIS), unless accomplished previously, and thereafter at intervals not to exceed 25 hours TIS:

(1) Tap inspect the upper and lower sides of each tip cap for bonding separation between the metal shells and the honeycomb core using a steel tap hammer, P/N 109–

3101–58–1, or a coin (quarter) in the area indicated as honeycomb core on Figure 1 of Alert Bollettino Tecnico (BT) No. 109–106, No. 109K–22, or No. 109EP–1, all Revision B, and all dated December 19, 2000, as applicable to your model helicopter. Also, tap inspect for bonding separation in the tip cap to blade bond area (no bonding voids are permitted in this area).

(2) Visually inspect the upper and lower sides of each blade tip cap for swelling or deformation.

(3) Dye-penetrant inspect the tip cap leading edge along the welded joint line of the upper and lower tip cap skin shells for a crack in accordance with the Compliance Instructions, steps 3. through 3.2.6., of the applicable BT.

(4) If any swelling, deformation, crack, or bonding separation that exceeds the prescribed limits in the applicable maintenance manual is found, replace the blade with an airworthy blade before further flight.

(b) For a MRB with a tip cap, P/N 709–0103–29–109, installed, perform the following in accordance with Table 1:

TABLE 1

For each tip cap:	Comply:
With 600 or more hours TIS	Within the next 5 hours TIS or 30 days, whichever occurs first, and thereafter at intervals not to exceed 50 hours TIS.
With less than 600 hours TIS	Before reaching 600 hours TIS, and thereafter, at intervals not to exceed 50 hours TIS.

(1) Using a 10x or higher power magnifying glass, visually inspect the tip cap leading edge welded bead (joint line between the two metallic shells) for a crack in accordance with the Compliance Instructions, steps 1. through 2. of BT No. 109–125, No. 109EP–85, or No. 109K–48, all dated December 13, 2007, as applicable to your model helicopter.

(2) If there is damage other than a crack, inspect the tip cap leading edge along the welded joint line of the shells for a crack using a dye penetrant method in accordance with the Compliance Instructions, steps 3. through 3.7. of BT No. 109–125, No. 109EP–85, or No. 109K–48, all dated December 13, 2007, as applicable to your model helicopter.

(3) If a crack is present, remove the blade and replace it with an airworthy blade before further flight.

(c) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. Contact the Manager, Safety Management Group, FAA, ATTN: Sharon Miles, Rotorcraft Directorate, Fort Worth, Texas 76193–0111, telephone (817) 222–5122, fax (817) 222–5961, for information about previously approved alternative methods of compliance.

(d) The inspections shall be done in accordance with the specified portions of the service information described in paragraphs (d)(1) and (d)(2) of this AD.

(1) The Director of the Federal Register approved the incorporation by reference of Agusta Bollettino Tecnico No. 109–125, No. 109EP–85, and No. 109K–48, all dated

December 13, 2007, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The Director of the Federal Register previously approved the incorporation by reference of Agusta Alert Bollettino Tecnico No. 109–106, No. 109K–22, and No. 109EP–1, all Revision B and all dated December 19, 2000, on January 7, 2002 (66 FR 60144, December 3, 2001).

(3) Copies may be obtained from Agusta, 21017 Cascina Costa di Samarate (VA) Italy, Via Giovanni Agusta 520, telephone 39 (0331) 229111, fax 39 (0331) 229605–222595.

(4) Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.

Note: The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2007–0306–E, dated December 14, 2007.

(e) This amendment becomes effective on May 27, 2008, to all persons except those persons to whom it was made immediately effective by Emergency AD 2007–26–52, issued December 20, 2007, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on May 1, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8–10054 Filed 5–8–08; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–0527; Directorate Identifier 2008–CE–027–AD; Amendment 39–15520; AD 2008–10–13]

RIN 2120–AA64

Airworthiness Directives; EADS SOCATA Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: We are adopting a new airworthiness directive (AD) for the products listed above. This AD results from mandatory continuing airworthiness information (MCAI) issued by the aviation authority of another country to identify and correct

an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

A rupture of the alternator and vapour cycle cooling system pulley drive assembly has reportedly been found. Such a failure could lead to the loss of the alternator and vapour cycle cooling systems and could also cause mechanical damage inside the powerplant compartment.

This AD requires actions that are intended to address the unsafe condition described in the MCAI.

DATES: This AD becomes effective May 29, 2008.

On May 29, 2008, the Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD.

We must receive comments on this AD by June 9, 2008.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Fax:* (202) 493-2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4119; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued EASA AD No.: 2008-0067-E, dated April 3, 2008

(referred to after this as “the MCAI”), to correct an unsafe condition for the specified products. The MCAI states:

A rupture of the alternator and vapour cycle cooling system pulley drive assembly has reportedly been found. Such a failure could lead to the loss of the alternator and vapour cycle cooling systems and could also cause mechanical damage inside the powerplant compartment.

To address this condition, AD 2008-0063-E had been published to require a check of the pulley drive assembly for leakage and, as an interim action, removal of the compressor drive belt from the assembly, and adoption of a new operational procedure to keep the air-conditioning system deactivated.

This AD retains the requirements of AD 2008-0063-E which is superseded, introduces a mandatory terminating action which consists in replacing the original pulley drive assembly by a new one of an improved design—corresponding to the EADS SOCATA modification MOD 70-0231-21—that permits reinstallation of the compressor drive belt.

The MCAI requires you to deactivate the air conditioning system, inspect the pulley drive assembly for leaks, and replace the pulley drive assembly if leaks are found.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

EADS SOCATA has issued Mandatory Service Bulletin SB 70-156, Amendment 1, dated March 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are issuing this AD because we evaluated all information provided by the State of Design Authority and determined the unsafe condition exists and is likely to exist or develop on other products of the same type design.

The MCAI and the service information require replacement of the pulley drive assembly part number (P/N) T700G215504900000 with the new P/N T700G215505710000 and reinstallation of the compressor drive belt by no later than March 31, 2009. This AD is considered an interim action because we are only mandating this

replacement if a leak is found. The Administrative Procedure Act does not permit the FAA to “bootstrap” a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action are analyzed separately for justification to bypass prior public notice.

After issuing this AD, we may initiate further AD action (notice of proposed rulemaking followed by a final rule) to require such a terminating action.

Differences Between This AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might have also required different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are described in a separate paragraph of the AD. These requirements take precedence over those copied from the MCAI.

FAA's Determination of the Effective Date

An unsafe condition exists that requires the immediate adoption of this AD. The FAA has found that the risk to the flying public justifies waiving notice and comment prior to adoption of this rule because a rupture of the alternator and vapour cycle cooling system pulley drive assembly has been reported. Such a failure could lead to the loss of the alternator and vapor cycle cooling systems and could cause mechanical damage inside the powerplant compartment.

Therefore, we determined that notice and opportunity for public comment before issuing this AD are impracticable and that good cause exists for making this amendment effective in fewer than 30 days.

Comments Invited

This AD is a final rule that involves requirements affecting flight safety, and we did not precede it by notice and opportunity for public comment. We invite you to send any written relevant data, views, or arguments about this AD. Send your comments to an address listed under the **ADDRESSES** section. Include “Docket No. FAA-2008-0527; Directorate Identifier 2008-CE-027-”

AD” at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this AD. We will consider all comments received by the closing date and may amend this AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this AD.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA’s authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. “Subtitle VII: Aviation Programs,” describes in more detail the scope of the Agency’s authority.

We are issuing this rulemaking under the authority described in “Subtitle VII, Part A, Subpart III, Section 44701: General requirements.” Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this AD will not have federalism implications under Executive Order 13132. This AD will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that this AD:

- (1) Is not a “significant regulatory action” under Executive Order 12866;
- (2) Is not a “significant rule” under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
- (3) Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

■ Accordingly, under the authority delegated to me by the Administrator, the FAA amends 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

- 1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

- 2. The FAA amends § 39.13 by adding the following new AD:

2008–10–13 EADS SOCATA: Amendment 39–15520; Docket No. FAA–2008–0527; Directorate Identifier 2008–CE–027–AD.

Effective Date

- (a) This airworthiness directive (AD) becomes effective May 29, 2008.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to Models TBM 700 airplanes, serial numbers 434 through 455, certificated in any category.

Subject

- (d) Air Transport Association of America (ATA) Code 24: Electric Power.

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states:

A rupture of the alternator and vapour cycle cooling system pulley drive assembly has reportedly been found. Such a failure could lead to the loss of the alternator and vapour cycle cooling systems and could also cause mechanical damage inside the powerplant compartment.

To address this condition, AD 2008–0063–E had been published to require a check of the pulley drive assembly for leakage and, as an interim action, removal of the compressor drive belt from the assembly, and adoption of a new operational procedure to keep the air-conditioning system deactivated.

This AD retains the requirements of AD 2008–0063–E which is superseded, introduces a mandatory terminating action which consists in replacing the original pulley drive assembly by a new one of an improved design—corresponding to the EADS SOCATA modification MOD 70–0231–21—that permits reinstallation of the compressor drive belt.

The MCAI requires you to deactivate the air conditioning system, inspect the pulley drive assembly for leaks, and replace the pulley drive assembly if leaks are found.

Actions and Compliance

- (f) Unless already done, before further flight after May 29, 2008 (the effective date of this AD), do the following actions:

(1) Position to “OFF” the air-conditioning “AIR COND” switch.

(2) Check for oil leakage in the pulley drive assembly by following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008.

(3) If any leak is found, before further flight, replace the pulley drive assembly part number (P/N) T700G215504900000 with P/N T700G215505710000 following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008.

(4) If no leak is found, before further flight, remove the compressor drive belt from the pulley drive assembly following either EADS SOCATA Service Bulletin (SB) No. 70–156, original issue; or EADS SOCATA Service Bulletin (SB) No. 70–156, Amendment 1; both dated March 2008.

(5) The air-conditioning “AIR COND” switch must be in the “OFF” position and the compressor drive belt must remain removed until the pulley drive assembly part number (P/N) T700G215504900000 is replaced with P/N T700G215505710000 following EADS SOCATA Service Bulletin (SB) No. 70–156 Amendment 1, dated March 2008. This replacement must be done before further flight if any leak is found and may be done at any time as terminating action to this AD.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows:

(1) The MCAI and the service information require replacement of the pulley drive assembly part number (P/N) T700G215504900000 with the improved design P/N T700G215505710000 and reinstallation of the compressor drive belt by no later than March 31, 2009.

(2) This AD is considered an interim action because we are only mandating this replacement if a leak is found. The Administrative Procedure Act does not permit the FAA to “bootstrap” a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action are analyzed separately for justification to bypass prior public notice.

(3) After issuing this AD, we may initiate further AD action (notice of proposed rulemaking followed by a final rule) to require the replacement of the pulley drive assembly part number (P/N) T700G215504900000 with the new P/N T700G215505710000, and reinstallation of the compressor drive belt as a terminating action. Appropriate credit would be given for the initial actions done under this AD.

Other FAA AD Provisions

- (g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to

ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4119; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product*: For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements*: For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Special Flight Permit

(h) Under 14 CFR 39.23, we are limiting the special flight permits for this AD under the following condition: The air-conditioning "AIR-COND" switch is set to the "OFF" position.

Related Information

(i) Refer to MCAI European Aviation Safety Agency (EASA) Emergency AD No.: 2008-0067-E, dated April 3, 2008, and EADS SOCATA Service Bulletin (SB) No. 70-156, Amendment 1, dated March 2008, for related information.

Material Incorporated by Reference

(j) You must use EADS SOCATA Service Bulletin (SB) No. 70-156, original issue; or EADS SOCATA Service Bulletin (SB) No. 70-156, Amendment 1, both dated March 2008, to do the actions required by this AD, unless the AD specifies otherwise.

(1) The Director of the Federal Register approved the incorporation by reference of this service information under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) For service information identified in this AD, contact EADS SOCATA—Direction des Services, 65921 Tarbes Cedex 9, France; telephone: +33 (0)5 62 41 73 00; fax: +33 (0)5 62 41 7-54; or in the United States contact EADS SOCATA North America, Inc., North Perry Airport, 7501 South Airport Road., Pembroke Pines, Florida 33023; telephone: (954) 893-1400; fax: (954) 964-4141.

(3) You may review copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Kansas City, Missouri, on April 30, 2008.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-10066 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-13-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9397]

RIN 1545-BH95

Assumption of Liabilities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the assumption of liabilities under section 358(h) of the Internal Revenue Code (Code). Section 358(h) provides that, after application of section 358(d), the basis in stock received in a nonrecognition transaction shall be reduced to the fair market value of the stock by the amount of any liability assumed in the exchange. The Treasury Department and the IRS have determined that removing an exception to section 358(h) is necessary to prevent abuse. These regulations affect corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective on May 9, 2008.

Applicability Date: For dates of applicability, see §§ 1.358-5(a) and (b).

FOR FURTHER INFORMATION CONTACT: Robert M. Rhyne (202) 622-7550 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to 26 CFR part 1 under section 358(h) of the Code. As part of the Consolidated Appropriations Act of 2001 (Pub. L. 106-554, 114 Stat. 2763), Congress enacted, on December 21, 2000, section 358(h), applicable to assumptions of liability after October 18, 1999, to address certain transactions in which property is transferred to a corporation in exchange for both stock and the corporation's assumption of certain obligations of the transferor. In these transactions, transferors took the position that the obligations were not liabilities within the meaning of section 357(c) or that they were described in section 357(c)(3), and, therefore, the obligations did not reduce the basis of

the stock received by transferor. These assumed obligations, however, did reduce the value of the stock. The transferors then sold the stock and claimed a loss. In this way, taxpayers attempted to duplicate a loss in corporate stock and to accelerate deductions that typically are allowed only on the economic performance of these types of obligations.

Section 358(h)(1) addresses these transactions by requiring that, after application of section 358(d), the basis in stock received in an exchange to which section 351, 354, 355, 356, or 361 applies be reduced (but not below the fair market value of the stock) by the amount of any liability assumed in the exchange. Section 358(h)(2) provides exceptions to section 358(h)(1) where: (A) The trade or business with which the liability is associated is transferred to the person assuming the liability as part of the exchange; or (B) substantially all of the assets with which the liability is associated are transferred to the person assuming the liability as part of the exchange (the "Asset Exception"). The Secretary, however, has the authority to limit these exceptions. Section 358(h)(3) provides that the term "liability" for purposes of section 358(h) includes any fixed or contingent obligation to make payment without regard to whether the obligation is otherwise taken into account for purposes of the Code.

On May 26, 2005, temporary regulations (TD 9207) were published in the **Federal Register** (70 FR 30334) making unavailable the exception of section 358(h)(2)(B), the Asset Exception. A notice of proposed rulemaking (REG-106736-00) cross-referencing those temporary regulations was published in the **Federal Register** (71 FR 30380) on the same day.

The IRS and the Treasury Department received no comments responding to the proposed and temporary regulations. No public hearing was requested or held. The IRS and the Treasury Department have determined that making the exception of section 358(h)(2)(B) unavailable is necessary to prevent abuse; therefore, this document contains final regulations adopting the provisions of the proposed regulations with no change and the corresponding temporary regulations are removed.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to 5 U.S.C. 553(d)(3) it has been determined that a delayed effective

date is unnecessary because this rule finalizes, without change, currently effective temporary rules regarding the assumption of liabilities. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the only impact of the regulations is to require taxpayers to calculate the basis of stock received in certain transactions more accurately. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. Chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Robert M. Rhyne of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *
§ 1.358–5 also issued under 26 U.S.C. 358(h)(2). * * *

■ **Par. 2.** Section 1.358–5 is added to read as follows:

§ 1.358–5 Special rules for assumption of liabilities.

(a) *In general.* Section 358(h)(2)(B) does not apply to an exchange occurring on or after May 9, 2008.

(b) *Effective/Applicability date.* For exchanges occurring on or after June 24, 2003, and before May 9, 2008, see § 1.358–5T as contained in 26 CFR part 1 in effect on April 1, 2007.

§ 1.358–5T [Removed]

■ **Par. 3.** Section 1.358–5T is removed.

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: April 28, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8–10454 Filed 5–8–08; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9396]

RIN 1545–BH52

Corporate Reorganizations; Amendment to Transfers of Assets or Stock Following a Reorganization

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulation.

SUMMARY: This document contains final regulations that amend TD 9361, titled *Transfers of Assets or Stock Following a Reorganization*. These final regulations make certain clarifying amendments to the rules regarding the effect of certain transfers of assets or stock on the continuing qualification of transactions as reorganizations under section 368(a). These regulations affect corporations and their shareholders.

DATES: *Effective Date:* These regulations are effective on *May 9, 2008*.

Applicability Date: For dates of applicability, see § 1.368–2(k)(3).

FOR FURTHER INFORMATION CONTACT: Mary W. Lyons, at (202) 622–7930 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

As noted in the preamble to TD 9361 (72 FR 60556), § 1.368–1(a) provides that a transaction must be evaluated under all relevant provisions of law, including the step transaction doctrine, in determining whether it qualifies as a reorganization under section 368(a). Section 1.368–2 provides guidance regarding whether a transaction satisfies the explicit statutory requirements of a particular reorganization. Specifically, section 1.368–2(k) provides that a transaction otherwise qualifying as a reorganization will not be disqualified or recharacterized as a result of certain subsequent transfers of assets or stock described therein. The fact that a

subsequent transfer of assets or stock is not described in § 1.368–2(k) does not necessarily preclude reorganization qualification, but the overall transaction would then be subject to analysis under the step transaction doctrine.

Section 1.368–2(k), as in effect prior to these final regulations, generally permits one or more post-reorganization transfers (or successive transfers) of assets or stock, provided that the Continuity of Business Enterprise (COBE) requirement is satisfied and the transfer(s) qualify as “distributions” (as described in § 1.368–2(k)(1)(i)) or “other transfers” (as described in § 1.368–2(k)(1)(ii)). These final regulations amend those rules to clarify that a transfer to the former shareholders of the acquired corporation (other than a former shareholder that is also the acquiring corporation) or the surviving corporation, as the case may be, is not described in paragraph (k)(1) to the extent it constitutes the receipt by such shareholders of consideration for their proprietary interests in the acquired corporation or the surviving corporation, as the case may be. Any such transfer to the former shareholders following a transaction otherwise qualifying as a reorganization under section 368(a) calls into question whether the underlying transaction satisfies the continuity of interest requirement in Treas. Reg. § 1.368–1(e) as well as certain statutory limitations on permissible consideration (such as the “solely for voting stock” requirement in section 368(a)(1)(B) or (C)). Therefore, such transfers are outside the scope of the safe harbor protection afforded by these final regulations. Nevertheless, the safe harbor of Treas. Reg. § 1.368–2(k) continues to apply to transfers to the former shareholders that do not constitute consideration for their proprietary interests in the acquired corporation or the surviving corporation, as the case may be, such as certain pro-rata dividend distributions by the acquiring corporation following a reorganization. Moreover, the amendment provides that the limitation on the scope of Treas. Reg. 1.368–2(k) does not apply to transfers to a shareholder that also is the acquiring corporation in the reorganization. Thus, the regulations continue to provide safe harbor protection to certain “upstream” reorganizations followed by a transfer of acquired assets. See, for example, Rev. Rul. 69–617, 1969–2 CB 57.

In addition, these final regulations amend § 1.368–2(k) to clarify that the safe harbor shall not apply to a transfer by the former shareholders of the acquired corporation (other than a

former shareholder that is also the acquiring corporation) or the surviving corporation, as the case may be, of consideration initially received in the potential reorganization to the issuing corporation or a person related to the issuing corporation (see definition of “related person” in § 1.368–1(e)).

Further, these final regulations revise the title of paragraph (k)(1)(ii) and the requirement in paragraph (k)(1)(ii)(A). These amendments are intended to clarify that a distribution to shareholders is not a transfer described in paragraph (k)(1)(ii) regardless of whether or not it is described in paragraph (k)(1)(i). Additionally, these final regulations amend paragraph (k)(1)(ii)(C) to clarify that a transfer is not described in paragraph (k)(1)(ii) if the acquired corporation, the acquiring corporation, or the surviving corporation, as the case may be, terminates its corporate existence for Federal income tax purposes in connection with the transfer.

Finally, conforming changes are made to the analysis in *Examples 1, 6, 7, 8* and *9*, and one clarifying change is made to the facts in *Example 3*.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these final regulations is Mary W. Lyons of the Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

Availability of IRS Documents

IRS revenue rulings, procedures, and notices cited in this preamble are made available by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

■ Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 1.368–2(k) is revised to read as follows:

§ 1.368–2 Definition of terms.

* * * * *

(k) *Certain transfers of assets or stock in reorganizations*—(1) *General rule.* A transaction otherwise qualifying as a reorganization under section 368(a) shall not be disqualified or recharacterized as a result of one or more subsequent transfers (or successive transfers) of assets or stock, provided that the requirements of § 1.368–1(d) are satisfied and the transfer(s) are described in either paragraph (k)(1)(i) or (k)(1)(ii) of this section. However, this paragraph (k) shall not apply to a transfer to the former shareholders of the acquired corporation (other than a former shareholder that is also the acquiring corporation) or the surviving corporation, as the case may be, to the extent it constitutes the receipt of consideration for a proprietary interest in the acquired corporation or the surviving corporation, as the case may be. Similarly, this paragraph (k) shall not apply to a transfer by the former shareholders of the acquired corporation (other than a former shareholder that is also the acquiring corporation) or the surviving corporation, as the case may be, of consideration initially received in the potential reorganization to the issuing corporation or a person related to the issuing corporation (see definition of “related person” in § 1.368–1(e)).

(i) *Distributions.* One or more distributions to shareholders (including distribution(s) that involve the assumption of liabilities) are described in this paragraph (k)(1)(i) if—

(A) The property distributed consists of—

(1) Assets of the acquired corporation, the acquiring corporation, or the surviving corporation, as the case may be, or an interest in an entity received in exchange for such assets in a transfer described in paragraph (k)(1)(ii) of this section;

(2) Stock of the acquired corporation provided that such distribution(s) of stock do not cause the acquired corporation to cease to be a member of the qualified group (as defined in § 1.368–1(d)(4)(ii)); or

(3) A combination thereof; and

(B) The aggregate of such distributions does not consist of—

(1) An amount of assets of the acquired corporation, the acquiring corporation (disregarding assets held prior to the potential reorganization), or the surviving corporation (disregarding assets of the merged corporation), as the case may be, that would result in a liquidation of such corporation for Federal income tax purposes; or

(2) All of the stock of the acquired corporation that was acquired in the transaction.

(ii) *Transfers Other Than Distributions.* One or more other transfers are described in this paragraph (k)(1)(ii) if—

(A) The transfer(s) do not consist of one or more distributions to shareholders;

(B) The property transferred consists of—

(1) Part or all of the assets of the acquired corporation, the acquiring corporation, or the surviving corporation, as the case may be;

(2) Part or all of the stock of the acquired corporation, the acquiring corporation, or the surviving corporation, as the case may be, provided that such transfer(s) of stock do not cause such corporation to cease to be a member of the qualified group (as defined in § 1.368–1(d)(4)(ii)); or

(3) A combination thereof; and

(C) The acquired corporation, the acquiring corporation, or the surviving corporation, as the case may be, does not terminate its corporate existence for Federal income tax purposes in connection with the transfer(s).

(2) *Examples.* The following examples illustrate the application of this paragraph (k). Except as otherwise noted, P is the issuing corporation, and T is an unrelated target corporation. All corporations have only one class of stock outstanding. T operates a bakery that supplies delectable pastries and cookies to local retail stores. The acquiring corporate group produces a variety of baked goods for nationwide distribution. Except as otherwise noted, P owns all of the stock of S–1 and 80 percent of the stock of S–4, S–1 owns 80 percent of the stock of S–2 and 50 percent of the stock of S–5, S–2 owns 80 percent of the stock of S–3, and S–4 owns the remaining 50 percent of the stock of S–5. The examples are as follows:

Example 1. Transfers of acquired assets to members of the qualified group after a reorganization under section 368(a)(1)(C). (i) *Facts.* Pursuant to a plan of reorganization, T transfers all of its assets to S-1 solely in exchange for P stock, which T distributes to its shareholders, and S-1's assumption of T's liabilities. In addition, pursuant to the plan, S-1 transfers all of the T assets to S-2, and S-2 transfers all of the T assets to S-3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the successive transfers of all of the T assets to S-2 and from S-2 to S-3 because the transfers are not one or more distributions to shareholders, the transfers consist of part or all of the assets of the acquiring corporation, the acquiring corporation does not terminate its corporate existence for Federal income tax purposes in connection with the transfers, and the transaction satisfies the requirements of § 1.368-1(d).

Example 2. Distribution of acquired assets to a member of the qualified group after a reorganization under section 368(a)(1)(C). (i) *Facts.* Pursuant to a plan of reorganization, T transfers all of its assets to S-1 solely in exchange for P stock, which T distributes to its shareholders, and S-1's assumption of T's liabilities. In addition, pursuant to the plan, S-1 distributes half of the T assets to P, and P assumes half of the T liabilities.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the distribution of half of the T assets from S-1 to P, or P's assumption of half of the T liabilities from S-1, because the distribution consists of assets of the acquiring corporation, the distribution does not consist of an amount of S-1's assets that would result in a liquidation of S-1 for Federal income tax purposes (disregarding S-1's assets held prior to the acquisition of T), and the transaction satisfies the requirements of § 1.368-1(d).

Example 3. Indirect distribution of acquired assets to a member of the qualified group after a reorganization under section 368(a)(1)(C). (i) *Facts.* The facts are the same as *Example 2*, except that, instead of S-1 distributing half of the T assets to P and having P assume half of the T liabilities, S-1 contributes half of the T assets to newly formed S-6, S-6 assumes half of the T liabilities, and S-1 distributes all of the S-6 stock to P.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the transfer of half of the T assets to S-6 and the distribution of the S-6 stock to P because the transfer of half of the T assets to S-6 is described in paragraph (k)(1)(ii) of this section, the distribution of the S-6 stock to P is an indirect distribution of assets of the acquiring corporation, the distribution does not consist of an amount of S-1's assets that would result in a liquidation of S-1 for Federal income tax purposes (disregarding S-1's assets held prior to the acquisition of T), and the transaction satisfies the requirements of § 1.368-1(d).

Example 4. Distribution of acquired stock to a controlled partnership after a

reorganization under section 368(a)(1)(B). (i) *Facts.* P owns 80 percent of the stock of S-1, and an 80-percent interest in PRS, a partnership. S-4 owns the remaining 20-percent interest in PRS. PRS owns the remaining 20 percent of the stock of S-1. Pursuant to a plan of reorganization, the T shareholders transfer all of their T stock to S-1 solely in exchange for P stock. In addition, pursuant to the plan, S-1 distributes 90 percent of the T stock to PRS in redemption of 5 percent of the stock of S-1 owned by PRS.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by the distribution of 90 percent of the T stock from S-1 to PRS because the distribution consists of less than all of the stock of the acquired corporation that was acquired in the transaction, the distribution does not cause T to cease to be a member of the qualified group (as defined in § 1.368-1(d)(4)(ii)), and the transaction satisfies the requirements of § 1.368-1(d).

Example 5. Transfer of acquired stock to a non-controlled partnership. (i) *Facts.* Pursuant to a plan, the T shareholders transfer all of their T stock to S-1 solely in exchange for P stock. In addition, as part of the plan, T distributes half of its assets to S-1, S-1 assumes half of the T liabilities, and S-1 transfers the T stock to S-2. S-2 and U, an unrelated corporation, form a new partnership, PRS. Immediately thereafter, S-2 transfers all of the T stock to PRS in exchange for a 50 percent interest in PRS, and U transfers cash to PRS in exchange for a 50 percent interest in PRS.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(B), is not disqualified by the distribution of half of the T assets from T to S-1, or S-1's assumption of half of the T liabilities from T, because the distribution consists of assets of the acquired corporation, the distribution does not consist of an amount of T's assets that would result in a liquidation of T for Federal income tax purposes, and the transaction satisfies the requirements of § 1.368-1(d). Further, this paragraph (k) describes the transfer of the acquired stock from S-1 to S-2, but does not describe the transfer of the acquired stock from S-2 to PRS because such transfer causes T to cease to be a member of the qualified group (as defined in § 1.368-1(d)(4)(ii)). Therefore, the characterization of this transaction must be determined under the relevant provisions of law, including the step transaction doctrine. See § 1.368-1(a). The transaction fails to meet the control requirement of a reorganization described in section 368(a)(1)(B) because immediately after the acquisition of the T stock, the acquiring corporation does not have control of T.

Example 6. Transfers of acquired assets to members of the qualified group after a reorganization under section 368(a)(1)(D). (i) *Facts.* P owns all of the stock of T. Pursuant to a plan of reorganization, T transfers all of its assets to S-1 solely in exchange for S-1 stock, which T distributes to P, and S-1's assumption of T's liabilities. In addition, pursuant to the plan, S-1 transfers all of the

T assets to S-2, and S-2 transfers all of the T assets to S-3.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(D), is not disqualified by the successive transfers of all the T assets from S-1 to S-2 and from S-2 to S-3 because the transfers are not one or more distributions to shareholders, the transfers consist of part or all of the assets of the acquiring corporation, the acquiring corporation does not terminate its corporate existence for Federal income tax purposes in connection with the transfers, and the transaction satisfies the requirements of § 1.368-1(d).

Example 7. Transfer of stock of the acquiring corporation to a member of the qualified group after a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). (i) *Facts.* Pursuant to a plan of reorganization, S-1 acquires all of the T assets in the merger of T into S-1. In the merger, the T shareholders receive solely P stock. Also, pursuant to the plan, P transfers all of the S-1 stock to S-4.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of all of the S-1 stock to S-4 because the transfer is not a distribution to shareholders, the transfer consists of part or all of the stock of the acquiring corporation, the transfer does not cause S-1 to cease to be a member of the qualified group (as defined in § 1.368-1(d)(4)(ii)), the acquiring corporation does not terminate its corporate existence for Federal income tax purposes in connection with the transfer, and the transaction satisfies the requirements of § 1.368-1(d).

Example 8. Transfer of acquired assets to a partnership after a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D). (i) *Facts.* Pursuant to a plan of reorganization, S-1 acquires all of the T assets in the merger of T into S-1. In the merger, the T shareholders receive solely P stock. In addition, pursuant to the plan, S-1 transfers all of the T assets to PRS, a partnership in which S-1 owns a 33⅓-percent interest. PRS continues T's historic business. S-1 does not perform active and substantial management functions as a partner with respect to PRS' business.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(D), is not disqualified by the transfer of T assets from S-1 to PRS because the transfer is not a distribution to shareholders, the transfer consists of part or all of the assets of the acquiring corporation, the acquiring corporation does not terminate its corporate existence for Federal income tax purposes in connection with the transfers, and the transaction satisfies the requirements of § 1.368-1(d).

Example 9. Sale of acquired assets to a member of the qualified group after a reorganization under section 368(a)(1)(C). (i) *Facts.* Pursuant to a plan of reorganization, T transfers all of its assets to S-1 in exchange for P stock, which T distributes to its

shareholders, and S-1's assumption of T's liabilities. In addition, pursuant to the plan, S-1 sells all of the T assets to S-5 for cash equal to the fair market value of those assets.

(ii) *Analysis.* Under this paragraph (k), the transaction, which otherwise qualifies as a reorganization under section 368(a)(1)(C), is not disqualified by the sale of all of the T assets from S-1 to S-5 because the transfer is not a distribution to shareholders, the transfer consists of part or all of the assets of the acquiring corporation, the acquiring corporation does not terminate its corporate existence for Federal income tax purposes in connection with the transfer, and the transaction satisfies the requirements of § 1.368-1(d).

(3) *Effective/applicability dates.* This paragraph (k) applies to transactions occurring on or after May 9, 2008, except that it does not apply to any transaction occurring pursuant to a written agreement which is binding before May 9, 2008, and at all times after that.

* * * * *

Linda E. Stiff,

Deputy Commissioner for Services and Enforcement.

Approved: May 2, 2008.

Eric Solomon,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. E8-10451 Filed 5-8-08; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 80

[EPA-HQ-2005-0036; FRL-8564-3]

RIN 2060-AO89

Control of Hazardous Air Pollutants From Mobile Sources: Early Credit Technology Requirement Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of Direct Final Rule.

SUMMARY: Because EPA received significant adverse comment, we are withdrawing the direct final rule for revising the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits, published on March 12, 2008.

DATES: Effective May 9, 2008, EPA withdraws the direct final rule published at 73 FR 13132 on March 12, 2008.

FOR FURTHER INFORMATION CONTACT: Christine Brunner, Office of Transportation and Air Quality,

Assessment and Standards Division, Environmental Protection Agency, 2000 Traverwood, Ann Arbor, MI 48105; telephone number: (734) 214-4287; fax number: (734) 214-4816; e-mail address: brunner.christine@epa.gov. Alternative contact: Assessment and Standards Division Hotline, telephone number: (734) 214-4636; e-mail address: asinfo@epa.gov.

SUPPLEMENTARY INFORMATION: Because EPA received significant adverse comment, we are withdrawing the direct final rule for revising the February 26, 2007 mobile source air toxics rule's requirements that specify the benzene control technologies that qualify a refiner to generate early benzene credits, published on March 12, 2008 (73 FR 13132). We stated in that direct final rule that if we received adverse comment by April 11, 2008, the direct final rule would not take effect and we would publish a timely withdrawal in the **Federal Register**. We subsequently received significant adverse comment on that direct final rule. We will address those comments in any subsequent final action, which will be based on the parallel proposed rule also published on March 12, 2008 (73 FR 13163). As stated in the direct final rule and the parallel proposed rule, we will not institute a second comment period on this action.

Dated: May 1, 2008.

Stephen L. Johnson,

Administrator.

■ Accordingly, the amendments to the rule published on March 12, 2008 (73 FR 13132) are withdrawn as of May 9, 2008.

[FR Doc. E8-10404 Filed 5-8-08; 8:45 am]

BILLING CODE 6560-50-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 080408542-8615-01]

RIN 0648-AW63

Magnuson-Stevens Act Provisions; Fisheries Off West Coast States; Pacific Coast Groundfish Fishery; Biennial Specifications and Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes the 2008 fishery specifications for Pacific whiting in the U.S. exclusive economic zone (EEZ) and state waters off the coasts of Washington, Oregon, and California, as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). These specifications include the level of the acceptable biological catch (ABC), optimum yield (OY), tribal allocation, and allocations for the non-tribal commercial sectors. This document also corrects Table 2a, which inadvertently omitted a listing in the December 29, 2006 document.

DATES: Effective May 9, 2008.

ADDRESSES: Although there is no formal comment period, comments and suggestions on this rulemaking are welcome and should be sent to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., BIN C15700, Bldg. 1, Seattle, WA 98115-0070. Comments also may be sent via facsimile (fax) to 206-526-6736.

FOR FURTHER INFORMATION CONTACT: Becky Renko (Northwest Region, NMFS) 206-526-6110.

SUPPLEMENTARY INFORMATION:

Electronic Access

This final rule is accessible via the Internet at the Office of the Federal Register's Website at <http://www.gpoaccess.gov/fr/index.html>.

Background information and documents are available at the NMFS Northwest Region Web site at <http://www.nwr.noaa.gov/Groundfish-Halibut/Groundfish-Fishery-Management/index.cfm>.

Background

A proposed rulemaking to implement the 2007-2008 specifications and management measures for the Pacific Coast groundfish fishery was published on September 29, 2006 (71 FR 57764) and was followed by a final rule on December 29, 2006 (71 FR 78638). These specifications and management measures were codified in the CFR (50 CFR part 660, subpart G). The regulations were subsequently amended by correcting amendments published on March 20, 2007 (72 FR 13043) and September 18, 2007 (72 FR 53165). A final rule, published on April 9, 2007 (72 FR 19390), established the 2007 Pacific whiting harvest specifications. Inseason measures to revise management measures were published on July 5, 2007 (72 FR 36617), August 3, 2007 (72 FR 43193), October 4, 2007 (72 FR 56664), December 4, 2007 (72 FR 68097) and December 18, 2007 (72 FR 71583).

In November 2003, the U.S. and Canada signed an agreement regarding the conservation, research, and catch sharing of Pacific whiting. In that agreement, the U.S. and Canadian governments agreed upon a Pacific whiting catch sharing arrangement that provided 73.88 percent of the total catch OY to U.S. fisheries and 26.12 percent to Canadian fisheries. At this time, both countries are taking steps to fully implement the agreement. Until this occurs, the negotiators recommended that each country apply the agreed upon provisions to their respective fisheries. The Agreement is expected to become effective in 2008.

Consistent with the U.S.-Canada agreement, NMFS, at the recommendation of the Council, adopted a range for OYs and ABCs for Pacific whiting in the 2007–2008 specifications, published on December 29, 2006. For 2008, the Council recommended and NMFS adopts in this final rule ABC and OY values that are based on a new stock assessment. The impacts are consistent with the scope of impacts considered in the FEIS for the 2007 and 2008 management measures.

Pacific Whiting Stock Status

In general, Pacific whiting is a very productive species with highly variable recruitment (the biomass of fish that mature and enter the fishery each year) and a relatively short life span when compared to most other groundfish species. In 1987, the Pacific whiting biomass was at a historically high level due to an exceptionally large number of fish spawned in 1980 and 1984 (fish spawned during a particular year are referred to as a year class). As these large year classes of fish passed through the population and were replaced by moderate sized year classes, the stock declined. The Pacific whiting stock stabilized between 1995 and 1997, but then declined to its lowest level in 2001. After 2001, the Pacific whiting biomass increased substantially as a strong 1999 year class matured and entered the spawning population. The spawning biomass is expected to increase in the near future because of a moderately strong 2005 year class. However, the strength of the 2005 recruitment is still very uncertain.

The joint U.S.-Canada Stock Assessment Review (STAR) panel met February 11–14, 2008, in Seattle, Washington to review the following three draft stock assessment documents on Pacific whiting: *A Stock Assessment of Pacific Hake (whiting) in U.S. and Canadian Waters in 2008* by Helser *et al.*; *An Assessment and Management Advice for Pacific Hake in U.S. and*

Canadian Waters in 2008 by Steven Martell; and *A Virtual Population Analysis* by Alan Sinclair and Chris Grandin. The primary differences among the three assessments involved are assumptions regarding survey selectivity and catchability, stock productivity, and the reliability of historical data, as well as the treatment of ageing error and the aggregation and weighting of data used in the models. After consideration of all three stock assessments by the Council's STAR Panel, the "base model" presented by Helser *et al.* was chosen as the preferred stock assessment model. The STAR Panel recommended the base model because it provided a more flexible platform for evaluating assumptions about the stock and it made better use of the available data.

The 2008 base model is similar to that used in the 2007 assessment, except that the 2008 base model estimated the natural mortality rate of older fish; used the Bayesian priors to estimate the value of "h", or the stock-recruitment steepness (a proportional measure of expected recruitment relative to the number of adult fish) which serve to constrain the range within which the estimate will fall; accounted for the value of "q", which is known as the ageing error, or the acoustic survey catchability coefficient which, along with age-specific selectivity, defines the proportion of Pacific whiting biomass that the hydroacoustic survey is able to measure relative to the total amount of Pacific whiting in the surveyed area; and, eliminated the use of the pre-recruit survey data. In the previous assessments, the value of q was identified as a major source of uncertainty. The uncertainty in estimating the value of q is largely driven by conflicting signals from the acoustical survey biomass time series and age compositions. Each year from 2003 to 2007, two stock assessment models were presented with different values for q with each being assumed to have been equally likely. For 2008, the base model integrated uncertainty regarding all estimated parameters. The base model forecasts a positive trajectory for Pacific whiting indicating that the 1999 year-class is still available to the fishery and a reasonably strong 2005 year-class has shown up both in the fishery and the NMFS survey.

The Pacific whiting stock biomass is estimated to be approximately 42.6 percent (based on the 50th percentile of estimated probability distribution for depletion level) of its unfished biomass in 2008. The 2008 assessment estimated the stock biomass to be lower and the depletion level to be higher than in the

2007 assessment because the current assessment freely estimated the value for q, and because an age-reading error matrix was used that resulted in a lower estimate of the unfished biomass and increased estimate of the size of the 1999 year class. The results of the new 2008 base model indicate that spawning stock biomass for the most recent years was generally lower than had been estimated in the 2007 assessment, but is greater relative to the estimate of unfished biomass.

At the Council's March 2008 meeting the Scientific and Statistical Committee (SSC) reviewed the assessments and endorsed the use of the 2008 base model and the associated decision table for management purposes. Although the SSC endorsed the base model for management purposes, concerns were expressed about estimating natural mortality and selectivity for the oldest ages and whether the data used to estimate the value of q were informative enough to rely only on the point estimate from the base model for management decisions. In addition, the SSC noted that there was considerable uncertainty associated with stock size estimates given that the 2005 recruitment has not been sampled adequately to confirm its strength, and that the three assessments presented to the STAR Panel differ in their predictions. The SSC also noted that the population dynamics of Pacific whiting may not match the default harvest policy of F40% specified in the provisions of the U.S.-Canada agreement. A rate of F40% can be explained as that which reduces spawning potential per female to 40 percent of what it would have been under long-term unfished conditions. The selection of the F40% value was based on an analysis of stock and recruitment data for other whiting (hake) species. However, because long-term application of the current harvest rate of F40% would be expected to drive the Pacific whiting stock well below the biomass target, the SSC recommended that further work be done on the development of a more suitable control rule. Despite the identified concerns, the SSC concluded that none of the concerns warranted changing the recommendations of the STAR Panel.

ABC/OY Recommendations

The range of U.S. ABCs and OYs analyzed in the FEIS for the 2007 and 2008 specifications and management measures included: A low ABC of 244,425 mt and a high ABC of 733,275 mt (50 percent and 150 percent, respectively, of the 2006 U.S. ABC of 488,850); and a low OY of 134,534 mt

and a high OY of 403,604 mt (50 percent and 150 percent, respectively, of the 2005/2006 U.S. OY of 269,069). These broad ranges in Pacific whiting harvest levels were analyzed in order to assess the potential range of the effects of the Pacific whiting fishery on incidentally-caught overfished species and the economic effects to coastal communities.

At its March 10–14, 2008, meeting in Sacramento, California the Council reviewed the results of the new Pacific whiting stock assessments and recommended adopting a U.S.-Canada coastwide ABC of 400,000 mt with a corresponding U.S. ABC of 295,520 mt. The coastwide ABC is below the risk averse ABC of 414,000 mt projected from the base model and recommended by the SSC. The range of U.S.-Canada coastwide OY values considered by the Council included: 546,297 mt, which is the highest harvest analyzed within the FEIS for 2007 and 2008 specifications and management measures; 400,000 mt, which is an intermediate value based on a constant catch level; 328,358 mt which is the 2007 status quo value; 300,000 mt, which is an intermediate value based on a constant catch level; 259,775 mt, which is the amount projected to be harvested with a widow bycatch limit of 275 mt; and 250,000 mt, which is the most conservative value in the stock assessment projections. Following discussion and public testimony, the Council recommended adopting a U.S.-Canada coastwide OY of 364,842 mt with a corresponding U.S. OY of 269,545 mt. The U.S. OY is similar to the 2005 and 2006 U.S. OYs.

Risk factors identified by the SSC concerning the fishery were cause for concern such that a more risk averse OY was recommended by the Council. The Council indicated that a precautionary approach was needed to account for both assessment and management uncertainty. The Council's recommendation also took into consideration the very limited amounts of canary, darkblotched and widow rockfish (bycatch limit species) available to be taken incidentally in the Pacific whiting fishery. With a U.S. OY of 269,545 mt, the industry would need to continue to avoid the incidental catch of bycatch limit species to fully utilize the OY. The Council indicated that the expectation of the Pacific whiting OY to be fully utilized was near the upper end of what would be expected given the understanding of the catch of bycatch limit species.

It is unknown exactly how much risk is involved with the use of the current assessments and harvest control rule with a species such as Pacific whiting.

When coupled with the observation that the stock biomass has been in decline since 2003 while ABC has increased substantially over the same period, the best available information suggests there may be cause for concern if the full ABC were harvested. The Council's OY recommendation was consistent with the concerns expressed by the SSC.

Allocations

In 1994, the United States formally recognized that the four Washington coastal treaty Indian tribes (Makah, Quileute, Hoh, and Quinault) have treaty rights to fish for groundfish in the Pacific Ocean. In general terms, the quantification of those rights is 50 percent of the harvestable surplus of groundfish that pass through the tribes' usual and accustomed ocean fishing areas (described at 50 CFR 660.324).

The Pacific Coast Indian treaty fishing rights, described at 50 CFR 660.385, allow for the allocation of fish to the tribes through the specification and management measures process. A tribal allocation is subtracted from the species OY before limited entry and open access allocations are derived. The tribal whiting fishery is a separate fishery, and is not governed by the limited entry or open access regulations or allocations. To date, only the Makah Tribe has participated in the fishery. It regulates, and in cooperation with NMFS, monitors this fishery so as not to exceed the tribal allocation.

Beginning in 1999, NMFS set the tribal allocation according to an abundance-based sliding scale method, proposed by the Makah Tribe in 1998. (See 64 FR 27928, 27929 (May 29, 1999); 65 FR 221, 247 (January 4, 2000); and 66 FR 2338, 2370 (January 11, 2001)). Details on the abundance-based sliding scale allocation method and related litigation are discussed in the preamble to the proposed rule (69 FR 56570; September 21, 2004) and are not repeated here. On December 28, 2004, the Ninth Circuit Court of Appeals upheld the sliding scale approach in *Midwater Trawler Cooperative v. Daley*, 393 F. 3d 994 (9th Cir. 2004). Under the sliding scale allocation method, the tribal allocation varies with U.S. Pacific whiting OY, ranging from 14 percent (or less) of the U.S. OY when OY levels are above 250,000 mt, to 17.5 percent of the U.S. OY when the OY level is at or below 145,000 mt. For 2008, using the sliding scale allocation method, the tribal allocation will be 35,000 mt. The Makah are the only Washington Coast tribe that requested a Pacific whiting allocation for 2008.

The 2008 commercial OY (non-tribal) for Pacific whiting is 232,545 mt. This

is calculated by deducting the 35,000–mt tribal allocation and 2,000–mt for research catch and bycatch in non-groundfish fisheries from the 269,545 mt total catch OY. Regulations at 50 CFR 660.323(a)(4) divide the commercial OY into separate allocations for the non-tribal catcher/processor, mothership, and shore-based sectors of the Pacific whiting fishery.

The catcher/processor sector is comprised of vessels that harvest and process Pacific whiting. The mothership sector is comprised of catcher vessels that harvest Pacific whiting for delivery to motherships. Motherships are vessels that process, but do not harvest, Pacific whiting. The shoreside sector is comprised of vessels that harvest Pacific whiting for delivery to shoreside processors. Each sector receives a portion of the commercial OY in accordance with the regulations at 50 CFR 660.323(a)(4). For 2008, the catcher/processors receive 34 percent (79,065 mt), motherships receive 24 percent (55,811 mt), and the shore-based sector receives 42 percent (97,669 mt) of the total catch OY.

Correction

An omission was identified in Table 2a, which was published in the final rule of the 2007–2008 harvest specifications (December 29, 2006, 71 FR 78638). The ABC value for darkblotched rockfish in Table 2a was inadvertently left out of the table, but identified in the associated footnote to the table. The ABC value of 487 mt has been inserted into the table. The 2007 OY value for darkblotched rockfish in Table 1a inadvertently carried over into Table 2a for 2008. The associated footnote contained the correct OY value of 330 mt. Therefore Table 2a has been revised to include the OY value of 330 mt for darkblotched rockfish. Table 2a in the Proposed Rule also contained these errors, but the preamble to the Proposed Rule that explained and summarized the rebuilding plan for darkblotched rockfish clearly stated the correct ABC and OY for 2008 for darkblotched rockfish (September 29, 2006, 71 FR 57764, 57780).

Classification

The final Pacific whiting specifications and management measures for 2008 are issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and are in accordance with 50 CFR part 660, the regulations implementing the FMP.

For the following reasons, NMFS finds good cause, pursuant to 5 U.S.C. 553(b)(B) to waive prior public notice

and comment on the 2008 Pacific whiting specifications.

The FMP requires that fishery specifications be evaluated periodically using the best scientific information available. NMFS completes a Pacific whiting stock assessment every year in cooperation with Canadian scientists. The 2008 stock assessment for Pacific whiting was prepared in early 2008, which is the optimal time of year to conduct stock assessments for this species due to the unavailability 2007 data until that time. New 2007 data used in this assessment include updated total catch, length and age data from the U.S. and Canadian fisheries, and biomass indices from the Joint US-Canadian acoustic/midwater trawl surveys. Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment when determining ABC and OY. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. For the actions to be implemented in this final rule, affording the time necessary for prior notice and opportunity for public comment would prevent the agency from managing the Pacific whiting and related fisheries using the best available science to approach without exceeding the OYs. Delaying this action would be impracticable and contrary to the public's interest and NMFS's obligations under the Magnuson-Stevens Act.

Also for these reasons, NMFS finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), so that this final rule may become effective as soon as possible after the April 1, 2008, fishery start date. As stated previously, Pacific whiting differs from other groundfish species in that it has a shorter life span and the population fluctuates more swiftly. Thus, it is important to use the most recent stock assessment when determining ABC and OY. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. Because of the timing of the assessment, the results are not available for use in developing the new ABC and OY until just before the Council's annual March meeting. Delaying the implementation of the rule to allow for the 30-day delay in effectiveness would prevent the agency from managing the Pacific whiting and related fisheries using the best available science to approach without exceeding the OYs. Thus, the

AA waives the 30-day delay in effectiveness and makes this rule effective upon publication.

The environmental impacts associated with the Pacific whiting harvest levels being adopted by this action are consistent with the impacts in the final environmental impact statement for the 2007–2008 specification and management measures. Copies of the FEIS and the ROD are available from the Council (see **ADDRESSES**).

An Initial Regulatory Flexibility Analysis (IRFA) and FRFA were prepared for the 2007–2008 harvest specifications and management measures, which included the regulatory impacts of this action on small entities. The IRFA was summarized in the proposed rule published on September 29, 2006 (71 FR 57764). The following summary of the FRFA analysis, which covers the entire groundfish regulatory scheme of which this is a part, was published in the final rule on December 29, 2006 (71 FR 78638). The need for and objectives of this final rule are contained in the **SUMMARY** and in the Background section under **SUPPLEMENTARY INFORMATION**.

The final 2007–2008 specifications and management measures were intended to allow West Coast commercial and recreational fisheries participants to fish the harvestable surplus of more abundant stocks while also ensuring that those fisheries do not exceed the allowable catch levels intended to rebuild and protect overfished and depleted stocks. The specifications (ABCs and OYS) follow the guidance of the Magnuson-Stevens Act, the national standard guidelines, and the FMP for protecting and conserving fish stocks. Fishery management measures include trip and bag limits, size limits, time/area closures, gear restrictions, and other measures intended to allow year-round West Coast groundfish landings without compromising overfished species rebuilding measures.

In recent years the number of participants in the Pacific whiting fishery has ranged from 29 to 37 shoreside trawl vessels; 4 to 6 motherships with a fleet of 11 to 20 catcher vessels, 5 and 9 catcher processors and 14 to 15 shorebased processors. As explained below, we expect that this final rule will result in some positive economic impacts due to increased production and revenue and some negative impacts due to rising fuel prices. Because of the uncertainty of these impacts, it is not possible for NMFS to quantify the net change in economic impact of this final rule as compared to that analyzed in the FEIS

for the 2007–2008 specifications and management measures.

The 2007 fishery landed 224,529 mt that generated \$37 million in ex-vessel revenues at \$165 per ton. Ex-vessel revenues in 2007 were the highest on record. The 2008 OY is approximately 9 percent larger than the 2007 OY. Being able to harvest the entire Pacific whiting OY will depend on how well the industry stays within the bycatch limits established for overfished species taken incidentally in the fishery. Assuming that there are no bycatch issues, it is expected that 2008 landings will continue the growth in annual revenue that has occurred since 2004 when the fishery harvested about 215,000 mt worth \$17 million at about \$80 per ton ex-vessel. In addition to an increase in the OY, the major factor for increased revenues is the increased demand for whiting products, especially headed and gutted products. Over the 2004–2007 period, wholesale prices for headed and gutted product increased from about \$1,200 per ton to \$1,600 per ton. While indicating that there are signs that wholesale prices may be leveling off, industry publications are also indicating that markets for the Pacific whiting products will be as strong in 2008 as they were in 2007 as a result of European and Asian exchange rates, growing market demand, and declines in whiting production from South American sources. Therefore, revenues in 2008 may be greater than in 2007 either as a result of a potential price increases or because of the increase in the OY.

Although wholesale and ex-vessel prices may either level off or continue to rise, fuel prices, a major expenditure category for whiting vessels, have been increasing dramatically since last year. For example, April 2008 marine diesel prices in Newport, Oregon, reached \$3.70 per gallon compared to April 2007 levels of \$2.39 per gallon. Therefore, levels of profitability achieved in 2007 may not be maintained in 2008.

NMFS issued Biological Opinions under the ESA on August 10, 1990, November 26, 1991, August 28, 1992, September 27, 1993, May 14, 1996, and December 15, 1999 pertaining to the effects of the Pacific Coast groundfish FMP fisheries on Chinook salmon (Puget Sound, Snake River spring/summer, Snake River fall, upper Columbia River spring, lower Columbia River, upper Willamette River, Sacramento River winter, Central Valley spring, California coastal), coho salmon (Central California coastal, southern Oregon/northern California coastal, and Oregon coastal), chum salmon (Hood Canal summer, Columbia River),

sockeye salmon (Snake River, Ozette Lake), and steelhead (upper, middle and lower Columbia River, Snake River Basin, upper Willamette River, central California coast, California Central Valley, south/central California, southern California).

NMFS reinitiated a formal section 7 consultation under the ESA in 2005 for both the Pacific whiting midwater trawl fishery and the groundfish bottom trawl fishery. The December 19, 1999 Biological Opinion had defined an 11,000 Chinook incidental take threshold for the Pacific whiting fishery. During the 2005 Pacific whiting season, the 11,000 fish Chinook incidental take threshold was exceeded, triggering reinitiation. Also in 2005, new data from the West Coast Groundfish Observer Program became available, allowing NMFS to do a more complete analysis of salmon take in the bottom trawl fishery.

NMFS completed its reinitiation of consultation and prepared a Supplemental Biological Opinion dated March 11, 2006. In its 2006 Supplemental Biological Opinion, NMFS concluded that catch rates of salmon in the 2005 Pacific whiting fishery were consistent with expectations considered during prior consultations. Chinook bycatch has averaged about 7,300 over the last 15 years and has only occasionally exceeded the reinitiation trigger of 11,000. Since 1999, annual Chinook bycatch has averaged about 8,450. The Chinook ESUs most likely affected by the Pacific whiting fishery have generally improved in status since the 1999 section 7 consultation. Although these species remain at risk, as indicated by their ESA listing, NMFS concluded that the higher observed bycatch in 2005 does not require a reconsideration of its prior “no jeopardy” conclusion with respect to the fishery. For the groundfish bottom trawl fishery, NMFS concluded that incidental take in the groundfish fisheries is within the overall limits

articulated in the Incidental Take Statement of the 1999 Biological Opinion. The groundfish bottom trawl limit from that opinion was 9,000 fish annually. NMFS will continue to monitor and collect data to analyze take levels. NMFS also reaffirmed its prior determination that implementation of the Groundfish FMP is not likely to jeopardize the continued existence of any of the affected ESUs.

Lower Columbia River coho (70 FR 37160, June 28, 2005) were recently listed and Oregon Coastal coho (73 FR 7816, February 11, 2008) were recently relisted as threatened under the ESA. The 1999 biological opinion concluded that the bycatch of salmonids in the Pacific whiting fishery were almost entirely Chinook salmon, with little or no bycatch of coho, chum, sockeye, and steelhead. The Southern Distinct Population Segment (DPS) of green sturgeon (71 FR 17757, April 7, 2006) were also recently listed as threatened under the ESA. As a consequence, NMFS has reinitiated its Section 7 consultation on the PFMC’s Groundfish FMP.

After reviewing the available information, NMFS concluded that, in keeping with Sections 7(a)(2) and 7(d) of the ESA, the proposed action would not result in any irreversible or irretrievable commitment of resources that would have the effect of foreclosing the formulation or implementation of any reasonable and prudent alternative measures.

Pursuant to Executive Order 13175, this action was developed after meaningful consultation and collaboration with tribal officials from the area covered by the FMP. Under the Magnuson-Stevens Act at 16 U.S.C. 1852(b)(5), one of the voting members of the Council must be a representative of an Indian tribe with federally recognized fishing rights from the area of the Council’s jurisdiction. In addition, regulations implementing the FMP establish a procedure by which the tribes with treaty fishing rights in the

area covered by the FMP request new allocations or regulations specific to the tribes, in writing, before the first of the two meetings at which the Council considers groundfish management measures. Only the Makah Tribe requested a whiting allocation for 2008.

The regulations at 50 CFR 660.324(d) further state “the Secretary will develop tribal allocations and regulations under this paragraph in consultation with the affected tribe(s) and, insofar as possible, with tribal consensus.” The tribal whiting allocation finalized by this final rule was recommended by the Council based on the sliding scale allocation formula which was recommended by the Makah tribe and is described above.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

List of Subjects in 50 CFR Part 660

Fisheries, Fishing, and Indian fisheries.

Dated: May 5, 2008.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES

■ 1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

■ 2. In § 660.385 paragraph (e) is revised to read as follows:

§ 660.385 Washington coastal tribal fisheries management measures.

* * * * *

(e) Pacific whiting. The tribal allocation is 35,000 mt.

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■ 3. Tables 2a, 2b, and 2c to part 660 subpart G are revised to read as follows:

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Table 2a. To Part 660, Subpart G-2008, and Beyond, Specifications of ABCs, OYs, and HGs, by Management Area (weights in metric tons).

Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC		Com- mer- cial	Rec- rea- tion al
	Van- cou- ver a/	Col- umb- ia	Eur- eka	Mont- erey	Con- cep- tion				
ROUNDFISH									
Lingcod c/ N of 42° N. lat.	5,428		852			6,280	5,558		
S of 42° N. lat.							612		
Pacific Cod e/	3,200		d/			3,200	1,600	1,200	
Pacific Whiting f/	295,520					295,520	269,545	232,545	
Sablefish g/	6,058					6,058	5,934	5,362	
Cabazon h/ S of 42°N. lat.	d/		71		23	94	69	27	
FLATFISH:									
Dover sole i/	28,442					28,442	16,500		
English sole j/	6,237					6,237	6,237	-	
Petrable sole k/	1,475		1,444			2,919	2,499	-	
Arrowtooth	5,800					5,800	5,800	-	
Starry Flounder m/	1,221					1,221	890		
Other flatfish n/	6,731					6,731	4,884	-	
ROCKFISH:									
Pacific Ocean Perch o/	911					911	150	111.3	
Shortbelly p/	13,900					13,900	13,900		
Widow q/	5,144					5,144	368	251.4	9.4
Canary r/	179					179	44	23.8	17.2
Chilipepper s/	d/		2,700			2,700	2,000		
Bocaccio t/	d/		618			618	218	80.2	66.3
Splitnose u/	d/		615			615	461		
Yellowtail v/	4,548		d/			4,548	4,548		

Species	ABC Specifications					ABC	OY b/	HG b/	
	ABC Contributions by Area							Com- mer- cial	Rec- rea- tion al
	Van- cou- ver a/	Col- umb- ia	Eur- eka	Mont- erey	Con- cep- tion				
ROCKFISH:									
Shortspine thornyhead w/ N of 34°27' N.lat.	2,476					2,476	1,634		
S of 34°27' N. lat							421		
Longspine thornyhead x/ N of 34°27' N. lat.	3,907					3,907	2,220		
S of 34°27' N. lat.							476		
Cowcod y/ 36° to 40° 30 N. lat.	d/			19	--	19	4	3.1	0.3
south of 36° N. lat.	d/			--	17	17			
Darkblotched z/	487					487	330	-	
Yelloweye aa/						26	20	7.8	8.9
California Scorpionfish bb/					219	219	175	34	
Black cc/ N of 46°16' N. lat.	540					540	540		
S of 46°16' N. lat.		722				722	722		
Minor Rockfish dd/ N of 40° 10' N. lat.	3,680			--		3,680	2,270	2,181	89
Minor Rockfish ee/ S of 40° 10' N. lat.	--			3,403		3,403	1,904	1,418	486
Remaining	1,612			1,105					
bank	d/			350					
blackgill	d/			292					
bocaccio north	318			--					
chilipepper north	32			--					
redstripe	576			d/					
sharpchin	307			45					

silvergrey	38			d/					
splitnose north	242			--					
Species	ABC Specifications						OY b/	HG b/	
	ABC Contributions by Area					ABC		Com- mer- cial	Rec- rea- tion al
	Van- cou- ver a/	Col- umb- ia	Eur- eka	Mont- erey	Con- cep- tion				
yellowmouth	99			d/					
yellowtail	--			116					
gopher	d/			302					
Other rockfish	2,068			2,298					
SHARKS/SKATES/RATFISH/MORIDS/GRENADIERS/KELP GREENLING:									
Other fish ii/	2,500	7,000	1,200	3,900		14,600	7,300		

Table 2b. To Part 660, Subpart G-2008, and Beyond, Harvest Guidelines for Minor Rockfish by Depth Sub-groups (weights in metric tons).

Species	Total Catch ABC	Total Catch OY	Rec- rea- tion- al HG	Commer- cial HG	Limited Entry HG		Open Access HG	
					Mt	%	Mt	%
Minor Rockfish dd/ N of 40° 10' N. lat	3,680	2,270	89	2,181	2,000	91.7	181	8.3
Nearshore		142	79	63				
Shelf		968	10	958				
Slope		1,160	0	1,160				
Minor Rockfish ee/ S of 40° 10' N. lat	3,403	1,904	486	1,418	790	55.7	628	44.3
Nearshore		564	426	138				
Shelf		714	60	654				
Slope		626	0	626				

Table 2c. To Part 660, Subpart G-2008, and Beyond, Open Access and Limited Entry Allocations by Species or Species Group. (Weights in Metric Tons)

Species	Commercial Total Catch HGs	Commercial Total Catch HGs			
		Limited Entry		Open Access	
		Mt	%	Mt	%
Lingcod	--				
N of 42° N. lat.					
S of 42° N. lat.		--	81.0	--	19.0
Sablefish jj/	5,151	4,667	90.6	484	9.4

N of 36° N. lat.					
Widow kk/	251.4	--	97.0	--	3.0
Canary kk/	23	--	87.7	--	12.3
Chilipepper	2,000	1,114	55.7	886	44.3
Bocaccio kk/	80.2	--	55.7	--	44.3
Yellowtail	--	--	91.7	--	8.3
Shortspine thornyhead N of 34°27' N. lat.	1,634	1,193	99.7	441	0.27
Minor Rockfish N of 40°10' N.	2,181	2,000	91.7	181	8.3
S of 40°10' N. lat.	1,418	790	55.7	628	44.3

a/ ABCs apply to the U.S. portion of the Vancouver area.

b/ Optimum Yields (OYs) and Harvest Guidelines (HG) are specified as total catch values. Though presented as harvest guidelines, the recreational values for widow rockfish, bocaccio, and cowcod are catch estimates. A harvest guideline is a specified harvest target and not a quota. The use of this term may differ from the use of similar terms in state regulation.

c/ Lingcod - A coastwide lingcod stock assessment was prepared in 2005. The lingcod biomass was estimated to be at 64 percent of its unfished biomass in 2005. The ABC was calculated using an F_{MSY} proxy of $F_{45\%}$. The ABC of 6,280 mt is a two year average ABC for 2007 and 2008. Because the stock is above $B_{40\%}$ coastwide, the OY could be set equal to the ABC. Separate OYs are being adopted for the area north of 42° N. lat. and the area south of 42° N. lat. For that portion of the stock north of 42° N. lat. the OY of 5,558 mt is set equal to the ABC contribution for the area. The biomass in the area south of 42° N. lat. is estimated to be at 24 percent of the unfished biomass. As a precautionary measure, the OY for the southern portion of the stock is being set at 612 mt, which is lower than the ABC contribution for the area. An OY of 612 mt (equivalent to the 2006 OY) is expected to result in a biomass increase for the southern portion of the stock. The tribes do not have a specific allocation at this time, but are expected to take 30 mt of the commercial HG.

d/ "Other species", these species are neither common nor important to the commercial and recreational fisheries in the areas footnoted. Accordingly, these species are included in the harvest guidelines of "other fish", "other rockfish" or "remaining rockfish".

e/ Pacific Cod - The 3,200 mt ABC for the Vancouver-Columbia area is based on historical landings data. The 1,600 mt OY is the ABC reduced by 50 percent as a precautionary adjustment. A tribal harvest guideline of 400 mt is deducted from the OY resulting in a commercial OY of 1,200 mt.

f/ Pacific whiting - The most recent stock assessment was prepared in February 2008, and the whiting biomass was estimated to be 42.6 percent (50th percentile estimate of depletion) of its unfished biomass in 2008 using the base model. The U.S. Canada coastwide ABC is 400,000 mt. Per the U.S.-Canada agreement, the U.S. ABC is 295,520 mt, 73.88 percent of the coastwide value. The U.S.-Canada coastwide OY is 364,842 mt. The U.S. OY is 269,545 mt (73.88 percent of the coastwide value). The tribal allocation is 35,000 mt. The 2008

commercial OY (non-tribal) for Pacific whiting is 232,545 mt, which is calculated by deducting the 35,000 mt tribal allocation and 2,000 mt for research catch and bycatch in non-groundfish fisheries from the 269,545 mt total catch OY. Each sector receives a portion of the commercial OY, with the catcher/processors getting 34 percent (79,065 mt), motherships getting 24 percent (55,811 mt), and the shore-based sector getting 42 percent (97,669 mt).

g/ Sablefish - A coastwide sablefish stock assessment was prepared in 2005. The coastwide sablefish biomass was estimated to be at 35.2 percent of its unfished biomass in 2005. Projections indicate that the biomass is increasing and will be near 42 percent of its unfished biomass by 2008. The coastwide ABC of 6,058 mt was based on the base-case assessment model with a F_{MSY} proxy of $F_{45\%}$. The coastwide OY of 5,934 mt is based on the application of the 40-10 harvest policy and is a two year average OY for 2007 and 2008. To apportion fishery allocations for the area north of 36° N. lat., 96.45 percent of the coastwide OY (5,723 mt) is attributed to the northern area. The tribal allocation for the area north of 36° N. lat. is 572 mt (10 percent of the OY north of 36° N. lat), which is further reduced by 1.9 percent (10.9 mt) for discards. The tribal landed catch value is 561.4 mt.

h/ Cabezon south of 42° N. lat. was assessed in 2005. In 2005, the Cabezon stock was estimated to be at 40 percent of its unfished biomass north of 34° 27' N. lat. and 28 percent of its unfished biomass south of 34° 27' N. lat. The stock biomass is projected to be increasing in the northern area and decreasing in the southern area. The ABC of 94 mt (71 mt for the northern portion of the stock and 23 mt for the southern portion of the stock) is based on a harvest rate proxy of $F_{50\%}$. The OY of 69 mt is a constant harvest level that is consistent with the application of a 60-20 harvest rate policy specified in the California Nearshore Management Plan.

i/ Dover sole north of 34° 27' N. lat. was assessed in 2005. The Dover sole biomass was estimated to be at 59.8 percent of its unfished biomass in 2005 and is projected to be increasing. The ABC of 28,442 mt is based on the results of the 2005 assessment with an F_{MSY} proxy of $F_{40\%}$. Because the stock is above $B_{40\%}$ coastwide, the OY could be set equal to the ABC. The OY of 16,500 mt, which is less than the ABC, is the MSY harvest level and is considerably larger than the coastwide catches in any recent years.

j/ A coastwide English sole stock assessment was prepared in 2005 and the stock was estimated to be at 91.5 percent of its unfished biomass in 2005, but the stock biomass is believed to be declining. The ABC of 6,237 is a two year average ABC for 2007 and 2008 based on the results of the 2005 assessment with an F_{MSY} proxy of $F_{40\%}$. Because the stock is above $B_{40\%}$, the OY was set equal to the ABC.

k/ A petrale sole stock assessment was prepared for 2005. In 2005 the petrale sole stock coastwide was estimated to be at 32 percent of its unfished biomass (34 percent in the northern assessment area and 29 percent of in the southern assessment area). The petrale sole biomass is believed to be increasing. The ABC of 2,919 mt is based on the new assessment with a $F_{40\%}$ F_{MSY} proxy. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas. As a precautionary measure, an additional 25 percent reduction was made in the OY contribution for the southern area due assessment uncertainty. The OY of 2,499 mt is the average coastwide OY value for 2007 and 2008.

l/ Arrowtooth flounder was last assessed in 1993 and was estimated to be above 40 percent of its unfished biomass, therefore the OY will be set equal to the ABC.

m/ Starry Flounder was assessed for the first time in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005 (44 percent for the northern stock off Washington and Oregon, and 62 percent for the southern stock of California). The starry flounder biomass is believed to be declining, and will be below $B_{40\%}$. The starry flounder assessment was considered to be a data-poor assessment relative to other groundfish assessments. For 2007, the coastwide ABC of 1,221 mt is based on the new assessment with a F_{MSY} proxy of $F_{40\%}$ and is an average ABC for 2007 and 2008. Because the stock is believed to be above $B_{40\%}$, the OY could be set equal to the ABC. To derive the OY, the 40-10 harvest policy was applied to the ABC for both the northern and southern assessment areas then an additional 25 percent reduction was made due to assessment uncertainty. Starry flounder was previously managed as part of the "other flatfish" category. The OY of 890 mt is the average coastwide OY value for 2007 and 2008.

n/ "Other flatfish" are those flatfish species that do not have individual ABC/OYs and include butter sole, curlfin sole, flathead sole, Pacific sand dab, rex sole, rock sole, and sand sole. Starry flounder was first assessed in 2005 and has been removed from the other flatfish complex. The other flatfish ABC is based on historical catch levels. The ABC of 6,731 mt is based on the highest landings for sanddabs (1995) and rex sole (1982) for the 1981-2003 period and on the average landings from the 1994-1998 period for the remaining other flatfish species. The OY of 4,884 mt is based on the ABC with a 25 percent precautionary adjustment for sanddabs and rex sole and a 50 percent precautionary adjustment for the remaining species.

o/ A POP stock assessment was prepared in 2005 and the stock was estimated to be at 23.4 percent of its unfished biomass in 2005. The ABC of 911 mt for the Vancouver and Columbia areas is based on an F_{MSY} proxy of $F_{50\%}$. The OY of 150 mt is based on a rebuilding plan with a target year to rebuild of 2017 and an SPR harvest rate of 86.4 percent. The OY is reduced by 3.6 mt for the amount anticipated to be taken during research activity.

p/ Shortbelly rockfish remains an unexploited stock and is difficult to assess quantitatively. A 1989 stock assessment provided 2 alternative yield calculations of 13,900 mt and 47,000 mt. NMFS surveys have shown poor recruitment in most years since 1989, indicating low recent productivity and a naturally declining population in spite of low fishing pressure. The ABC and OY are therefore set at the low end of the range projected in the stock assessment, 13,900 mt.

q/ Widow rockfish was assessed in 2005 and was estimated to be at 31.1 percent of its unfished biomass in 2004. The ABC of 5,144 mt is based on an $F_{50\%}$ F_{MSY} proxy. The OY of 368 is based on a rebuilding plan with a target year to rebuild of 2015 and an SPR harvest rate of 95 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch about 46.1 mt of widow rockfish in 2008, but do not have a specific allocation at this time. For the Pacific whiting fishery, 200 mt is being set aside and will be managed with bycatch limits.

r/ Canary rockfish - A coastwide canary rockfish stock assessment was completed in 2005 and the stock was estimated to be at 9.4 percent of its unfished biomass coastwide in 2005. The coastwide ABC of 179 mt is based on a F_{MSY} proxy of $F_{50\%}$. The OY of 44 mt is based on a rebuilding plan with a target year to rebuild of 2063 and a SPR harvest rate of 88.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research

activity. Tribal vessels are estimated to catch about 5 mt of canary rockfish under the 2008 commercial HG, but do not have a specific allocation at this time. South of 42° N. lat., the canary rockfish recreational fishery HG is 9.0 mt and north of 42° N. lat., the canary rockfish recreational fishery HG 8.2 mt.

s/ Chilipepper rockfish was last assessed in 1998. The ABC (2,700 mt) for the Monterey-Conception area is based on a three year average projection from 1999-2001 with a $F_{50\% F_{MSY}}$ proxy. Because the unfished biomass is estimated to be above 40 percent the unfished biomass, the default OY could be set equal to the ABC. However, the OY is set at 2,000 mt to discourage fishing on chilipepper, which is taken with bocaccio. Management measures to constrain the harvest of overfished species have reduced the availability of chilipepper rockfish to the fishery during the past several years. Because the harvest assumptions (from the most recent stock assessment) used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2008 was considered to be conservative and based on the best available data. Open access is allocated 44.3 percent (886 mt) of the commercial HG and limited entry is allocated 55.7 percent (1,114 mt) of the commercial HG.

t/ A bocaccio stock assessment updates and a rebuilding analysis were prepared in 2005. The bocaccio stock was estimated to be at 10.7 percent of its unfished biomass in 2005. The ABC of 618 mt for the Monterey-Conception is based on a $F_{50\% F_{MSY}}$ proxy. The OY of 218 is based on a rebuilding plan with a target year to rebuild of 2026 and a SPR harvest rate of 77.7 percent. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

u/ Splitnose rockfish - The ABC is 615 mt in the southern area (Monterey-Conception). The 461 mt OY for the southern area reflects a 25 percent precautionary adjustment because of the less rigorous stock assessment for this stock. In the north, splitnose is included in the minor slope rockfish OY. Because the harvest assumptions used to forecast future harvest were likely overestimates, carrying the previously used ABCs and OYs forward into 2008 was considered to be conservative and based on the best available data.

v/ Yellowtail rockfish - A yellowtail rockfish stock assessment was prepared in 2005 for the Vancouver-Columbia-Eureka areas. Yellowtail rockfish was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 4,548 mt is a 2 year average ABC for 2007 and 2008 and is based on the 2005 stock assessment with the F_{MSY} proxy of $F_{50\%}$. The OY of 4,548 mt was set equal to the ABC, because the stock is above the precautionary threshold of $B_{40\%}$. Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2007, but do not have a specific allocation at this time. Tribal vessels are estimated to catch about 539 mt of yellowtail rockfish in 2008, but do not have a specific allocation at this time.

w/ Shortspine thornyhead was assessed in 2005 and the stock was estimated to be at 63 percent of its unfished biomass in 2005. The ABC of 2,476 mt is based on a $F_{50\% F_{MSY}}$ proxy and is the two year average ABC for 2007 and 2008. For that portion of the stock (66 percent of the biomass) north of Point Conception (34° 27' N. lat.), the OY of 1,634 mt was set at equal to the ABC because the stock is estimated to be above the precautionary threshold. For that portion of the stock south of Point Conception (34 percent of the biomass), the OY of 421 mt was the portion of the ABC for the area reduced by 50 percent as a precautionary adjustment due to the short duration and amount

of survey data for that area. Tribal vessels are estimated to catch about 13 mt of shortspine thornyhead in 2008, but do not have a specific allocation at this time.

x/ Longspine thornyhead was assessed coastwide in 2005 and the stock was estimated to be at 71 percent of its unfished biomass in 2005. The coastwide ABC of 3,907 mt is based on a $F_{50\%}$ F_{MSY} proxy and is the two year average OY for the 2007 and 2008 period. The OY is set equal to the ABC because the stock is above the precautionary threshold. Separate OYs are being established for the areas north and south of $34^{\circ} 27' N.$ lat. (Point Conception). The OY for that portion of the stock in the northern area (79 percent) is set equal to the ABC. For that portion of the stock in the southern area (21 percent), the OY of 476 mt was the portion of the ABC for the area reduced by 25 percent as a precautionary adjustment due to the short duration and amount of survey data for that area.

y/ Cowcod in the Conception area was assessed in 2005 and the stock was estimated to be between 14 and 21 percent of its unfished biomass. The ABC for the area south of $36^{\circ} N.$ lat., the Conception area, is 17 mt and is based on the 2005 stock assessment with a $F_{50\%}$ F_{MSY} proxy. The ABC for the Monterey area (19 mt) is based on average landings from 1993-1997. An OY of 4 mt is being set for both areas. The OY is based on a rebuilding plan with a target year to rebuild of 2039 and an SPR rate of 90.0 percent. The OY is reduced by 0.1 mt for the amount anticipated to be taken during research activity.

z/ Darkblotched rockfish was assessed in 2005 and was estimated to be at 16 percent of its unfished biomass in 2005. The ABC is projected to be 487 mt and is based on the 2005 stock assessment with an F_{MSY} proxy of $F_{50\%}$. The OY of 330 mt is based on a rebuilding plan with a target year to rebuild of 2011 and an SPR harvest rate of 60.7 percent in 2008. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity.

aa/ Yelloweye rockfish was assessed in 2006 and is estimated to be at 17.7 percent of its unfished biomass coastwide. The 26 mt coastwide ABC is based on the new stock assessment and an F_{MSY} proxy of $F_{50\%}$. The 20 mt OY is based on a rebuilding plan with a target year to rebuild of 2084 and an SPR harvest rate of 60.8 percent in 2008. The OY is reduced by 3.0 mt for the amount anticipated to be taken during research activity. Tribal vessels are estimated to catch 2.3 mt of yelloweye rockfish of the commercial HG in 2008, but do not have a specific allocation at this time. South of $42^{\circ} N.$ lat. the yelloweye rockfish recreational fishery HG is 2.1 mt and north of $42^{\circ} N.$ lat. the yelloweye rockfish recreational fishery HG 6.8 mt.

bb/ California Scorpionfish south of $34^{\circ} 27' N.$ lat. was assessed in 2005 and was estimated to be above 40 percent of its unfished biomass in 2005. The ABC of 219 mt is based on the new assessment with a harvest rate proxy of $F_{50\%}$ and is an average ABC for 2007 and 2008. Because the stock is above $B_{40\%}$ coastwide, the OY could be set equal to the ABC. The OY of 175 mt, which is lower than the ABC, reflects the highest historical catch levels.

cc/ Black rockfish was last assessed in 2003 for the Columbia and Eureka area and in 2000 for the Vancouver area. The ABC for the area north of $46^{\circ} 16' N.$ lat. is 540 mt and the ABC for the area south of $46^{\circ} 16' N.$ lat. is 722 mt which is the two year average OY for the 2007 and 2008 period. Because of an overlap in the assessed areas between Cape Falcon and the Columbia River, projections from the 2000 stock assessment were adjusted downward by 12 percent to account for the overlap. The ABCs were derived using an F_{MSY} proxy of $F_{50\%}$. Because the unfished biomass is estimated to be above 40 percent, the OYs were set equal to the ABCs. For the area north of $46^{\circ} 16' N.$ lat., the OY is 540 mt. The following tribal harvest guidelines are being set: 20,000 lb

(9.1 mt) north of Cape Alava, WA (48°09.50' N. lat.) and 10,000 lb (4.5 mt) between Destruction Island, WA (47°40' N. lat.) and Leadbetter Point, WA (46°38.17' N. lat.). For the area south of 46°16' N. lat., the OY is 722 mt. The black rockfish OY in the area south of 46°16' N. lat., is subdivided with separate HGs being set for the area north of 42° N. lat (419 mt/58 percent) and for the area south of 42° N. lat (303 mt/42 percent). For the southern area north of 42° N. lat., a range is presented for the recreational estimate (289-350 mt) and commercial HG (91 -111 mt). Specific values will be specified in the final rule. Of the 303 mt of black rockfish attributed to the area south of 42° N. lat., 168 mt is estimated to be taken in the recreational fisheries, resulting in a commercial HG of 135 mt.

dd/ Minor rockfish north includes the "remaining rockfish" and "other rockfish" categories in the Vancouver, Columbia, and Eureka areas combined. These species include "remaining rockfish", which generally includes species that have been assessed by less rigorous methods than stock assessments, and "other rockfish", which includes species that do not have quantifiable stock assessments. The ABC of 3,680 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ($F=0.75M$) as a precautionary adjustment. To obtain the total catch OY of 2,270 mt, the remaining rockfish ABCs were further reduced by 25 percent and other rockfish ABCs were reduced by 50 percent. This was a precautionary measure to address limited stock assessment information. Tribal vessels are estimated to catch about 38 mt of minor rockfish in 2008, but do not have a specific allocation at this time.

ee/ Minor rockfish south includes the "remaining rockfish" and "other rockfish" categories in the Monterey and Conception areas combined. These species include "remaining rockfish" which generally includes species that have been assessed by less rigorous methods than stock assessment, and "other rockfish" which includes species that do not have quantifiable stock assessments. The ABC of 3,403 mt is the sum of the individual "remaining rockfish" ABCs plus the "other rockfish" ABCs. The remaining rockfish ABCs continue to be reduced by 25 percent ($F=0.75M$) as a precautionary adjustment. The remaining rockfish ABCs are further reduced by 25 percent, with the exception of blackgill rockfish (see footnote gg). The other rockfish ABCs were reduced by 50 percent. This was a precautionary measure due to limited stock assessment information. The resulting minor rockfish OY is 1,904 mt.

ff/ Bank rockfish - The ABC is 350 mt which is based on a 2000 stock assessment for the Monterey and Conception areas. This stock contributes 263 mt towards the minor rockfish OY in the south.

gg/ Blackgill rockfish in the Monterey and Conception areas was assessed in 2005 and is estimated to be at 49.9 percent of its unfished biomass in 2008. The ABC of 292 mt for the Monterey and Conception areas is based on the 2005 stock assessment with an F_{MSY} proxy of $F_{50\%}$ and is the two year average ABC for the 2007 and 2008 periods. This stock contributes 292 mt towards minor rockfish south.

hh/ "Other rockfish" includes rockfish species listed in 50 CFR 660.302. California scorpionfish and gopher rockfish were assessed in 2005 and are being removed from this category. The California Scorpionfish contribution of 163 mt and the gopher rockfish contribution of 97 mt were removed from the ABC value. The ABC for the remaining species is based on the 1996 review of commercial *Sebastes* landings and includes an estimate of recreational landings. These species have never been assessed quantitatively.

ii/ "Other fish" includes sharks, skates, rays, ratfish, morids, grenadiers, kelp greenling, and other groundfish species noted above in footnote d/.

kk/ Sablefish allocation north of 36° N. lat. - The limited entry allocation is further divided with 58 percent allocated to the trawl fishery and 42 percent allocated to the fixed-gear fishery.

jj/ Specific open access/limited entry allocations have been suspended during the rebuilding period as necessary to meet the overall rebuilding target while allowing harvest of healthy stocks.

* * * * *

[FR Doc. E8-10382 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-22-C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 071106673-8011-02]

RIN 0648-XH78

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Less Than 60 ft (18.3 m) LOA Using Pot or Hook-and-Line Gear in the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; closure.

SUMMARY: NMFS is prohibiting directed fishing for Pacific cod by catcher vessels less than 60 ft (<18.3 meters (m)) length overall (LOA) using pot or hook-and-line gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the 2008 Pacific cod total allowable catch (TAC) allocated to catcher vessels < 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 6, 2008, through 2400 hrs, A.l.t., December 31, 2008.

FOR FURTHER INFORMATION CONTACT: Jennifer Hogan, 908-586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2008 and 2009 final harvest specification for groundfish in the BSAI (73 FR 10160, February 26, 2008), the reallocation on February 26, 2008 (73 FR 11562, March 4, 2008), and the reallocation on April 10, 2008 (73 FR 19748, April 11, 2008) allocated a directed fishing allowance for Pacific cod of 4,660 metric tons to catcher vessels <60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that the 2008 Pacific cod directed fishing allowance allocated to catcher vessels less than 60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific cod by catcher vessels <60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI.

After the effective date of this closure the maximum retainable amounts at § 679.20(e) and (f) apply at any time during a trip.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is impracticable and contrary to the public interest. This requirement is impracticable and contrary to the public interest as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the closure of Pacific cod by catcher vessels <60 ft (18.3 m) LOA using pot or hook-and-line gear in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of May 5, 2008.

The AA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 2008.

James P. Burgess,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 08-1238 Filed 5-6-08; 12:49 pm]

BILLING CODE 3510-22-S

Proposed Rules

Federal Register

Vol. 73, No. 91

Friday, May 9, 2008

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 214 and 248

[CIS No. 2429-07; DHS Docket No. USCIS-2007-0056]

RIN 1615-AB64

Period of Admission and Stay for Canadian and Mexican Citizens Engaged in Professional Business Activities—TN Nonimmigrants

AGENCY: U.S. Citizenship and Immigration Services, DHS.

ACTION: Proposed rule.

SUMMARY: This rule affects certain Canadian and Mexican citizens who seek temporary entry as professionals to the United States pursuant to the TN classification, as established by the North American Free Trade Agreement (NAFTA or Agreement). TN nonimmigrants are Canadian or Mexican citizens who obtain temporary entry into the United States as business persons to engage in business activities at a professional level. This rule proposes to increase the maximum allowable period of admission for TN nonimmigrants from one year to three years, and allow otherwise eligible TN nonimmigrants to be granted an extension of stay in increments of up to three years instead of the current maximum of one year. TD nonimmigrants ("NAFTA Dependent") are the spouses and unmarried minor children of TN nonimmigrants. TD nonimmigrants who would otherwise be eligible for TD nonimmigrant status would be eligible to be admitted and seek extensions for the same period of time as the TN principal. The purpose of this narrow change is to remove certain administrative requirements on TN nonimmigrants and U.S. employers and U.S. entities, thereby making this nonimmigrant classification more attractive to eligible professionals and their U.S. employers. The rule also proposes to remove filing location requirements from the TN regulations

and instead provides that such locations will be prescribed by form instructions in order to provide more flexibility in program administration, as well as making certain technical modifications to eliminate outdated references to prior requirements. Finally, this rule proposes to revise the text of 8 CFR 214.1(a)(2) and (c)(1) and 8 CFR 248.3 by replacing the outdated term "TC" (the previous classification given to Canadian workers under the 1989 Canada-United States Free Trade Agreement) with "TN."

DATES: Written comments must be submitted on or before June 9, 2008.

ADDRESSES: You may submit comments, identified by DHS Docket No. USCIS-2007-0056 by one of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *E-mail:* You may submit comments directly to USCIS by e-mail at rfs.regs@dhs.gov. Include DHS Docket No. USCIS-2007-0056 in the subject line of the message.

- *Mail:* Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529. To ensure proper handling, please reference DHS Docket No. USCIS-2007-0056 on your correspondence. This mailing address may also be used for paper, disk, or CD-ROM submissions.

- *Hand Delivery/Courier:* U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529. Contact Telephone Number is (202) 272-8377.

FOR FURTHER INFORMATION CONTACT: Patricia Jepsen, Adjudications Officer, Business and Trade Services, Office of Service Center Operations, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529, telephone (202) 272-8410.

SUPPLEMENTARY INFORMATION:

I. Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this proposed rule. U.S. Citizenship and Immigration Services (USCIS) also

invites comments that relate to the economic, environmental, or federalism effects that might result from this proposed rule. Comments that will provide the most assistance to USCIS in developing these procedures will reference a specific portion of the proposed rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Instructions: All submissions received must include the agency name and DHS Docket No. USCIS-2007-0056. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

Docket: For access to the docket to read background documents or comments received go to <http://www.regulations.gov>. Submitted comments may also be inspected at the Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security, 111 Massachusetts Avenue, NW., 3rd Floor, Washington, DC 20529.

II. Background

A. The North American Free Trade Agreement

On December 17, 1992, the United States, Canada and Mexico signed the North American Free Trade Agreement (NAFTA or Agreement). On December 8, 1993, the President signed into law the North American Free Trade Agreement Implementation Act, Public Law 103-182 (NAFTA Implementation Act). Among other things, the NAFTA Implementation Act created a new section 214(e) of the Immigration and Nationality Act, as amended (INA), which created the TN classification for nonimmigrant professionals seeking admission to the United States under NAFTA. Almost immediately following the enactment of this law, on January 1, 1994, NAFTA went into effect, thereby creating one of the largest free trade areas in the world. Chapter 16 of NAFTA provides for the temporary entry of qualified business persons from each of the countries that are signatories to the Agreement. This chapter of NAFTA establishes four categories of business persons who may be allowed temporary entry into the territory of another NAFTA party. The four categories are: (1) Business visitors; (2) traders and investors; (3) intra-company

transferees; and (4) professionals. As discussed below, this proposed regulation would change certain regulatory provisions dealing with the fourth category, NAFTA professionals, by amending 8 CFR 214.6.

B. The TN Nonimmigrant Classification

The TN nonimmigrant classification permits qualified Canadian and Mexican citizens to seek temporary entry into the United States as business persons to engage in business activities at a professional level. 8 CFR 214.6(a). The specific occupations which qualify for the TN classification are set forth in Chapter 16 of NAFTA, Annex 1603, Appendix 1603.D.1., and are reproduced at 8 CFR 214.6(c). Among the types of professionals who are eligible to seek admission as TN nonimmigrants are certain accountants, engineers, lawyers, pharmacists, scientists, and teachers. The spouses and unmarried minor children of TN nonimmigrants, if otherwise admissible, may be granted TD nonimmigrant classification. 8 CFR 214.6(j). Although neither the NAFTA Implementation Act nor the INA prescribes a maximum period of admission to the United States for TN nonimmigrants and their dependents, USCIS regulations currently provide that TN nonimmigrants may be admitted to the United States for a period not to exceed one year. 8 CFR 214.6(e).

Currently, TN nonimmigrants generally may be readmitted to the United States for the remainder of the period authorized on their Form I-94, provided that the TN nonimmigrant's originally-intended professional activity and employer(s) have not changed. 8 CFR 214.6(g)(1) and (2). TN nonimmigrants also may apply to U.S. Citizenship and Immigration Services (USCIS) for admission for a period of time that extends beyond the date of their original terms of admission at any U.S. port-of-entry. 8 CFR 214.6(h)(2). TN professionals also may, upon application to USCIS, be granted extensions of stay for a maximum period of one year. 8 CFR 214.6(h)(1). The spouse and unmarried minor children of TN professionals, if otherwise eligible, may be admitted in TD classification for the period of time granted to the TN professional, and may seek extensions of stay for the same period as the TN professional.

III. Changes Made by This Rule

A. Increased Time of Admission, Extension of Stay, and Readmission at the Border

TN nonimmigrants are not subject to any maximum period of stay, as long as they continue to be engaged in TN business activities for a U.S. employer or U.S. entity at a professional level, provided they maintain the requisite nonimmigrant intent to depart the United States at the conclusion of their authorized periods of stay. USCIS regulations, however, require that such persons, if they wish to remain in the United States beyond the period of their initial admission, either seek readmission in TN status or apply for an extension of stay no less frequently than annually. 8 CFR 214.6(h). This requirement involves, at a minimum, the annual submission of documentation and payment of the filing fees specified in 8 CFR 103.7. This proposed rule would ease administrative burdens on TN nonimmigrants (and their TD dependents) as well as on the U.S. employers and U.S. entities by increasing the period of time granted to a TN nonimmigrant upon admission, or pursuant to a timely filed request for extension of stay, from a maximum of one year to a maximum of three years. The proposed rule at 8 CFR 214.6(h)(2) would also permit a TN nonimmigrant to apply for admission at a designated port-of-entry for a period of time that extends beyond the date of original admission for up to three years.

The proposed rule does not alter any otherwise applicable evidentiary requirements, change existing filing fee requirements as set forth in 8 CFR 103.7, expand the maximum period of stay in TN status which is already indefinite, or expand the principle of "dual intent" to TN nonimmigrants or their TD dependents.¹ Instead, the proposed changes would increase the initial period of admission, extension of stay, and readmission at the border; provide a cost and resource savings for employers and nonimmigrants alike; and reduce the potential for an interruption of employment due to foreign travel requirements or delays in processing times, thereby contributing to a more stable and predictable

¹ The dual intent doctrine holds that even though a nonimmigrant visa applicant has previously expressed a desire to enter the United States as an immigrant—and may still have such a desire—that does not of itself preclude the issuance of a nonimmigrant visa to him nor preclude his being a bona fide nonimmigrant. *Matter of H-R*, 7 I&N Dec. 651, 654 (INS Reg. Comm'r 1958). See also INA section 214(h) (limiting dual intent to certain H, L, and V nonimmigrants); 8 U.S.C. 1184(h).

workforce. By reducing administrative costs and burdens, these changes are expected to make the TN nonimmigrant classification more attractive to professionals and their U.S. employers. In addition, by extending the initial period of admission, extension of stay, and readmission at the border from one year to three years, the TN nonimmigrant classification will mirror the periods of admission (or extension of stay) for other highly skilled nonimmigrant categories such as H-1B, thus making the TN nonimmigrant classification a workable alternative to those other high-skill categories for certain Canadian and Mexican professionals. Finally, this proposal may encourage other NAFTA signatories to reciprocate by effecting similar liberalizing measures with respect to citizens of the United States seeking admission to their countries under the NAFTA.

B. Changes to TD Spouses and Unmarried Minor Children

In a change from the current regulation, the proposed rule would explicitly state that spouses and unmarried minor children of TN professionals, if otherwise eligible, may be admitted or readmitted in TD classification for the period of time granted to the TN professional, and may seek extensions of stay or change of nonimmigrant status for the same period as the TN professional. An application for change of status or extension of stay for a TD spouse or unmarried minor child would be filed on Form I-539.

C. Filing Location

This rule also proposes to eliminate references to specific filing locations in current 8 CFR 214.6(h)(1). It is not necessary for USCIS to indicate in the Code of Federal Regulations where documents will be accepted. Further, fluctuations in volume, shifting workload needs, and benefits processing modifications may make variation of petition and application filing locations necessary in order to better use USCIS resources and serve customers. Codification of filing locations restricts USCIS' ability to address changed circumstances. Filing locations will still be found on USCIS forms and the USCIS Web site. Customers may also call the USCIS customer service line for information on where to file their documents, or may call the agency listing in the government resources pages of their local telephone directories. Moreover, as has been past practice, USCIS will provide the public with an adequate transition period to adapt to any changes to the current

filing location (the Vermont Service Center), should USCIS, in the future, find it necessary to change the filing location(s) for TN applications.

D. Clarification and Correction

This rule also proposes to revise the text in 8 CFR 214.6(g) and (h) to make them more readable and would revise the text of 8 CFR 214.1(a)(2) and (c)(1) and 8 CFR 248.3 by replacing the outdated term "TC" with "TN." "TC" was the previous classification given to Canadian workers entering under the terms of the Canada-United States Free Trade Agreement, which went into effect on January 1, 1989 and was subsequently replaced by NAFTA. NAFTA created a new nonimmigrant classification, "TN," which includes both Canadian and Mexican workers. In addition, USCIS proposes to delete paragraph (k)(2) from section 214.6. This paragraph relates to the now obsolete requirement of a petition for Mexican TN admissions. The sunset of this provision was announced in 69 FR 11287.

The rule also proposes to add a phrase at the end of 214.6(k)(3) to make it clear that, although the Director may not deny a petition, suspend an approved petition, or deny entry to an applicant for TN status based upon a strike or labor dispute involving a work stoppage of workers in progress that has not been certified under (k)(1), the examining officer must consider all relevant facts in determining an alien's eligibility for TN classification.

IV. Regulatory Requirements

A. Regulatory Flexibility Act

DHS has reviewed this proposed rule in accordance with the Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), requires Federal agencies to conduct a regulatory flexibility analysis which describes the impact of the proposed rule on small entities whenever an agency is publishing a notice of proposed rulemaking under 5 U.S.C. 553(b). A small entity may be a small business (defined as any independently owned and operated business not dominant in its field that qualifies as a small business per the Small Business Act); a small not-for-profit organization; or a small governmental jurisdiction (locality with fewer than 50,000 people).

This rule will reduce compliance costs on the regulated industries. This rule will save the public in information collection costs, USCIS fees, and legal

costs, because TN and TD status holders will not have to renew their status each year. There are no provisions in this rule that add compliance costs. Therefore, USCIS can certify that this rule will not have a significant economic impact on a substantial number of small entities.

B. Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of \$100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

C. Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

D. Executive Order 12866 (Regulatory Planning and Review)

This rule has been designated as a "significant regulatory action" by the Office of Management and Budget (OMB) under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, an analysis of the economic impacts of this rule has been prepared and submitted to the Office of Management and Budget (OMB) for review. DHS has determined that this rule decreases the costs imposed by the TN nonimmigrant program on the government as well as the public. The changes made by this rule will result in more satisfaction with the NAFTA professional program among the participating employers and the TN status holders by increasing program flexibility and loosening time and travel restrictions. The expected effect is an increase in the number of TN status petitions filed with and approved by USCIS. A small economic benefit may result from the increased availability of scarce workers for U.S. employers in particular fields and industries. This rule will result in fees collected by USCIS for filings associated with TN status decreasing by approximately \$2.4

million per year as a result of this rule. In addition, total paperwork burden costs on the public will decrease by about 12,225 hours and \$340,000 as a result of fewer required filings. Eventually, DOS and USCIBP annual fee collections from TN nonimmigrants will also decrease as a result of this proposed rule. A copy of the complete analysis is available in the rulemaking docket for this rule at <http://www.regulations.gov>, under Docket No. USCIS–2007–0056, or by calling the information contact listed above.

E. Executive Order 13132 (Federalism)

This rule would have no substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

F. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163 (1995) (PRA), all Departments are required to submit to OMB, for review and approval, any reporting or recordkeeping requirements inherent in a rule. This rulemaking does not impose any new reporting or recordkeeping requirements under the Paperwork Reduction Act. However, by requiring TN and TD status renewals every three years instead of every year, this rule will reduce the volume of Form I–129 filings, Form I–907, Request for Premium Processing Service, filings, and Form I–539, Application To Extend/Change Nonimmigrant Status, filings per year and the aggregate paperwork burden on the public accordingly. When the rule is published as a final rule, USCIS will submit the appropriate requests for non-substantive change to OMB to reflect the reduced annual respondents and costs.

List of Subjects

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1186a, 1187, 1221, 1258, 1281, 1282, 1301–1305 and 1372; sec. 643, Pub. L. 104–208, 110 Stat. 3009–708; section 141 of the Compacts of Free Association with the Federated States of Micronesia and the Republic of the Marshall Islands, and with the Government of Palau, 48 U.S.C. 1901 note, and 1931 note, respectively; 8 CFR part 2.

§ 214.1 [Amended]

2. Section 214.1 is amended by:

a. Removing the designation “Cdn FTA, Professional” and “TC” from the list in paragraph (a)(2);

b. Removing the term “TC” and adding “TN” in its place in the first sentence in paragraph (c)(1).

3. Section 214.6 is amended by:

a. Revising the section heading and by revising paragraphs (e), (g), and (h);

b. Redesignating paragraphs (j)(1), (j)(2) and (j)(3) as paragraphs (j)(2), (j)(3), and (j)(4), respectively;

c. Adding a new paragraph (j)(1);

d. Revising newly redesignated paragraphs (j)(2), (j)(3), and (j)(4); and by

e. Revising paragraph (k);

The addition and revisions read as follows:

§ 214.6 Citizens of Canada or Mexico seeking temporary entry under NAFTA to engage in business activities at a professional level.

* * * * *

(e) *Procedures for admission.* A citizen of Canada or Mexico who qualifies for admission under this section shall be provided confirming documentation (Form I–94) and shall be admitted under the classification symbol TN for a period not to exceed three years. Form I–94 shall bear the legend “multiple entry.” The fee prescribed under 8 CFR 103.7(b)(1) shall be remitted by Canadian Citizens upon admission to the United States pursuant to the terms and conditions of the NAFTA. Upon remittance of the prescribed fee, the TN applicant for admission shall be provided a Department-issued receipt (Form G–211, Form G–711, or Form I–797).

* * * * *

(g) *Readmission.* (1) *With a Form I–94.* An alien may be readmitted to the United States in TN classification for the remainder of the period of TN admission authorized on Form I–94, without presentation of the letter or supporting documentation described in paragraph (d)(3) of this section and without the prescribed fee set forth in 8 CFR 103.7(b)(1), provided that the

original intended professional activities and employer(s) have not changed, and the Form I–94 has not expired.

(2) *Without a valid I–94.* If the alien seeking readmission to the United States in TN classification is no longer in possession of a valid, unexpired Form I–94, and the period of initial admission in TN classification has not lapsed, a new Form I–94 may be issued for the period of validity that remains on the TN nonimmigrant’s original Form I–94 with the legend “multiple entry” and the alien readmitted in TN status if the alien presents alternate evidence as follows:

(i) For Canadian citizens, alternate evidence may include, but is not limited to, a fee receipt for admission as a TN or a previously issued admission stamp as TN in a passport, and a confirming letter from the United States employer(s).

(ii) For Mexican citizens seeking readmission as TN nonimmigrants, alternate evidence shall consist of presentation of a valid TN visa and evidence of a previous admission.

(h) *Extension of stay.* (1) *Filing.* A United States employer of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status, or a United States entity (in the case of a citizen of Canada or Mexico who is currently maintaining valid TN nonimmigrant status and is employed by a foreign employer), may request an extension of stay, subject to the following conditions:

(i) An extension of stay must be requested by filing Form I–129 with the prescribed fee noted at 8 CFR 103.7(b)(1), in accordance with the form instructions.

(ii) The beneficiary must be physically present in the United States at the time of the filing of the Form I–129 requesting an extension of stay as a TN nonimmigrant. If the alien is required to leave the United States for any reason while the Form I–129 is pending, the petitioner may request USCIS to notify the consular office where the beneficiary is required to apply for a visa or, if visa exempt, a DHS-designated port-of-entry where the beneficiary will apply for admission to the United States, of the approval.

(iii) An extension of stay may be approved by USCIS for a maximum of three years.

(iv) There is no specific limit on the total period of time an alien may be in TN status provided the alien is continuing to be engaged in TN business activities for a U.S. employer or entity at a professional level and otherwise continues to properly maintain nonimmigrant TN status.

(2) *Readmission at the border.*

Nothing in paragraph (h)(1) of this section shall preclude a citizen of Canada or Mexico who has previously been admitted to the United States in TN status, and has not violated such status while in the United States, from applying at a DHS-designated port-of-entry, prior to the expiration date of that period of admission, for a new period of admission not to exceed three years from the date of request for such new period of admission. The application for a new period of admission shall be supported by a new letter from the United States employer or the foreign employer, in the case of a citizen of Canada who is providing prearranged services to a United States entity, which meets the requirements of paragraph (d) of this section, together with the appropriate filing fee noted at 8 CFR 103.7(b)(1). Citizens of Mexico must present a valid passport and nonimmigrant TN visa when applying for readmission, as outlined in paragraph (d)(1) of this section.

* * * * *

(j) * * *

(1) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status, if they are otherwise admissible, may be admitted initially, readmitted, or granted a change of nonimmigrant status or an extension of his or her period of stay for the same period of time granted to the TN nonimmigrant. Such spouse or unmarried minor children shall, upon approval of an application for admission, readmission, change of status or extension of stay be classified as TD nonimmigrants. A request for a change of status to TD or an extension of stay of a TD nonimmigrant may be made on Form I–539 together with appropriate filing fees and evidence of the principal alien’s current TN status.

(2) The spouse or unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be required to present a valid, unexpired nonimmigrant TD visa unless otherwise exempt under Sec. 212.1 of this chapter.

(3) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall be issued confirming documentation (Form I–94) bearing the legend “multiple entry”. There shall be no fee required for admission of the spouse and unmarried minor children.

(4) The spouse and unmarried minor children of a citizen of Canada or Mexico admitted in TN nonimmigrant status shall not accept employment in the United States unless otherwise authorized under the Act.

(k) *Effect of a strike.* (1) If the Secretary of Labor certifies to or otherwise informs the Director of USCIS that a strike or other labor dispute involving a work stoppage of workers is in progress, and the temporary entry of a citizen of Mexico or Canada in TN nonimmigrant status may affect adversely the settlement of any labor dispute or the employment of any person who is involved in such dispute, the United States may refuse to issue an immigration document authorizing entry or employment to such alien.

(2) If the alien has already commenced employment in the United States and is participating in a strike or other labor dispute involving a work stoppage of workers, whether or not such strike or other labor dispute has been certified by the Department of Labor, or whether USCIS has been otherwise informed that such a strike or labor dispute is in progress, the alien shall not be deemed to be failing to maintain his or her status solely on account of past, present, or future participation in a strike or other labor dispute involving a work stoppage of workers, but is subject to the following terms and conditions:

(i) The alien shall remain subject to all applicable provisions of the Immigration and Nationality Act and regulations promulgated in the same manner as all other TN nonimmigrants;

(ii) The status and authorized period of stay of such an alien is not modified or extended in any way by virtue of his or her participation in a strike or other labor dispute involving a work stoppage of workers; and

(iii) Although participation by a TN nonimmigrant alien in a strike or other labor dispute involving a work stoppage of workers will not constitute a ground for removal, any alien who violates his or her status or who remains in the United States after his or her authorized period of stay has expired will be subject to removal.

(3) If there is a strike or other labor dispute involving a work stoppage of workers in progress, but such strike or other labor dispute is not certified under paragraph (k)(1) of this section, or USCIS has not otherwise been informed by the Secretary that such a strike or labor dispute is in progress, the Director, USCIS, shall not deny a petition or deny entry to an applicant for TN status based upon such strike or other labor dispute.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

4. The authority citation for part 248 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1258; 8 CFR part 2.

§ 248.3 [Amended]

5. Section 248.3 is amended by removing the term “TC” and adding “TN” in its place in the first sentence of paragraph (a)(1).

Dated: May 2, 2008.

Michael Chertoff,

Secretary.

[FR Doc. E8–10343 Filed 5–8–08; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 2

[Docket No. APHIS–2006–0024]

RIN 0579–AC14

Minimum Age Requirements for the Transport of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We propose to amend the Animal Welfare Act regulations by adding minimum age requirements for the transport in commerce of animals. The regulations currently contain such requirements for dogs and cats, but no corresponding ones for other regulated animals, despite the risks associated with the early transport of these species. We also propose to amend the regulations to allow, provided certain conditions are met, for animals to be transported without their mothers for medical treatment and for scientific research before reaching the minimum age and weaning requirement. Establishing minimum age requirements for the transport in commerce of animals and providing for the transport of animals that have not met the minimum age requirements are necessary to help ensure the humane treatment of these animals.

DATES: We will consider all comments that we receive on or before July 8, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2006-0024> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment

to Docket No. APHIS–2006–0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. APHIS–2006–0024.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, APHIS, 4700 River Road Unit 84, Riverdale, MD 20737–1231; (301) 734–7833.

SUPPLEMENTARY INFORMATION:

Background

The Animal Welfare Act (the Act) (7 U.S.C. 2131 *et seq.*) authorizes the Secretary of Agriculture to promulgate standards and other requirements governing the humane handling, care, treatment, and transportation of certain animals by dealers, research facilities, exhibitors, carriers, and intermediate handlers. The Secretary of Agriculture has delegated the responsibility of enforcing the Act to the Administrator of the Animal and Plant Health Inspection Service (APHIS). The regulations established under the Act are contained in title 9 of the Code of Federal Regulations (9 CFR), chapter I, subchapter A, parts 1, 2, and 3. The regulations in 9 CFR part 2 pertain to the safe and humane handling of animals.

Section 2.130 sets forth minimum age requirements for dogs and cats to be transported in commerce. Under § 2.130, dogs and cats cannot be transported in commerce or delivered by any person unless they are 8 weeks of age and have been weaned, except if transported to a registered research facility. Currently, no such requirements exist for other regulated animals. It is our position that all animals should be afforded the same protections as provided for dogs and cats. We are currently developing standards for birds in a separate proposed rule; therefore, birds were not considered during the development of the proposed minimum age requirements in this rule.

APHIS is proposing this rule to safeguard the welfare and well-being of regulated animals and to protect those not yet safeguarded from possible stress, distress, pain, suffering and/or death during the transport process. APHIS currently requires that all domestic dogs and cats transported for regulated purposes be at least 8 weeks of age and weaned prior to transport. These same protections should be afforded all regulated species.

Longstanding experience and general veterinary medical experience and knowledge support the conclusion that shipping young animals increases the risk of illness and death in these animals. Unweaned animals and animals of many species under the age of 8 weeks are generally not yet able to eat and drink independently of their mothers and have an increased need for maternal or human intervention to provide nourishment and water frequently. By 8 weeks of age, most animals are able to digest solid foods and are no longer dependent on their mothers as their sole source of nutrition. The young of social species such as nonhuman primates need physical and social interactions for proper development, and a loss of role models and companionship from an animal of the same species can lead to lifetime behavioral and social problems.

Review of past enforcement issues with the transport of young animals involve a wide variety of issues. While we can attribute certain injuries, illnesses, or deaths of some young animals to being transported before they were weaned and/or 8 weeks of age, it is difficult to determine exactly how many such incidents have occurred because there is currently no age restriction for transport. As such, the age of the animals involved is not always documented. In addition, incidents resulting in injury, illness, or death of young, unweaned animals may be underreported, as many may involve noncommercial transport agents and vehicles.

Based on acknowledged animal care principles and physiology of infant and juvenile animals, any transport totaling more than 2 hours, especially if the animal is unweaned and not observed or handled during that time, would be stressful and possibly distressful because young animals need to be fed and may not be able to adequately control their body temperature. The risk of illness or death of the animal may increase if the animals are delayed from reaching their destinations on flights or ground transportation systems that are delayed.

In addition, it is in the animal's best interest and welfare to be provided with consistent care during the critical period from birth to weaning by responsible, knowledgeable, and experienced people. Providing animals that are only a day or weeks old and/or unweaned to unqualified persons could result in the death of the animal in many instances. While it is beyond the scope of APHIS' regulatory authority to address the issue of private owner competence, providing a weaned and older animal reduces the risks of serious complications that could otherwise occur with an animal that is unweaned and/or under the age of 8 weeks.

Therefore, we believe that it is necessary to amend the regulations to provide that animals under the age of 8 weeks and unweaned, not transported in the same enclosure as their mothers, may not be transported in commerce unless it is medically necessary for the health of the animal or the animal is destined for a registered research facility and needs to be acquired at this age to satisfy a specific research protocol approved by Institutional Animal Care and Use Committees (IACUC). While we are proposing to use 8 weeks as the minimum age standard in this document, we recognize that some species are naturally weaned at an earlier age. We welcome any comments or suggestions regarding particular species or circumstances in which it might be appropriate to have a minimum age requirement greater or less than 8 weeks.

We propose to amend § 2.130 by adding a new paragraph (a) to specify that no animal, other than birds, be delivered by any person to any carrier or intermediate handler for transportation in commerce, or be transported in commerce by any person unless the animal is with its mother or has been weaned and is at least 8 weeks of age.

We recognize that situations may arise which require the transport of underage and/or unweaned animals and would provide the licensee or registrant with some flexibility. To accomplish this, we propose to add a new paragraph (b) to provide an exception for animals that are less than 8 weeks of age and/or unweaned, to be transported to registered research facilities for use in specific IACUC-approved research protocols, provided a transportation plan is submitted to and approved by the appropriate Animal Care regional office. The transportation plan would have to be signed by the attending veterinarian and head of the animal caregiving staff and outline the reason for the transport (including the IACUC-

approved protocol involved, if applicable), transportation specifics (including, but not limited to, dates, destination, intermediate carrier or handler to be used, mode of transportation, and enclosure size and design), food and water arrangements, attendants and/or monitoring plan, contact provisions in case of medical or other care needs, and, for nonhuman primates, how the special needs of the infant will be met during transportation. Our proposed rule would also allow for one transportation plan to be submitted for multiple animals being transported from one facility if the plan can show that the needs of all of the animals have been accommodated as determined by Animal Care. As noted previously, § 2.130 currently provides for underage/unweaned dogs and cats to be moved to a registered research facility, but does not require a transportation plan. Our proposal would require an APHIS-approved transportation plan and IACUC-approved protocols for all animals. By requiring research protocols to be IACUC-approved, we would ensure that unweaned animals and/or animals under the age of 8 weeks are needed for the specific research being conducted at the facility.

Currently, § 2.33 provides that dogs and cats be given adequate medical care from the attending veterinarian, but § 2.130 does not specifically address the transportation of underage/unweaned dogs and cats for medical care. This proposed rule would amend the regulations to explicitly allow for all animals to be transported for medical treatment. Specifically, we would also provide in § 2.130, new paragraph (c), that persons may transport animals that have not been weaned and that are not at least 8 weeks of age to a licensed veterinarian for medical care. It is common practice to transport animals that have not been weaned and that are not at least 8 weeks of age for routine medical care. Therefore, we would not require a transportation plan for animals being transported for routine medical care (e.g., deworming or vaccinations) if the animal is returned to the licensed or registered facility from which it originated upon the completion of the medical care for which it was transported and no change of ownership is involved. If those conditions are not met, then a transportation plan would be required. As in the case of animals destined for registered research facilities, our proposed rule would allow for one transportation plan to be submitted for multiple animals being transported from one facility if the plan can show that the needs of all of the

animals have been accommodated as determined by Animal Care. We would not require a transportation plan in the event that the animal requires emergency medical care because we do not believe that it would be in the best interest of the animal. This would ensure that the animal receives timely care. However, to the extent possible, appropriate care should be taken to ensure the humane treatment of the animal.

The Animal Care regional office would accept requests made using e-mail and via facsimile in order to avoid delaying the transport of the animal. Requests made using e-mail or facsimile would have to include the transportation plan and the names, mailing addresses, and phone numbers of the attending veterinarian and head of the animal caregiving staff. The Animal Care regional office would contact the veterinarian and head of the animal caregiving staff to confirm their concurrence with the plan. In addition, a copy of the transportation plan signed by the attending veterinarian and head of the animal caregiving staff would have to be kept on file and made available for APHIS inspection. Written approval of the transportation plan by the APHIS regional office would have to be received before the animal(s) could be transported in commerce.

We believe a transportation plan is necessary to ensure that the licensee or registrant understands and has taken into account the issues that might arise when transporting unweaned/underage animals (e.g., transportation will not be too long, there are adequate food and water resources along the way, etc.). In the past, unanticipated events (e.g., delays, misdirected shipments) have resulted in the deaths of animals. By ensuring proper planning on the part of the licensee or registrant, the occurrence of such incidents can be minimized. We welcome comments on the practical utility of the proposed transportation plan requirement and the specific elements that would have to be addressed in the plan, including how we might enhance the quality, utility, and clarity of the information collected and how we might reduce the paperwork burden that would be associated with the proposed transportation plan requirement, including the use of performance based criteria as a substitute for specific plan requirements, or some combination of the two.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule

has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

For this proposed rule, we have prepared an economic analysis, which is set out below. The analysis considers the potential economic effects of the rule on small entities as required by the Regulatory Flexibility Act and the potential costs and benefits of the rule as required by Executive Order 12866.

In accordance with 5 U.S.C. 603, we have performed an initial regulatory flexibility analysis, which is set out below, regarding the effects of this proposed rule on small entities. We do not currently have all the data necessary for a comprehensive analysis of the effects of this proposed rule on small entities. Therefore, we are inviting comments concerning potential effects. In particular, we are interested in determining: (1) The number of entities that transport unweaned/underage animals for scientific purposes and/or medical treatment; (2) the age at which these animals are being transported; and (3) any additional information that may help us to determine the economic impact of the proposed minimum age requirements for animals.

We propose to amend the Animal Welfare Act regulations by adding minimum age requirements for the transport in commerce of animals. The regulations currently contain such requirements for dogs and cats, but no corresponding ones for other regulated animals, despite the risks associated with the early transport of these species. We also propose to amend the regulations to allow, provided certain conditions are met, for animals to be transported without their mothers for medical treatment and for scientific research before reaching the minimum age and weaning requirement. Establishing minimum age requirements for the transport in commerce of animals and providing for the transport of animals that have not met the minimum age requirements are necessary to help ensure the humane treatment of these animals.

Benefits and Costs of the Rule

Transporting young, unweaned animals without their mothers increases the risk of them becoming sick or dying during transport. According to APHIS Animal Care, this risk may increase if the animals are delayed from reaching their destinations because of flights or ground transportation systems that are delayed. Unweaned animals and animals of many species under the age of 8 weeks are generally not yet able to

eat and drink independently of their mothers and have an increased need for maternal or human intervention to provide nourishment and water frequently.

The benefit of the proposed rule is the reduced risk of inhumane treatment of young and unweaned animals. A measure of this benefit, once the rule is enacted, would be the reduction in the frequency of illness and death of young animals while being transported. We believe that a reduction in illness and death for dogs and cats resulted when the same weaning and minimum age requirements were established for those species. As far as we know, the benefit for dogs and cats has not been documented, but general veterinary medical experience and knowledge support the conclusion that shipping young animals increases the risk of illness and death in these animals.

Costs of the proposed rule would be incurred by entities that would otherwise transport animals unweaned and under 8 weeks of age, in terms of the additional time the infant animals would need to be maintained before transport. Direct costs of feeding and caring for these very young animals until they are weaned and 8 weeks of age would be minimal; care and sustenance would be provided by their mothers unless the mother and offspring have been separated. The additional cost of feeding animals ranges from less than \$1 to \$5 a day depending upon the species of animal. For example, the cost of feeding small mammals, such as ferrets and guinea pigs, is less than a \$1 a day while the cost of feeding a chimpanzee ranges from \$2 to \$5 a day.

There are generally no additional feeding costs for animals that are nursing as compared to those that are not; however, there may be additional costs associated with transporting animals that are nursing with their mothers. The amount of space required for one adult animal would generally be sufficient for unweaned cubs, puppies, and kittens. The unweaned young of big cats or nonhuman primates may require additional space when traveling with their mothers than what is currently required in the regulations for adults of these animals when traveling alone. The incorporation of larger cages would be a one-time investment, if necessary, and we anticipate that most facilities for exotics should be able to readily reconfigure current enclosures to accommodate any additional space at little or no additional cost.

While APHIS is aware that some breeders and dealers transport unweaned animals before 8 weeks of age, the specific age at which these

animals are transported is unknown. Without this information it is difficult to quantify the impacts to those entities currently transporting animals before 8 weeks of age or unweaned. A discussion with the industry representatives indicates that most responsible breeders and dealers do not transport animals until they have been weaned or are 8 weeks of age. This proposed rule would have little, if any, economic impact on those licensees. If the licensee does not already follow the minimum age requirements as outlined in this proposed rule, there would be an increased cost of care associated with the longer holding time for the animals. This increased cost is expected to be only a small percentage of the revenue from the animal's sale.

The price of animals can vary from a few hundred dollars for a wild squirrel, to several thousand dollars for an adult monkey. For example, the price of some of the smallest animals, such as guinea pigs, is \$30, while wild cats can range from \$1,200 for single jungle cat to \$15,000 for a single white tiger. The price of a baby chimpanzee can be as high as \$50,000.¹

Another area of cost associated with the proposed rule would be the higher shipping charges that would be incurred, simply because a weaned animal that is at least 8 weeks of age would be larger than an animal of the same species that is not yet weaned and less than 8 weeks old. Table 1 shows live animal air cargo shipping rates by weight of the shipment.

TABLE 1.—LIVE ANIMAL AIR CARGO SHIPPING RATES

Weight	Rate	Security tax (\$0.21 per lb)
0–9 lbs	\$109	\$0–\$1.89
10–50 lbs	189	2.10–10.50
51–70 lbs	239	10.71–14.70
71–100 lbs	299	14.91–21.00
101–150 lbs ..	359	21.21–31.50
151–200 lbs ..	459	31.71–42.00

The additional shipping costs are expected to be a small percentage of the animal's sale price. We would expect the additional costs of care and feeding of animals until they reach the minimum transport age would be offset, and maybe exceeded, by the improved welfare benefits to the animals in terms of enhanced safeguarding and decreased animal morbidity and mortality that could result from the transport in commerce of young animals. We expect the benefits of safeguarding animals that are under 8 weeks of age and/or

unweaned to exceed the additional costs associated with care and feeding that would result from this rule. We welcome information that the public may offer that would allow the Agency to better evaluate benefits and costs of the proposed rule.

We note that the Captive Wildlife Safety Act (CWSA) prohibits interstate and foreign trade in exotic cats. Under this Act, it is illegal to import, export, transport, sell, receive, acquire, or purchase, in interstate or foreign commerce, live lions, tigers, leopards, snow leopards, cheetahs, jaguars, or cougars, or any hybrid combination of any of these species, except in certain cases. Thus, exotic cats covered under CWSA generally cannot be transported interstate, irrespective of whether they have been weaned and are at least 8 weeks of age. The proposed rule would still apply for circuses, zoos, wildlife rehabilitators and some other licensed facilities that are exempt from the CWSA regulations.

Assessment of Alternatives

One alternative would be to make no changes to the current regulations. However, transporting animals before they are 8 weeks of age or weaned increases the risk of those animals becoming sick or dying. In addition, we believe that certain circumstances may require the transport of animals before reaching the minimum age requirement, such as, transport to a medical facility for medical treatment. Such exceptions would make it necessary to ensure these animals are also transported safely. Therefore, doing nothing is not a viable option to safeguarding animals in commerce.

Another alternative would be to allow the transport of weaned animals without an 8-week minimum age requirement. This would allow smaller animals that mature faster than larger animals to be transported before reaching 8 weeks of age. This alternative would also protect larger animals from being transported before they are weaned, as it is possible that some larger species of animals will not be weaned by 8 weeks of age. The problem with this alternative is that brokers and dealers could falsely state that the animal has been weaned in order to allow them to transport the animal prematurely.

A third alternative would be to implement a two-tiered system. The system would compensate for smaller animals that are weaned before 8 weeks of age compared to larger animals that require more time to mature. Such a system could use adult weight as the determining factor for each tier and set an appropriate weight limit (e.g., 15

pounds). In the first tier, animals weighing less than 15 pounds could be transported when the animal is 4 weeks of age and weaned. In the second tier, animals larger than 15 pounds would need to be 8 weeks of age and weaned before transport. This alternative would benefit the entities that broker and breed small pets while continuing to safeguard the larger animals. However, APHIS believes this alternative could cause problems when classifying the animals under each tier. Each animal's life cycle is different and weight alone is not a good measure of when the animal will become weaned and ready for transport. We welcome public and industry comment on the potential impacts of a two-tiered system for classifying animals for transport, including specific criteria we should consider when classifying animals into tiers and timeframes for weaning that can be applied to each tier.

For these reasons, we have determined that proposing minimum age and weaning requirements would best safeguard the health and welfare of larger animals. This proposed rule would also allow for the transport of animals to research facilities before meeting the minimum age requirement, provided that a transportation plan is submitted to and approved by the Animal Care regional office. We believe that allowing underage and unweaned research animals to be transported without a transportation plan subjects these animals to unnecessary risks, and that the plan is necessary to assure that these animals arrive safely at their destinations. This proposed rule would also allow for animals to be transported to a licensed veterinarian for medical care before meeting the minimum age requirement.

Impact on Small Entities

The North American Industry Classification System (NAICS) code of particular interest is 424990 (Other Miscellaneous Nondurable Goods Merchant Wholesalers), for which the small-entity size standard is 100 or fewer employees. This industry includes animal dealers and importers. According to APHIS Animal Care, there are approximately 5,060 licensed animal dealers. The proposed rule may also affect entities classified within NAICS codes 712130 (Zoos and Botanical Gardens) and 712190 (Nature Parks and Other Similar Institutions). A small enterprise classified within either of these codes is one having \$6.5 million or less in annual receipts. Also of interest are businesses that breed animals, which fall within NAICS code 112990 (All Other Animal Production)

¹ <http://www.monkeybreeder.com>.

and for which the small-entity definition is \$750,000 or less in annual receipts. For facilities that deal in research with animals, the NAICS code is 541710 (Research and Development in the Physical, Engineering, and Life Sciences), and the small-entity definition is 500 or fewer employees. While only a fraction of the firms in each industry code group are expected to be directly affected by the proposed rule, we note that the majority of entities in each of these industry groups are small.²

According to APHIS Animal Care, nearly all of the 5,060 animal dealers have annual receipts of less than \$750,000, which classifies them as small entities under Small Business Administration criteria. APHIS does not have specific information regarding the 5,060 licensed animal dealers; however, we would expect that some would be considered small entities. It is unknown how many of these licensed animal dealers transport underage and unweaned animals. It is also unknown at what age these animals are being transported. Information is currently not available to identify the dog and cat dealers who transport underage and unweaned animals to approved research facilities. We welcome information that the public may offer that would allow the Agency to better determine the impact of the proposed 8-week minimum age requirement. Specifically, we welcome public comment on the number of establishments that could be affected, particularly ones classified within the industry groups identified in this analysis; the frequency with which they transport unweaned animals under 8 weeks of age, without their mothers; and the delays and associated costs that small entities may incur because of the proposed rule.

This proposed rule contains certain reporting and recordkeeping requirements (See "Paperwork Reduction Act" below).

With respect to exotic cats, the proposed rule is superseded by the Captive Wildlife Safety Act regulations (50 CFR Part 14, Subpart K), which prohibit the interstate transport of these animals other than by certain licensed facilities such as circuses, zoos, and wildlife rehabilitators. The licensed

facilities would not be exempt from the proposed rule.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. The Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. APHIS-2006-0024. Please send a copy of your comments to: (1) Docket No. APHIS-2006-0024, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road Unit 118, Riverdale, MD 20737-1238, and (2) Clearance Officer, OCIO, USDA, room 404-W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

To protect the health and well-being of young animals, we are proposing to require animals to be at least 8 weeks of age and weaned before they can be shipped in commerce. Also, a transportation plan would be required for transport to research facilities or for medical treatment for all animals that are less than 8 weeks of age and have been weaned. The transportation plan is required to be written, signed by the attending veterinarian and head of the animal caregiving staff, and submitted to APHIS for approval prior to the shipment. The plan must include the details of the transport and the justification for the transport.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; *e.g.*, permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.5 hours per response.

Respondents: Animal dealers and breeders who ship or transport animals.

Estimated annual number of respondents: 1,000.

Estimated annual number of responses per respondent: 4.

Estimated annual number of responses: 4,000.

Estimated total annual burden on respondents: 2,000 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

E-Government Act Compliance

The Animal and Plant Health Inspection Service is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes. For information pertinent to E-Government Act compliance related to this proposed rule, please contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

List of Subjects in 9 CFR Part 2

Animal welfare, Pets, Reporting and recordkeeping requirements, Research.

²Based on data provided by the U.S. Census Bureau, Statistics of U.S. Businesses, to SBA, Office of Advocacy, small operations comprise more than 90 percent of animal dealers and/or independent importers, more than 70 percent of zoos and botanical gardens, more than 80 percent of nature parks and other similar institutions, and more than 90 percent of research facilities that could potentially handle the animals of concern.

Accordingly, we propose to amend 9 CFR part 2 as follows:

PART 2—REGULATIONS

1. The authority citation for part 2 continues to read as follows:

Authority: 7 U.S.C. 2131–2159; 7 CFR 2.22, 2.80, and 371.7.

2. Section 2.130 is revised to read as follows:

§ 2.130 Minimum age requirements.

(a) Unless being transported in the same enclosure as its mother or documented surrogate mother, no animal, other than birds, except as provided in paragraphs (b) and (c) of this section, shall be delivered by any person to any carrier or intermediate handler for transportation in commerce, or be transported in commerce by any person unless such animal has been weaned and is at least 8 weeks of age.

(b)(1) Persons wishing to transport an animal that has not been weaned and that is not at least 8 weeks of age without its mother or documented surrogate mother to a registered research facility for a specific protocol approved by the Institutional Animal Care and Use Committees (IACUC) must obtain prior written approval by the appropriate Animal Care regional office by submitting, in writing, a transportation plan signed by the attending veterinarian and head of the animal caregiving staff outlining the reason for the transport (including the IACUC-approved protocol involved, if applicable), transportation specifics (including, but not limited to, dates, destination, intermediate carrier or handler to be used, mode of transportation, and enclosure size and design), food and water arrangements, attendants and/or monitoring plan, contact provisions in case of medical or other care needs, and, for nonhuman primates, how the special needs of the infant will be met during transportation (in support of the requirements of § 3.81).

(2) One transportation plan may be submitted for multiple animals being transported from one facility if the plan can show that the needs of all of the animals have been accommodated as determined by Animal Care.

(3) Transportation plans submitted via e-mail or facsimile must also include the names, mailing addresses, and phone numbers of the attending veterinarian and head of the animal caregiving staff. Those submitting plans via e-mail or facsimile must also keep on file a copy of the transportation plan that is signed by the attending veterinarian and head of the animal

caregiving staff and make the plan available to Animal Care upon request.

(c)(1) Persons may transport an animal that has not been weaned and that is not at least 8 weeks of age without its mother or documented surrogate mother to a licensed veterinarian for routine medical care, provided the animal is returned to the licensed or registered facility from which it originated upon the completion of the medical care for which it was transported and no change of ownership is involved. If those conditions are not met, then persons wishing to transport animals that have not been weaned and that are not at least 8 weeks of age for routine medical care must obtain approval from the appropriate Animal Care regional office by submitting a transportation plan in accordance with paragraph (b) of this section.

(2) One transportation plan may be submitted for multiple animals being transported from one facility if the plan can show that the needs of all of the animals have been accommodated as determined by Animal Care.

(3) Persons may transport animals that have not been weaned and that are not at least 8 weeks of age to a licensed veterinarian for emergency medical care without a transportation plan.

Done in Washington, DC, this 5th day of May 2008.

Bruce Knight,

Under Secretary for Marketing and Regulatory Programs.

[FR Doc. E8–10400 Filed 5–8–08; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2008–0237]

Regulation of Advanced Nuclear Power Plants; Draft Statement of Policy

AGENCY: U.S. Nuclear Regulatory Commission.

ACTION: Issuance of draft policy statement and notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is considering adopting a statement of policy to improve the licensing environment for advanced nuclear power reactors to minimize complexity and uncertainty in the regulatory process. This statement would provide the Commission's policy regarding the review of, and desired characteristics associated with, advanced reactors. This policy

statement would be the second revision of the policy statement titled "Regulation of Advanced Nuclear Power Plants; Statement of Policy." The purpose of this revision is to update the Commission's policy statement on advanced reactors to integrate the Commission's expectations for security and preparedness with the current expectations for safety. This draft policy statement is being issued for public comment.

DATES: Comments on this document should be submitted by July 8, 2008. Comments received after that date will be considered to the extent practical. To ensure efficient and complete comment resolution, comments should include references to the section, page, and line numbers of the document to which the comment applies, if possible.

ADDRESSES: You may submit comments by any one of the following methods. Comments submitted in writing or in electronic form will be made available for public inspection. Because your comments will not be edited to remove any identifying or contact information, the NRC cautions you against including any information in your submission that you do not want to be publicly disclosed.

Federal e-Rulemaking Portal: Go to <http://www.regulations.gov> and search for documents filed under Docket ID [NRC–2008–0237]. Address questions about NRC dockets to Carol Gallagher 301–415–5905, e-mail Carol.Gallagher@nrc.gov.

Mail comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

E-mail comments to: Rulemaking.Comments@nrc.gov. If you do not receive a reply e-mail confirming that we have received your comments, contact us directly at 301–415–1966.

Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. Federal workdays. (Telephone 301–415–1966.)

Fax comments to: Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.

You can access publicly available documents related to this document using the following methods:

NRC's Public Document Room (PDR): The public may examine and have copied for a fee publicly available documents at the NRC's PDR, Public File Area O F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Documents Access and Management System (ADAMS):

Publicly available documents created or received at the NRC are available electronically at the NRC's electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC's PDR reference staff at 1-899-397-4209, 301-415-4737, or by e-mail to pdr.resources@nrc.gov.

FOR FURTHER INFORMATION CONTACT:

Wesley H. Held, Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Telephone: 301-415-1583, e-mail: Wesley.Held@nrc.gov.

SUPPLEMENTARY INFORMATION:

Background

On July 8, 1986 (51 FR 24643), the Commission published a policy statement on regulation of advanced reactors in the **Federal Register**. The Commission's primary objectives in issuing the advanced reactor policy statement were as follows:

- To maintain the earliest possible interaction of applicants, vendors, and government agencies with the NRC.
- To provide all interested parties, including the public, with the Commission's views concerning the desired characteristics of advanced reactor designs.
- To express the Commission's intent to issue timely comment on the implications of such designs for safety and the regulatory process.

On July 12, 1994 (59 FR 35461), the Commission revised the 1986 advanced reactor policy statement by addressing the Commission's policy on metrication (57 FR 46202; October 7, 1992; as revised June 19, 1996 (61 FR 31169)).

Since the events of September 11, 2001, the NRC has assessed potential threats and their possible impacts on the Nation's fleet of operating nuclear power reactors and has required upgrades of physical security measures and mitigative strategies through the issuance of a series of security orders and license conditions. For new nuclear power reactors, the Commission considers it prudent to provide expectations and guidance on security matters to prospective applicants so that they can use this information early in the design stage to identify potential mitigative measures and/or design features that provide a more robust and effective security posture. Therefore, the Commission decided to revise the advanced reactor policy statement to

integrate these expectations for security and preparedness with the current expectations for safety.

The NRC is seeking public comment in order to receive feedback from the widest range of interested parties and to ensure that all information relevant to developing this document is available to the NRC staff. This document is issued for comment only. The NRC will review public comments received on the document, incorporate suggested changes as necessary, and issue the final revision.

Commission Policy

Consistent with its legislative mandate, the Commission's policy with respect to regulating nuclear power reactors is to ensure adequate protection of the environment and public health and safety and common defense and security. Regarding advanced reactors, the Commission expects, as a minimum, at least the same degree of protection of the environment and public health and safety and the common defense and security, that is required for current-generation light-water reactors. Furthermore, the Commission expects that advanced reactors will provide enhanced margins of safety and/or use simplified, inherent, passive, or other innovative means to accomplish their safety and security functions.

The Commission's expectation for advanced reactor designs that consider the effects of a large, commercial airplane impact is currently being addressed through rulemaking (Consideration of Aircraft Impacts for New Nuclear Power Reactor Designs—RIN A119—ID Docket NRC-2007-0009). The Commission believes that reactors designed with potential aircraft impact considerations resulting from this rule would be more robust than if they were designed in the absence of this rule.

Among the attributes that could assist in establishing the acceptability or licensability of a proposed advanced reactor design, and therefore should be considered in advanced designs, are:

- Highly reliable and less complex shutdown and decay heat removal systems. The use of inherent or passive means to accomplish this objective is encouraged (negative temperature coefficient, natural circulation, etc.).
- Longer time constants and sufficient instrumentation to allow for more diagnosis and management before reaching safety systems challenge and/or exposure of vital equipment to adverse conditions.
- Simplified safety systems that, where possible, reduce required operator actions, equipment subjected to severe environmental conditions, and

components needed for maintaining safe shutdown conditions. Such simplified systems should facilitate operator comprehension, reliable system function, and more straightforward engineering analysis.

- Designs that minimize the potential for severe accidents and their consequences by providing sufficient inherent safety, reliability, redundancy, diversity, and independence in safety systems.

- Designs that provide reliable equipment in the balance of plant (BOP) (or safety-system independence from BOP) to reduce the number of challenges to safety systems.

- Designs that provide easily maintainable equipment and components.

- Designs that reduce potential radiation exposures to plant personnel.

- Designs that incorporate the defense-in-depth philosophy by maintaining multiple barriers against radiation release, and by reducing the potential for, and consequences of, severe accidents.

- Design features that can be proven by citation of existing technology, or that can be satisfactorily established by commitment to a suitable technology development program.

- Designs that include considerations for safety and security requirements together in the design process such that security issues (e.g., newly identified threats of terrorist attacks) can be effectively resolved through facility design and engineered security features, and formulation of mitigation measures, with reduced reliance on human actions.

- Designs with features to prevent a simultaneous loss of containment integrity (including situations where the containment is by-passed), and the ability to maintain core cooling as a result of an aircraft impact, or identification of system designs that would provide inherent delay in radiological releases (if prevention of release is not possible).

- Designs with features to prevent loss of spent fuel pool integrity as a result of an aircraft impact.

If specific advanced reactor designs with some or all of the previously mentioned attributes are brought to the NRC for comment and/or evaluation, the Commission can develop preliminary design safety evaluation and licensing criteria for their safety-related and security-related aspects. Incorporating the above attributes may promote more efficient and effective design reviews. However, the listing of a particular attribute does not necessarily mean that specific licensing criteria will attach to

that attribute. Designs with some or all of these attributes are also likely to be more readily understood by the general public. Indeed, the number and nature of the regulatory requirements may depend on the extent to which an individual advanced reactor design incorporates general attributes such as those listed previously.

In addition, the Commission expects that the safety features of these advanced reactor designs will be complemented by the operational program for Emergency Planning (EP). This EP operational program, in turn, must be demonstrated by inspections, tests, analyses, and acceptance criteria to ensure effective implementation of established measures. The Commission also expects that advanced reactor designs will comply with the Commission's safety goal policy statement (51 FR 28044; August 4, 1986 as corrected and republished at 51 FR 30028; August 21, 1986), and the policy statement on conversion to the metric measurement system (61 FR 31169; June 19, 1996).

To provide for more timely and effective regulation of advanced reactors, the Commission encourages the earliest possible interaction of applicants, vendors, other government agencies, and the NRC to provide for early identification of regulatory requirements for advanced reactors and to provide all interested parties, including the public, with a timely, independent assessment of the safety and security characteristics of advanced reactor designs. Such licensing interaction and guidance early in the design process will contribute towards minimizing complexity and adding stability and predictability in the licensing and regulation of advanced reactors.

While the NRC does not develop new designs, the Commission intends to develop the capability, when appropriate, for timely assessment and response to innovative and advanced designs that might be presented for NRC review. Prior experience has shown that new reactor designs—even variations of established designs—may involve technical problems that must be solved to ensure adequate protection of the public health and safety. The earlier these design problems are identified, the earlier satisfactory resolution can be achieved. Prospective applicants are reminded that, while the NRC will undertake to review and comment on new design concepts, the applicants are responsible for documentation and research necessary to support a specific application. Research activities would include testing of new safety or security

features that differ from existing designs for operating reactors, or that use simplified, inherent, passive means to accomplish their safety or security function. The testing shall ensure that these new features will perform as predicted, provide collection of sufficient data to validate computer codes, and show that the effects of system interactions are acceptable.

During the initial phase of advanced reactor development, the Commission particularly encourages design innovations that enhance safety, reliability, and security (such as those described previously) and that generally depend on technology that is either proven or can be demonstrated by a straightforward technology development program. In the absence of a significant history of operating experience on an advanced concept reactor, plans for innovative use of proven technology and/or new technology development programs should be presented to the NRC for review as early as possible, so that the NRC can assess how the proposed program might influence regulatory requirements.

Finally, the NRC also believes that it will be in the interest of the public as well as the design vendors' and the prospective license applicants to address security issues early in the design stage to achieve a more robust and effective security posture for future nuclear power reactors.

Dated at Rockville, Maryland, this 5th day of May 2008.

For the Nuclear Regulatory Commission,
Annette L. Vietti-Cook,
Secretary of the Commission.
[FR Doc. E8-10443 Filed 5-8-08; 8:45 am]
BILLING CODE 7590-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0536; Directorate Identifier 2008-CE-030-AD]

RIN 2120-AA64

Airworthiness Directives; APEX Aircraft Model CAP 10 B Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing

airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been determined that the currently used values for Arms of front and rear fuel tanks, and luggage compartment from the CAP 10B Airplane Flight Manuals (AFM), must be rectified.

If left uncorrected, these weight and balance data could lead to erroneous determination of the location of the Center of Gravity (CG) and possibly cause operation with the CG outside the approved limits which may result in control difficulty.

The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by June 9, 2008.

ADDRESSES: You may send comments by any of the following methods:

- **Federal eRulemaking Portal:** Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Fax:** (202) 493-2251.

- **Mail:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- **Hand Delivery:** U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments

to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2008-0536; Directorate Identifier 2008-CE-030-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Community, has issued AD No. 2008-0071, dated April 15, 2008 (referred to after this as "the MCAI"), to correct an unsafe condition for the specified products. The MCAI states:

It has been determined that the currently used values for Arms of front and rear fuel tanks, and luggage compartment from the CAP 10B Airplane Flight Manuals (AFM), must be rectified.

If left uncorrected, these weight and balance data could lead to erroneous determination of the location of the Center of Gravity (CG) and possibly cause operation with the CG outside the approved limits which may result in control difficulty.

To prevent this condition, the present Airworthiness Directive (AD) mandates revision of the AFM which introduces the corrected values and replaces the previous loading graphs by loading tables.

You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

APEX Aircraft has issued Service Bulletin No. 030502, dated April 11, 2008. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of the Proposed AD

This product has been approved by the aviation authority of another country, and is approved for operation in the United States. Pursuant to our bilateral agreement with this State of Design Authority, they have notified us of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all information and determined the unsafe condition exists and is likely to exist or

develop on other products of the same type design.

Differences Between This Proposed AD and the MCAI or Service Information

We have reviewed the MCAI and related service information and, in general, agree with their substance. But we might have found it necessary to use different words from those in the MCAI to ensure the AD is clear for U.S. operators and is enforceable. In making these changes, we do not intend to differ substantively from the information provided in the MCAI and related service information.

We might also have proposed different actions in this AD from those in the MCAI in order to follow FAA policies. Any such differences are highlighted in a Note within the proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 31 products of U.S. registry. We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is \$80 per work-hour.

Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be \$2,480, or \$80 per product.

Authority for This Rulemaking

Title 49 of the United States Code specifies the FAA's authority to issue rules on aviation safety. Subtitle I, section 106, describes the authority of the FAA Administrator. "Subtitle VII: Aviation Programs," describes in more detail the scope of the Agency's authority.

We are issuing this rulemaking under the authority described in "Subtitle VII, Part A, Subpart III, Section 44701: General requirements." Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

We determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the

distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify this proposed regulation:

1. Is not a "significant regulatory action" under Executive Order 12866;
2. Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and
3. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

APEX Aircraft: Docket No. FAA-2008-0536; Directorate Identifier 2008-CE-030-AD.

Comments Due Date

- (a) We must receive comments by June 9, 2008.

Affected ADs

- (b) None.

Applicability

- (c) This AD applies to CAP 10 B airplanes, all serial numbers up to and including 282, certificated in any category.

Subject

- (d) *Air Transport Association of America (ATA) Code 08: Leveling and Weighing.*

Reason

- (e) The mandatory continuing airworthiness information (MCAI) states: It has been determined that the currently used values for Arms of front and rear fuel tanks, and luggage compartment from the CAP 10B Airplane Flight Manuals (AFM), must be rectified.

If left uncorrected, these weight and balance data could lead to erroneous determination of the location of the Center of Gravity (CG) and possibly cause operation with the CG outside the approved limits which may result in control difficulty.

To prevent this condition, the present Airworthiness Directive (AD) mandates revision of the AFM which introduces the corrected values and replaces the previous loading graphs by loading tables.

Actions and Compliance

(f) Unless already done, within the next 50 hours time-in-service (TIS) after the effective date of this AD, incorporate Apex Aircraft AVION CAP 10 B Document Number 1000977 GB, Revision 8, dated February 2007 into the limitations section of the airplane flight manual as specified in APEX Aircraft Service Bulletin No. 030502, dated April 11, 2008. The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations 14 CFR 43.7 may do this action. Make an entry in the aircraft records showing compliance with this portion of the AD following 14 CFR 43.9.

FAA AD Differences

Note: This AD differs from the MCAI and/or service information as follows: No differences.

Other FAA AD Provisions

(g) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Sarjapur Nagarajan, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4145; fax: (816) 329-4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

(2) *Airworthy Product:* For any requirement in this AD to obtain corrective actions from a manufacturer or other source, use these actions if they are FAA-approved. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent). You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(h) Refer to MCAI European Aviation Safety Agency (EASA) AD No. 2008-0071, dated April 15, 2008; and APEX Aircraft Service Bulletin No. 030502, dated April 11, 2008, for related information.

Issued in Kansas City, Missouri, on May 2, 2008.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. E8-10348 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-13-P

POSTAL SERVICE

39 CFR Part 111

Revised Standards for Postage and Fee Refunds

AGENCY: Postal Service™.

ACTION: Proposed rule.

SUMMARY: This revised proposed rule will modify the *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM®) 604.9.0 to establish a minimum dollar amount for the issuance of checks by the USPS® for the refund of unused postage value in postage meters and PC Postage® accounts. In addition, we provide specific time frames and procedures for refunds of different types of postage produced by PC Postage and postage meter systems.

DATES: Submit comments on or before June 9, 2008.

ADDRESSES: Mail or deliver written comments to the Manager, Postage Technology Management, Postal Service, 475 L'Enfant Plaza, SW., NB Suite 4200, Washington, DC 20260-4200. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, at the Postage Technology Management office.

FOR FURTHER INFORMATION CONTACT: Daniel J. Lord, Manager, Postage Technology Management, U.S. Postal Service, at 202-268-4281.

SUPPLEMENTARY INFORMATION: The revised proposed rule establishes a \$25.00 minimum for USPS issuance of individual customer refund checks for unused postage value in postage meters and PC Postage accounts. In addition, the revisions in the proposed rule provide a 60-day limit for submission of physical refunds for both PC Postage and postage meter indicia; specify a 10-day limit and procedures for requesting refunds processed electronically for items bearing a Product Identification Code (PIC) produced by a PC Postage system; and establish refund procedures for unused, undated PC Postage indicia.

The proposed revision of DMM 604.9.0 was published for comment in the **Federal Register**, September 12, 2007 (Vol. 72, No. 176, pages 52025-

52027). In that publication the minimum for USPS issuance of individual refund checks was \$5.00. The Postal Service received two written comments from postage providers after the closing date of October 12, 2007; and both were considered in our response.

The Postal Service gave thorough consideration to the comments it received and modified the proposed rule as appropriate.

Discussion of Comments

Both commenters supported the proposed rule, except for provisions in DMM 604.9.3.1a and 604.9.3.1b concerning the \$5.00 minimum for refund of unused postage.

The intent of DMM 604.9.3.1a and 604.9.3.1b is to reduce the costly process of issuing checks by the USPS. In this context, the USPS defines "refund" as the check that is issued to customers when the account with their current provider is closed and the USPS must "refund" the amount left in their device.

In the PC Postage model, providers refund unused money to their customers when an account is closed. They provide the USPS with documentation on refunds made to customers and request reimbursement from the USPS for the refunded postage. Following this model, customers are not refused any monies left unused in an account they no longer wish to have.

One commenter recommended rephrasing the provision to make it clear this does not prohibit the provider from crediting a customer's account or transferring the customer's funds to another device. The Postal Service reviewed the suggestion and amended the wording of the provision to clarify this matter.

Although we are exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), we invite public comments on the following proposed revisions to Mailing Standards of the United States Postal Service, Domestic Mail Manual (DMM®), incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

Accordingly, 39 CFR Part 111 is proposed to be amended as follows:

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM), as follows: *Mailing Standards of the United States Postal Service*, Domestic Mail Manual (DMM)

* * * * *

600 Basic Standards for All Mailing Services

* * * * *

604 Postage Payment Methods

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9.0 Refunds and Exchanges

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9.2 Postage and Fee Refunds

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9.2.8 Ruling on Refund Request

Refund requests are decided based on the specific type of postage or mailing:

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[Revise items b and c by changing “licensing post office” to “local post office” and changing “licensee” to “authorized user” as follows:]

b. Dated metered postage, except for PC Postage systems, under 9.3. The postmaster at the local post office grants or denies requests for refunds for dated metered postage under 9.3. The authorized user may appeal an adverse ruling within 30 days through the manager, Postage Technology Management, USPS Headquarters (see 608.8.0 for address), who issues the final agency decision. The original meter indicia must be submitted with the appeal.

c. Undated metered postage under 9.3. The manager, business mail entry at the district post office overseeing the mailer's local post office, or designee authorized in writing, grants or denies requests for refunds for undated metered postage under 9.3. The authorized user may appeal an adverse ruling within 30 days through the manager, business mail entry, or designee, to the Pricing and Classification Service Center (PCSC) manager who issues the final agency decision. The original meter indicia must be submitted with the appeal.

[Revise item d as follows:]

d. PC Postage systems under 9.3. The system provider grants or denies a request for a refund for indicia printed by PC Postage systems under 9.3 using established USPS criteria. The authorized user may appeal an adverse ruling within 30 days through the manager, Postage Technology

Management, USPS Headquarters, who issues the final agency decision. The original indicia must be submitted with the appeal.

* * * * *

9.3 Refund Request for Postage Evidencing Systems and Metered Postage

9.3.1 Unused Postage Value in Postage Evidencing Systems

[Revise 9.3.1 to restrict refunds to amounts of \$25.00 or more and to change “licensee” to “authorized user” as follows:]

The unused postage value remaining in a postage evidencing system when withdrawn from service may be refunded, depending upon the circumstance and the ability of the USPS to make a responsible determination of the actual or approximate amount of the unused postage value. If the postage evidencing system is withdrawn because of faulty operation, a final postage adjustment or refund will be withheld pending the system provider's report of the cause to the USPS and the USPS determination of whether or not a refund is appropriate and, if so, the amount of the refund. No refund is given for faulty operation caused by the authorized user. When a postage evidencing system that is damaged by fire, flood, or similar disaster is returned to the provider, postage may be refunded or transferred when the registers are legible and accurate, or the register values can be reconstructed by the provider based on adequate supporting documentation. When the damaged system is not available for return, postage may be refunded or transferred only if the provider can accurately determine the remaining postage value based on adequate supporting documentation. The authorized user may be required to provide a statement on the cause of the damage and to attest that there has not been reimbursement by insurance or otherwise, and that the authorized user will not seek such reimbursement.

Refunds for unused postage value are granted for postage evidencing systems specified in 4.0 in accordance with the following procedures:

a. All postage evidencing systems except for PC Postage systems. Authorized users must notify their provider to withdraw the system and to refund any unused postage value remaining on their system or account. The postage evidencing system must be examined to verify the amount before any funds are cleared from the meter. Based on what is found, a refund or credit is initiated for unused postage

value, or additional money is collected to pay for postage value used. The provider forwards the refund request to the USPS for payment or may credit the amount to the authorized user's account. The USPS will not issue individual customer refund checks for unused postage value less than \$25.00 remaining in a postage evidencing system.

b. PC Postage systems. Authorized users must notify their provider to withdraw the system and to refund any unused postage value remaining in their account. The provider refunds the unused postage value remaining on the user's system on behalf of the USPS. The USPS will not issue individual customer refund checks for unused postage value less than \$25.00 remaining in a postage evidencing system.

9.3.2 Unused, Dated Postage Evidencing System Indicia, Except PC Postage Indicia

Unused, dated postage meter indicia are considered for refund only if complete, legible, and valid. PC Postage indicia refunds are processed under 9.3.3. All other metered postage refund requests must be submitted as follows:

[Revise items a through e only as follows:]

a. Authorized users must submit the request to their local post office. The refund request must include proof that the person or entity requesting the refund is the authorized user of the postage meter that printed the indicia. Acceptable proof includes a copy of the lease, rental agreement, or contract.

b. Authorized users must include the items bearing the unused postage with their request to their local post office. The items must be sorted by meter used and then by postage value shown in the indicia, and must be properly faced and bundled in groups of 100 identical items when quantities allow. The request is processed by the USPS. The postmaster approves or denies the refund request.

c. Authorized users must submit the refund request within 60 days of the date(s) shown in the indicia.

d. When unused metered postage is affixed to a mailpiece, the refund request must be submitted with the entire envelope or wrapper. For those items with postage affixed to a large container (i.e., cardboard box), a sufficient portion of the container with the postage affixed must be included to validate that the item was never deposited with the USPS. The unused metered postage must not be removed from the mailpiece once applied.

e. Indicia printed on labels or tapes not adhered to wrappers or envelopes

must be submitted loose and must not be stapled together or attached to any paper or other medium. However, self-adhesive labels printed without a backing may be submitted on a plain sheet of paper.

* * * * *

9.3.3 Unused, Dated PC Postage Indicia

Unused, dated PC Postage indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

[Revise 9.3.3 a, b, and c only as follows:]

a. Only authorized PC Postage users may request the refund. Users must submit the request to their system provider. The request is processed by the provider, not the USPS.

b. Requests for refund of PC Postage indicia that contain a valid Postal Identification Code (PIC) must be submitted by authorized users to their provider electronically in accordance with procedures available from their provider. Valid PICs include any form of Delivery Confirmation, Signature Confirmation, Express Mail, or Confirm Code service. Authorized users must initiate requests for electronic refunds within ten (10) days of printing the indicia. Refunds for postage associated with a PIC may only be submitted electronically. Physical submissions are not permitted.

c. Requests for refund of PC Postage indicia which do not have an associated PIC must be physically submitted by authorized users to their provider, along with the items bearing the unused postage, in accordance with procedures available from their provider. Authorized users must submit the refund request within sixty (60) days of the date(s) shown in the indicia. The refund request must be submitted as required in 9.3.2d. through 9.3.2g.

* * * * *

[Revise title and items a and c only of 9.3.4 as follows:]

9.3.4 Unused, Undated Metered Postage

Unused, undated postage evidencing system indicia are considered for refund only if complete, legible, and valid. The refund request must be submitted as follows:

a. Only the authorized user or the commercial entity that prepared the mailing for the authorized user may request the refund. The request must include a letter signed by the authorized user or the commercial entity that prepared the mailing explaining why the mailpieces were not mailed.

* * * * *

c. The authorized user, or the commercial entity that prepared the mailing for the authorized user, must submit the request, along with the items bearing the unused postage and the required documentation, to the manager, business mail entry at the district post office overseeing the mailer's local post office, or to a designee authorized in writing. The manager or designee approves or denies the refund request.

* * * * *

[Renumber current 9.3.5 through 9.3.7 as new 9.3.6 through 9.3.8 and add new 9.3.5 as follows:]

9.3.5 Unused, Undated PC Postage Indicia

Refunds will not normally be provided for valid, undated, serialized PC Postage indicia containing commonly used postage values. If the authorized user believes there are extraordinary circumstances, requests for such refunds must be made by the authorized user in accordance with the procedures outlined in 9.3.3.c along with a detailed description of the extraordinary circumstances. Requests will be considered by the provider on a case by case basis.

9.3.6 Ineligible Metered Postage Items

The following metered postage items are ineligible for refunds:

* * * * *

[Revise item d of renumbered 9.3.6 to change "licensing post office" to "local post office" as follows:]

d. Indicia lacking identification of the local post office or other required information.

* * * * *

Neva R. Watson,

Attorney, Legislative.

[FR Doc. E8-10358 Filed 5-8-08; 8:45 am]

BILLING CODE 7710-12-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R09-OAR-2008-0237; FRL-8564-2]

Revisions to the California State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Ventura County Air Pollution Control District (VCAPCD) portion of the California State Implementation Plan (SIP). These

revisions concern oxides of nitrogen (NO_x) emissions from stationary internal combustion engines. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by June 9, 2008.

ADDRESSES: Submit comments, identified by docket number EPA-R09-OAR-2008-0237, by one of the following methods:

1. *Federal eRulemaking Portal:* www.regulations.gov. Follow the on-line instructions.

2. *E-mail:* steckel.andrew@epa.gov.

3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through www.regulations.gov or e-mail. www.regulations.gov is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Francisco Dóñez, EPA Region IX, (415) 972-3956, Donez.Francisco@epa.gov.

SUPPLEMENTARY INFORMATION:

Throughout this document, “we,” “us” and “our” refer to EPA.

Table of Contents**I. The State’s Submittal**

- A. What rule did the State submit?
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 - B. Does the rule meet the evaluation criteria?
 - C. EPA recommendations to further improve the rule
 - D. Public Comment and Final Action
- III. Statutory and Executive Order Reviews

I. The State’s Submittal**A. What rule did the State submit?**

Table 1 shows the rule addressed by this proposal with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1.—SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
VCAPCD	74.9	Stationary Internal Combustion Engines	11/08/05	03/10/06

On March 30, 2006, this rule submittal was found to meet the completeness criteria in 40 CFR Part 51, Appendix V, which must be met before formal EPA review.

B. Are there other versions of this rule?

We approved a version of Rule 74.9 into the SIP on October 25, 2002 (67 FR 65501).

C. What is the purpose of the submitted rule revisions?

NO_x helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control NO_x emissions. Rule 74.9 regulates NO_x and carbon monoxide (CO) emissions from stationary internal combustion engines rated at 50 or more horsepower. The submitted rule contains three major revisions, originally suggested by EPA in the technical support document (TSD) for the SIP-approved version.

- The submitted rule requires biennial source tests and quarterly NO_x screening tests with hand-held instrument, rather than relying exclusively on annual source testing.
- The submitted rule requires the installation of non-resettable elapsed operating time meters in order to qualify for rule exemptions involving engine operating hours.
- The requirement for biennial source testing to verify compliance with all emission limits has been clarified in the submitted rule.

In addition, the revised rule includes a new limitation on CO emissions for new engines. CO emissions are limited to 2000 ppmv for all stationary engines installed after adoption of the amended rule. EPA’s TSD has more information about this rule.

II. EPA’s Evaluation and Action**A. How is EPA evaluating the rule?**

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and 182(f)), and must not relax existing requirements (see sections 110(l) and 193). The VCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 74.9 must fulfill RACT.

Guidance and policy documents that we use to help evaluate enforceability and RACT requirements consistently include the following:

1. “State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule,” (the NO_x Supplement), 57 FR 55620, November 25, 1992.
2. “Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,” EPA, May 25, 1988 (the Bluebook).
3. “Guidance Document for Correcting Common VOC & Other Rule Deficiencies,” EPA Region 9, August 21, 2001 (the Little Bluebook).
4. “Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Spark-Ignited Internal Combustion Engines,” California Air Resources Board, November 2001.

B. Does the rule meet the evaluation criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. We note in the TSD that the revised rule (subsection D.5) exempts engines used in agricultural operations. Such an exemption is generally

impermissible under the RACT requirements of CAA Sections 182(a)(2) and (f). However, the District submitted a convincing demonstration that there are no agricultural sources within the VCAPCD that meet the major source threshold for NO_x emissions, and that therefore the agricultural exemption does not violate RACT requirements. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA’s current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

Because EPA believes the submitted rule fulfills all relevant requirements, we are proposing to fully approve it as described in section 110(k)(3) of the Act. We will accept comments from the public on this proposal for the next 30 days. Unless we receive convincing new information during the comment period, we intend to publish a final approval action that will incorporate this rule into the federally enforceable SIP.

III. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA’s role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a “significant regulatory action” subject to review by the Office

of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);

- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);

- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);

- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and

- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 22, 2008.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. E8–10405 Filed 5–8–08; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 73, No. 91

Friday, May 9, 2008

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Meeting

AGENCY: Advisory Council on Historic Preservation.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation (ACHP) will meet on Tuesday, May 13, 2008. The meeting will be held in Room M09 of the Old Post Office Building, 1100 Pennsylvania Ave, NW., Washington, DC at 8 a.m. The ACHP was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470 et. seq.) to advise the President and Congress on national historic preservation policy and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The ACHP's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, Defense, Housing and Urban Development, Commerce, Education, Veterans Affairs, and Transportation; the Administrator of the General Services Administration; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American; and eight non-Federal members appointed by the President. The agenda for the meeting includes the following:

Call to Order—8 a.m.

- I. Chairman's Welcome
- II. Native American Activities
 - A. Native American Advisory Group
 - B. Native American Program Report
- III. Archaeology Task Force
 - A. Proposed Policy Statement on Archaeology and Heritage Tourism
- IV. Chairman's Award Presentation
- V. Preserve America Program
 - A. Preserve America Presidential

- Awards
 - B. Preserve America Stewards Initiative
 - C. Preserve America/Save America's Treasures Authorizing Legislation
- VI. Implementation of ACHP Recommendations from the Preserve America Summit
 - A. Agency Progress
 - B. Recommendations Implemented by the ACHP
- VII. Preservation Initiatives Committee
 - A. Legislative Update
 - B. Heritage Tourism Activities
- VIII. Federal Agency Programs Committee
 - A. National Park Service Programmatic Agreement
 - B. Bureau of Land Management Nationwide Programmatic Agreement
 - C. Standard Treatments Update
 - D. Section 106 Cases
 - a. New Orleans Cases
 - b. Navy Cases
- VIII. Communications, Education, and Outreach Committee
 - A. ACHP Strategic Communications Plan
- IX. Chairman's Report
 - A. ACHP Alumni Foundation
 - B. ACHP FY 2009 Budget Request
 - C. Transition to a New Administration
- X. Executive Director's Report
- XI. New Business
- XII. Adjourn

Note: The meetings of the ACHP are open to the public.

If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Room 803, Washington, DC, 202-606-8503, at least seven (7) days prior to the meeting.

For further information: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., #803, Washington, DC 20004.

Dated: May 5, 2008.

John Fowler,
Executive Director.

[FR Doc. E8-10355 Filed 5-8-08; 8:45 am]

BILLING CODE 4310-K6-M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 6, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8681.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

National Agriculture Statistics Service

Title: Childhood Injury and Adult Occupational Injury Survey of Minority Farm Population.

OMB Control Number: 0535-0235.

Summary of Collection: Primary function of the National Agricultural

Statistics Services (NASS) is to prepare and issue state and national estimates of crop and livestock production under the authority of 7 U.S.C. 2204. NASS will conduct a national childhood agricultural injury survey and an adult occupational farm injury survey focusing on the minority farm population. The study will provide estimates of annual childhood and adult nonfatal injury incidence rates, annual injury frequencies, and descriptive injury information for children under the age of 20 and farm operators and employees 20 years of age or older.

Need and Use of the Information: Data from this survey will provide a source of consistent information that the National Institute for Occupational Safety and Health (NIOSH) can use to target funds appropriated by Congress for the prevention of childhood agricultural injuries and adult occupational injuries. No source of data on childhood injuries or adult occupational farm injuries exists that covers all aspects of the agricultural production sector. If this information is not collected, NIOSH's ability to track and evaluate the impact of its injury prevention efforts will decrease.

Description of Respondents: Farms.
Number of Respondents: 50,500.
Frequency of Responses: Reporting: Other (One-Time).
Total Burden Hours: 12,404.

National Agricultural Statistics Service

Title: Generic Clearance to Conduct Survey Research Studies.

OMB Control Number: 0535-NEW.

Summary of Collection: The primary objectives of the National Agricultural Statistics Service (NASS) are to prepare and issue State and national estimates of crop and livestock production, economic statistics, and environmental statistics related to agriculture and to conduct the Census of Agriculture. The purpose of this generic clearance is to allow NASS to continue to develop, test, evaluate, adopt, and use state-of-the-art techniques to cover a broad range of topics designed to improve NASS' data collection on agriculture.

Need and Use of the Information: NASS will use a number of survey improvement techniques, as appropriate to the individual project under investigation. These include focus groups, cognitive and usability laboratory and field techniques, exploratory interviews, behavior coding, respondent debriefing, pilot surveys and split-panel tests. The information gathered will be used mainly for questionnaire development and other research and evaluation. Additionally, NASS anticipates the benefit of

increased response rates through improved survey design; a goal tied directly to addressing OMB requirements for higher response rates and measurement of non-response bias.

Description of Respondents: Farms.

Number of Respondents: 1,100.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,650.

Charlene Parker,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-10392 Filed 5-8-08; 8:45 am]

BILLING CODE 3410-20-P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 6, 2008.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), OIRA_Submission@OMB.EOP.GOV or fax (202) 395-5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250-7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720-8958.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to

the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Representations for CCC and FSA Loans and Authorization to File a Financing Statement.

OMB Control Number: 0560-0215.

Summary of Collection: The revised Article 9 of the Uniform Commercial Code deals with secured transaction for personal property. The revised Article 9 affects the manner in which the Commodity Credit Corporation (CCC) and the Farm Service Agency (FSA), as well as any other creditor, perfect and liquidate security interests in collateral. FSA operates several loan programs that are affected by the revision to Article 9 of the Uniform Commercial Code. Each of the programs requires that loans be secured with collateral. The security interest is created and attaches to the collateral when: (1) Value has been given, (2) the debtor has rights in the collateral or the power to transfer rights in the collateral, and (3) the debtor has authenticated a security agreement that provides a description of the collateral. FSA will collect information using form CCC-10. The information obtained on CCC-10 is needed to not only obtain authorization from loan applicants to file a financing statement without their signature, and to verify the name and location of the debtor.

Need and Use of the Information: The information that FSA collects will be used to gather or verify basic data regarding the applicant which is required on a financing statement and to obtain permission to file a financing statement prior to the execution of a security agreement. Without obtaining the information from loan applicants, CCC and FSA would be unable to perfect a security interest in collateral used to secure loans.

Description of Respondents: Farms; Individuals or households; Business or other for-profit.

Number of Respondents: 55,500.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 32,357.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E8-10403 Filed 5-8-08; 8:45 am]

BILLING CODE 3410-05-P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. APHIS-2008-0058]

Notice of Request for Extension of Approval of an Information Collection; Importation of Fruits and Vegetables**AGENCY:** Animal and Plant Health Inspection Service, USDA.**ACTION:** Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with regulations for the importation of fruits and vegetables.

DATES: We will consider all comments that we receive on or before July 8, 2008.

ADDRESSES: You may submit comments by either of the following methods:

Federal eRulemaking Portal: Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0058> to submit or view comments and to view supporting and related materials available electronically.

Postal Mail/Commercial Delivery: Please send two copies of your comment to Docket No. APHIS-2008-0058, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0058.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: For information on regulations for the importation of fruits and vegetables, contact Ms. Donna L. West, Senior Import Specialist, Commodity Import Analysis and Operations, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale,

MD 20737-1231; (301) 734-8758. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734-7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Fruits and Vegetables.

OMB Number: 0579-0264.

Type of Request: Extension of approval of an information collection.

Abstract: As authorized by the Plant Protection Act (7 U.S.C. 7701 *et seq.*) (PPA), the Secretary of Agriculture may prohibit or restrict the importation, entry, exportation, or movement in interstate commerce of any plant, plant product, biological control organism, noxious weed, means of conveyance, or other article if the Secretary determines that the prohibition or restriction is necessary to prevent a plant pest or noxious weed from being introduced into or disseminated within the United States. This authority has been delegated to the Animal and Plant Health Inspection Service (APHIS), which administers regulations to implement the PPA.

The regulations in Subpart—Fruits and Vegetables (7 CFR 319.56-1 through 319.56-47) allow a number of fruits and vegetables to be imported into the United States, under specified conditions, from certain parts of the world. Importation of a variety of fruits and vegetables from Central America, South America, Belgium, China, the Dominican Republic, Jamaica, Jerusalem, Mexico, the Netherlands, and Trinidad and Tobago requires the use of certain information collection activities, including phytosanitary certificates, fruit fly monitoring records, and cooperative agreements.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.2557172 hours per response.

Respondents: Growers, shippers, and national plant protection organizations.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 32.06666.

Estimated annual number of responses: 481.

Estimated total annual burden on respondents: 123 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 5th day of May 2008.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8-10441 Filed 5-8-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. APHIS-2008-0065]

Notice of Availability of a Pest Risk Analysis for Importation of Dragon Fruit From Vietnam Into the Continental United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that we have prepared a pest risk analysis that evaluates the risks associated with the importation into the continental United States of dragon fruit from Vietnam. Based on that analysis, we believe that the application of one or more designated phytosanitary measures will be sufficient to mitigate the risks of introducing or disseminating plant pests or noxious weeds via the importation of dragon fruit from Vietnam. We are making the pest risk analysis available to the public for review and comment.

DATES: We will consider all comments that we receive on or before July 8, 2008.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov/fdmspublic/component/main?main=DocketDetail&d=APHIS-2008-0065> to submit or view comments and to view supporting and related materials available electronically.

- *Postal Mail/Commercial Delivery:* Please send two copies of your comment to Docket No. APHIS-2008-0065, Regulatory Analysis and Development, PPD, APHIS, Station 3A-03.8, 4700 River Road, Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. APHIS-2008-0065.

Reading Room: You may read any comments that we receive on this docket in our reading room. The reading room is located in Room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

Other Information: Additional information about APHIS and its programs is available on the Internet at <http://www.aphis.usda.gov>.

FOR FURTHER INFORMATION CONTACT: Mr. Alex Belano, Import Specialist, Commodity Import Analysis and Operation Staff, PPQ, APHIS, 4700 River Road, Unit 133, Riverdale, MD 20737-1231; (301) 734-5333.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in “Subpart-Fruits and Vegetables” (7 CFR 319.56 through 319.56-47, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

Section 319.56-4 contains a performance-based process for approving the importation of commodities that, based on the findings of a pest risk analysis, can be safely imported subject to one or more of the designated phytosanitary measures listed in paragraph (b) of that section. These measures are:

- The fruits or vegetables are subject to inspection upon arrival in the United States and comply with all applicable provisions of § 319.56-3;

- The fruits or vegetables are imported from a pest-free area in the country of origin that meets the requirements of § 319.56-5 for freedom from that pest and are accompanied by a phytosanitary certificate stating that the fruits or vegetables originated in a pest-free area in the country of origin;

- The fruits or vegetables are treated in accordance with 7 CFR part 305;

- The fruits or vegetables are inspected in the country of origin by an inspector or an official of the national plant protection organization of the exporting country, and have been found free of one or more specific quarantine pests identified by the risk analysis as likely to follow the import pathway; and/or

- The fruits or vegetables are a commercial consignment.

APHIS received a request from the Government of Vietnam to allow the importation of dragon fruit from Vietnam into the continental United States. We have completed a pest risk assessment to identify pests of quarantine significance that could follow the pathway of importation into the United States and, based on that pest risk assessment, have prepared a risk management analysis to identify phytosanitary measures that could be applied to the commodity to mitigate the pest risk. We have concluded that dragon fruit can be safely imported into the continental United States from Vietnam using one or more of the five designated phytosanitary measures listed in § 319.56-4(b). Therefore, in accordance with § 319.56-4(c), we are announcing the availability of our pest risk analysis for public review and comment. The pest risk analysis may be viewed on the Regulations.gov Web site or in our reading room (see **ADDRESSES** above for instructions for accessing Regulations.gov and information on the location and hours of the reading room). You may request paper copies of the pest risk analysis by calling or writing to the person listed under **FOR FURTHER INFORMATION CONTACT**. Please refer to the subject of the pest risk analysis when requesting copies.

After reviewing the comments we receive, we will announce our decision regarding the import status of dragon fruit from Vietnam in a subsequent notice. If the overall conclusions of the analysis and the Administrator's determination of risk remain unchanged following our consideration of the comments, then we will begin issuing permits for importation of dragon fruit

from Vietnam into the continental United States subject to the requirements specified in the risk management analysis.

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 5th day of May 2008.

Cindy Smith,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E8-10442 Filed 5-8-08; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Natural Resources Conservation Service

Conservation Security Program; Correction

AGENCY: Natural Resources Conservation Service (NRCS) and Commodity Credit Corporation (CCC), USDA.

ACTION: Notice; Extension

SUMMARY: NRCS and CCC published in the **Federal Register** on April 10, 2008, (73 FR 19456), a document stating “Notice of the Conservation Security Program, (CSP-08-01) sign up.” This notice extends the sign-up period end date from May 16, 2008, to May 30, 2008, in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the previously published document.

FOR FURTHER INFORMATION CONTACT: Dwayne Howard, Branch Chief—Stewardship Programs, Financial Assistance Programs Division, NRCS, Post Office Box 2890, Washington, DC 20013-2890; telephone: (202) 720-1845; fax: (202) 720-4265. Submit via e-mail to: dwayne.howard@wdc.usda.gov, with subject line of “Attention: Conservation Security Program.”

Signed in Washington, DC, on April 30, 2008.

Arlen L. Lancaster,

Chief, Natural Resources Conservation Service, Vice President, Commodity Credit Corporation.

[FR Doc. E8-10360 Filed 5-8-08; 8:45 am]

BILLING CODE 3410-16-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and Deletions from the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a service previously furnished by such agencies.

EFFECTIVE DATE: June 8, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia, 22202-3259.

FOR FURTHER INFORMATION CONTACT: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION:

Additions

On March 14, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR13828) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-

O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

End of Certification

Accordingly, the following services are added to the Procurement List:

Services

Service Type/Location: Administrative Support Services, U.S. Custom House, 200 Chestnut Street, Philadelphia, PA.
NPA: Elwyn, Inc., Aston, PA.

Contracting Activity: General Services Administration, Public Buildings Service, Mid Atlantic Region 3-P, Philadelphia, PA.

Service Type/Location: Custodial Services, U.S. Army Corps of Engineers, Central Area Office, 5235 Grand Avenue, Davenport, IA.

NPA: Goodwill Industries of Southeast Iowa, Iowa City, IA.

Contracting Activity: U.S. Army Corps of Engineers, Rock Island, IL.

Deletion

On March 14, 2008, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (73 FR13829) of proposed deletions to the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the service to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the service deleted from the Procurement List.

End of Certification

Accordingly, the following service is deleted from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, U.S. Federal Building, Courthouse and Post Office, 301 West Main Street, Benton, IL.

NPA: Franklin-Williamson Human Services, Inc., West Frankfort, IL.

Contracting Activity: General Services

Administration.

Dennis Lockard,
General Counsel.

[FR Doc. E8-10374 Filed 5-8-08; 8:45 am]

BILLING CODE 6353-01-P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions From the Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete a service previously furnished by such agencies.

Comments Must be Received on or Before: June 8, 2008.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202-3259.

For Further Information or To Submit Comments Contact: Kimberly M. Zeich, Telephone: (703) 603-7740, Fax: (703) 603-0655, or e-mail CMTEFedReg@jwod.gov.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice for each product or service will be required to procure the products and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the products and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following products and services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Products

Aircraft Assembly Parts

NSN: 1560-00-870-1656—Cover Access.

NSN: 1560-00-875-6001—Support, Structural.

NSN: 1560-01-114-0870—Bracket Assembly.

NSN: 1560-01-153-9682—Weather Strip.

NSN: 5365-00-159-3781—Shim.

NSN: 5365-00-159-3792—Shim.

NPA: The Lighthouse for the Blind, Inc. (Seattle Lighthouse), Seattle, WA.

Coverage: C-List for the requirement of the Defense Supply Center Richmond, Richmond, VA.

Contracting Activity: Defense Supply Center Richmond, Richmond, VA.

Cap, Garrison, Unisex U.S. Navy

NSN: 8405-01-539-5868—Size 6¾.

NSN: 8405-01-539-5869—Size 6½.

NSN: 8405-01-539-5873—Size 6⅝.

NSN: 8405-01-539-5887—Size 6¾.

NSN: 8405-01-539-5888—Size 6⅞.

NSN: 8405-01-539-5889—Size 7.

NSN: 8405-01-539-5891—Size 7⅛.

NSN: 8405-01-539-5892—Size 7¼.

NSN: 8405-01-539-5894—Size 7⅜.

NSN: 8405-01-539-5895—Size 7½.

NSN: 8405-01-539-5897—Size 7⅝.

NSN: 8405-01-539-5900—Size 7¾.

NSN: 8405-01-539-5934—Size 7⅞.

NSN: 8405-01-539-5937—Size 8.

NSN: 8405-01-539-5939—Size 8⅛.

NSN: 8405-01-539-5962—Size 8¼.

NSN: 8405-01-539-5969—Size 8⅜.

NSN: 8405-01-539-6335—Size 8½.

NPA: Goodwill Industries of South Florida, Inc., Miami, FL.

Coverage: C-List for 25% of the requirement of the Defense Supply Center Philadelphia, Philadelphia, PA.

Contracting Activity: Defense Supply Center Philadelphia, Philadelphia, PA.

Services

Service Type/Location: Mailroom Operations, Fort Stewart, 1042 William H. Wilson Avenue, Fort Stewart, GA.

NPA: Abilities, Inc. of Florida, Clearwater,

FL.

Contracting Activity: Army Contracting Agency, Directorate of Contracting, Fort Stewart, GA.

Service Type/Location: Mailroom Operations, Internal Revenue Service, 10715 David Taylor Drive, Charlotte, NC.

NPA: Employment Source, Inc., Fayetteville, NC.

NPA: ServiceSource, Inc., Alexandria, VA (PRIME CONTRACTOR).

Contracting Activity: U.S. Department of the Treasury, Internal Revenue Service Headquarters, Oxon Hill, MD.

Deletion

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action should not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. If approved, the action may result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for deletion from the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

End of Certification

The following service is proposed for deletion from the Procurement List:

Service

Service Type/Location: Janitorial/Custodial, Veterans Affairs Medical Center, Seattle, WA.

NPA: Seattle Mental Health Institute, Inc., Seattle, WA.

Contracting Activity: Department of Veterans Affairs, Seattle, WA.

Dennis Lockard,

General Counsel.

[FR Doc. E8-10373 Filed 5-8-08; 8:45 am]

BILLING CODE 6353-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

2007 Calculation of Expected Non-Market Economy Wages

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Finalization and Effective Date of 2007 Expected Non-Market Economy Wage Calculation.

SUMMARY: On April 11, 2008, the Department of Commerce

(“Department”) published the preliminary 2007 expected non-market economy (“NME”) wages (the “2007 calculation”), and provided the public with an opportunity to comment on potential clerical errors. See Expected Non-Market Economy Wages: Request for Comments on 2007 Calculation, 73 FR 19812 (April 11, 2008). The 2007 calculation was based on 2005 data and the methodology described in the **Federal Register** notice entitled Antidumping Methodologies: Market Economy Inputs, Expected Non-Market Economy Wages, Duty Drawback; and Request for Comments, 71 FR 61716, Oct. 19, 2006 (hereafter, the “Antidumping Methodologies notice”). The Department received two sets of comments in response to this notice and has made one change to its calculation, as described below, based on those comments. This notice constitutes the Department’s announcement of the finalization and effective date of the 2007 calculation.

DATES: These expected NME wage rates are finalized on the date of publication of this notice in the **Federal Register** and will be in effect for all antidumping proceedings for which the Department’s final decision is due after the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Anthony Hill, Economist, Office of Policy, or Juanita Chen, Special Assistant to the Senior Enforcement Coordinator, China/ NME Group, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-1843 and (202) 482-1904, respectively.

SUPPLEMENTARY INFORMATION:

Comments

Two parties commented that the Department used the incorrect exchange rate for Madagascar when converting wages reported for that country into U.S. dollars. They pointed out that Madagascar has two currencies, the ariary and the Malagasy franc (“FMG”), and that the International Labour Organization (“ILO”) reported wage data for Madagascar in FMG. However, they noted, it seems as though the exchange rate used by the Department was an ariary rate per U.S. dollar. They also pointed out that the rate of ariary to FMG was 1 to 5. Parties provided a source that showed an FMG per U.S. dollar exchange rate and argued that the Department should use this exchange rate to convert the ILO wage data reported for Madagascar into U.S. dollars.

Two parties also argued that the Department should have excluded Indian and South Korean wage rates from the regression analysis because of subsidy programs in these countries. They contend that the Department's normal practice is to exclude surrogate data from countries with generally available subsidies and that India and South Korea are countries in which these subsidies are available.

One party argued that the Ordinary Least Squares ("OLS") regression analysis used by the Department will inherently lead to inaccurate results when applying it to the dataset used in the expected NME wages calculation because the dataset exhibits heteroscedasticity. They argue that the Department should use a Generalized Least Squares regression to predict NME wages because this method would give more reliable results.

Department's Position

With respect to the use of the incorrect exchange rate in converting Madagascar's labor rate, the Department agrees that this is a clerical error and will change the 2007 calculation. The ILO wage data for Madagascar are reported in FMG per hour. The International Financial Statistics ("IFS") exchange rate data do not specify the name of the currency; however, the IFS

does say that the exchange rates are reported in units of the national currency per U.S. dollar. Moreover, the International Monetary Fund's 2007 Annual Report on Exchange Arrangements and Exchange Restrictions ("IMF Report") states that, "The currency of Madagascar is the ariary." Instead of converting the ILO wage data reported for Madagascar directly into U.S. dollars using the exchange rate suggested by the parties, the Department converted the Madagascar wage data from FMG to ariary, and then from ariary to US dollars, using the ariary/FMG rate in the IMF Report and the IFS ariary/dollar rate. The IMF Report notes that Madagascar's two currencies are convertible at the rate of 1 ariary per 5 FMG.

The suggestion that the wage rates from India and South Korea should be excluded from the expected NME wage rate analysis is a comment on the calculation methodology and not a clerical error. India and South Korea are countries for which the Department has reason to believe or suspect maintain generally available *export* subsidies; however, this practice has no bearing on the use of domestic prices, including labor rates, within these countries.

The argument that the Department should use a Generalized Least Squares

regression instead of an Ordinary Least Squares regression is also a comment on the methodology and not a clerical error. The specific issue of heteroscedasticity has been recently addressed by the court, which concluded that, given (i) the inherent difficulties in identifying heteroscedasticity and (ii) the fact that the OLS estimators remain unbiased and consistent even in the face of heteroscedasticity, the Department's decision not to account for the possibility of heteroscedasticity was reasonable. *See Dorbest Ltd., et al. v. United States*, Slip Op. 2008-24 (CIT feb. 27, 2008) at 4-19.

Results

Following the data compilation and regression methodology described in the Antidumping Methodologies notice, and using Gross National Income and wage data for 2005, the regression results are: $Wage = 0.2721729 + 0.0004477 * GNI$. The final expected NME wage rates, as calculated with the above mentioned change, are shown in Attachment 1.

Dated: May 6, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

Attachment 1

Country	2005 GNI (USD per annum)	Expected NME wage rate (USD per hour)
Armenia	1,470	0.93
Azerbaijan	1,270	0.84
Belarus	2,760	1.51
China	1,740	1.05
Georgia	1,300	0.85
Kyrgyz Republic	450	0.47
Moldova	960	0.70
Tajikistan	330	0.42
Uzbekistan	530	0.51
Vietnam	620	0.55

The World Bank did not publish a GNI for Turkmenistan.

The final results and underlying data for the 2007 calculation have been posted on the Import Administration Web site at (<http://ia.ita.doc.gov>). [FR Doc. E8-10525 Filed 5-8-04; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping Methodologies for Proceedings that Involve Significant Cost Changes Throughout the Period of Investigation (POI)/Period of Review (POR) that May Require Using Shorter Cost Averaging Periods; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Request for comment.

SUMMARY: The Department of Commerce (Department) seeks public comment on

its development of a predictable methodology for determining when the use of shorter cost averaging periods is more appropriate than the established practice of using annual cost averages due to the occurrence of significant cost changes throughout the POI/POR. Although the Department maintains that the established practice of using annual cost averages is the most appropriate methodology to use in a majority of proceedings, it may be preferable to use an alternative methodology in certain cases. The Department now seeks comments from the public on the factors to consider, the tests to apply, and the thresholds to adhere to in determining whether or not shorter cost averaging

periods (e.g., quarterly) are more appropriate.

DATES: Comments must be submitted within thirty days from the publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to the Secretary of Commerce, Attn: Import Administration, APO/Dockets Unit, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Ave., NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Neal M. Halper, Director, Office of Accounting, or Taija A. Slaughter, Lead Accountant, Office of Accounting, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-2989 and (202) 482-3563, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department's methodology for calculating the cost of manufacture (COM) of subject merchandise in less-than-fair-value investigations and antidumping administrative reviews is based on the cost over the entire POI or POR (i.e., on an annual basis). This yearly based methodology results in a normalized, weighted-average production cost that can then be compared to sales prices covering the same extended period of time. Therefore, the Department's questionnaire requests that all respondents report their costs of producing merchandise on an annual average basis over the entire POI or POR. See, e.g., *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review*, 65 FR 77852 (Dec. 13, 2000) (*Pasta from Italy*), and accompanying Issues and Decision Memorandum at Comment 18 and *Notice of Final Results of Antidumping Duty Administrative Review of Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (Jan. 24, 2006) (*Wire Rod from Canada*), and accompanying Issues and Decision Memorandum at Comment 5 (explaining the Department's practice of computing a single weighted-average cost for the entire period). This methodology is predictable and generally applied consistently in all proceedings.

The Tariff Act of 1930, as amended (the Act), and the Department's regulations describe the role of the cost of production (COP) in the Department's antidumping analysis. "Dumping" is defined in section 771(34) of the Act as the sale or likely sale of goods at less than normal value (NV) in the United States. A "dumping margin," as defined

by section 771(35)(A) of the Act, is the amount by which the NV exceeds the export price (EP) or constructed export price (CEP) of the subject merchandise. In calculating NV, section 773(a)(1)(B) of the Act states that the Department will consider only those sales in the comparison market that are made in the "ordinary course of trade." Section 771(15) of the Act and 19 CFR 351.102 explain that sales are generally made "in the ordinary course of trade" if they are sold under "conditions and practices which, for a reasonable period of time prior to the exportation of the subject merchandise, have been normal" for sales of the foreign like product.¹ None of these provisions provides guidance on the methodology which the Department should use in calculating a respondent's COP.

Furthermore, section 773(b)(1) of the Act and 19 C.F.R. 351.406 provide that sales may be disregarded if they have been made at prices which represent less than the COP of that product. Section 773(b)(3) of the Act defines the COP as:

an amount equal to the sum of-

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment.

Thus, although the Act states that the COP is calculated using a "period which would ordinarily permit the production" of the foreign like product, no guidance is given with regard to whether or not the Department should use only a single, weighted-average period of time, or multiple time periods within that "production period" for purposes of making comparisons and calculating a dumping margin.

The Department has established a practice of using a single weighted-average COP that applies to the entire POI/POR, which it has applied in the vast majority of its investigations and reviews. Factors such as erratic production levels, the extent to which and how accurately monthly accruals

are made, periodic maintenance, inventory valuation methods, etc. all impact the timing and accuracy of per-unit costing over short periods of time. Relying on an annual average cost tends to smooth out these short-term per-unit cost fluctuations resulting in a normalized average production cost to be compared to sales prices over the same extended period of time. See *Color Television Receivers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 55 FR 26225, 26228 (June 27, 1990) (where the Department stated that the use of quarterly data would cause aberrations due to short-term cost fluctuations) and *Grey Portland Cement and Clinker From Mexico: Final Results of Antidumping Duty Administrative Review*, 58 FR 47253, 47257 (September 8, 1993) (where the Department explained that the annual period used for calculating costs accounts for any seasonal fluctuation which may occur as it accounts for a full operation cycle).

The Department has, however, in a limited number of cases, deviated from its normal methodology of calculating costs on an annual average basis over the entire POI/POR and resorted to shorter cost averaging periods. Examples of instances where the Department departed from its standard cost averaging period include high technology products that experienced significant and consistent cost and price changes over a short period of time. See *Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8926 (Feb. 23, 1998) (*SRAMS from Taiwan*) (where the Department determined that quarterly, rather than annual, averages resulted in a more accurate comparison of pricing behavior during the period of investigation (POI) given the significant decrease in the price and cost of static random access memory semiconductors throughout the POI) and *Final Determination of Sales at Less Than Fair Value: Erasable Programmable Read Only Memories from Japan*, 51 FR 39680, 39685 (Oct. 30, 1986) (*EPROMS from Japan*) (where the Department found that significant changes in the COP during a short period of time due to technological advancements and changes in the production process justified the use of quarterly weighted-average costs).

The Department also found that shorter period averages resulted in a more accurate comparison of pricing behavior where the respondent's COM changed significantly throughout the cost reporting period. In *Final Results of Antidumping Duty Administrative*

¹ Section 773(b)(1) of the Act states that if no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value (CV) of the merchandise. See also 19 CFR 351.405(a). CV is defined at section 773(e) of the Act as the cost of materials, plus fabrication expenses, selling, general and administrative expenses, profit and packing expenses.

Review and Determination Not to Revoke the Antidumping Duty Order: Brass Sheet and Strip from Netherlands, 65 FR 742 (Jan. 6, 2000) (*Brass Sheet and Strip from Netherlands*), the Department was able to make a contemporaneous comparison of metal values and sales prices which resulted in a more accurate calculation of the dumping margin in that instance because the respondent treated the cost of the input metals as a pass-through to its customers in its normal books and records. See *id.* at 747–748.

Accordingly, in *Brass Sheet and Strip from Netherlands*, the Department determined it appropriate to deviate from calculating cost on an annual average basis over the entire cost reporting period because record evidence showed that the cost of metal inputs represented a significant percentage of the total cost of producing brass sheet and strip, the cost of the metal inputs dropped consistently and significantly throughout the POR, and prices and costs for the shorter periods could be accurately matched.²

Issues of Concern

In several recent proceedings, we have received requests from respondents to report costs using averaging periods of less than one year. See *Certain Steel Concrete Reinforcing Bars from Turkey; Final Results, Rescission of Antidumping Duty Administrative Review in Part, and Determination To Revoke in Part*, 70 FR 67665 (November 8, 2005) (*Rebar from Turkey*), and accompanying Issues and Decision memorandum at Comment 1; *Final Results of Antidumping Duty Administrative Review: Carbon and Certain Alloy Steel Wire Rod from Canada*, 71 FR 3822 (January 24, 2006); and *Final Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils From France*, 71 FR 6269 (February 7, 2006). In these

cases, we primarily relied on two factors in determining whether it was appropriate to deviate from our normal practice of using an annual average cost method: (1) whether the cost changes throughout the POI/POR were significant, and (2) whether sales during the shorter averaging periods could be accurately linked with the COP/CV during the same shorter averaging periods.

In these recent proceedings, we analyzed the significance of the cost changes throughout the POI/POR by conducting a comparative COM analysis between the annual average cost method and the suggested shorter period average cost method (e.g., quarterly cost averaging period). See, e.g., *Rebar from Turkey*. In comparing the costs under the two methods, the Department examined the five most frequently sold models of the foreign like product (i.e., control numbers or “CONNUMS”) in the comparison market. For each of the five models, the Department compared the difference between the annual-average COM and the shorter period average COMs.³

In considering whether a shorter cost averaging period reflects a more accurate measure of dumping, we also explained in those proceedings that sales during the shorter averaging period must be closely linked with the COP of the shorter period. In certain cases there are various factors⁴ which may affect the timing relationship between the purchase of the raw materials, the production of a product, and its subsequent sale. Therefore, arbitrarily relying on a shorter cost reporting period can create uncertainty as to how accurately the average costs during the shorter period relate to the sales that occurred during that same shorter period. Thus, we believe it is necessary for a respondent to provide evidence on the administrative record of a direct linkage between resulting costs and sales prices before we consider using a cost-averaging period that does not extend throughout the entire POI/POR. In the above-mentioned recent proceedings, in assessing whether sales

can be accurately linked with the concurrent quarterly average costs, we analyzed the relationship of the cost and price trends throughout the POI/POR.

In addition, in a recent remand redetermination, filed with the Court of International Trade, we assessed how closely sales prices and costs tracked each other during the shorter cost calculation periods by analyzing the consistency of the shorter cost averaging period profit percentages on comparison market sales. See *Final Results of Redetermination Pursuant to Court Remand, Habas Sinai ve Tibbi Gazlar Istihsal ve Endustrisi A.S. v. United States*, Court No. 05–00613, Slip Op. 07–167 (CIT Nov. 15, 2007), dated March 3, 2008 found at <http://ia.ita.doc.gov>. In that remand redetermination, to calculate the shorter cost averaging period profit percentages, we subtracted the shorter average cost of producing such sales from the shorter averaging period comparison market net sales revenue, and divided this figure by the same shorter average cost of producing such sales. Using this analysis, we concluded that the required linkage between sales and costs did not exist in that case such as to warrant using shorter time periods.

Request for Comments

We continue to regard our practice of using annual cost averages in proceedings as generally the most appropriate methodology, and we intend to deviate from this practice only under limited circumstances. The use of annual cost averages results in an approach that normally evens out swings in production costs that a respondent may have experienced over short periods (i.e., months or quarters) of time, and reasonably reflects the COP for sales made throughout the year.

However, in certain cases, possible distortions may result when an annual-average cost method is used during a period of significant cost changes. Conversely, many factors, as noted above, may result in distortions when using shorter period average costs. Consequently, relying on a shorter cost reporting period can create uncertainty as to how accurately the average costs during the shorter period relate to the sales that occurred during that same shorter period. In light of these competing considerations, the Department requests comments and suggestions on the factors to consider, tests to apply, and thresholds to adhere to when deciding to rely on cost averaging periods of less than a year.

Below is a list of specific questions we would like parties to comment on:

² The Department also deviated from its practice of using POR average costs in *Notice of Final Results of Antidumping Duty Administrative Review: Canned Pineapple Fruit From Thailand*, 63 FR 7392 (Feb. 13, 1998). In this case the POR covered an 18-month period. For purposes of calculating the dumping margin, the Department initially used the POR-wide weighted-average cost. However, the Department later matched the sales and costs by segregating the POR into two fiscal years for purposes of its dumping analysis. See *Final Results of Redetermination Pursuant to United States Court of International Trade Remand Order Thai Pineapple Canning Industry Corp. Ltd. And Mitsubishi International Corp. Ltd. v. United States*, Court No. 98–03–00487 (CIT Feb. 5, 2002), dated May 31, 2002, at 3 found at <http://ia.ita.doc.gov>. Although the Department matched sales prices to average costs for periods of time that were shorter than the span of the entire POR, it is important to note that the shorter averaging periods used were fiscal years, and not quarters or months.

³ In each case, the analysis was conducted using the total COM and not the cost of an input or one element of the COM.

⁴ For example, factors such as: 1) the raw material inventory turnover period; 2) the inventory valuation method used by the company (e.g., last-in, first-out versus first-in, first-out versus weighted-average, etc.); 3) the extent to which raw materials are purchased pursuant to long-term contracts; 4) erratic production levels throughout the year; 5) sales made pursuant to long-term contracts; 6) the extent to which monthly accruals are made; and 7) year-end adjustments all affect the timing relationship between sales transactions and costs.

- (i) Are there other factors relevant to the consideration of whether and when to rely on shorter cost averaging periods besides significant cost changes and the linking of sales and costs during the same shorter period? If so, identify the factor(s) and explain in detail why such factor(s) should be considered.
- (ii) How should the significant cost changes factor be analyzed and what numeric threshold should we rely upon as a basis for resorting to shorter cost averaging periods? Provide the basis for your suggested threshold number. Should the nature of the industry (e.g., steel, consumer electronics, perishable products, etc.) affect the analysis? If so, explain in detail how the analysis would be affected.
- (iii) How should the correlation between prices and shorter cost averaging periods be analyzed to reasonably assess that the prices and shorter period average costs are accurately linked?
- (iv) Should it matter whether costs are trending consistently up, consistently down, or up and down throughout the POI/POR in the decision to use shorter cost averaging periods? Explain in detail why or why not.
- (v) If shorter cost averaging periods are used based on the argument that it is distortive to rely on a single average cost when costs have changed significantly throughout the year, should the recovery of cost test be modified in any way? That is, should sales that are below the shorter cost averaging period still be considered to provide for the recovery of costs within a reasonable period time if they are above the annual average cost? See section 773(b)(2)(D) of the Act.
- (vi) To what extent should the costs from the window periods⁵ in reviews affect the overall analysis?
- (vii) If we were to gather information

at the outset of every segment of a proceeding in order to determine early on whether a respondent needed to provide cost information for shorter cost averaging periods, what information should we request? Provide specific questions that could be incorporated into the section A questionnaire.

- (viii) Should shortening the cost averaging period affect price comparisons? For sales comparison purposes, should prices be compared across cost-averaging periods?

- (ix) Are there other points you deem relevant to the issue at hand?

Submission of Comments

Persons wishing to comment should file a signed original and six copies of each set of comments by the date specified above. The Department will consider all comments received by the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially due to business proprietary concerns or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in its development of a methodology for when it is appropriate to deviate from the annual average cost reporting method to shorter cost averaging periods. The Department requires that comments be submitted in written form. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: <http://ia.ita.doc.gov>.

Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, email address: webmaster-support@ita.doc.gov.

Dated: May 5, 2008.

David M. Spooner,

Assistant Secretary for Import Administration.

[FR Doc. E8-10527 Filed 5-8-04; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

International Trade Administration

Clean Energy and Environment Trade Mission to China and India

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

SUMMARY: Clean Energy and Environment Trade Mission to China and India.

DATES: September 1-12, 2008.

FOR FURTHER INFORMATION CONTACT:

Brian O'Hanlon at brian.ohanlon@mail.doc.gov or Debra Delay at debra.delay@mail.doc.gov or visit the mission Web site at <http://www.export.gov/cleanenergymission>.

SUPPLEMENTARY INFORMATION:

Mission Description: The United States Department of Commerce, International Trade Administration, is organizing a Clean Energy and Environment Trade Mission to China and India, September 1-12, 2008. The trade mission will target a broad range of clean energy and environmental technologies such as renewable energy, biofuels, energy efficiency, clean coal, distributed generation, waste handling and treatment, wastewater treatment, packaging recycling, and drinking water treatment. The mission will make stops in Beijing, Jinan, and Shanghai, China as well as New Delhi, Hyderabad, and Mumbai, India. It will be led by Assistant Secretary of Commerce David Bohigian.

Through this mission, ITA seeks to match participating U.S. companies with prescreened partners, agents, distributors, representatives, licensees, or retailers in each of these important sectors. In addition to one-on-one business meetings, the agenda will also include meetings with national and local government officials, networking opportunities, country briefings, seminars, and site visits.

Background: This mission builds on two previous U.S. Clean Energy Technologies Trade Missions, which took place in April 2007 and January 2008. Each brought 17 U.S. companies to China and India. This trade mission takes place within the context of both the President's international framework

⁵ In administrative reviews of existing antidumping orders, the Department normally compares the export price (or constructed export price) of an individual U.S. sale to an average normal value for a contemporaneous month. The preferred month is the month in which the particular U.S. sale was made. If, during the preferred month, there are no sales in the foreign market of a foreign like product that is identical to the subject merchandise, the Department will then employ a six-month window period for the selection of contemporaneous sales. For each U.S. sale, the Department will calculate an average price for sales of identical merchandise in the most recent of the three months (90 days) prior to the month of the U.S. sale. If there are no such sales, the Department will use sales of identical merchandise in the earlier of the two months (60 days) following the month of the U.S. sale.

on climate change, energy security, and economic growth involving the 15 major economies (the Global-15), as well as the Asia-Pacific Partnership on Clean Development and Climate (APP).

On May 31, 2007, President Bush announced an effort to develop and implement the Global-15 framework by 2012, which would complement the current United Nations Framework Convention on Climate Change and advance the APP. The APP is a public-private partnership in which member countries work together to facilitate commercial deployment of technologies that reduce greenhouse gas emissions and enhance energy security.

The mission also builds on the work of the U.S.-China Joint Commission on Commerce and Trade. In December 2007, both countries committed to continued cooperation in the deployment of environmental technologies by launching the U.S.-China Environmental Industries Forum, an event sponsored by the China Association of Environmental Protection Industry.

China

China's rapid economic growth has been accompanied by widespread pollution and environmental degradation. This, combined with limited energy resources and inefficient use of energy, has caused the central government to make clean energy, environmental technologies, and energy efficiency a strategic priority. In the 11th Five-Year Plan (2005–2010), the government has set the targets of reducing energy intensity per unit of GDP by 20% and reducing emissions for major pollutants (e.g. carbon dioxide and sulphur dioxides) by 10%. The Chinese Government's recent passage of the new Renewable Energy Law has codified many of these mandates, including a renewable energy portfolio of at least 10 percent by 2020 (up from approximately 3 percent in 2003). This law is partly responsible for the increase in new renewable energy projects and offers U.S. producers an important opportunity to provide wind turbines, solar photovoltaics, waste-to-energy, biomass, geothermal, biofuels, and resource mapping technologies. Achieving the targets for wind energy alone (30 GW by 2020 from 1.2 GW in 2005) will require \$21–28 billion in investment. China has already invested \$12 billion in renewable energy capacity in 2007 and will most likely spend even more in 2008.

In addition to renewable energy, China has a substantial need for energy and environmental products that will render energy production from coal

cleaner. Coal accounts for 69% of China's energy use and thus the need to develop clean coal technologies provides a substantial opportunity for U.S. producers of combined heat and power, coal beneficiation products, coal mine methane extraction technologies, gas turbines, circulating fluidized bed boilers, pollution control technologies such as desulphurization technologies, and coal conversion technologies such as advanced pulverized coal gasifiers.

In addition to air pollution and the need for cleaner, more efficient energy, water issues are among the top priorities of China's environmental protection plan. It is estimated that in the next five years, China will invest \$175 billion in environmental protection, accounting for 1.3–1.4% of GDP.

All these initiatives underscore China's intention to deploy cleaner and more efficient technologies. U.S. technology providers with accurate market information and a sound business strategy have the potential to take advantage of the growing Chinese market for clean energy and environment technologies.

Beijing

With a population of over 15 million, China's capital, Beijing, offers unparalleled access to Chinese policymakers and institutions including the National Development and Reform Commission and the newly-created Ministry of Environment. Since China's energy and environmental sectors are regulated by the central government, interaction with these officials can be critical to a company's success.

There is also a strong local market for clean energy technologies in Beijing, due to its size, its political and economic importance, and the poor environmental conditions caused by development. Beijing is unique in China in its provincial status, which enables its municipal government to approve independent foreign investment projects up to a value of \$30 million. This has positioned Beijing as an attractive location for foreign investment in China.

Beijing is also developing its own renewable energy policy, partly as a way to combat the effects of the nearly 1,000 new cars per day driving on the city's roads.

Jinan

With a population of 5.9 million, Jinan is the capital of China's Shandong Province. Jinan boasts a highly skilled workforce, is home to ten universities, and has over two hundred research institutions, including ten national labs. The city is host to heavy industry, textiles, IT, bioengineering, home

appliances, and transportation tools companies. Shandong Province's energy intensive economy and environmental needs offers an array of opportunities to U.S. companies. In recent years, the province has invested over \$13 billion on environmental projects including water treatment, industrial monitoring, and pollution prevention.

Jinan is also host to the 3rd International Exhibition on Green Industry and the Northeast Asia Environmental Protection Industry Fair, which brings together green technologies and buyers from across North Asia. Trade mission participants will receive special attention from the event's organizers as the first U.S. delegation to the exhibition.

Shanghai

Shanghai is known as the commercial and financial capital of China. With its strategic location at the mouth of China's longest river, the Yangtze, Shanghai also serves as the country's central transportation hub, offering a well-developed air, rail, sea, and road transportation infrastructure. In 2006, Shanghai registered 12 percent growth in its gross domestic product (GDP), the city's 15th consecutive year of double-digit growth. Its estimated population of 21 million people makes Shanghai the second largest city in China, after Chongqing. Per capita GDP is US\$7,000, compared to the national average of US\$2,800. Its strategic location, highly skilled workforce, and solid infrastructure make Shanghai a magnet for foreign direct investment (FDI). Contracted FDI for 2006 reached US\$15 billion, up 5 percent from 2005, and realized FDI was US\$7 billion. Shanghai hosts over 4,800 U.S.-invested firms, including GM, Intel, GE, Motorola, FedEx, and UPS.

Shanghai faces the same severe energy and environmental challenges as many of China's other cities. According to the Shanghai Municipal Government, 80 percent of Shanghai's 22,000 waterways and lakes are contaminated by substances such as petrochemicals, cyanides, mercury, cadmium, arsenic, and lead. In 2007, domestic sewage discharge reached 1.8 billion cubic meters; however, only 49.4 percent was treated in urban areas. Only 20 percent of water supplied by local rivers is drinkable, limiting the water available to residents to 1,050 cubic meters per capita—60 percent less than China's national average.

In an effort to reverse environmental degradation, Shanghai recently launched the multi-billion dollar Shanghai Urban Environment Plan, seeking to address urban planning and

environmental needs for the city. The plan will require the Shanghai Water Authority to invest \$725 million in the next few years, including a 1.3 million ton per day wastewater treatment plant, new pipe networks, pumping stations, and overall management and monitoring systems.

Shanghai recently overhauled its Clean Air Act and now mandates desulfurization systems on all new power plants and industrial facilities located in designated sulfur dioxide and acid rain control zones. The city is embarking on an ambitious campaign to curb vehicle emissions by phasing out leaded gasoline, issuing new tailpipe standards, developing alternative fuel technologies, and investing in emissions control and inspection equipment. And the government is beginning to enforce its comprehensive solid and hazardous waste law.

The Shanghai Municipal Government's energy strategy has focused on the diversification of energy supplies, increasing energy efficiency, and introducing clean energy technologies into the energy mix. Shanghai's energy demand has grown approximately 6–8% annually, while electricity demand has recently surged to over 10% a year. As a result, this focus is particularly reflected in the Shanghai's building codes have been changed to encourage energy efficient technologies and design.

Shanghai's government is also considering a "100,000" roofs initiative to add solar panels to homes and businesses. China's power grid company is developing a fleet of electric-only vehicles and plans to create a network of charging stations for the Beijing Olympics and the 2010 World Expo in Shanghai. Shanghai also plans to have a fleet of electric buses in time for the 2010 World Expo.

India

India is experiencing dramatic economic growth and a rapidly increasing demand for energy. Currently the world's fourth largest energy consumer, India will be the third-largest by 2030. Both India's cities and villages lack adequate energy; there is therefore a need to add on-grid and off-grid power generation. The Government of India has specified renewable energy in its development plans and has developed numerous government incentives. The federal government has set a goal of electrifying 18,000 remote villages and meeting 10 percent of its energy demand with clean energy by 2012. The Indian market for clean energy is estimated at \$600 million with an annual growth rate of 25 percent. The current 8,000 MW of

installed capacity is expected to reach 20,000 MW by 2012. India is currently experiencing annual growth of energy demand of 9 percent a year.

The clean energy market in India offers strong business prospects to U.S. companies, particularly in solar, biomass, gasification, wind, hydro, and solid and industrial waste-to-energy. The market for energy efficiency is estimated to be about \$2 billion, concentrated especially in energy-intensive industries such as cement, aluminum, fertilizers, pulp and paper, petrochemicals, and steel.

New Delhi

New Delhi, India's capital, is not only the second largest city, but also the second-most favored foreign direct investment (FDI) destination in the country. Key industries and business opportunities in New Delhi include environmental technologies, renewable energy, and energy efficiency. The total Indian market for these goods and services is expected to grow to \$9 billion in 2010. New Delhi is also the principal end-user of clean technology, fulfilling the Government of India's (GOI) directives on nation-wide deployment of environmental equipment and services. The size of New Delhi's need for energy and high pollution makes it an attractive market for large investments in clean technology projects, which is a key national priority.

Hyderabad

Hyderabad is the capital of the state of Andhra Pradesh and has a population of 7 million. Clean energy companies visiting Andhra Pradesh will find potential partners in the city's numerous energy intensive sectors including cement, steel, power plants, and defense industries.

The state agency, Non-Conventional Energy Development Corporation of Andhra Pradesh Ltd., implements numerous programs to support clean energy. The Andhra Pradesh government provides subsidies to all renewable energy technologies including wind, solar, hydro, and biogas. Hyderabad is also the epicenter for the Green Business Building push in India. The Confederation of Indian Industry's Green Business Center is located in Hyderabad. This showcase for Clean Energy enjoys support from ongoing U.S.-India partnerships operated by USAID and the State Government of Andhra Pradesh.

The Environment Protection Agency of India (EPTRI) is also located in Hyderabad, providing comprehensive training and research in environmental

issues and concerns. The increasing population density and sustained efforts to improve the standard of living have created tremendous pressure on the environment. Approximately 10 percent of the geographical area and 19 percent of the cultivatable area of Andhra Pradesh requires environmental cleanup. Though there is domestic competition, Hyderabad therefore presents a tremendous opportunity for U.S. firms, which can provide a wide range of services.

Mumbai

Mumbai (formerly Bombay) is the capital of the state of Maharashtra and is home to over 16 million residents. As India's most industrialized state, Maharashtra leads India in energy consumption, produces sizeable quantities of pollutants, and has experienced frequent energy blackouts. A 5,000 MW energy shortfall has spurred innovative programs to promote clean energy. In fact, the Maharashtra Energy Development Agency is actively promoting additional power from solar, wind, biogas, and small hydro sources. One of India's premier research institutes, the Indian Institute of Technology Bombay, operates an active Energy Systems Engineering program with a particular focus on sustainable energy.

Small-scale industrial firms dominate the environmental technologies sector but there are a few engineering companies offering services and equipment as part of turnkey consulting services. This sector is growing at 10–12 percent annually. There is a growing demand for the technologies for solid waste, water and wastewater treatment, vehicular pollution and air pollution. Some of the advanced equipment required for treatment of biomedical waste is not manufactured domestically and must be imported—an opportunity for U.S. exporters. Imports constitute nearly 40 percent of the total market.

Mission Goals: The Trade Mission will facilitate market entry or increased sales into these significant markets for U.S. clean energy and environmental technologies and services firms, and will assist mission participants in gaining first-hand market information and access to key government officials and potential business partners.

Mission Scenario: In China and India, the International Trade Administration will:

- Provide a market briefing highlighting opportunities in the clean energy technologies sectors.
- Schedule one-on-one appointments with potential business partners for each participant.

- Provide a venue for the one-on-one appointments and provide interpreters as needed.
- Provide networking opportunities with the private and public sectors.
- Organize relevant site visits.

Summary of Results Expected From the Mission

- Increased U.S. clean energy and environmental technologies exports to China and India.
- Progress on addressing market access barriers to trade in clean energy and environmental technologies and services in China and India.
- Reduction of greenhouse gas emissions per unit of economic growth and the improvement of environmental conditions in China and India.
- Increased awareness of the President's new international climate change framework ("the Global-15") and the Asia Pacific Partnership on Clean Development and Climate, and of ITA's trade policy and promotion programs.

Proposed Mission Timetable

Monday, September 1, 2008

Arrive in Beijing.
Welcome Reception.

Tuesday, September 2, 2008

Embassy Briefing.
U.S.-China Clean Energy and Environmental Technologies Forum.
Meeting with China's National Development and Reform Commission.
One-on-One Business Meetings.
Networking Reception.

Wednesday, September 3, 2008

Depart Beijing.
Arrive Jinan.
Participate in the Shandong International Exposition of Green Industry.
Government/Business Meetings.
Networking Reception.

Thursday, September 4, 2008

One-on-One Business Meetings.
Depart Jinan.
Arrive Shanghai.
Networking Dinner.

Friday, September 5, 2008

Consulate Briefing.
Government/Business Meetings.
One-on-One Business Meetings.
Networking Reception.

Saturday, September 6, 2008

Depart Shanghai.

Sunday, September 7, 2008

Arrive New Delhi.

Monday, September 8, 2008

Embassy Briefing.

Government/Business Meetings.
One-on-One Business Meetings.
Networking Reception.

Tuesday, September 9, 2008

Depart New Delhi.
Arrive Hyderabad.
Local Market Briefing.
One-on-One Business Meetings.
Networking Reception.

Wednesday, September 10, 2008

Depart Hyderabad.
Arrive Mumbai.
Government/Business Meetings.
One-on-One Business Meetings.
Networking Reception.

Thursday, September 11, 2008

Government/Business Meetings.
One-on-One Business Meetings.
Site Visit.

Friday, September 12, 2008

Depart Mumbai.

Participation Requirements

All parties interested in participating in this mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. No more than 25 companies will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a company has been selected to participate on the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee will be \$5,400 per firm, which includes one principal representative. The fee for each additional firm representative is \$1,000. For companies who wish to only participate in mission activities for one country the participation fee will be \$3,500 per firm, which includes one principal representative. The fee for each additional firm representative is \$750. Expenses for travel, lodging, some meals, and incidentals will be the responsibility of each mission participant.

Conditions for Participation

- An applicant must submit a completed and signed mission application and supplemental application materials, including adequate information on the company's: Products and/or services, primary market objectives, and goals for participation no later than July 21, 2008. If we receive an incomplete application,

we reserve the right to either reject the application or take the lack of information into account when evaluating the applications. A mission application may be found at <http://www.export.gov/cleanenergymission>.

- Each applicant must also:
 - Certify that the products or services it seeks to export through the mission are either produced in the United States, or, if not, marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content;
 - Certify that the export of the products or services that it wishes to export through the mission would be in compliance with U.S. export controls and regulations;
 - Certify that it has identified to the Department of Commerce for its evaluation any business pending before the Department of Commerce that may present either a conflict of interest or the appearance of a conflict of interest;
 - Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
 - Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with the company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

Selection Criteria for Participation:
Selection will be based on the following criteria in decreasing order of importance.

- Relevance of the company's business line to the mission scope and goals;
- Potential for business in the selected markets;
- Demonstrated export experience in China and/or India and/or globally;
- Participation in both the China and India portions of the mission;
- Rank/seniority of the designated company representative; and
- Diversity of sector participation.

Additional factors, such as diversity of company size, type, location, demographics, and traditional underrepresentation in business, may also be considered during the review process.

Invited companies must submit the trade mission participation fee and completed participation agreement within two weeks of receipt of their invitation in order to secure their place in the mission. After that time other companies may be invited to fill their spot. Applications received after the closing date will be considered only if

space and scheduling constraints permit.

Referrals from political organizations and any documents, including the application, containing references to partisan political activities (including political contributions) will be removed from an applicant's submission and not considered during the selection process.

The mission will be promoted through the following venues: ITA's Export Assistance Centers; the Energy Team; the Environment Team; the Asia Pacific Team; the Africa, Near East, and South Asia Team; Global Trade Programs; the Trade Events List <http://www.export.gov>; industry newsletters; the **Federal Register**; the Asia-Pacific Partnership for Clean Development and Climate; relevant trade publications; relevant trade associations; past Commerce trade mission participants; various in-house and purchased industry lists; the Commerce Department trade missions calendar: <http://www.ita.doc.gov/doctm/tmcal.html>; and the Web: <http://www.export.gov/cleanenergymission>.

FOR FURTHER INFORMATION CONTACT:

Brian O'Hanlon, Office of Energy and Environment, U.S. Department of Commerce, E-mail: cleanenergymission@mail.doc.gov, Telephone: 202-482-3492.

Debra Delay, Global Environmental Technologies Deputy Team Leader, Boston U.S. Export Assistance Center, U.S. Department of Commerce, E-mail: debra.delay@mail.doc.gov, Telephone: 617-565-4302. Mission Web site: <http://www.export.gov/cleanenergymission>.

Dated: May 6, 2008.

Stephen Jacobs,

Deputy Assistant Secretary for Market Access and Compliance.

[FR Doc. E8-10450 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-DR-P

DEPARTMENT OF COMMERCE

International Trade Administration

Proposed Methodology for Identifying and Analyzing Targeted Dumping in Antidumping Investigations; Request for Comment

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce ("the Department") seeks public comment on its proposed targeted dumping methodology (described below) and related issues.

DATES: Comments must be submitted within 30 days from the publication of this notice.

ADDRESSES: Written comments (original and six copies) should be sent to David Spooner, Assistant Secretary for Import Administration, U.S. Department of Commerce, Central Records Unit, Room 1870, 14th Street & Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Anthony Hill, International Economist, Office of Policy, or Michael Rill, Director, Antidumping Policy, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: 202-482-1843 or 202-482-3058, respectively.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to section 777A(d)(1)(A) of the Tariff Act of 1930 (the "Act"), the Department normally will calculate dumping margins in investigations by comparing weighted-average export prices to weighted-average normal values or transaction-specific export prices to transaction-specific normal values. Section 777A(d)(1)(B) of the Act allows the Department to use, under certain circumstances, an alternative methodology for determining the extent of dumping in an investigation. The alternative methodology is a comparison of transaction-specific export prices to weighted-average normal values. In order to use this alternative methodology, the Act requires the Department to find that there is a pattern of export prices (or constructed export prices) that differ significantly among purchasers, regions, or periods of time. See section 777A(d)(1)(B)(i) of the Act. In addition, the Act requires the Department to explain why the differences cannot be taken into account using one of the normal calculation methodologies. See section 777A(d)(1)(B)(ii) of the Act.

The Department's experience with regard to analyzing targeted dumping claims is limited and to date, no standard targeted dumping test for general application has been adopted. In response to a 1999 remand in the antidumping investigation of certain pasta from Italy, the Department created and utilized a targeted dumping test (the "Pasta Test") to analyze U.S. price data in that case, and found no targeted dumping. See *Borden, Inc. v. U.S.*, 1999 WL 397968, *2 (CIT June 4, 1999) ("*Borden Remand*") (citing Department's Remand Redetermination at 17 ("*Remand Redetermination*"). The Department noted that it reserved

the discretion to alter its methodology in future cases. See *Borden Remand*, 1999 WL at *1 (citing *Remand Redetermination* at 15).

In the antidumping investigation of coated free sheet paper from the Republic of Korea ("CFS paper"), the Department accepted petitioner's allegation for purposes of undertaking a targeted dumping analysis in that proceeding. Based on that allegation, the Department found that there was a pattern of prices that differed significantly among purchasers and regions and that those differences could not be taken into account using the average-to-average or transaction-to-transaction methodology. See *Notice of Final Determination of Sales at Less Than Fair Value: Coated Free Sheet Paper from the Republic of Korea*, 72 FR 60630 (October 25, 2007), accompanied by Issues and Decision Memorandum, Comments 2, 4, and 5. Again, the Department also acknowledged that it had not yet established a general set of standards for accepting and analyzing a targeted dumping allegation. See Memorandum to David M. Spooner entitled "Antidumping Duty Investigation of Coated Free Sheet Paper from the Republic of Korea—Targeted Dumping," from Stephen J. Claeys, dated September 7, 2007.

More recently, in the preliminary determinations in the antidumping investigations of certain steel nails from the United Arab Emirates and the People's Republic of China, the Department preliminarily accepted petitioner's targeted dumping allegations but noted that it was still in the process of developing a new test. See *Certain Steel Nails from the United Arab Emirates: Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 73 FR 3945 (January 23, 2008) and *Certain Steel Nails from the People's Republic of China: Preliminary Determination of Sales at Less Than Fair Value and Partial Affirmative Determination of Critical Circumstances and Postponement of Final Determination*, 73 FR 3928 (January 23, 2008).

In order to establish a standard test for general application in analyzing a targeted dumping allegation, the Department solicited and received a first round of comments on the principles and standards that should be employed as part of a targeted dumping test. See *Targeted Dumping in Antidumping Investigations; Request for Comment*, 72 FR 60651 (October 25, 2007). The Department received nineteen sets of comments in response to that request.

Proposed Methodology

In the recent post-preliminary determination memorandum in the antidumping investigations of certain steel nails from the United Arab Emirates and from the People's Republic of China, the Department announced and applied a new targeted dumping standard and methodology for analyzing a targeted dumping allegation. See Memorandum to David M. Spooner entitled "Post-Preliminary Determinations on Targeted Dumping," from Stephen J. Claeys, dated April 21, 2008.

For future investigations, the Department proposes to adopt this new methodology for determining whether targeted dumping exists. The methodology involves a two-stage test: the first of which addresses the pattern requirement and the second addresses the significant difference requirement. All price comparisons would be done on the basis of identical merchandise. The test procedures described below are the same for customer, region or time-period targeting, even though the example given below involves customer targeting. The first stage of the test, referred to as the "standard deviation test," would provide that the Department determine, on an exporter-specific basis, the share of the allegedly targeted customer's purchases of subject merchandise, by sales value, that are at prices more than one standard deviation below the weighted-average price to all customers of that exporter, targeted and non-targeted. If that share exceeds 33 percent of the total value of the exporter's sales of subject merchandise to the allegedly targeted customer, then the pattern requirement is met. The calculation of the standard deviation would be done product-by-product (*i.e.*, "control number" by "control number") using period of investigation ("POI")-wide average prices (weighted by sales value) for each allegedly targeted customer and each distinct non-targeted customer.

If the first test is met, in the second stage, the Department would examine all the sales of identical merchandise by that exporter to the allegedly targeted customer for which the standard deviation requirement is met and determine the total sales value for which the difference between (i) the sales-weighted average price to the allegedly targeted customer and (ii) the next higher sales-weighted average price to a non-targeted customer exceeds the average price gap (weighted by sales value) for the non-targeted group. Each of the price gaps in the non-targeted group would be weighted

by the combined sales associated with the pair of prices to non-targeted customers that make up the gap. If the share of the sales that meet this test exceeds 5 percent of the total value of sales of subject merchandise to the allegedly targeted customer, the significant difference requirement is met and the Department would determine that customer targeting has occurred.

Request for Comments

In addition to comments on the methodology described above, the Department requests comments on appropriate criteria and standards for the definitions of "region" and "time period." Please comment on the extent to which the definitions for region and time period in a targeted dumping allegation should be reflective of the industry and commercial market in the United States.

Also, as the statute allows targeted dumping allegations with respect to customers, regions, or time periods, the Department requests comment on how it should handle multiple allegations made with respect to one respondent, (*i.e.* a respondent is allegedly targeting certain customers and certain regions). For example, when calculating non-targeted customer weighted-average sales prices in the second stage (the gap test), should the Department exclude sales to an allegedly targeted region? Please also comment on what standards, if any, the Department should adopt for accepting an allegation of targeted dumping. For example, should some type of *de minimis* threshold apply to the sales on which an allegation is based, either in terms of the quantity of control numbers or share of sales covered? Finally, the Department requests comment on the application of the alternative calculation methodology (average-to-transaction comparison) and the conditions, if any, under which the alternative methodology should apply to all sales to the target even if some sales of a control number do not pass the targeted dumping test.

Submission of Comments

Persons wishing to comment should file a signed original and six copies of each set of comments within 30 days of publication of this notice. The Department will consider all comments received by the close of the comment period. Comments received after the end of the comment period will be considered, if possible, but their

¹ For example: If non-target A's weighted-average price is \$1.00 with total value of \$100 and non-target B's weighted-average price is \$.95 with total value of \$120, then the difference of \$.05 (\$1.00 - .95) would be weighted by \$220 (\$100 + 120).

consideration cannot be assured. The Department will not accept comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the persons submitting the comments and will not consider them in its development of a targeted dumping analysis. The Department requires that comments be submitted in written form. The Department also requests submission of comments in electronic form to accompany the required paper copies. Comments filed in electronic form should be submitted either by e-mail to the webmaster below, or on CD-ROM, as comments submitted on diskettes are likely to be damaged by postal radiation treatment.

Comments received in electronic form will be made available to the public in Portable Document Format (PDF) on the Internet at the Import Administration website at the following address: <http://ia.ita.doc.gov>. Any questions concerning file formatting, document conversion, access on the Internet, or other electronic filing issues should be addressed to Andrew Lee Beller, Import Administration Webmaster, at (202) 482-0866, email address: webmaster-support@ita.doc.gov.

Dated: May 6, 2008.

David M. Spooner,
Assistant Secretary for Import
Administration.

[FR Doc. E8-10528 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-DS-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH31

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Mexico under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation

Program (IDCP) by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Mexico and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: Effective April 1, 2008, through March 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; phone 562-980-4000; fax 562-980-4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Mexico or obtained from the IATTC and the Department of State

and has determined that Mexico has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Government of Mexico's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Mexican-flag purse seine vessels or purse seine vessels operating under Mexican jurisdiction. Mexico's current affirmative finding remains valid through March 31, 2010, subject to subsequent annual reviews by NMFS.

Dated: May 5, 2008.

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E8-10378 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG04

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Government of Spain under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Government of Spain and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The renewal is effective from April 1, 2008, through March 31, 2009.

FOR FURTHER INFORMATION CONTACT:

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA

90802-4213; phone 562-980-4000; fax 562-980-4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. If granted, NMFS will review the affirmative finding on an annual basis and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Government of Spain or obtained from the IATTC and the Department of State and has determined that Spain has met the MMPA's requirements to receive an annual affirmative finding renewal. Spain's current 5-year affirmative finding request remains valid through March 31, 2010, subject to annual review by NMFS.

After consultation with the Department of State, the Assistant Administrator issued the Government of Spain's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the

ETP by Spanish-flag purse seine vessels or purse seine vessels operating under Spanish jurisdiction.

Dated: May 5, 2008.

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E8-10379 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XG42

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; affirmative finding renewal.

SUMMARY: The Assistant Administrator for Fisheries, NMFS, (Assistant Administrator) has renewed the affirmative finding for the Republic of Ecuador under the Marine Mammal Protection Act (MMPA). This affirmative finding will allow yellowfin tuna harvested in the eastern tropical Pacific Ocean (ETP) in compliance with the International Dolphin Conservation Program (IDCP) by Ecuadorian-flag purse seine vessels or purse seine vessels operating under Ecuadorian jurisdiction to be imported into the United States. The affirmative finding was based on review of documentary evidence submitted by the Republic of Ecuador and obtained from the Inter-American Tropical Tuna Commission (IATTC) and the U.S. Department of State.

DATES: The renewal is effective from April 1, 2008, through March 31, 2009.

FOR FURTHER INFORMATION CONTACT: Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213; phone 562-980-4000; fax 562-980-4018.

SUPPLEMENTARY INFORMATION: The MMPA, 16 U.S.C. 1361 *et seq.*, allows the entry into the United States of yellowfin tuna harvested by purse seine vessels in the ETP under certain conditions. If requested by the harvesting nation, the Assistant Administrator will determine whether to make an affirmative finding based upon documentary evidence provided by the government of the harvesting

nation, the IATTC, or the Department of State.

The affirmative finding process requires that the harvesting nation is meeting its obligations under the IDCP and obligations of membership in the IATTC. Every 5 years, the government of the harvesting nation must request an affirmative finding and submit the required documentary evidence directly to the Assistant Administrator. On an annual basis, NMFS will review the affirmative finding and determine whether the harvesting nation continues to meet the requirements. A nation may provide information related to compliance with IDCP and IATTC measures directly to NMFS on an annual basis or may authorize the IATTC to release the information to NMFS to annually renew an affirmative finding determination without an application from the harvesting nation.

An affirmative finding will be terminated, in consultation with the Secretary of State, if the Assistant Administrator determines that the requirements of 50 CFR 216.24(f) are no longer being met or that a nation is consistently failing to take enforcement actions on violations, thereby diminishing the effectiveness of the IDCP.

As a part of the affirmative finding process set forth in 50 CFR 216.24(f), the Assistant Administrator considered documentary evidence submitted by the Republic of Ecuador or obtained from the IATTC and the Department of State and has determined that Ecuador has met the MMPA's requirements to receive an annual affirmative finding renewal.

After consultation with the Department of State, the Assistant Administrator issued the Republic of Ecuador's annual affirmative finding renewal, allowing the continued importation into the United States of yellowfin tuna and products derived from yellowfin tuna harvested in the ETP by Ecuadorian-flag purse seine vessels or purse seine vessels operating under Ecuadorian jurisdiction. Ecuador's affirmative finding will remain valid through March 31, 2010, subject to subsequent annual reviews by NMFS.

Dated: May 5, 2008.

James W. Balsiger,

*Acting Assistant Administrator for Fisheries,
National Marine Fisheries Service.*

[FR Doc. E8-10380 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH74

Endangered and Threatened Species; Take of Anadromous Fish

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability and request for comment.

SUMMARY: Notice is hereby given that NMFS has received an application from the Washington Department of Fish and Wildlife (WDFW) for an incidental take permit pursuant to the Endangered Species Act of 1973, as amended (ESA). This document serves to notify the public of the availability for comment of a revised draft environmental assessment (EA) before a final decision on whether to issue a Finding of No Significant Impact and the permit is made by NMFS. The draft EA is revised to reflect a permit extension from five years to ten years. All comments received will become part of the public record and will be available for review pursuant to section 10(c) of the ESA.

DATES: Written comments on the application and draft EA must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific time on May 23, 2008.

ADDRESSES: Written comments on the application should be sent to Kristine Petersen, Salmon Recovery Division, 1201 N.E. Lloyd Boulevard, Suite 1100, Portland, OR 97232. Comments may also be submitted by e-mail to: UCRFisheriesEA.nwr@noaa.gov. Include in the subject line of the e-mail comment the following identifier: Comments on UCR recreational fisheries. Comments may also be sent via facsimile (fax) to (503) 872-2737. Requests for copies of the permit application should be directed to the Salmon Recovery Division, 1201 NE Lloyd Boulevard, Suite 1100, Portland, OR 97232. The documents are also available on the Internet at www.nwr.noaa.gov. Comments received will also be available for public inspection, by appointment, during normal business hours by calling (503) 230-5409.

FOR FURTHER INFORMATION CONTACT: Kristine Petersen at (503) 230-5409.

SUPPLEMENTARY INFORMATION: This notice is relevant to the following species and evolutionarily significant

units (ESUs) or distinct population segments (DPSs):

Steelhead (*Oncorhynchus mykiss*): endangered, naturally produced and artificially propagated Upper Columbia River (UCR) and threatened Middle Columbia River.

Chinook salmon (*O. tshawytscha*): endangered Upper Columbia River spring-run and threatened Snake River fall-run.

Background

Section 9 of the ESA and Federal regulations prohibit the "taking" of a species listed as endangered or threatened. The term "take" is defined under the ESA to mean harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. NMFS may issue permits to non-Federal entities to take ESA-listed species if such taking is incidental to, and not the purpose of, carrying out an otherwise lawful activity, under section 10(a)(1)(B) of the ESA. NMFS regulations governing permits for threatened and endangered species are promulgated at 50 CFR 222.307.

NEPA requires Federal agencies to conduct an environmental analysis of their proposed actions to determine if the actions may affect the human environment. NMFS expects to take action on an ESA section 10(a)(1)(B) submittal received from the WDFW and is seeking public input to extend the WDFW's permit term from five years to ten years.

On September 12, 2005, the WDFW submitted an application to NMFS for an ESA section 10(a)(1)(B) permit for incidental take of ESA-listed anadromous fish species associated with recreational fishery programs in the upper Columbia River and its tributaries for a five-year period (70 FR 71087). On September 12, 2007, the draft NEPA analysis of the action was made available for public comment (72 FR 52085). All comments were subsequently addressed, and no comments were received regarding the permit term. However, a final EA and final ESA determination were not prepared because, since the draft EA public comment period, NMFS has determined that issuing the proposed permit for ten years, rather than five years, is reasonable. NMFS believes that these fisheries pose a low risk of deviating from the assessed impacts over time. Permit 1554 as proposed, and as previously described, would maintain or strengthen monitoring and compliance enforcement activities and, therefore, the level of confidence in the effects analysis and the impacts.

Additionally, permit 1554 would include an annual reporting requirement and identify an annual renewal process. If impacts exceed the authorized take or new information on the impacts of the activities arises, NMFS could re-initiate consultation. The proposed fisheries would target non-listed anadromous salmon and steelhead and resident game fish species. No fisheries that would target listed species are proposed. Implementation of these fisheries would allow fishing for recreational purposes and would provide economic opportunities for local communities through the sale of licenses and equipment, and the conduct of other business and services related to recreational fisheries.

This notice is provided pursuant to section 10(c) of the ESA. NMFS requests comments on the ten-year permit period and will evaluate comments submitted to determine whether the application meets the requirements of section 10(a)(1)(A) of the ESA. If it is determined that the requirements are met, a final EA and Finding of No Significant Impact will be prepared, and a permit will be issued to the WDFW for the purpose of carrying out the fisheries management activities. NMFS will publish a record of its final action in the **Federal Register**.

Dated: May 6, 2008.

Marta Nammack,

*Acting Chief, Endangered Species Division,
Office of Protected Resources, National
Marine Fisheries Service.*

[FR Doc. E8-10390 Filed 5-8-08; 8:45 am]

BILLING CODE 3510-22-S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648-XH76

Public Meetings on the Makah Tribe's Request To Hunt Eastern North Pacific Gray Whales

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice.

SUMMARY: We are issuing this notice to advise the public that NMFS has prepared a Draft Environmental Impact Statement (DEIS) in response to the Makah Tribe's request that NMFS waive the take moratorium of the Marine Mammal Protection Act (MMPA) to allow for treaty right hunting of eastern North Pacific (ENP) gray whales in

usual and accustomed grounds off the coast of Washington State. We are requesting written comments on the DEIS and announcing the dates and locations of three public meetings regarding the DEIS.

DATES: Three public meetings will be held as follows:

- (1) May 28, 2008, Port Angeles, Washington;
- (2) June 2, 2008, Seattle, Washington; and
- (3) June 5, 2008, Silver Spring, Maryland.

Specific times and locations for each of these meetings is included in **SUPPLEMENTARY INFORMATION**.

Written or electronic comments on the DEIS from all interested parties are encouraged and must be received no later than 5 p.m. PDT on July 8, 2008. All comments and material received, including names and addresses, will become part of the administrative record and may be released to the public.

ADDRESSES: All comments concerning the DEIS should be addressed to: Steve Stone, NMFS Northwest Region, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Comments may also be submitted via fax (503) 230-5441, Attn: 2008 Makah DEIS, or by e-mail to MakahDEIS.nwr@noaa.gov with a subject line containing the document identifier: 2008 Makah DEIS.

The DEIS is available in electronic form on the Internet at the following address: <http://www.nwr.noaa.gov/Marine-Mammals/Whales-Dolphins-Porpoise/Gray-Whales/>. The DEIS also may be viewed at various libraries identified at this Internet address or at the following NMFS offices:

(1) NMFS Protected Resources Division, 1201 NE Lloyd Blvd., Suite 1100, Portland, OR 97232. Contact Steve Stone at 503-231-2317; and

(2) NMFS, Protected Resources Division, 7600 Sand Point Way, NE, Building 1, Seattle, WA 98115-6349. Contact Josephine Evans at 206-526-6150.

In addition, copies of the DEIS are available on CD by contacting Steve Stone (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Steve Stone, NMFS Northwest Region, (503) 231-2317, or Tom Eagle, Office of Protected Resources, (301) 713-2322, ext. 105.

SUPPLEMENTARY INFORMATION:

Meeting Information

Dates, times, and addresses for the public meetings are as follows:

- (1) May 28, 2008, 6:30 p.m.-9:30 p.m., Vern Burton Memorial Community

Center, 308 East 4th Street, Port Angeles, WA;

(2) June 2, 2008, 6:30 p.m.–9:30 p.m., Lake Union Park Armory-Great Hall, Seattle, 860 Terry Avenue North, Washington; and

(3) June 5, 2008, 10 a.m.–1 p.m., NOAA Auditorium, 1301 East-West Highway, Silver Spring, Maryland.

Background

On May 9, 2008, the U.S. Environmental Protection Agency announced the availability of NMFS' DEIS concerning the Makah Indian Tribe's February 2005 request to resume limited hunting of ENP gray whales in the coastal portion of the Tribe's usual and accustomed fishing grounds, off the coast of Washington State, for ceremonial and subsistence purposes. The Tribe's proposed action stems from the 1855 Treaty of Neah Bay, which expressly secures the Makah Tribe's right to hunt whales. To exercise that right, the Tribe is seeking authorization from NMFS under the MMPA and the Whaling Convention Act. The release of this DEIS is one of several steps NMFS will undertake to evaluate the Tribe's request.

The DEIS, prepared pursuant to the National Environmental Policy Act, considers various alternatives to the Tribe's proposed action. To develop the full range of action alternatives—five in total—we considered the principal components associated with a hunt, including: the time when whale hunting would occur; the area where whale hunting would occur; the annual and five-year limits on the number of whales harvested, struck, and struck and lost; cessation of whale hunting if a predetermined number of identified whales (i.e., included in a photographic catalog of whales from the Pacific Coast Feeding Aggregation area) were harvested; and the method of hunting. We developed these alternatives with input from NMFS staff, the applicant, the cooperating agency (i.e., Bureau of Indian Affairs), and oral and written comments from the public. This DEIS addresses a number of resources identified for review during both internal and public scoping, including: water quality, marine habitat and species, ENP gray whales, other wildlife species, economics, environmental justice, social environment, cultural resources, ceremonial and subsistence resources, noise, aesthetics, transportation, public services, public safety, and human health.

The DEIS provides an important opportunity for the public to formally comment on the Tribe's proposal and the various alternatives. These

comments, in conjunction with considerations described in the DEIS, will provide key information to assist NMFS with its final decision on the Tribe's request.

Access to Government Building

For access to a Federal government building, the Department of Commerce Office of Security at NOAA has advised that all attendees must register for the meeting and must have a valid government-issued identification (e.g., driver's license or passport) with a photograph. Therefore, prospective attendees for the public meeting in the NOAA Auditorium, Silver Spring, MD, should submit their first and last names and affiliation, if appropriate, by telephone or e-mail to Tom Eagle (See **FOR FURTHER INFORMATION CONTACT**) by 4 p.m. EDT on June 2, 2008.

Reasonable Accommodation

Persons needing reasonable accommodations to attend and participate in the public meetings should contact Steve Stone (see **FOR FURTHER INFORMATION CONTACT**). To allow sufficient time to process requests, please call at least 5 business days prior to the relevant meeting(s).

Dated: May 5, 2008.

Barbara A. Schroeder,

Acting Chief, Marine Mammal and Sea Turtle Conservation Division, National Marine Fisheries Service.

[FR Doc. E8–10377 Filed 5–8–08; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Notice of Availability for the Recirculated Draft Environmental Impact Statement/Environmental Impact Report for the Berths 97–109 [China Shipping] Container Terminal Project, Los Angeles County, CA

AGENCY: Department of the Army—U.S. Army Corps of Engineers, DoD.

ACTION: Notice of Availability.

SUMMARY: The U.S. Army Corps of Engineers, Los Angeles District (Regulatory Division), in coordination with the Port of Los Angeles, has completed and is re-circulating the Draft Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the Berths 97–109 [China Shipping] Container Terminal Project. The Port of Los Angeles requires authorization pursuant to Section 404 of the Clean Water Act and Section 10 of the River

and Harbor Act to construct new wharves at Berths 100 and 102; dredge (41,000 cubic yards [yd³] of sediments) and dispose of that material at the upland Port Anchorage Road Disposal Site; develop backlands, including construction of terminal buildings, on 142 acres; install 10 new A-frame cranes at Berths 100 and 102; construct transportation infrastructure improvements in the vicinity of the existing terminal entrance (shared by the Berths 97–109 terminal and the Berths 121–131 terminal); construct two new bridge structures connecting Berths 97–109 terminal and Berths 121–131 terminal across the Southwest Slip; and relocate the Catalina Terminal to south of the Vincent Thomas Bridge at Berth 95.

FOR FURTHER INFORMATION CONTACT:

Questions or comments concerning the recirculated Draft EIS/EIR should be directed to Dr. Spencer D. MacNeil, North Coast Branch, Regulatory Division, U.S. Army Corps of Engineers, P.O. Box 532711, Los Angeles, CA 90053–2325, (805) 585–2152.

SUPPLEMENTARY INFORMATION: The Port of Los Angeles and U.S. Army Corps of Engineers originally released the Berths 97–109 [China Shipping] Container Terminal Project Draft EIS/EIR in August 2006. Based on comments received on the Draft EIS/EIR, the Port of Los Angeles and U.S. Army Corps of Engineers decided to re-circulate the document. The April 2008 Draft EIS/EIR is a full recirculation of the original Draft EIS/EIR and addresses comments received on the August 2006 document. The Port of Los Angeles and U.S. Army Corps of Engineers will jointly hold a public meeting on June 5, 2008 at Banning's Landing Community Center in Wilmington, California, to receive public comments and assess public concerns regarding this recirculated Draft EIS/EIR and proposed terminal project. Written comments will be accepted until the close of the public review period on June 30, 2008.

Mark Durham,

Acting Chief, Regulatory Division, Los Angeles District.

[FR Doc. E8–10280 Filed 5–7–08; 8:45 am]

BILLING CODE 3710–KF–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The IC Clearance Official, Regulatory Information Management Services, Office of Management invites

comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 2008.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Education Desk Officer, Office of Management and Budget, 725 17th Street, NW., Room 10222, Washington, DC 20503. Commenters are encouraged to submit responses electronically by e-mail to oir_submission@omb.eop.gov or via fax to (202) 395-6974. Commenters should include the following subject line in their response: "Comment: [insert OMB number], [insert abbreviated collection name, e.g., "Upward Bound Evaluation"]". Persons submitting comments electronically should not submit paper copies.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The IC Clearance Official, Regulatory Information Management Services, Office of Management, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: May 5, 2008.

Angela C. Arrington,
IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Special Education and Rehabilitative Services

Type of Review: New.

Title: Special Education Individual Reporting on Regulatory Compliance Related to the Personnel Development

Program's Service Obligation and the Government Performance and Results Act (GPRA).

Frequency: On Occasion; Biennially.

Affected Public: Individuals or household; Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 15,000.

Burden Hours: 6,688.

Abstract: The data collection under this request is governed by sections 304.23-304.30 of the June 5, 2006, regulations that implement section 662 (h) of the IDEA Amendments of 2004, which require that individuals who receive a scholarship through the Personnel Development Program funded under the Act subsequently provide special education and related services to children with disabilities for a period of two years for every year for which assistance was received. Scholarship recipients who do not satisfy the requirements of the regulations must repay all or part of the cost of assistance, in accordance with regulations issued by the Secretary. These regulations implement requirements governing, among other things, the service obligation for scholars, reporting requirements by grantees, and repayment of scholarships by scholars. In order for the federal government to ensure that the goals of the program are achieved, certain data collection, recordkeeping, and documentation are necessary. In addition, this data collection is governed by the Government Performance and Results Act (GPRA). GPRA requires Federal agencies to establish performance measures for all programs, and the Office of Special Education Programs (OSEP) has established performance measures for the Personnel Development Program. Data collection from scholars who have received scholarships under the Personnel Development Program is necessary to evaluate these measures.

Requests for copies of the information collection submission for OMB review may be accessed from <http://edicsweb.ed.gov>, by selecting the "Browse Pending Collections" link and by clicking on link number 3572. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to U.S. Department of Education, 400 Maryland Avenue, SW., LBJ, Washington, DC 20202-4537. Requests may also be electronically mailed to ICDocketMgr@ed.gov or faxed to 202-401-0920. Please specify the

complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be electronically mailed to ICDocketMgr@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

[FR Doc. E8-10447 Filed 5-8-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF EDUCATION

Privacy Act of 1974; Computer Matching Program

AGENCY: Department of Education.

ACTION: Notice—Computer Matching between the Department of Education and the Department of Justice.

SUMMARY: Section 421(a)(1) of the Controlled Substances Act (21 U.S.C. 862(a)(1)) includes provisions regarding the judicial denial of Federal benefits. Section 421 of the Controlled Substances Act, which was originally enacted as section 5301, of the Anti-Drug Abuse Act of 1988, was amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Public Law 101-647 (hereinafter referred to as "section 5301") authorizes Federal and State judges to deny certain Federal benefits (including student financial assistance under Title IV of the Higher Education Act of 1965, as amended (HEA)) to individuals convicted of drug trafficking or possession.

In order to ensure that Title IV, HEA student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to section 5301, the Department of Justice and the Department of Education implemented a computer matching program. The 18-month computer matching agreement (CMA) was recertified for an additional 12 months on June 18, 2007. The 12-month recertification of the CMA will automatically expire on June 18, 2008.

The Department of Education must continue to obtain from the Department of Justice identifying information regarding individuals who are the subject of section 5301 denial of benefits court orders. The purpose of this notice is to announce the continued operation of the computer matching program and to provide certain required information concerning the computer matching program.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer Matching and Privacy Protection Act of 1988 (Pub. L. 100-503) and Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818, June 19, 1989), and OMB Circular A-130, the following information is provided:

1. *Names of Participating Agencies.*

The Department of Education (ED)(recipient agency) and the Department of Justice (DOJ)(source agency).

2. *Purpose of the Match.*

The purpose of this matching program is to ensure that the requirements of section 421 of the Controlled Substances Act (originally enacted as section 5301 of the Anti-Drug Abuse Act of 1988, Pub. L. 100-690, 21 U.S.C. 853a, which was amended and redesignated as section 421 of the Controlled Substances Act by section 1002(d) of the Crime Control Act of 1990, Pub. L. 101-647) (hereinafter referred to as "section 5301") are met.

DOJ is the lead contact agency for information related to section 5301 violations and, as such, provides this data to ED. ED (recipient agency) seeks access to the information contained in the DOJ (source agency) Denial of Federal Benefits Clearinghouse System (DFB) database that is authorized under section 5301 for the purpose of ensuring that Title IV, HEA student financial assistance is not awarded to individuals subject to denial of benefits under court orders issued pursuant to the Denial of Federal Benefits Program.

3. *Authority for Conducting the Matching Program.*

Under section 5301, ED must deny Federal benefits to any individual upon whom a Federal or State court order has imposed a penalty denying eligibility for those benefits. Student financial assistance under Title IV of the HEA is a Federal benefit under section 5301, and ED must, in order to meet its obligations under the HEA, have access to information about individuals who have been declared ineligible under section 5301.

While DOJ provides information about section 5301 individuals who are ineligible for Federal benefits to the General Services Administration (GSA) for inclusion in GSA's List of Parties Excluded from Federal Procurements and Nonprocurement Programs, DOJ and ED have determined that matching against the DOJ database is more efficient and effective than access to the GSA List. The DOJ database has specific information about the Title IV, HEA programs for which individuals are ineligible as well as the expiration of the

debarment period, making the DOJ database more complete than the GSA List. Both of these elements are essential for a successful match.

4. *Categories of Records and Individuals Covered by the Match.*

ED will submit, for verification, records from its Central Processing System files (Federal Student Aid Application File (18-11-01)), the social security number (SSN) and other identifying information for each applicant for Title IV, HEA student financial assistance. ED will use the SSN, date of birth, and the first two letters of an applicant's last name for the match.

The DOJ DFB (OJP-0013) contains the names, SSNs, dates of birth, and other identifying information regarding individuals convicted of Federal or State offenses involving drug trafficking or possession of a controlled substance who have been denied Federal benefits by Federal or State courts. This system of records also contains information concerning the specific program or programs for which benefits have been denied, as well as the duration of the period of ineligibility. DOJ will make available for the matching program the records of only those individuals who have been denied Federal benefits under one or more of the Title IV, HEA programs.

5. *Effective Dates of the Matching Program.*

The matching program will be effective on the last of the following dates: (1) June 19, 2008, the day after the expiration of the current CMA; (2) thirty (30) days after notice of the matching program has been published in the **Federal Register**; or (3) forty (40) days after a report concerning the matching program has been transmitted to OMB and transmitted to the Congress along with a copy of this agreement, unless OMB waives 10 days of this 40-day period for compelling reasons shown, in which case, 30 days after transmission of the report to OMB and Congress.

The matching program will continue for 18 months after the effective date of the CMA and may be extended for an additional 12 months thereafter, if the conditions specified in 5 U.S.C.552a(o)(2)(D) have been met.

6. *Address for Receipt of Public Comments or Inquiries.*

Marya Dennis, Management and Program Analyst, U.S. Department of Education, Federal Student Aid, Union Center Plaza, 830 First Street, NE., Washington, DC 20202-5454. Telephone: (202) 377-3385. If you use a telecommunications device for the deaf (TDD), you may call the Federal Relay Service (FRS) at 1-800-877-8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register** in text or Adobe Portable Document Format (PDF) on the Internet at the following site: <http://www.ed.gov/news/fedregister>.

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free at 1-888-293-6498, or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: <http://www.gpoaccess.gov/nara/index.html>.

Authority: 5 U.S.C. 552(a); 21 U.S.C. 862(a)(1).

Dated: May 6, 2008.

Lawrence A. Warder,
Acting Chief Operating Officer, Federal Student Aid.

[FR Doc. E8-10433 Filed 5-8-08; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

[OE Docket No. EA-232-B]

Application to Export Electric Energy; OGE Energy Resources, Inc.

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: OGE Energy Resources, Inc. (OGE) has applied to renew its authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act (FPA).

DATES: Comments, protests or requests to intervene must be submitted on or before June 9, 2008.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-586-8008).

FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On April 16, 2001, the Department of Energy (DOE) issued Order No. EA-232 authorizing OGE to transmit electric energy from the United States to Canada for a two-year term. That authority was renewed for a five-year term on August 13, 2003, in Order No. EA-232-A and will expire on August 13, 2008. On April 30, 2008, OGE filed an application with DOE to renew the export authority contained in Order No. EA-232-A for an additional five-year term.

OGE will arrange for the delivery of exports to Canada over the international transmission facilities currently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, and Vermont Electric Transmission Co.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by OGE has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the OGE application to export electric energy to Canada should be clearly marked with Docket No. EA-232-B. Additional copies are to be filed directly with Cary Metz, Senior Contracts Coordinator, and J. Brent Hagy, Senior Counsel, OGE Energy

Resources, Inc., 515 Central Park Drive, E460, Oklahoma City, OK 73034.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the program's Home Page at <http://oe.energy.gov/permits.htm>.

Issued in Washington, DC, on May 6, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8-10366 Filed 5-8-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

[OE Docket No. EA-340]

Application to Export Electric Energy; Saracen Energy Partners, LP

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Notice of application.

SUMMARY: Saracen Energy Partners, LP (SEP) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests, or requests to intervene must be submitted on or before June 9, 2008.

ADDRESSES: Comments, protests, or requests to intervene should be addressed as follows: Office of Electricity Delivery and Energy Reliability, Mail Code: OE-20, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585-0350 (FAX 202-586-5860).

FOR FURTHER INFORMATION CONTACT:

Ellen Russell (Program Office) 202-586-9624 or Michael Skinker (Program Attorney) 202-586-2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated by the Department of Energy (DOE) pursuant to sections 301(b) and 402(f) of the Department of Energy Organization Act (42 U.S.C. 7151(b), 7172(f)) and require authorization under section 202(e) of the FPA (16 U.S.C. 824a(e)).

On May 1, 2008, DOE received an application from SEP for authority to transmit electric energy from the United

States to Canada as a power marketer. SEP has requested an electricity export authorization with a 5-year term. SEP does not own any electric transmission facilities nor does it hold a franchised service area. The electric energy which SEP proposes to export to Canada would be surplus energy purchased from electric utilities, Federal power marketing agencies, and other entities within the United States.

SEP proposes to export electric energy to Canada and to arrange for the delivery of those exports over the international transmission facilities presently owned by Basin Electric Power Cooperative, Bonneville Power Administration, Eastern Maine Electric Cooperative, International Transmission Co., Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power, Inc., Minnkota Power Cooperative, Inc., New York Power Authority, Niagara Mohawk Power Corp., Northern States Power Company, Vermont Electric Power Company, and Vermont Electric Transmission Company.

The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by SEP was previously authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters: Any person desiring to become a party to these proceedings or to be heard by filing comments or protests to this application should file a petition to intervene, comment, or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the Federal Energy Regulatory Commission's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each comment, petition, and protest should be filed with DOE on or before the dates listed above.

All filings in this proceeding should be clearly marked with Docket No. EA-340. Additional copies are to be filed directly with Allison P. Duensing, Assistant General Counsel, The Saracen Group of Companies, Five Greenway Plaza, Suite 1310, Houston, TX 77040 and Daniel E. Frank, Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2415.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by DOE that the proposed action will not adversely impact on the

reliability of the U.S. electric power supply system.

Copies of these applications will be made available, upon request, for public inspection and copying at the address provided above, by accessing the program Web site at <http://oe.energy.gov/permits.htm>, or by e-mailing Odessa Hopkins at odessa.hopkins@hq.doe.gov.

Issued in Washington, DC, on May 6, 2008.

Anthony J. Como,

Director, Permitting and Siting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. E8-10368 Filed 5-8-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Columbia Basin Fish Accords

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD for the 2008 Columbia Basin Fish Accords (Accords) consistent with and tiered to the Fish and Wildlife Implementation Plan Environmental Impact Statement (DOE/EIS-0312, April 2003) and ROD (October 31, 2003). BPA has decided to enter into these agreements to help mitigate the impacts of the Federal Columbia River Power System on fish species, particularly salmon and steelhead listed under the Endangered Species Act with projects that are expected to produce significant and measurable biological effects. Projects will be implemented throughout the states of Idaho, Montana, Oregon, and Washington. The Accords are 10-year agreements with four tribes, two states, and two other federal agencies. The Accords will provide greater certainty and stability to BPA's mitigation funding commitments and help BPA manage its financial risks. The Accords will also resolve some of the outstanding issues regarding BPA's compliance with its fish and wildlife mitigation and recovery responsibilities. The Accords will also help BPA meet its treaty and trust responsibilities to the tribes.

ADDRESSES: Copies of the ROD may be obtained by calling BPA's toll-free document request line, 1-800-622-4520. The ROD is also available on the BPA Web site, http://www.bpa.gov/corporate/pubs/rods/2008/MOA_ROD.pdf.

FOR FURTHER INFORMATION CONTACT:

Sandra Ackley, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon 97208-3621; toll-free telephone number 1-800-282-3713; fax number 503-230-5699; or e-mail sjackley@bpa.gov.

Issued in Portland, Oregon, on May 2, 2008.

Stephen J. Wright,

Administrator, and Chief Executive Officer.

[FR Doc. E8-10435 Filed 5-8-08; 8:45 am]

BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13014-000]

Agency Valley Hydro, LLC ; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13014-000.

c. *Date filed:* August 31, 2007.

d. *Applicant:* Agency Valley Hydro, LLC.

e. *Name of Project:* Agency Valley Dam Hydroelectric Project.

f. *Location:* Malheur River in Malheur County, Oregon. It would use the U.S. Bureau of Reclamation's Agency Valley Dam.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745-0834.

i. *FERC Contact:* Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-13014-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Bureau of Reclamation's Agency Valley Dam and operated in a run-of-river mode would consist of: (1) One 223-foot-long, 72-inch-diameter steel penstock; (2) a new powerhouse and switchyard; (3) one turbine/generator unit with an installed capacity of 2 megawatts; (4) a new 0.04-mile-long above ground 12.5-kilovolt transmission line extending from the switchyard to an interconnection point with the utility distribution system owned by Harney Electric Coop; and (5) appurtenant facilities. The proposed Agency Valley Dam Project would have an average annual generation of 4 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit—* Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application—* Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a

competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory

Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10301 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13022-000]

Barren River Lake Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 13022-000.

c. *Date filed*: September 14, 2007.

d. *Applicant*: Barren River Lake Hydro, LLC.

e. *Name of Project*: Barren River Lake Dam Hydroelectric Project.

f. *Location*: Barren River in Barren County, Kentucky. It would use the U.S. Army Corps of Engineers' Barren River Lake Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745-0834.

i. *FERC Contact*: Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary,

Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-13022-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project using the U.S. Army Corps of Engineers' Barren River Lake Dam and operated in a run-of-river mode would consist of: (1) One 168-foot-long, 144-inch-diameter steel penstock; (2) a new powerhouse and switchyard; (3) two turbine/generator units with a combined installed capacity of 13 megawatts; (4) a new 1-mile-long above ground 25-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (5) appurtenant facilities. The proposed Barren River Lake Dam Project would have an average annual generation of 31 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. Competing Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit

application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. Competing Development

Application—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies Under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title

“COMMENTS”, “NOTICE OF INTENT TO FILE COMPETING APPLICATION”, “COMPETING APPLICATION”, “PROTEST”, and “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10302 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 785-018]

Consumers Energy Company; Notice of Application Tendered for Filing With the Commission, Soliciting Additional Study Requests, and Establishing Procedural Schedule for Relicensing and a Deadline for Submission of Final Amendments

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application*: New License.

b. *Project No.*: 785-018.

c. *Date Filed*: April 4, 2008.

d. *Applicant*: Consumers Energy Company.

e. *Name of Project*: Calkins Bridge Hydroelectric Project.

f. *Location*: On the Kalamazoo River in Allegan County, Michigan. The project does not occupy federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact*: James R. Coddington, Consumers Energy Company, One Energy Plaza, Jackson, MI 49201, (517) 788-2455.

i. *FERC Contact*: Timothy Konnert, (202) 502-6359 or timothy.konnert@ferc.gov.

j. *Cooperating agencies*: We are asking Federal, state, and local agencies and Indian tribes with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item l below.

k. Pursuant to section 4.32(b)(7) of 18 CFR of the Commission's regulations, if any resource agency, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate factual basis for a complete analysis of the application on its merit, the resource agency, Indian Tribe, or person must file a request for a study with the Commission not later than 60 days from the date of filing of the application, and serve a copy of the request on the applicant.

l. Deadline for filing additional study requests and requests for cooperating agency status: June 3, 2008.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. The Commission strongly encourages electronic filings. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (<http://www.ferc.gov>) under the “eFiling” link.

m. This application is not ready for environmental analysis at this time.

n. The existing Calkins Bridge Project consists of a 42-foot-high, 1,330-foot-long dam, consisting of 1,100 feet of earth embankment and a 230-foot concrete integral powerhouse-spillway section, creating an 8.5-mile-long, 1,550 acre reservoir with a normal water surface elevation of 615.0 feet msl, a powerhouse containing three generating units with a total installed capacity of 2,550 kW, and appurtenant facilities.

o. A copy of the application is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket

number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

p. With this notice, we are initiating consultation with the Michigan State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

q. *Procedural schedule and final amendments:* The application will be processed according to the following Hydro Licensing Schedule. Revisions to the schedule will be made as appropriate. The Commission staff proposes to issue one environmental assessment rather than issue a draft and final EA. Comments, terms and conditions, recommendations, prescriptions, and reply comments, if any, will be addressed in an EA. Staff intends to give at least 30 days for entities to comment on the EA, and will take into consideration all comments received on the EA before final action is taken on the license application.

Issue Acceptance or Deficiency Letter—June 2008

Issue Scoping Document—November 2008

Notice of application is ready for environmental analysis—March 2009

Notice of the availability of the EA—September 2009

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10305 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2552-081]

FPL Energy Maine Hydro LLC; Notice of Application to Amend License and Soliciting Comments, Motions To Intervene, and Protests

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Approval of Full Dam Removal in Lieu of Partial Removal.

b. *Project No.:* 2552-081.

c. *Date Filed:* April 17, 2008.

d. *Applicant:* FPL Energy Maine Hydro LLC.

e. *Name of Project:* Fort Halifax Hydroelectric Project.

f. *Location:* The project is located on the Sebec River in Kennebec County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a-825r.

h. *Applicant Contact:* Dave Dominie, TRC Companies, Inc., 249 Western Avenue, Augusta, ME 04330, Tel: (207) 621-7084.

i. *FERC Contact:* Andrea Claros, Tel: (202) 502-8171, and e-mail: andrea.claros@ferc.gov.

j. *Deadline for filing comments, motions to intervene, and protest:* June 2, 2008.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

k. *Description of Request:* On January 23, 2004, the Commission approved FPL Energy's application for surrender of license for the Fort Halifax Hydroelectric Project and ordered that the dam be partially removed. As a result of discussions with the Town of

Winslow, Maine, FPL Energy is now requesting Commission approval to remove the entirety of the existing dam spillway, including all spillway bays, totaling approximately 330 linear feet, using mechanical demolition methods, in lieu of the approved partial removal. In order to facilitate the full removal process, the pre-breach drawdown period will be extended to two weeks and the post-breach drawdown period will be extended to one week.

Given that the Commission has already issued a final decision on the surrender of the Fort Halifax Project and ordered partial removal, the issue before the Commission with regard to this filing is the proposed full removal of the dam as opposed to the approved partial removal of the dam.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE., Room 2A, Washington, DC 20426, or by calling (202) 502-8371. This filing may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-866-208-3676 or e-mail FERCOnlineSupport@ferc.gov; for TTY, call (202) 502-8659.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Any filings must bear in all capital letters the title "COMMENTS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number (P-2552-081) of the particular application to which the filing refers.

p. *Agency Comments:* Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

q. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at <http://www.ferc.gov> under the "e-Filing" link.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10304 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13010-000]

Mississippi 8 Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 13010-000.

c. *Date filed:* September 7, 2007.

d. *Applicant:* Mississippi 8 Hydro, LLC.

e. *Name of Project:* Mississippi River Lock and Dam #8 Hydroelectric Project.

f. *Location:* Mississippi River in Vernon County, Wisconsin. It would use the U.S. Army Corps of Engineers' Mississippi River Lock and Dam #8.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745-0834.

i. *FERC Contact:* Robert Bell, (202) 502-4126.

j. *Deadline for filing comments, protests, and motions to intervene:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and

interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-13010-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project using the U.S. Army Corps of Engineers' Mississippi River Lock and Dam #8 and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) four turbine/generator units with a combined installed capacity of 35 megawatts; (3) a new 3-mile-long above ground 69-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility's distribution system; and (4) appurtenant facilities. The proposed Lock and Dam #8 Project would have an average annual generation of 140 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing

preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION",

“PROTEST”, and “MOTION TO INTERVENE”, as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission’s regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency’s comments must also be sent to the Applicant’s representatives.

Kimberly D. Bose,

Secretary.

[FR Doc. E8–10299 Filed 5–8–08; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13027–000]

Stennis Hydro, LLC; Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application*: Preliminary Permit.

b. *Project No.*: 13027–000.

c. *Date filed*: September 20, 2007.

d. *Applicant*: Stennis Hydro, LLC.

e. *Name of Project*: Stennis Lock and Dam Hydroelectric Project.

f. *Location*: Tennessee-Tombigbee Waterway in Lowndes County, Mississippi. It would use the U.S. Army Corps of Engineers’ Stennis Lock and Dam.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745–0834.

i. *FERC Contact*: Robert Bell, (202) 502–4126.

j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission’s Web site under the “e-Filing” link. The Commission strongly encourages electronic filings. Please include the project number (P–13027–000) on any comments or motions filed.

The Commission’s Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army Corps of Engineers’ Stennis Lock and Dam and operated in a run-of-river mode would consist of: (1) A new powerhouse and switchyard; (2) three turbine/generator units with a combined installed capacity of 19 megawatts; (3) a new 2-mile-long above ground 46-kilovolt transmission line extending from the switchyard to an interconnection point with the local utility’s distribution system; and (4) appurtenant facilities. The proposed Stennis Lock and Dam Project would have an average annual generation of 58 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission’s Web site at <http://www.ferc.gov> using the “eLibrary” link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1–866–208–3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502–8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing

application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to

intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10303 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-165-000]

Tennessee Gas Pipeline Company; Notice of Application

May 2, 2008.

Take notice that on April 21, 2008, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana, Houston, Texas 77002, filed in Docket No. CP08-165-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA), for authorization to abandon, by sale, to PSI Midstream Partners, L.P.

(PSI) an offshore and off system supply pipeline designated as Line No. 823X-2200. This pipeline segment extends from an interconnection with an interstate transmission system in East Cameron Block 227 to West Cameron Block 498. This application is being filed concurrently with PSI's application that seeks the Commission's declaratory order designating the pipeline as a gathering facility. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "e-Library" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport or call toll-free, (866) 208-3676, or for TTY, (202) 502-8659.

Any questions regarding this application should be directed to Jay V. Allen, Senior Counsel, 1001 Louisiana, Houston, Texas 77002, at (713) 420-5589.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list

maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commentators will not be required to serve copies of filed documents on all other parties. However, the non-party commentators will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (<http://www.ferc.gov>) site under the "e-Filing" link.

Comment Date: May 23, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10292 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory
Commission

[Project No. 13013-000]

**Warrior Hydro, LLC; Notice of
Application Accepted for Filing and
Soliciting Motions To Intervene,
Protests, and Comments**

May 2, 2008.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

- a. *Type of Application*: Preliminary Permit.
- b. *Project No.*: 13013-000.
- c. *Date filed*: September 7, 2007.
- d. *Applicant*: Warrior Hydro, LLC.
- e. *Name of Project*: A. I. Selden Lock and Dam Hydroelectric Project.
- f. *Location*: Black Warrior River in Hale County, Alabama. It would use the U.S. Army Corps of Engineers' A. I. Selden Lock and Dam.
- g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)-825(r).
- h. *Applicant Contact*: Mr. Brent L. Smith, COO, Symbiotics, LLC, P.O. Box 535, Rigby, ID 83442, (208) 745-0834.
- i. *FERC Contact*: Robert Bell, (202) 502-4126.
- j. *Deadline for filing comments, protests, and motions to intervene*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, protests, and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link. The Commission strongly encourages electronic filings. Please include the project number (P-13013-000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project*: The proposed project using the U.S. Army Corps of Engineers' A. I. Selden Lock and Dam and operated in a run-of-river

mode would consist of: (1) A new powerhouse and switchyard; (2) three turbine/generator units with a combined installed capacity of 20 megawatts; (3) a new 3-mile-long above ground 46-kilovolt transmission line extending from the switchyard to an interconnection point with the utility distribution system owned by Black Warrior Electric Membership Corporation; and (4) appurtenant facilities. The proposed A. I. Selden Lock and Dam Project would have an average annual generation of 70 gigawatt-hours.

l. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, call toll-free 1-866-208-3676 or e-mail FERCONLINESUPPORT@FERC.GOV. For TTY, call (202) 502-8659. A copy is also available for inspection and reproduction at the address in item h above.

m. *Competing Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30 and 4.36.

n. *Competing Development Application*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 and 4.36.

o. *Notice of Intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include

an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. *Proposed Scope of Studies Under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", and "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be

obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10300 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99-2948-012; ER00-2918-011; ER00-2917-011; ER97-2261-022; ER01-556-010; ER01-1654-013; ER02-2567-011; ER02-699-005; ER04-485-008; ER07-247-003; ER07-245-003; ER07-244-003]

Baltimore Gas and Electric Company; Constellation Power Source Generation, Inc.; Calvert Cliffs Nuclear Power Plant, Inc.; Constellation Energy Commodities Group, Inc.; Handsome Lake Energy, LLC; Nine Mile Point Nuclear Station, LLC; Constellation NewEnergy, Inc.; Constellation Energy Commodities Group Maine, LLC; R.E. Ginna Nuclear Power Plant, LLC; Raven One, LLC; Raven Two, LLC; Raven Three, LLC; Notice of Filing

May 2, 2008.

Take notice that on April 21, 2008, the above-captioned entities (collective,

the Constellation MBR Entities) filed their joint market-power analysis update for the Northeast region and certain amendments to their market-based rate tariffs in compliance with Order No. 697.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the

Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 12, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10294 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Filing

May 2, 2008.

PSEG Energy Resources & Trade LLC	ER99-3151-008
Public Service Electric and Gas Company	ER97-837-007
PSEG Power Connecticut LLC	ER03-327-002
PSEG Fossil LLC	ER08-447-000
PSEG Nuclear LLC	ER08-448-000
PPL Electric Utilities Corporation	ER00-1712-008
Lower Mount Bethel Energy, LLC	ER02-2408-003
PPL Brunner Island, LLC	ER00-744-006
PPL Holtwood, LLC.	
PPL Martins Creek, LLC.	
PPL Montour, LLC.	
PPL Susquehanna, LLC.	
PPL University Park, LLC	ER02-1327-005
PPL EnergyPlus, LLC	ER00-1703-003
PPL Edgewood Energy, LLC	ER02-1749-003
PPL Shoreham Energy, LLC	ER02-1747-003
PPL Great Works, LLC	ER99-4503-005
PPL Maine, LLC	ER00-2186-003
PPL Wallingford Energy LLC	ER01-1559-004
Atlantic City Electric Company	ER96-1361-013
Delmarva Power & Light	ER99-2781-011
Potomac Electric Power Company	ER98-4138-009
Conectiv Energy Supply, Inc.	ER00-1770-019
Conectiv Bethlehem, LLC	ER02-453-010
Pepco Energy Services, Inc.	ER98-3096-015
Bethlehem Renewable Energy, LLC	ER07-903-002
Eastern Landfill Gas, LLC	ER05-1054-003
Potomac Power Resources, LLC	ER01-202-008
Fauquier Landfill Gas, LLC	ER04-472-007

Dominion Energy Marketing, Inc.	ER01-468-008
Dominion Nuclear Connecticut, Inc.	ER00-3621-009
Dominion Nuclear Marketing III, LLC	ER00-3746-009
Dominion Energy Kewaunee, Inc.	ER04-318-004
Dominion Energy Brayton Point, LLC	ER05-36-005
Dominion Energy Manchester Street, Inc.	ER05-37-005
Dominion Energy New England, Inc.	ER05-34-005
Dominion Energy Salem	ER05-35-005
Dominion Retail, Inc.	ER04-249-005
Elwood Energy, LLC	ER99-1695-010
Fairless Energy, LLC	ER02-23-011
Kincaid Generation, LLC	ER97-30-006
State Line Energy, LLC	ER96-2869-013
Virginia Electric and Power Company	ER97-3561-005
Baltimore Gas and Electric Company	ER00-1737-011
Constellation Power Source Generation, Inc.	ER99-2948-012
Calvert Cliffs Nuclear Power Plant, Inc.	ER00-2918-011
Constellation Energy Commodities Group, Inc.	ER00-2917-011
Handsome Lake Energy, LLC	ER97-2261-022
Nine Mile Point Nuclear Station, LLC	ER01-556-010
Constellation NewEnergy, Inc.	ER01-1654-013
Constellation Energy Commodities Group Maine, LLC	ER02-2567-011
R.E. Ginna Nuclear Power Plant	ER02-699-005
Raven One, LLC	ER04-485-008
Raven Two, LLC	ER07-247-003
Raven Three, LLC	ER07-245-003
Exelon Generation Company, LLC	ER07-244-003
AmerGen Energy Company, LLC	ER00-3251-015
Commonwealth Edison Company	ER99-754-016
Exelon Energy Company	ER98-1734-014
PECO Energy Company	ER01-1919-011
Exelon West Medway, LLC	ER01-1147-006
Exelon New Boston, LLC.	ER01-513-021
Exelon Framingham, LLC.	
Exelon Wyman, LLC.	
Exelon New England Power Marketing, L.P.	ER99-2404-011
FirstEnergy Operating Companies	ER01-1403-006
Pennsylvania Power Company, <i>et al.</i>	ER06-1443-002
Jersey Central Power & Light Company	ER04-366-005
FirstEnergy Solutions Corp.	ER01-2968-007
FirstEnergy Generation Corporation	ER01-845-006
FirstEnergy Nuclear Generating Corporation	ER05-1122-004
FirstEnergy Generating Mansfield Unit 1 Corp. (collectively PJM RTO Filers)	ER08-107-001

Take notice that on April 30, 2008, The PJM RTO filers filed a partial compliance filing, pursuant to the Commission's April 4, 2008 Letter Order, requesting addition information related to PJM RTO filer's updated market power analyses.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy

of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call

(866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 20, 2008.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10295 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11910-002 Oregon]

Applegate Dam; Notice of Availability of Final Environmental Assessment

May 2, 2008.

In accordance with the National Environmental Policy Act of 1969 and Federal Energy Regulatory Commission (Commission) regulations, 18 CFR Part

380 (Order No. 486, 52 FR 47897), Office of Energy Projects staff have reviewed Symbiotics, LLC's application for the proposed Applegate Dam Project and prepared this final environmental assessment (FEA). The proposed project would be located at the existing U.S. Army Corps of Engineers' (Corps) Applegate dam located at river mile 45.7 on the Applegate River, near the town of Medford, in Jackson County, Oregon. The proposed project facilities would occupy 7.1 acres of federal land administered by the Corps below and adjacent to the dam. In addition, the project boundary would include 2.32 acres of National Forest System land and 0.66 acre of U.S. Bureau of Land Management land.

This FEA contains the Commission staff's analysis of the potential future environmental effects of the project. Staff has concluded that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at (866) 208-3676, or for TTY, (202) 502-8659.

You may also register online at <http://www.ferc.gov/docs-filing/esubscription.asp> to be notified via e-mail of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

Please contact Tim Looney by telephone at (202) 502-6096 or by e-mail at Timothy.Looney@ferc.gov if you have any questions.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10297 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 12455-004 (PA)]

Borough of Leighton, PA; Notice of Availability of Environmental Assessment

May 2, 2008.

In accordance with the National Environmental Policy Act (NEPA) of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for an original license for the Beltzville Hydroelectric Project (project), to be located on Pohopoco Creek in Carbon County, Pennsylvania, and has prepared an Environmental Assessment (EA) in cooperation with the U.S. Army Corps of Engineers (Corps of Engineers) and the Delaware River Basin Commission (Basin Commission). In the EA, Commission staff analyze the potential environmental effects of licensing the project and conclude that issuing a license for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at FERCOnlineSupport@ferc.gov or toll-free at 1-866-208-3676, or for TTY, (202) 502-8659.

Any comments should be filed within 30 days from the issuance date of this notice, and should be addressed to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1-A, Washington, DC 20426. Please affix "Beltzville Hydroelectric Project No. 12455-004" to all comments. Comments may be filed electronically via Internet in lieu of paper. The Commission strongly encourages electronic filings (See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "eFiling" link). For

further information, contact John Ramer at (202) 502-8969.

Kimberly D. Bose,
Secretary.

[FR Doc. E8-10298 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AC08-57-000]

Trans Union Interstate Pipeline, L.P.; Notice of Filing

May 2, 2008.

Take notice that on April 15, 2008 Trans Union Interstate Pipeline, L.P. submitted a request for waiver of the FERC Form No. 2-A under Section 260.2 of the Commission's regulations.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. On or before the comment date, it is not necessary to serve motions to intervene or protests on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: June 1, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10306 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID-3824-005]

William H. Spence; Notice of Filing

May 2, 2008.

Take notice that on April 23, 2008, William H. Spence tendered for filing an application to hold interlocking positions pursuant to section 305(b) of the Federal Power Act. On April 24, 2008, Attachment A was submitted, which was inadvertently omitted from the April 23, 2008 application.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. Such notices, motions, or protests must be filed on or before the comment date. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant and all the parties in this proceeding.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the "eFiling" link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the "eLibrary" link and is available for review in the Commission's Public Reference Room in Washington, DC. There is an "eSubscription" link on the Web site that enables subscribers to receive e-mail notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please e-mail FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5 p.m. Eastern Time on May 14, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10296 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP08-183-000]

PSI Midstream Partners, L.P.; Notice of Petition for a Declaratory Order

May 2, 2008.

Take notice that on April 24, 2008, PSI Midstream Partners, L.P. (PSI), filed pursuant to Rule 207(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, a petition for a declaratory order. In its petition, PSI requests the Commission to issue an order declaring that certain facilities to be acquired by PSI, non-jurisdictional gathering facilities pursuant to section 1(b) of the Natural Gas Act (NGA). The facilities to be acquired by PSI consist of a natural gas lateral pipeline, which extends from West Cameron Block 498 to an interconnection with a pipeline owned and operated by Texas Eastern Transmission Company (TETCO) in East Cameron Block 227. Tennessee is filing contemporaneously with PSI's petition an application pursuant to section 7(b) of the NGA to abandon and convey the lateral pipeline to PSI. This filing is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the "eLibrary" link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at FERCOnlineSupport or call toll-free, (866) 208-3676, or for TTY, (202) 502-8659.

Any questions regarding this application should be directed to Matthew M. Schreck, counsel to PSI, 9525 Katy Freeway, Suite 420, Houston, Texas 77024, at (713) 444-6689 or matt@airmail.net.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is

issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before the comment date stated below, file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commentators will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings

associated with the Commission's environmental review process. Environmental commentors will not be required to serve copies of filed documents on all other parties. However, the non-party commentors will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments protests and interventions via the internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web (<http://www.ferc.gov>) site under the "e-Filing" link.

Comment Date: May 23, 2008.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10293 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98-1-000]

Records Governing Off-the-Record Communications; Public Notice

May 2, 2008.

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record

communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at <http://www.ferc.gov> using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC, Online Support at FERCOnlineSupport@ferc.gov or toll free at (866) 208-3676, or for TTY, contact (202) 502-8659.

Docket No.	Date received	Presenter or requester
Prohibited		
CP07-208-000	4-28-08	Michael L. Carey.
Exempt		
1. CP07-62-000	4-29-08	Hon. Barbara A. Mikulski. Hon. Benjamin L. Cardin. Hon. Elijah E. Cummings. Hon. C.A. Dutch Ruppersberger. Hon. John P. Sarbanes.
2. CP07-208-000	4-25-08	Hon. George V. Voinovich.
3. EL08-39-000	4-14-08	Hon. RoAnn M. Destito.
4. EL08-44-000	4-22-08	Hon. Matthew E. Baker.
5. Project No. 2197-000	4-10-08	Hon. Philip E. Berger.
6. Project No. 10395-000	4-22-08	Hon. Sherrod Brown.

Kimberly D. Bose,

Secretary.

[FR Doc. E8-10291 Filed 5-8-08; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6698-7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental

Review Process (ERP), under section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at 202-564-7167.

An explanation of the ratings assigned to draft environmental impact

statements (EISs) was published in FR dated April 11, 2008 (73 FR 19833).

Draft EISs

EIS No. 20070436, ERP No. D-FHW-B40339-ME, Wiscasset Route 1 Corridor Study Project, To Relieve Traffic Congestion and Improve Safety, US Army COE Section 404 Permit, Wiscasset and Edgecomb Counties, ME.

Summary: EPA expressed environmental concerns about wetland, water, and air quality impacts. EPA also requested analysis of cumulative impacts. Rating EC2.

EIS No. 20080019, ERP No. D-MMS-B09802-00, Cape Wind Energy Project, Construction, Operation and Maintenance, and Decommissioning of an Electric Generation Facility, Barnstable, Nantucket and Duke County, MA and Washington County, RI.

Summary: EPA's comments highlighted the need for renewable energy sources in the region and underscored the importance of a comprehensive consideration of alternatives, impacts and appropriate mitigation. Rating EC2.

EIS No. 20080050, ERP No. D-FRA-C50016-NJ, Portal Bridge Capacity Enhancement Project, To Replace the nearly 100-Year-Old Portal Bridge and Eliminate Capacity Constraints on the Northeast Corridor between Swift Interlocking and Secaucus Transfer Station, Funding, U.S. Army Corp Section 10 and 404 Permits, Hackensack River, Hudson County, NJ.

Summary: EPA expressed environmental concerns about air quality and wetland impacts, and requested that a general conformity determination, wetlands mitigation, noise mitigation and a cumulative impacts discussion be included in the Final EIS. Rating EC2.

EIS No. 20080053, ERP No. D-FHW-D40341-DC, South Capitol Street Project, Replacement of the Fredrick Douglas Memorial Bridge, from Firth Sterling Avenue, SE., to Independence Avenue and the Suitland Parkway from Martin Luther King, Jr. Avenue, SE., to South Capitol Street, Washington, District of Columbia.

Summary: EPA expressed environmental concerns about air quality impacts and requested additional PM2.5 hot spot analysis. Rating EC2.

EIS No. 20080074, ERP No. D-IBR-K91014-CA, American Basin Fish Screen and Habitat Improvement Project, Construction and Operation

of one or two Positive-Barrier Fish Screen Diversion Facilities, Funding and U.S. Army COE Section 10 and 404 Permits, Natomas Mutual, Sacramento and Sutter Counties, CA.

Summary: While EPA has no objections to the proposed action, it did request clarification on resource conservation issues, canal modifications, costs, fisheries, and pumping design limits. Rating LO.

EIS No. 20080090, ERP No. D-BIA-K60040-CA, Enterprise Rancheria Gaming Facility and Hotel Fee-To-Trust Acquisition Project, Implementation, Federal Trust, Estom Yumeka Maida Tribe, Yuba County, CA.

Summary: EPA does not object to the proposed project, but suggested additional mitigation measures to further reduce environmental impacts. Rating LO.

EIS No. 20080112, ERP No. DS-NOA-K90031-CA, Channel Islands National Marine Sanctuary Management Plan, Supplement/Replace Information, Implementation, Santa Barbara and Ventura Counties, CA.

Summary: EPA does not object to the proposed project. Rating LO.

Final EISs

EIS No. 20070525, ERP No. F-NPS-K65324-CA, Big Lagoon Wetland and Creek Restoration Project, To Restore a Functional, Self-Sustaining Ecosystem, including Wetland, Riparian, and Aquatic Components, Golden Gate National Area, Muir Beach, Marin County, CA.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080034, ERP No. F-FHW-B40097-NH, Spaulding Turnpike Improvements Project, Reconstruction and Widening of a 3.5-mile Section from U.S. Route 4 and NH Route 16, US Coast Guard Bridge Permit, NPDES Permit and US Army COE Section 404 Permit, Town of Newton, City of Dover, Strafford and Rockingham Counties, NH.

Summary: EPA had no outstanding objections to the project, but continued to encourage NHDOT/FHWA to commit to mitigation to address anticipated air quality impacts.

EIS No. 20080058, ERP No. F-BOP-E81040-AL, Aliceville, Alabama Area, Proposed Federal Correctional Complex, To Address the Growing Federal Inmate Population, Pickens County, AL.

Summary: EPA continues to have environmental concerns about aquatic resource impacts, and requested commitments to mitigate those impacts in the Record of Decision.

EIS No. 20080065, ERP No. F-BLM-L65513-ID, Snake River Birds of Prey National Conservation Area, Resource Management Plan, Implementation, Ada, Canyon, Elmore, Owyhee Counties, ID.

Summary: EPA supports the goals and objectives of the Resources Management Plan; however, we still have concerns with potential environmental impacts from grazing.

EIS No. 20080066, ERP No. F-BLM-L65471-ID, Fire, Fuels and Related Vegetation Management Direction Plan Amendment, Upper Snake River District (The District), Amending 12 Existing Land Use Plans, Several Counties, ID.

Summary: EPA supports protecting sagebrush steppe ecosystems and associated wildlife species. However, we continue to express concerns with potential impacts to air quality, from prescribed fire use allowed under Alternative E. We believe that additional siting information for fire treatments and air quality monitoring should be considered.

EIS No. 20080089, ERP No. F-BLM-K65305-CA, United States Gypsum Expansion/Modernization Project, Expand and Upgrade Plaster City Plant to Increase Wallboard Production Capacity with Related increases in Water Supply, Right-of-Way Grant, Imperial County, CA.

Summary: EPA continues to expressed environmental concerns about potential impacts to groundwater quality and quantity and waters of the U.S., and recommended the Bureau of Land Management address these issues prior to issuing Record of Decision the mining permit.

EIS No. 20080097, ERP No. F-FRC-K05065-CA, Upper American River Hydroelectric FERC NO. 2101-084, El Dorado and Sacramento Counties, CA and Chili Bar Hydroelectric FERC No. 2155-024, El Dorado County, CA, Issuance of a New License for the Existing and Proposed Hydropower Projects.

Summary: No formal comment letter was sent to the preparing agency.

EIS No. 20080101, ERP No. F-FHW-L40229-ID, ID-75 Timmerman to Ketchum—US-20 to Saddle Road, Preferred Alternative is 2, Increase Roadway and Transportation Safety, Cities of Bellevue, Hailey, Ketchum and the City of Sun Valley, Blaine County, ID.

Summary: EPA continues to recommend that construction mitigation measures are augmented to further release minimize air toxics and diesel particulate matter emissions.

EIS No. 20080110, ERP No. F-BIA-K65299-CA, Scotts Valley Band of

Pomo Indians, Proposed 29.87 Acre Fee-to-Trust Transfer and Casino Project, Contra Costa County.

Summary: EPA's concerns were addressed in the Final EIS; therefore, EPA does not object to the proposed project.

EIS No. 20080116, ERP No. F-FRC-G03035-00r, Gulf Crossing Project, Construction and Operation of Natural Gas Pipeline to Facilitate the Transport of up to 1.73 Billion Cubic Feet Per Day of Natural Gas, Locate in various Counties and Parishes in OK, TX, LA and MS.

Summary: EPA continues to have environmental concerns about air quality impacts.

EIS No. 20080132, ERP No. F-USN-D11042-VA, Marine Corps Base Quantico (MCBQ) Virginia Project, Proposes Development of the Westside of MCBQ and the 2005 Base Realignment and Closure Action at MCBQ, Implementation, Quantico, VA.

Summary: EPA has determined that the U.S. Marine Corps has adequately addressed its comments within the FEIS; therefore, EPA does not object to the proposed project.

EIS No. 20080098, ERP No. FS-COE-G39044-TX, Central City Project, Proposed Modification to the Authorized Projects which provides Flood Damage Reduction, Habitat Improvement, Recreation and Urban Revitalization, Upper Trinity River Central City, Upper Trinity River Basin, Trinity River, Fort Worth, TX.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 6, 2008.

Robert W. Hargrove,
Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-10401 Filed 5-8-08; 8:45 am]

BILLING CODE 6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-6698-6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564-7167 or <http://www.epa.gov/compliance/nap/>.

Weekly Receipt of Environmental Impact Statements

Filed 04/28/2008 Through 05/02/2008 Pursuant to 40 CFR 1506.9.

EIS No. 20080166, *Revised Draft EIS*, AFS, WI, Cayuga Project, New Information Regarding American Marten, Regional Forester Sensitive

Species (RFSS), Changed Condition on the Landscape from Spruce Decline and New Non-Native Invasive Species Survey Information, Chequamegon-Nicolet National Forest, Great Divide Ranger District, Ashland County, WI, *Comment Period Ends:* 06/23/2008, *Contact:* Patty Beyer 906-226-1499.

EIS No. 20080167, *Draft EIS*, COE, CO, Northern Integrated Supply Project, Construction and Operation a Regional Water Supply to Serve the Current and Future Water Needs of 12 Towns and Water District, Approval of Section 404 Permit Application, Northern Colorado Water Conservancy District, Larimer and Weld Counties, CO, *Comment Period Ends:* 06/30/2008, *Contact:* Chandler J. Peter 303-979-4120.

EIS No. 20080168, *Final EIS*, AFS, AK, Iyoutkut Timber Sales, Proposes Harvesting Timber, Implementation, Hoonah Ranger District, Tongass National Forest, Hoonah, AK, *Wait Period Ends:* 06/09/2008, *Contact:* Richard Jennings 907-945-3631.

EIS No. 20080169, *Revised Draft EIS*, COE, CA, Berth 97-109 (China Shipping) Container Terminal Project, Construction and Operation, Issuance of Section 404 (CWA) and Section 10 Rivers and Harbor Act Permits, Port of Los Angeles, Los Angeles County, CA, *Comment Period Ends:* 06/30/2008, *Contact:* Dr. Spencer D. MacNeil 805-585-2152.

EIS No. 20080170, *Final EIS*, AFS, MT, Young Dodge Project, Proposed Timber Harvest and Associate Activities, Prescribed Burning, Road and Recreation Management, Kootenai National Forest, Rexford Ranger District, Lincoln County, MT, *Wait Period Ends:* 06/09/2008, *Contact:* Pat Price 406-296-7163.

EIS No. 20080171, *Draft EIS*, NOA, WA, Makah Whale Hunt Project, Proposed Authorization to Makah Indian Tribe's the Right to Hunt Whales (Gray Whales (*Eschrichtius robustus*) under the 1855 Treaty of Neah Bay, WA, *Comment Period Ends:* 07/07/2008, *Contact:* Donna Darm 206-526-6150.

EIS No. 20080172, *Draft Supplement*, COE, CA, Rio del Oro Specific Plan Project, New Information on Biological Resource and Water Supply, City of Rancho Cordova, Sacramento County, CA, *Comment Period Ends:* 07/07/2008, *Contact:* Kathleen Dadey, Ph.D 916-557-7253.

EIS No. 20080173, *Final Supplement*, FTA, TX, North Corridor Fixed Guideway Project, Updated/ Additional Information on the Locally Preferred Alternative, Proposed

Transit Improvements from University of Houston (UH)-Downtown Station to Northline Mall, Harris County, TX, *Wait Period Ends:* 06/09/2008, *Contact:* Timothy Lidiak 817-978-0550.

EIS No. 20080174, *Final EIS*, AFS, OR, Crawford Project and Proposed Nonsignificant Forest Plan Amendments, Commercial Timber Harvest, Prescribed Burning, Adjustments to Dedicated Old Growth Areas, and Road Closure and Decommissioning Activities, Implementation, Blue Mountain Ranger District, Malheur National Forest, Grant County, OR, *Wait Period Ends:* 06/09/2008, *Contact:* Ryan Falk 541-820-3800.

EIS No. 20080175, *Final EIS*, AFS, 00, Sage Steppe Ecosystem Restoration Strategy, Implementation, Modoc National Forest, Modoc, Lassen, Shasta Counties, CA and Washoe County, NV, *Wait Period Ends:* 06/09/2008, *Contact:* Rob Jeffers 530-233-8816.

EIS No. 20080176, *Final EIS*, AFS, CA, North 49 Forest Health Recovery Project, Restore Fire Adapted Forest System, Located in the Red (MA-16) and Logan (MA-45) Management Areas, Hat Creek Ranger District, Lassen National Forest, Shasta County, CA, *Wait Period Ends:* 06/09/2008, *Contact:* Kit Mullen 530-336-5521.

EIS No. 20080177, *Final EIS*, USN, HI, Hawaii Range Complex (HRC) Project, Preferred Alternative is 3, To Support and Maintain Navy Pacific Fleet Training, and Research, Development, Test, and Evaluation (RDT&E) Operations, Kauai, Honolulu, Maui and Hawaii Counties, HI, *Wait Period Ends:* 06/09/2008, *Contact:* Tom Clements 866-767-3347.

EIS No. 20080178, *Final EIS*, AFS, UT, Big Creek Vegetation Treatment Project, Preferred Alternative is 1, To Treat 4,800 Acres of Aspen Conifer and Sagebrush Communities, Ogden Ranger District, Wasatch-Cache National Forest, Rich County, UT, *Wait Period Ends:* 06/09/2008, *Contact:* Chip Sibbernson 801-625-5112.

EIS No. 20080179, *Final Supplement*, FTA, TX, Southeast Corridor Project, Preferred Alternative is the Light Rail Alternative, Proposed Fixed-Guideway Transit System, Funding, Metropolitan Transit Authority (METRO) of Harris County, Houston, Harris County, TX, *Wait Period Ends:* 06/11/2008, *Contact:* Timothy Lidiak 817-978-0550.

EIS No. 20080180, *Fourth Draft Supplement*, FTA, 00, South Corridor

Portland-Milwaukie Light Rail Project, Proposal to Develop Light Rail Transit in Final Segment, Connecting downtown Portland, OR, the City of Milwaukie and north Clackamas and Multnomah, OR and Clark County, WA, *Comment Period Ends: 06/23/2008, Contact: Mark Turpel 206-220-7954.*

Amended Notices

EIS No. 20080067, Draft EIS, FHW, MI, Detroit River International Crossing Study, Proposed Border Crossing System between the International Border Cities of Detroit, Michigan and Windsor, Ontario, Wayne County, MI, Comment Period Ends: 05/29/2008, Contact: David T. Williams 517-702-1820. Revision of FR Notice Published 02/29/2008: Extending Comment Period from 04/29/2008 to 05/29/2008.

EIS No. 20080103, Draft EIS, USN, FL, Mayport Naval Station Project, Proposed Homeporting of Additional Surface Ships, Several Permits, Mayport, FL, Comment Period Ends: 05/27/2008, Contact: William Sloger 874-820-5797. Revision to FR Published 03/28/2008: Extending Comment Period from 05/12/2008 to 05/27/2008.

Dated: May 6, 2008.

Robert W. Hargrove,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. E8-10402 Filed 5-8-08; 8:45 am]

BILLING CODE 6560-50-P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Equal Employment Opportunity Commission.

DATE AND TIME: Tuesday, May 13, 2008, 10 a.m. Eastern Time.

PLACE: Clarence M. Mitchell, Jr. Conference Room on the Ninth Floor of the EEOC Office Building, 1801 L Street, NW., Washington, DC 20507.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: Open Session:

1. Announcement of Notation Votes,
2. Change to EEOC Order 110.002, Reorganization of Administrative Judge Function and Creation of the Office of Federal Sector Programs, and
3. Notice of Proposed Rulemaking—Federal Sector Regulations, 29 CFR part 1614.

Note: In accordance with the Sunshine Act, the meeting will be open to public

observation of the Commission's deliberations and voting. (In addition to publishing notices on EEOC Commission meetings in the **Federal Register**, the Commission also provides a recorded announcement a full week in advance on future Commission sessions.)

Please telephone (202) 663-7100 (voice) and (202) 663-4074 (TTY) at any time for information on these meetings. The EEOC provides sign language interpretation at Commission meetings for the hearing impaired. Requests for other reasonable accommodations may be made by using the voice and TTY numbers listed above. *Contact Person for More Information:* Stephen Llewellyn, Executive Officer on (202) 663-4070.

Dated: May 2, 2008.

Stephen Llewellyn,

Executive Officer, Executive Secretariat.

This Notice Issued May 2, 2008.

[FR Doc. E8-10134 Filed 5-8-08; 8:45 am]

BILLING CODE 6570-01-M

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 5, 2008.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to take this opportunity to (PRA) of 1995 (PRA), Public Law No. 104-13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. Subject to the PRA, no person shall be subject to any penalty for failing to comply with a collection of information that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written PRA comments should be submitted on or before July 8, 2008. If you anticipate that you will be

submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Interested parties may submit all PRA comments by e-mail or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov and/or Cathy.Williams@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418-2918 or send an e-mail to PRA@fcc.gov and/or Cathy.Williams@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060-0854.

Title: Truth-in-Billing Format, CC Docket No. 98-170 and CG Docket No. 04-208.

Form Number: Not Applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents and Responses: 5,309 respondents; 34,866 responses.

Estimated Time per Response: 5 to 465 hours.

Frequency of Response: On occasion reporting requirement; Third party disclosure.

Total Annual Burden: 4,636,942 hours.

Total Annual Cost: \$15,418,000.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this obligation is found at Section 201(b) of the Communications Act of 1934 [47 U.S.C. 201(b)] Service and Charges, codified at 47 CFR 64.2401, Truth-in-Billing Requirements, and Section 258 of the Communications Act of 1934 [47 U.S.C. 258] Illegal Changes in Subscriber Carrier Selections, Public Law 104-104, 110 Stat. 56.

Nature and Extent of Confidentiality: An assurance of confidentiality is not offered because this information collection does not require the collection of personally identifiable information (PII) from individuals.

Privacy Impact Assessment: No impact(s).

Needs and Uses: On March 18, 2005, the Commission released a *Second Report and Order, and Declaratory Ruling*, FCC 05-55, which determined that Commercial Mobile Radio Service

(CMRS) providers no longer should be exempted from 47 CFR 64.2401(b), which requires billing descriptions to be brief, clear, non-misleading and in plain language. Also, in conjunction with the *Second Report and Order*, and *Declaratory Ruling*, the Commission released a *Second Further Notice of Proposed Rulemaking* which proposed and sought comment on measures to enhance the ability of consumers to make informed choices among competitive telecommunications providers.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. E8-10371 Filed 5-8-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection Requirements Being Submitted to OMB for Emergency Review and Approval, Comments Requested

March 6, 2008.

SUMMARY: As part of its continuing effort to reduce paperwork burden and as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520), the Federal Communications Commission invites the general public and other Federal agencies to comment on the following information collection(s). Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. An agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a valid OMB control number.

DATES: Written PRA comments should be submitted on or before May 15, 2008. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should

advise the contact listed below as soon as possible.

ADDRESSES: Direct all PRA comments to Nicholas A. Fraser, Office of Management and Budget, via Internet at Nicholas_A_Fraser@omb.eop.gov or via fax at (202) 395-5167 and to Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC or via Internet at PRA@fcc.gov.

To view a copy of this information collection request (ICR) submitted to OMB: (1) Go to the Web page <http://www.reginfo.gov/public/do/PRAMain>, (2) look for the section of the Web page called "Currently Under Review," (3) click on the downward-pointing arrow in the "Select Agency" box below the "Currently Under Review" heading, (4) select "Federal Communications Commission" from the list of agencies presented in the "Select Agency" box, (5) click the "Submit" button to the right of the "Select Agency" box, (6) when the list of FCC ICRs currently under review appears, look for the title of this ICR (or its OMB control number, if there is one) and then click on the ICR Reference Number to view detailed information about this ICR.

You may submit all PRA comments by email or U.S. post mail. To submit your comments by e-mail, send them to PRA@fcc.gov. To submit your comments by U.S. mail, mark them to the attention of Cathy Williams, Federal Communications Commission, Room 1-C823, 445 12th Street, SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information about the information collection(s), contact Cathy Williams at (202) 418-2918 or send an e-mail to PRA@fcc.gov.

SUPPLEMENTARY INFORMATION: The Commission is requesting emergency OMB processing of the information collection requirements contained in this notice and has requested OMB approval by May 22, 2008.

OMB Control Number: 3060-1115.

Title: DTV Consumer Education Initiative; Sections 15.124, 27.20, 54.418, 73.674, and 76.1630.

Form Number: FCC Form 388.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities; Not-for-profit institutions, State, local or tribal governments.

Number of Respondents/Responses: 11,022 respondents; 70,026 responses.

Estimated Time per Response: 0.50 hours-85 hours.

Frequency of Response: On occasion reporting requirement; Monthly

reporting requirement; Quarterly reporting requirement; Third party disclosure requirement.

Obligation to Respond: Required to obtain benefits—Statutory authority for this collection of information is contained in Sections 4(i), 303(r), 335, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 335, and 336.

Total Annual Burden: 155,646 hours.

Total Annual Cost: None.

Confidentiality: No need for confidentiality required.

Privacy Impact Assessment: No impact(s).

Needs and Uses: The Commission adopted on April 23, 2008, an Order of Reconsideration, In the Matter of DTV Consumer Education Initiative, MB Docket 07-148, FCC 08-119. In this Order, we modify our requirements regarding the timing, scope, and content of manufacturer notices and the method of delivery of eligible telecommunications carriers (ETC) notices, and clarify other manufacturer requirements. The revised requirements are as follows:

a. Consumer Electronics

Manufacturer Notices (47 CFR 15.124).

The "responsible party," as defined in the Commission's rules, has to include a notice about the digital television (DTV) transition on television receivers and related devices manufactured between May 30, 2008 and March 31, 2009. The notices themselves must include the Commission's contact information (rather than the manufacturer's), convey information about the DTV transition, and must be included with covered devices.

b. Eligible Telecommunications

Carriers (ETCs) Federal Universal Service Low-Income Program Participant Notices (47 CFR 54.418).

ETCs that receive federal universal service funds shall provide their Lifeline or Link-up customers (low-income customers) with notices about the transition for over-the-air full power broadcasting from analog to digital service (the "DTV Transition") in monthly bills, bill notices, or as a monthly stand-alone mailer (e.g., postcard, brochure), beginning May 30, 2008 through March 31, 2009.

These information collection requirements are also apart of this information collection:

(1) Broadcaster Education and Reporting (47 CFR 73.674).

(a) On-Air Education. Broadcasters must provide on-air DTV Transition consumer education information (e.g., via Public Service Announcements (PSAs), information crawls, snipes or tickers) to their viewers. Broadcasters

must comply with one of three alternative sets of rules as provided in the Report and Order.

(b) *DTV Consumer Education Quarterly Activity Report, FCC Form 388*. Broadcasters must electronically file a report about its DTV Transition consumer education efforts to the Commission on a quarterly basis. Broadcasters must begin filing these quarterly reports no later than April 10, 2008. In addition, if the broadcaster has a public Web site, they must post these reports on that Web site.

(2) *Multichannel Video Programming Distributor (Mvpd) Customer Bill Notices (47 CFR 76.1630)*. MVPDs must provide monthly notices about the DTV transition in their customer billing statements. They include (but are not limited to), for example: cable operators, direct broadcast satellite (DBS) carriers, open video system operators, and private cable operators.

(3) *DTV.Gov Partner Consumer Education Reporting*. DTV.gov Transition Partners must report their consumer education efforts, as a condition of continuing Partner status. They must begin filing these quarterly reports no later than April 10, 2008.

(4) *700 Mhz Wireless Service Licensee/Permittees Consumer Education Reporting (47 CFR 27.20)*. Winners of the 700 MHz spectrum auction must report their consumer education efforts to the Commission on a quarterly basis. These parties must file the first by the tenth day of the first calendar quarter following the initial grant of the license authorization that the entity holds.

Federal Communications Commission.

Marlene H. Dortch,
Secretary.

[FR Doc. E8-10375 Filed 5-8-08; 8:45 am]

BILLING CODE 6712-01-P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 2, 2008.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) P.O. Box 55882, Boston, Massachusetts 02106-2204:

1. *Greenfield Bancorp, MHC*; to become a bank holding company by acquiring 100 percent of the voting shares of Greenfield Cooperative Bank, both of Greenfield, Massachusetts, in connection with the reorganization of Applicant from mutual to stock form.

Board of Governors of the Federal Reserve System, May 5, 2008.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. E8-10282 Filed 5-8-08; 8:45 am]

BILLING CODE 6210-01-S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The applications also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 5, 2008.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480-0291:

1. *Hatton Bancshares, Inc.*, Hatton, North Dakota; to merge with and thereby acquire 100 percent of the voting shares of Mahnomen Bancshares, and thereby indirectly acquire First National Bank in Mahnomen, both of Mahnomen, Minnesota.

Board of Governors of the Federal Reserve System, May 6, 2008.

Robert deV. Frierson,
Deputy Secretary of the Board.

[FR Doc. E8-10351 Filed 5-8-08; 8:45 am]

BILLING CODE 6210-01-S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Minority Health and Health Disparities.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Minority Health and Health Disparities.

Date: June 10, 2008.

Closed: 8 a.m. to 9:30 a.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.
Open: 9:30 a.m. to 5 p.m.

Agenda: The agenda will include Opening Remarks, Administrative Matters, Director's Report, NCMHD Health Disparities Update, Scientific Program Highlights, and other business of the Council.

Place: Bethesda Marriott Suites, 6711 Democracy Boulevard, Bethesda, MD 20817.

Contact Person: Donna Brooks, Asst. Director for Administration, National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, 301-435-2135, brooksd@ncmhd.nih.gov.

Any member of the public interested in presenting oral comments to the committee may notify the Contact Person listed on this notice at least 10 days in advance of the meeting. Interested individuals and representatives of organizations may submit a letter of intent, a brief description of the organization represented, and a short description of the oral presentation. Only one representative of an organization may be allowed to present oral comments and if accepted by the committee, presentations may be limited to five minutes. Both printed and electronic copies are requested for the record. In addition, any interested person may file written comments with the committee by forwarding their statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

Dated: May 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10329 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NC VHS).

Time and Date: May 21, 2008, 9 a.m.–3 p.m.; May 22, 2008, 10 a.m.–2 p.m.

Place: Renaissance Washington DC Hotel, 999 9th Street, NW., Washington, DC 20001, Tel: 202 898 9000.

Status: Open.

Purpose: At this meeting the Committee will hear presentations and hold discussions on several health data policy topics. On the first day the Committee will hear updates from the Department by the Data Council and the HHS Office of the National Coordinator (ONC). They will also discuss letters to the HHS Secretary on hospital surge capacity and e-prescribing standards and long term care. Later in the afternoon there will be an update on classification issues in healthcare terminology.

On the morning of the second day the Committee will continue the discussions on the letters on surge capacity and e-prescribing standards. The remainder of the time will be spent discussing future agenda items and Committee administrative operations.

The times shown above are for the full Committee meeting. Subcommittee breakout sessions can be scheduled for late in the afternoon of the first day and in the morning prior to the full Committee meeting on the second day. Agendas for these breakout sessions will be posted on the NCVHS Web site (URL below) when available.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Marjorie S. Greenberg, Executive Secretary, NCVHS, National Center for Health Statistics, Centers for Disease Control and Prevention, 3311 Toledo Road, Room 2402, Hyattsville, Maryland 20782, telephone (301) 458-4245. Information also is available on the NC VHS home page of the HHS Web site: <http://www.ncvhs.hhs.gov/>, where further information including an agenda will be posted when available.

Should you require reasonable accommodation, please contact the CDC Office of Equal Employment Opportunity on (301) 458-4EEO (4336) as soon as possible.

Dated: April 21, 2008.

James Scanlon,

Deputy Assistant Secretary for Planning and Evaluation (SDP), Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. E8-10322 Filed 5-8-08; 8:45 am]

BILLING CODE 4151-05-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS-10123 and 10124, and CMS-216-94]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Department of Health and Human Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Notice of Provider Non-Coverage (CMS-10123) and Detailed Explanation of Non-Coverage (CMS-10124); *Use:* The Notice of Medicare Provider Non-Coverage (CMS-10123) is used to inform fee-for-service Medicare beneficiaries of the determination that their provider services will end, and of their right to an expedited review of that determination. The Detailed Explanation of Non-Coverage (CMS-10124) is used to provide beneficiaries who request an expedited determination with detailed information of why the services should end. The revised Notice of Provider Non-Coverage and Detailed Explanation of Provider Non-Coverage will no longer require use of the beneficiary's Medicare number as a patient identifier. Instead, when applicable, providers may use a number that helps to link the notice with a related claim. *Form Number:* CMS-10123 and 10124 (OMB# 0938-0953); *Frequency:* Occasionally; *Affected Public:* Business or other for-profit, not-

for-profit institutions, and individuals or households; *Number of Respondents:* 3,115,637; *Total Annual Responses:* 3,115,637; *Total Annual Hours:* 522,138.

2. Type of Information Collection Request: Extension of a currently approved collection; *Title of Information Collection:* Organ Procurement Organization/ Histocompatibility Laboratory Statement of Reimbursable Costs, manual instructions and supporting regulations contained in 42 CFR 413.20 and 413.24; *Use:* This form is required by the statute and regulation for participation in the Medicare program. The information is used to determine payment for Medicare. Organ Procurement Organizations and Histocompatibility Laboratories are the users. *Form Number:* CMS-216-94 (OMB# 0938-0102); *Frequency:* Yearly; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 108; *Total Annual Responses:* 108; *Total Annual Hours:* 4,860.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web Site address at <http://www.cms.hhs.gov/PaperworkReductionActof1995>, or E-mail your request, including your address, phone number, OMB number, and CMS document identifier, to Paperwork@cms.hhs.gov, or call the Reports Clearance Office on (410) 786-1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on June 9, 2008.

OMB Human Resources and Housing Branch, Attention: Carolyn Raffaelli, New Executive Office Building, Room 10235, Washington, DC 20503, Fax Number: (202) 395-6974.

Dated: May 1, 2008.

Michelle Shortt,

Director, Regulations Development Group, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. E8-10285 Filed 5-8-08; 8:45 am]

BILLING CODE 4120-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Indian Health Service

Office of Urban Indian Health Programs; Announcement Type: Targeted Solicitation

Funding Opportunity Number: HHS-2008-JHS-UIHP-0001.

Catalogue of Federal Domestic Assistance Number: 93.193.

Key Dates:

Application Deadline Date: May 21, 2008.

Review Date: June 13, 2008.

Earliest Anticipated Start Date: July 1, 2008.

I. Funding Opportunity Description

The Indian Health Service (IHS), Office of Urban Indian Health Programs (OUIHP) announces a targeted solicitation for the 4-in-1 Title V grants to make health care services more accessible for American Indians and Alaska Natives (AI/AN) residing in urban areas. This program is authorized under the authority of the Snyder Act and 25 U.S.C. 1652 and 1653 and Title V of the Indian Health Care Improvement Act (IHCIA), Public Law 94-437, as amended. This program is described at 93.193 in the Catalog of Federal Domestic Assistance (CFDA).

Under this grant opportunity, the IHS proposes to award grants to 34 Urban Indian organizations that have existing IHS contracts awarded in accordance with 25 U.S.C. 1653(c)(d)(e)(f). This grant announcement seeks to ensure the highest possible health status for AI/ANs. Funding will be used to continue the 34 Urban Indian organizations' successful implementation of the Department of Health and Human Services (HHS) priorities, GPRA reporting, collaborative activities with the Veterans Health Administration (VA), and four health programs that make health services more accessible to AI/ANs living in urban areas. The four health services programs are: (1) Health Promotion/Disease Prevention (HP/DP) services, (2) Immunizations, and Behavioral Health Services consisting of (3) Alcohol/Substance Abuse services, and (4) Mental Health Prevention and Treatment services. These programs are integral components of the IHS chronic care initiative and the strategic objective focused on improving safety, quality, affordability, and accessibility of health care.

II. Award Information:

Type of Award: Targeted Solicitation Grants.

Estimated Funds Available: The IHS intends to commit approximately \$8.5 million each year. The total project period is 2 years and 9 months in duration. The award that is issued under this announcement is subject to availability of funds.

Anticipated Number of Awards: 34 grants.

Project Period: July 1, 2008–March 31, 2011. The 2008–2009 budget period will run nine months, July 1, 2008 through March 31, 2009. The 2009–2010 and 2010–2011 budget periods will run 12 months each.

Award Amount: FY 2008 amounts for the 9-month budget period July 1, 2008 through March 31, 2009 are identified in the application transmittal letter. All future support is subject to the availability of funds.

III. Eligibility Information

1. *Eligible Applicants:* Urban Indian organizations, as defined by 25 U.S.C. 1603(h).

2. *Cost Sharing or matching*—This program does not require matching funds or cost sharing.

IV. Application and Submission Information

1. An applicant package may be found in Grants.gov (<http://www.grants.gov>) or at: http://www.ihs.gov/NonMedicalPrograms/gogp/gogp_funding.asp.

Information regarding the electronic application process may be directed to Michelle G. Bulls, Chief Grants Management Officer, Director, Division of Grants Policy, at (301) 443-6290.

2. Content and Form of Application Submission

- Be single spaced.
- Be typewritten.
- Have consecutively numbered pages.
- Use black type not smaller than 12 characters per one inch.
- Contain a narrative that does not exceed 55 typed pages that includes the other submission requirements below. The 55 page narrative does not include the work plan, standard forms, table of contents, budget, budget justifications, narratives, and/or other appendix items.

Public Policy Requirements: All Federal-wide public policies apply to IHS grants with the exception of the Lobbying and Discrimination public policy.

3. Submission Dates and Times

The application from each Urban Indian Health Organization (UIHO) must be submitted electronically through Grants.gov by 11:59 p.m.

Eastern Standard Time (EST) on May 21, 2008.

If technical challenges arise and the UIHO is unable to successfully complete the electronic application process, each organization must contact Michelle G. Bulls, Grants Policy Staff, fifteen days prior to the application deadline and advise of the difficulties that they are experiencing. Each organization must obtain prior approval, in writing (e-mails are acceptable), from Ms. Bulls allowing the paper submission. If submission of a paper application is requested and approved, the original and two copies must be sent to the appropriate grants contact that is listed in Section IV.1 above. Applications not submitted through Grants.gov, without an approved waiver, may be returned to the organizations without review or consideration.

A late application will be returned to the organization without review or consideration.

4. *Intergovernmental Review:* Executive Order 12372 requiring intergovernmental review is not applicable to this program.

5. *Funding Restrictions:*

A. Pre-award costs are allowable pending prior approval from the awarding agency. However, in accordance with 45 CFR Part 74, all pre-award costs are incurred at the recipient's risk. The awarding office is under no obligation to reimburse such costs if for any reason any of the UIHO do not receive an award or if the award to the recipient is less than anticipated.

B. The available funds are inclusive of direct and appropriate indirect costs.

C. Only one grant supplement will be awarded to each organization.

D. IHS will acknowledge receipt of the application.

6. *Other Submission Requirements:* Electronic Submission—Each UIHO must submit through Grants.gov.

However, should any technical challenges arise regarding the submission, please contact Grants.gov Customer Support at 1-800-518-4726 or support@grants.gov. The Contact Center hours of operation are Monday–Friday from 7 a.m. to 9 p.m. EST. If you require additional assistance please call (301) 443-6290, and identify the need for assistance regarding your Grants.gov application. Your call will be transferred to the appropriate grants staff member. Each organization must seek assistance at least fifteen days prior to the application deadline. If each organization doesn't adhere to the timelines for Central Contractor Registry (CCR), Grants.gov registration and request timely assistance with technical issues, the paper application submission

may not be granted. To submit an application electronically, please use the Grants.gov Web site. Download a copy of the application package on the Grants.gov Web site, complete it offline and then upload and submit the application via the Grants.gov site. You may not e-mail an electronic copy of a grant application to IHS.

Please be reminded of the following:

- Under the new IHS application submission requirements, paper applications are not the preferred method. However, if any UIHO has technical problems submitting the application on-line, please contact Grants.gov Customer Support directly at: <http://www.grants.gov/CustomerSupport>.

- Upon contacting Grants.gov, obtain a Grants.gov tracking number as proof of contact. The tracking number is helpful if there are technical issues that cannot be resolved and a waiver request from Grants Policy Staff (GPS) must be obtained. If any of the organizations are still unable to successfully submit the application on-line, please contact Michelle G. Bulls, GPS, at (301) 443-6290 at least fifteen days prior to the application deadline to advise her of the difficulties you have experienced.

- If it is determined that a formal waiver is necessary, each organization must submit a request, in writing (e-mails are acceptable), to Michelle.Bulls@ihs.gov providing a justification for the need to deviate from the standard electronic submission process. Upon receipt of approval, a hard-copy application package must be downloaded from Grants.gov, and sent directly to the Division of Grants Operations (DGO), 801 Thompson Avenue, TMP 360, Rockville, MD 20852 by May 1, 2008.

- Upon entering the Grants.gov Web site, there is information available that outlines the requirements to each UIHO regarding electronic submission of application and hours of operation. We strongly encourage each organization to not wait until the deadline date to begin the application process as the registration process for CCR and Grants.gov could take up to fifteen working days.

- To use Grants.gov, each UIHO must obtain a Data Universal Numbering System (DUNS) and register in the CCR. Each organization should allow a minimum of ten working days to complete CCR registration. See below on how to apply.

- Each organization must submit all documents electronically, including all information typically included on the SF-424 and all necessary assurances and certifications.

- Please use the optional attachment feature in Grants.gov to attach additional documentation that may be requested by IHS.

- Each organization must comply with any page limitation requirements described in the program announcement.

- After you electronically submit your application, you will receive an automatic acknowledgment from Grants.gov that contains a Grants.gov tracking number. The DGO will retrieve your application from Grants.gov. The DGO will notify each organization that the application has been received.

- You may access the electronic application for this program on Grants.gov.

- You may search for the downloadable application package using either the CFDA number or the Funding Opportunity Number. Both numbers are identified in the heading of this announcement.

- To receive an application package, each UIHO must provide the Funding Opportunity Number: HHS-2008-IHS-UIHP-0001.

E-mail applications will not be accepted under this announcement.

DUNS Number

Applicants are required to have a DUNS number to apply for a grant or cooperative agreement from the Federal Government. The DUNS number is a nine-digit identification number, which uniquely identifies business entities. Obtaining a DUNS number is easy and there is no charge. To obtain a DUNS number, access <http://www.dunandbradstreet.com> or call 1-866-705-5711. Interested parties may wish to obtain their DUNS number by phone to expedite the process.

Applications submitted electronically must also be registered with the CCR. A DUNS number is required before CCR registration can be completed. Many organizations may already have a DUNS number. Please use the number listed above to investigate whether or not your organization has a DUNS number.

Registration with the CCR is free of charge. Applicants may register by calling 1-888-227-2423. Please review and complete the CCR "Registration Worksheet" located on http://www.grants.gov/CCR_Register.

Sections V and VI which contain more detailed information regarding these registration processes can be found at Grants.gov.

VII. Agency Contacts

For program-related information: Phyllis S. Wolfe, Director, Office of Urban Indian Health Programs, 801

Thompson Avenue, Suite 200, Rockville, Maryland 20852, (301) 443-4680 or *phyllis.wolfe@ihs.gov*.

For general information regarding this announcement: Danielle Steward, Health Systems Specialist, Office of Urban Indian Health Programs, 801 Thompson Avenue, Room 200, Rockville, MD 20852, (301) 443-4680 or *danielle.steward@ihs.gov*.

For specific grant-related and business management information: Pallop Chareonvootitum, Grants Management Specialist, 801 Thompson Avenue, TMP 360, Rockville, MD 20852, (301) 443-5204 or *pallop.chareonvootitum@ihs.gov*.

Dated: May 1, 2008.

Robert G. McSwain,

Acting Director, Indian Health Service.

[FR Doc. E8-10218 Filed 5-8-08; 8:45 am]

BILLING CODE 4165-16-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Molecular and Integrative Signal Transduction Study Section, June 3, 2008, 8 a.m. to June 4, 2008, 5 p.m., One Washington Circle Hotel, One Washington Circle, Washington, DC 20037 which was published in the **Federal Register** on April 4, 2008, 73 FR 18539-18542.

The meeting will be held one day only June 3, 2008. The meeting time and location remain the same. The meeting is closed to the public.

Dated: May 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10321 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections

552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Vector Biology Member Conflicts.

Date: May 12, 2008.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call.)

Contact Person: Rossana Berti, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3191, MSC 7846, Bethesda, MD 20892, 301-402-6411, *bertiroscsr.nih.gov*.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research; 93.306, 93.333, 93.337, 93.393-93.396, 93.837-93.844, 93.846-93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10327 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center on Minority Health and Health Disparities; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center on Minority Health and Health Disparities Special Emphasis Panel; Loan Repayment Program for Health Disparities Research-Panel C.

Date: June 2, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Two Democracy Plaza, 6707 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Lorrita Watson, Ph.D., National Center on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892-5465, (301) 402-1366, *watsonl@mail.nih.gov*.

Dated: May 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10320 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute, Special Emphasis Panel, Risks of Developing Coronary Artery Disease.

Date: May 29, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Holly Patton, PhD, Scientific Review Administrator, Review Branch/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7188, Bethesda, MD 20892-7924, 301-435-0280, *pattonh@nhlbi.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and

Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10328 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Initial Review Group; Interventions Committee for Disorders Involving Children and Their Families.

Date: June 10-11, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Christopher S. Sarampote, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6148, MSC 9608, Bethesda, MD 20892-9608, 301-443-1959, csarampo@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in Non-Specialty Settings.

Date: June 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Aileen Schulte, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6140, MSC 9608, Bethesda, MD 20892-9608, 301-443-1225, aschultemail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Mental Health Services in MH Specialty Settings.

Date: June 10, 2008.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Marina Broitman, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6153, MSC 9608, Bethesda, MD 20892-9608, 301-402-8152, mbroitma@mail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Disorders Related to Schizophrenia, Late Life, or Personality.

Date: June 10, 2008.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Serena P. Chu, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Rockville, MD 20892, 301-443-0004, sechumail.nih.gov.

Name of Committee: National Institute of Mental Health Initial Review Group, Interventions Committee for Adult Mood and Anxiety Disorders.

Date: June 10, 2008.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: David I. Sommers, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, National Institutes of Health, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892-9606, 301-443-7861, dsommersmail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: May 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10313 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Dental and Craniofacial Research Council, June 23, 2008, 8:30 a.m. to June 23, 2008, 4:30 p.m., National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892 which was published in the **Federal Register** on December 26, 2007, 72 FR 73037.

The meeting has moved to the Natcher Conference Center on the NIH Campus. The closed session will be in the morning and the open session in the afternoon. A scientific symposium will be held on June 24. The meeting is partially Closed to the public.

Dated: May 1, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10317 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel.

Date: May 28, 2008.

Time: 9 a.m. to 9 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Kristen V Huntley, PhD, Scientific Review Administrator, Office of

Extramural Affairs, National Institute on Drug Abuse, NIH, DHHS, Room 220, MSC 8401, 6101 Executive Boulevard, Bethesda, MD 20892-8401, 301-435-1433, huntleyk@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.279, Drug Abuse and Addiction Research Programs, National Institutes of Health, HHS)

Dated: May 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10323 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Environmental Health Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Environmental Health Sciences Council.

Date: May 29-30, 2008.

Open: May 29, 2008, 8:30 a.m. to 5 p.m.

Agenda: Discussion of program policies and issues.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Closed: May 30, 2008, 8:30 a.m. to 12 p.m.
Agenda: To review and evaluate grant applications.

Place: Nat. Inst. of Environmental Health Sciences, Building 101, Rodbell Auditorium, 111 T. W. Alexander Drive, Research Triangle Park, NC 27709.

Contact Person: Dennis R Lang, PhD, Acting Director, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, National Institutes of Health, P.O. Box 12233/EC-3431, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541-7729, lang4@niehs.nih.gov.

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxicabs, hotel, and airport shuttles will be inspected before being allowed on campus. Visitors will be asked to show one form of identification (for example, a government-issued photo ID, driver's license, or passport) and to state the purpose of their visit.

Information is also available on the Institute's/Center's home page: <http://www.niehs.nih.gov/dertlc-agenda.htm>, where an agenda and any additional information for the meeting will be posted when available. (Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: May 2, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E8-10326 Filed 5-8-08; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID: FEMA-2008-0008]

National Incident Management System—FEMA 501

AGENCY: Federal Emergency Management Agency, DHS.

ACTION: Notice of availability; request for comments.

SUMMARY: The Federal Emergency Management Agency (FEMA) is accepting comments on the draft National Incident Management System (NIMS) document. NIMS provides a consistent nationwide template to

enable Federal, State, tribal, and local governments, the private sector, and nongovernmental organizations to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity.

DATES: Comments must be received by June 2, 2008.

ADDRESSES: The draft NIMS document is available online at www.regulations.gov, in Docket ID FEMA-2008-0008. You may also view hard copies at the Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472. You may submit comments on the draft NIMS document, identified by Docket ID FEMA-2008-0008, by one of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

E-mail: FEMA-POLICY@dhs.gov. Include Docket ID FEMA-2008-0008 in the subject line of the message.

Fax: 866-466-5370.

Mail/Hand Delivery/Courier: Regulation & Policy Team, Office of Chief Counsel, Federal Emergency Management Agency, Room 835, 500 C Street, SW., Washington, DC 20472.

Instructions: All Submissions received must include the agency name and docket ID. Regardless of the method used for submitting comments or material, all submissions will be posted, without change, to the Federal eRulemaking Portal at <http://www.regulations.gov>, and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy Act notice that is available on the Privacy and Use Notice link on the Administration Navigation Bar of www.regulations.gov.

FEMA has also provided a form, available in the docket at www.regulations.gov. Due to the large number of comments that are expected, FEMA asks that comments be submitted using this form.

Docket: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at <http://www.regulations.gov> and search for Docket ID FEMA-2008-0008. Submitted comments may also be inspected at FEMA, Office of Chief Counsel, Room 835, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Sean Murphy, Policy Advisor to the Deputy Administrator, Federal Emergency Management Agency, 500 C

Street, NW., Washington, DC 20472, 202-646-3100.

SUPPLEMENTARY INFORMATION: On February 28, 2003, the President issued Homeland Security Presidential Directive-5 (HSPD-5), Management of Domestic Incidents, which directed the Secretary of Homeland Security to develop and administer a National Incident Management System (NIMS). This system provides a consistent nationwide template to enable Federal, State, tribal, and local governments, the private sector, and nongovernmental organizations to work together to prevent, protect against, respond to, recover from, and mitigate the effects of incidents, regardless of cause, size, location, or complexity in order to reduce the loss of life and property, and the harm to the environment. This consistency provides the foundation for utilization of NIMS for all incidents, ranging from daily occurrences to incidents requiring a coordinated Federal response. NIMS represents a core set of doctrines, concepts, principles, terminology, and organizational processes that enables effective, efficient, and collaborative incident management.

Building on the foundation provided by existing emergency management and incident response systems used by jurisdictions, organizations, and functional disciplines at all levels, the NIMS document integrates best practices into a comprehensive framework for use by emergency management/response personnel in an all-hazards context nationwide. These best practices lay the groundwork for the components of NIMS and provide the mechanisms for the further development and refinement of supporting national standards, guidelines, protocols, systems, and technologies. NIMS fosters the development of specialized technologies that facilitate emergency management and incident response activities and allows for the adoption of new approaches that will enable continuous refinement of NIMS over time.

The changes reflected in the revised document are not substantively dramatic, and do not alter the basic NIMS doctrine published in the 2004 version. The Department is providing the current draft of the NIMS for public comment; this draft document does not necessarily reflect the final policy of the Administration.

Authority: Homeland Security Act of 2002, as amended, 6 U.S.C. 101 *et seq.*, Homeland Security Presidential Directive-5, Management of Domestic Incidents.

Dated: May 5, 2008.

R. David Paulison,

Administrator, Federal Emergency Management Agency.

[FR Doc. E8-10449 Filed 5-8-08; 8:45 am]

BILLING CODE 9110-21-P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

Intent To Request Renewal From OMB of One Current Public Collection of Information: TSA Customer Comment Card

AGENCY: Transportation Security Administration, DHS.

ACTION: Notice.

SUMMARY: The Transportation Security Administration (TSA) invites public comment on one currently approved information collection requirement abstracted below that we will submit to the Office of Management and Budget (OMB) for renewal in compliance with the Paperwork Reduction Act. This collection allows customers to provide feedback to TSA about their experiences with TSA's airport security process and procedures while traveling.

DATES: Send your comments by July 8, 2008.

ADDRESSES: Comments may be mailed or delivered to Joanna Johnson, Communications Branch, Business Management Office, Operational Process and Technology, TSA-11, Transportation Security Administration, 601 South 12th Street, Arlington, VA 22202-4220.

FOR FURTHER INFORMATION CONTACT: Joanna Johnson at the above address, or by telephone (571) 227-3651 or facsimile (703) 603-0822.

SUPPLEMENTARY INFORMATION:

Comments Invited

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number. The Information Collection Request documentation is available at www.reginfo.gov. Therefore, in preparation for OMB review and approval of the following information collection, TSA is soliciting comments to—

(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Information Collection Requirement

1652-0030; TSA Customer Comment Card. This collection continues a voluntary program for airport passengers to provide feedback to TSA regarding their experiences with TSA security procedures. This collection of information allows TSA to evaluate and address customer concerns about security procedures and policies.

TSA Customer Comment Cards will collect feedback and the passenger's contact information if voluntarily provided. TSA may use the contact information to respond to the passenger's comments. For passengers who deposit their cards in the designated drop-boxes, TSA staff at airports will collect the cards, categorize comments, enter the results into an online system for reporting, and respond to passengers as appropriate. Passengers also have the option to mail the cards directly the address provided on the comment card which will vary by airport. The TSA Contact Center will continue to be available for passengers to make comments independently of airport involvement.

TSA estimates the number of respondents to be 1,783,800, with an estimated number of 150,880 annual burden hours.

Issued in Arlington, Virginia, on May 5, 2008.

Fran Lozito,

Director, Business Management Office, Operational Process and Technology.

[FR Doc. E8-10359 Filed 5-8-08; 8:45 am]

BILLING CODE 9110-05-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form I-140, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form I-140,

Immigrant Petition for Alien Worker;
OMB Control Number 1615-0015.

The Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 8, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please add the OMB Control Number 1615-0015 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form I-140. Should USCIS decide to revise the Form I-140 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30-days to comment on any revisions to the Form I-140.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology,

e.g., permitting electronic submission of responses.

Overview of this Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Immigrant Petition for Alien Worker.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form I-140, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: U.S. Employers. The information furnished on Form I-140 will be used by U.S. Citizenship and Immigration Services to classify aliens under section 203(b)(1), 203(b)(2) or 203(b)(3) of the Immigration and Nationality Act (Act).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 96,000 responses at 60 minutes (1 hour) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 96,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: <http://www.regulations.gov/search/index.jsp>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202-272-8377.

Dated: May 6, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.
[FR Doc. E8-10363 Filed 5-8-08; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

Agency Information Collection Activities: Form N-600, Extension of a Currently Approved Information Collection; Comment Request

ACTION: 60-Day Notice of Information Collection Under Review: Form N-600, Application for Certificate of Citizenship; OMB Control Number 1615-0057.

The Department of Homeland Security, U.S. Citizenship and

Immigration Services (USCIS), has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for sixty days until July 8, 2008.

Written comments and suggestions regarding items contained in this notice, and especially with regard to the estimated public burden and associated response time should be directed to the Department of Homeland Security (DHS), USCIS, Chief, Regulatory Management Division, Clearance Office, 111 Massachusetts Avenue, NW., 3rd Floor, Suite 3008, Washington, DC 20529. Comments may also be submitted to DHS via facsimile to 202-272-8352, or via e-mail at rfs.regs@dhs.gov. When submitting comments by e-mail, please add the OMB Control Number 1615-0057 in the subject box.

During this 60-day period USCIS will be evaluating whether to revise the Form N-600. Should USCIS decide to revise the Form N-600 it will advise the public when it publishes the 30-day notice in the **Federal Register** in accordance with the Paperwork Reduction Act. The public will then have 30 days to comment on any revisions to the Form N-600.

Written comments and suggestions from the public and affected agencies concerning the collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a currently approved information collection.

(2) *Title of the Form/Collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Homeland Security sponsoring the collection:* Form N-600, U.S. Citizenship and Immigration Services.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. USCIS uses the information on the form to make a determination that the citizenship eligibility requirements and conditions are met by the applicant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 88,500 responses at 1 hour and 35 minutes (1.583 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 140,095 annual burden hours.

If you have additional comments, suggestions, or need a copy of the information collection instrument, please visit: <http://www.regulations.gov/search/index.jsp>.

We may also be contacted at: USCIS, Regulatory Management Division, 111 Massachusetts Avenue, NW., Suite 3008, Washington, DC 20529, telephone number 202-272-8377.

Dated: May 6, 2008.

Stephen Tarragon,

Acting Chief, Regulatory Management Division, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. E8-10367 Filed 5-8-08; 8:45 am]

BILLING CODE 9111-97-P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-5186-N-19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT:

Kathy Ezzell, Department of Housing and Urban Development, 451 Seventh Street, SW., Room 7266, Washington, DC 20410; telephone (202) 708-1234; TTY number for the hearing- and speech-impaired (202) 708-2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800-927-7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless v. Veterans Administration*, No. 88-2503-OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for "off-site use only" recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to John Hicks, Division of Property Management, Program Support Center, HHS, room 5B-17, 5600 Fishers Lane, Rockville, MD 20857; (301) 443-2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a

suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1-800-927-7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: **Army:** Ms. Veronica Rines, Headquarters, Department of the Army, Office of the Assistant Chief of Staff for Installation Management, 2511 Jefferson Davis Hwy., Arlington, VA 22202; (703) 601-2545; **Energy:** Mr. Mark Price, Department of Energy, Office of Engineering & Construction Management, MA-50, 1000 Independence Ave., SW., Washington, DC 20585; (202) 586-0072; **GSA:** Mr. John Smith, Deputy Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th & F Streets, NW., Washington, DC 20405; (202) 501-0084; **Navy:** Mrs. Mary Arndt, Acting Director, Department of the Navy, Real Estate Services, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE., Suite 1000,

Washington, DC 20374–5065; (202) 685–9305; (These are not toll-free numbers).

Dated: May 1, 2008.

Mark R. Johnston,

Deputy Assistant Secretary for Special Needs.

**Title V, Federal Surplus Property Program
Federal Register Report for 05/09/2008**

Suitable/Available Properties

Building

New York

Federal Building

Brinkerhoff/Margaret Streets

Plattsburgh NY 12901

Landholding Agency: GSA

Property Number: 54200820005

Status: Surplus

GSA Number: 1–G–NY–0898–1A

Comments: 13,833 sq. ft., eligible for National Register of Historic Places w/National Ranking of 5, most recent use—office, federal tenants to relocate in August 2008

Oregon

Air Center Bldg.

1740 SE Ochoco Way

Redmond OR 97756

Landholding Agency: GSA

Property Number: 54200820006

Status: Surplus

GSA Number: 9–A–OR–766

Comments: 1728 sq. ft., most recent use—office

20 acres

Cow Hollow Park

Nyssa OR 97913

Landholding Agency: GSA

Property Number: 54200820007

Status: Excess

GSA Number: 9–I–OR–769

Comments: 20 acres w/shower/restroom, eligible for listing on Historic Register

Unsuitable Properties

Building

California

Bldgs. 51, 51A

Lawrence Berkeley Natl Lab

Berkeley CA 94720

Landholding Agency: Energy

Property Number: 41200820002

Status: Excess

Reasons: Extensive deterioration

Bldg. PH1230

Naval Base

Port Hueneme CA 93043

Landholding Agency: Navy

Property Number: 77200820021

Status: Unutilized

Reasons: Extensive deterioration

Missouri

Bldgs. 0071B, 0072

Lake City Army Ammo Plant

Independence MO 64056

Landholding Agency: Army

Property Number: 21200820001

Status: Unutilized

Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Oregon

5 Bldgs.

Keeney Camp

Malheur National Forest

John Day Co: Sherman OR 97845

Landholding Agency: GSA

Property Number: 54200820008

Status: Surplus

GSA Number: 9–A–OR–76,7

Reasons: Extensive deterioration

Rhode Island

Bldg. 1A–CC

Naval Station

Newport RI 02841

Landholding Agency: Navy

Property Number: 77200820022

Status: Excess

Reasons: Secured Area

[FR Doc. E8–10009 Filed 5–8–08; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R4–ES–2008–N0077; ABC Code: F2]

Expansion of a Young Men's Christian Association Facility in Volusia County, FL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice: Receipt of application for an incidental take permit; request for comments.

SUMMARY: We, the Fish and Wildlife Service (Service), announce the availability of an Incidental Take Permit (ITP) Application and Habitat Conservation Plan (HCP). The Deltona Young Men's Christian Association Facility (Deltona YMCA) (applicant) requests an ITP for a 2-year duration under the Endangered Species Act of 1973, as amended (Act). The applicant anticipates taking approximately 0.30 acre of Florida scrub-jay (*Alphelocoma coerulescens*)—occupied habitat incidental to expansion of an already existing YMCA facility in Volusia County, Florida (project). The applicant's HCP describes the mitigation and minimization measures the applicant proposes to address the effects of the project to the scrub-jay.

DATES: We must receive any written comments on the ITP application and HCP on or before June 9, 2008.

ADDRESSES: If you wish to review the application and HCP, you may write the Field Supervisor at our Jacksonville Field Office, 6620 Southpoint Drive South, Suite 310, Jacksonville, FL 32216, or make an appointment to visit during normal business hours. If you wish to comment, you may mail or hand deliver comments to the Jacksonville Field Office, or you may e-mail comments to paula_sisson@fws.gov. For

more information on reviewing documents and public comments and submitting comments, see **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT:

Paula Sisson, Fish and Wildlife Biologist, Jacksonville Field Office (see **ADDRESSES**); telephone: 904/232–2580, ext. 126.

SUPPLEMENTARY INFORMATION:

Public Availability of Comments

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Please reference permit number TE176788–0 for Deltona YMCA in all requests or comments. Please include your name and return address in your e-mail message. If you do not receive a confirmation from us that we have received your e-mail message, contact us directly at the telephone number listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The Florida scrub-jay (scrub-jay) is found exclusively in peninsular Florida and is restricted to xeric upland communities (predominately in oak-dominated scrub with open canopies) of the interior and Atlantic coast sand ridges. Increasing urban and agricultural development has resulted in habitat loss and fragmentation, which have adversely affected the distribution and numbers of scrub-jays. Remaining habitat is largely degraded due to the exclusion of fire, which is needed to maintain xeric uplands in conditions suitable for scrub-jays. The total estimated population is between 7,000 and 11,000 individuals.

Applicant's Proposal

The applicant is requesting take of approximately 0.30 ac of occupied scrub-jay habitat incidental to the project. The 10-ac project is located within Section 08, Township 18 South, Range 31 East, Volusia County. The proposed project currently includes the expansion of the existing YMCA facility to include a new child care facility, administrative offices, exercise room, indoor basketball courts, and additional parking. The applicant proposes to mitigate for the take of the Florida scrub-jay by protecting and managing

1.3 ac of onsite habitat and creating a public education area within the preserve to serve the surrounding community. As minimization for impacts to the species, clearing activities during project construction will occur outside the scrub-jay nesting season (March 1–June 30) if active nests are found onsite.

We have determined that the applicant's proposal, including the proposed mitigation and minimization measures, would have minor or negligible effects on the species covered in the HCP. Therefore, the ITP is a "low-effect" project and qualifies for categorical exclusions under the National Environmental Policy Act (NEPA), as provided by the Department of the Interior Manual (516 DM 2 Appendix 1 and 516 DM 6 Appendix 1). This preliminary information may be revised based on our review of public comments that we receive in response to this notice. A low-effect HCP is one involving (1) minor or negligible effects on federally listed or candidate species and their habitats, and (2) minor or negligible effects on other environmental values or resources.

We will evaluate the HCP and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act (16 U.S.C. 1531 *et seq.*). If we determine that the application meets those requirements, we will issue the ITP for incidental take of the scrub-jay. We will also evaluate whether issuance of the section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in the final analysis to determine whether or not to issue the ITP.

Authority: We provide this notice under Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

Dated: April 24, 2008.

David L. Hankla,

Field Supervisor, Jacksonville Field Office.

[FR Doc. E8–10361 Filed 5–8–08; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–5420–FR–M131; ARES 54992]

Notice of Application for Recordable Disclaimer of Interest in Lands; Searcy County, Arkansas

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An application has been filed with the Bureau of Land Management (BLM) by Robert G. Hooper for a Recordable Disclaimer of Interest from the United States for certain land in Searcy County, Arkansas. This notice is intended to inform the public of the pending application.

DATES: Comments on this action should be received by August 7, 2008.

ADDRESSES: Comments must be filed with Steven R. Wells, Deputy State Director, Division of Natural Resources, BLM—Eastern States, 7450 Boston Boulevard, Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Ida V. Doup, Chief, Branch of Lands and Realty, at the above stated address or at 703–440–1541.

SUPPLEMENTARY INFORMATION: Pursuant to Section 315 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1745), the surface owner, Robert G. Hooper, filed an application for a Disclaimer of Interest for the land described as follows:

Fifth Principal Meridian

T. 16 N., R. 17 W.,
Sec. 1, NE $\frac{1}{4}$ NW $\frac{1}{4}$.

The area described contains 43.57 acres, more or less, in Searcy County. The BLM—Eastern States' review of the land status records indicates that a patent was issued to R.B. Weaver, E.S. Weaver, R.F. King, H.C. King, and R.D. Ailly for the Eureka Placer Mine, Buffalo District, Final Certificate Number 24, dated November 28, 1893. A copy of the land patent certificate cannot be located. All available land status records indicate a patent has been issued and title has transferred into private ownership. It is the opinion of this office that the Federal Government no longer has an interest in this 43.57-acre tract. Robert G. Hooper, surface owner, is seeking to clear title to demonstrate that the United States has transferred ownership to the original patentee.

All persons who wish to present comments, suggestions, or objections in connection with the pending application and proposed disclaimer may do so by writing to Stephen R. Wells, Deputy Assistant Director, Division of Natural Resources at the above address. Comments, including names and street addresses of commentors, will be available for public review at the BLM—Eastern States Office (see address above), during regular business hours, Monday through Friday, except holidays. Before including your address, phone number, e-mail address,

or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

If no valid objection is received, this action will be approved and will clear a cloud on the title by stating that the United States does not have a valid interest in this land.

Authority: 43 CFR 1864.2(a).

Terry Lewis,

Acting State Director, Eastern States.

[FR Doc. E8–10365 Filed 5–8–08; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

National Park Service

[AZ–100–07–1610–DR–241E]

Notice of Availability of Four Records of Decision and Three Approved Resource Management Plans for the Arizona Strip Field Office, Vermilion Cliffs National Monument, and Grand Canyon-Parashant National Monument (BLM Portion), and Approved General Management Plan for Grand Canyon-Parashant National Monument (NPS Portion), Arizona

AGENCY: Bureau of Land Management, Interior. National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: In accordance with the National Environmental Policy Act, the Federal Land Policy and Management Act, and the National Park and Recreation Act of 1978, and Bureau of Land Management (BLM) and National Park Service (NPS) policies, the BLM and NPS announce the availability of the two Records of Decision (RODs) for the Approved Resource Management Plan/General Management Plan for the jointly-managed Grand Canyon-Parashant National Monument (Parashant), located in Mohave County, Arizona. Separate RODs for the BLM and NPS decisions in the Approved Resource Management Plan/General Management Plan have been signed by the BLM Arizona State Director, and by the NPS Pacific West Regional Director, respectively, for each agency's decisions contained in the Approved Resource Management Plan/General Management

Plan. The BLM also announces the availability of the ROD/Approved Resource Management Plan for the Vermilion Cliffs National Monument (Vermilion) and the ROD/Approved Resource Management Plan for the Arizona Strip Field Office (ASFO), located in Mohave and Coconino Counties, Arizona. Both of these areas are managed solely by the BLM.

ADDRESSES: The RODs/Approved Plans and associated documents or information may be viewed and downloaded at http://www.blm.gov/az/LUP/strip/strip_plan.htm or at <http://www.nps.gov/lame/parkmgmt/docs.htm>. Copies of the BLM and NPS RODs are available upon request from the Arizona Strip District Office, Bureau of Land Management, or the National Park Service, both located at 345 East Riverside Drive, St. George, Utah 84790. Copies of the three Approved Plans are also available at the same address. Please indicate which ROD/Approved Plan you are requesting. Reference copies of each ROD/Approved Plan are available for review during regular business hours at the following locations:

Lake Mead National Recreation Area Office, 601 Nevada Highway, Boulder City, Nevada 89005; BLM Arizona State Office (AZ-931), One North Central, Suite 800, Phoenix, Arizona 85004-4427; Boulder City Library, 701 Adams Blvd, Boulder City, Nevada 89005; Flagstaff Public Library, 300 West Aspen, Flagstaff, Arizona 86001; Fredonia Town Library, 130 North Main, Fredonia, Arizona 86022; Kanab City Library, 374 North Main Street, Kanab, Utah 84741; Mohave County Library, 3269 North Burbank Street, Kingman, Arizona 86401; Page City Library, 697 Vista Avenue, Page, Arizona 86040; and Washington County Library, 88 West 100 South, St. George, Utah 84770.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: District Manager, Arizona Strip District or Superintendent, Grand Canyon-Parashant National Monument, 345 East Riverside Drive, St. George, Utah 84790; telephone 435-688-3200; e-mail Arizona_Strip@blm.gov.

SUPPLEMENTARY INFORMATION: The Parashant was established by Presidential Proclamation on January 11, 2000. The Parashant is cooperatively managed by the BLM and the NPS. It encompasses 1,048,325 acres in Mohave County, Arizona, of which 808,744 acres are administered by the BLM and 208,447 acres are administered by the NPS. The Vermilion was established by Presidential Proclamation on November 9, 2000. The Vermilion covers 293,689 acres in Coconino County, Arizona, and is administered solely by the BLM. The remainder of the BLM-administered lands is in the ASFO, which encompass approximately 1,981,000 acres located in Mohave and Coconino Counties, Arizona, north of the Grand Canyon and is situated almost entirely between the two National Monuments.

Ten Cooperating Agencies assisted the BLM and the NPS in this planning effort: Arizona Game and Fish Department; Arizona Department of Transportation; Coconino County, Arizona; Mohave County, Arizona; Kane County, Utah; Washington County, Utah; Kaibab Paiute Tribe; Town of Colorado City, Arizona; Town of Fredonia, Arizona; and the Federal Highway Administration.

The RODs/Approved Plans were developed with broad public and Cooperating Agency participation through a 5-year collaborative planning process. These RODs/Approved Plans address management on approximately 2,768,247 acres of BLM-administered land and 208,447 acres of NPS-administered land. The RODs/Approved Plans contain both land use planning decisions and implementing decisions, to achieve desired future conditions and to provide planning structure to facilitate the management of the Parashant, Vermilion, and ASFO. Major resources and activities addressed by the BLM in their RODs/Approved Resource Management Plans include travel management; wilderness characteristics areas; cultural resources; geological resources; recreation and environmental education including interpretation; visual resources; vegetation management including ponderosa pine restoration; livestock grazing; areas of critical environmental concern; special status species; and wildlife management. Major resources and activities addressed by the NPS in its ROD/Approved General Management Plan include travel management; wilderness characteristics areas; cultural resources; geological resources; recreation and environmental education including interpretation; visual resources and cultural landscapes; soundscapes; vegetation management;

control of non-native invasive species; livestock grazing; special status species; and wildlife management. As noted in the Final Environmental Impact Statement (FEIS), the NPS determined that none of the actions proposed would lead to impairment of park resources.

The Approved Plans are essentially the same decisions as contained in Alternative E in the Arizona Strip Proposed Plan/FEIS, published in February 2007. The BLM received seven protests on BLM land use plan decisions in the Proposed Plan/FEIS. After careful consideration of all points raised in those protests, the BLM Director concluded that the BLM Arizona State Director and the Arizona Strip District Manager followed all applicable planning procedures, laws, regulations, and policies, and considered all relevant resource information and public input in developing the proposed plan. None of the protests to BLM raised salient points pertaining to NPS decisions for lands and resources in Parashant. No inconsistencies with State or local plans, policies, or programs were identified during the Governor's consistency review of the Proposed Plan/FEIS. As a result, only minor editorial modifications were made in preparing the RODs/Approved Plans.

The decisions identifying designated routes of travel for motorized vehicles on BLM-administered lands are implementation decisions appealable under 43 CFR Part 4, subpart E. Any party adversely affected by the BLM's decision(s) to identify, evaluate, define, delineate and/or select specific routes as available for motorized use within designated areas in either the Parashant or Vermilion Management Plans may appeal within 30 days of publication of this Notice of Availability pursuant to 43 CFR, part 4, subpart E. The appeal should state the specific BLM route(s), as identified in the Approved Plans for the Parashant or Vermilion, on which the decision is being appealed. The appeal must be filed with the Arizona Strip District Manager at the above listed address. Please consult 43 CFR part 4 for further information on the IBLA appeals process.

There is no appeal process for NPS decisions in the NPS ROD and Parashant Approved Resource Management Plan/General Management Plan. Implementation of NPS decisions may begin upon publication of this Notice of Availability for the Parashant

NPS ROD/Approved Plan in the **Federal Register**.

Helen M. Hankins,

Associate State Director, BLM Arizona.

Jonathan B. Jarvis,

Regional Director, NPS Pacific West Region.

[FR Doc. E8-10376 Filed 5-8-08; 8:45 am]

BILLING CODE 4310-84-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-110]

Meeting of the Central California Resource Advisory Council

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management (BLM) Central California Resource Advisory Council (RAC) will meet as indicated below.

DATES: The meetings will be held Friday and Saturday, June 13 and 14, 2008, at the El Dorado Hills Fire Department, 1050 Wilson Blvd., El Dorado Hills, California. On June 13, the RAC will convene at 8 a.m. for a business meeting, followed by a field trip to Pine Hill Preserve in El Dorado County beginning at noon. Members of the public are welcome to attend the tour and meeting. Field tour participants must provide their own transportation and lunch. The RAC will resume its meeting at 8:30 a.m. on June 14 in the El Dorado Hills Fire Department meeting room. Time for public comment is reserved from 9:30 a.m. to 10:30 a.m. on June 14. The public comment time may be extended if needed.

FOR FURTHER INFORMATION CONTACT: BLM Folsom Field Office Manager Bill Haigh or BLM Central California Public Affairs Officer David Christy, both at (916) 985-4474.

SUPPLEMENTARY INFORMATION: The twelve-member Central California RAC advises the Secretary of the Interior, through the BLM, on a variety of public land issues associated with public land management in the Central California. At this meeting, agenda items include discussion of issues regarding the wildland-urban interface at Pine Hill Preserve. The RAC will also hear status reports from BLM managers for the Folsom, Hollister, Bakersfield and Bishop field offices. The meeting is open to the public. The public may present written comments to the RAC, and time will be allocated for hearing

public comments. Depending on the number of persons wishing to comment and the time available, the time for individual oral comments may be limited. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should contact the BLM as indicated above.

Charge Code: CA 110-1820-XX

Dated: May 1, 2008.

David Christy,

Public Affairs Officer.

[FR Doc. E8-10338 Filed 5-8-08; 8:45 am]

BILLING CODE 4310-HC-P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-910-08-1150-PH-24-1A]

Notice of Utah's Resource Advisory Committee Meeting

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Notice of Utah's Resource Advisory Committee (RAC) Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and The Federal Advisory Committee Act of 1972 (FACA), the U.S. Department of the Interior, Bureau of Land Management's (BLM) Utah Resource Advisory Committee (RAC) will meet as indicated below.

DATES: The Utah Resource Advisory Committee (RAC) will meet June 26 (8:30 a.m.-5 p.m.) and June 27, 2008, (8 a.m.-Noon) in Salt Lake City, Utah.

ADDRESSES: On June 26, the RAC will meet at the BLM's Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah, for a briefing and field tour of 5-Mile Pass. On June 27, the RAC will meet at the BLM's Utah State Office, Monument Conference Room, 440 West 200 South, Suite 500, Salt Lake City, Utah, for a business meeting.

FOR FURTHER INFORMATION: Contact Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, P.O. Box 45155, Salt Lake City, Utah, 84145-0155; phone (801) 539-4195.

SUPPLEMENTARY INFORMATION: The 15-member Council advises the Secretary of the Interior, through the Bureau of Land Management, on a variety of planning and management issues associated with public land management in Utah. On June 26 (8:30 a.m.-5 p.m.), the Resource Advisory Committee will meet at the Salt Lake Field Office for a field tour of the 5-Mile Pass area looking at management

concerns, discuss the State Parks partnership, draft plan amendment, and rural and urban interface issues. On June 27 (8 a.m.-Noon), the Council will conduct a business meeting at the BLM Utah State Office, Monument Conference Room, Suite 500. Topics of discussion include a follow up session on the field tour; RMP updates; oil and gas updates (as it relates to impacts to recreation and cultural resources); and recreational user-purchased insurance coverage. On June 27, a half-hour public comment period is scheduled to begin from 11:15 a.m.-11:45 a.m. Written comments may be sent to the Bureau of Land Management addressed listed above. All meetings are open to the public; however, transportation, lodging, and meals are the responsibility of the participating public.

Dated: May 5, 2008.

Selma Sierra,

State Director.

[FR Doc. E8-10364 Filed 5-8-08; 8:45 am]

BILLING CODE 4310-DQ-P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Quarterly Status Report of Water Service, Repayment, and Other Water-Related Contract Negotiations

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given of contractual actions that have been proposed to the Bureau of Reclamation (Reclamation) and are new, modified, discontinued, or completed since the last publication of this notice on March 4, 2008. This notice is one of a variety of means used to inform the public about proposed contractual actions for capital recovery and management of project resources and facilities consistent with section 9(f) of the Reclamation Project Act of 1939. Additional announcements of individual contract actions may be published in the **Federal Register** and in newspapers of general circulation in the areas determined by Reclamation to be affected by the proposed action.

ADDRESSES: The identity of the approving officer and other information pertaining to a specific contract proposal may be obtained by calling or writing the appropriate regional office at the address and telephone number given for each region in the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: Michelle Kelly, Contract Services Office,

Bureau of Reclamation, PO Box 25007, Denver, Colorado 80225-0007; telephone 303-445-2888.

SUPPLEMENTARY INFORMATION: Consistent with section 9(f) of the Reclamation Project Act of 1939 and the rules and regulations published in 52 FR 11954, April 13, 1987 (43 CFR 426.22), Reclamation will publish notice of proposed or amendatory contract actions for any contract for the delivery of project water for authorized uses in newspapers of general circulation in the affected area at least 60 days prior to contract execution. Announcements may be in the form of news releases, legal notices, official letters, memorandums, or other forms of written material. Meetings, workshops, and/or hearings may also be used, as appropriate, to provide local publicity. The public participation procedures do not apply to proposed contracts for the sale of surplus or interim irrigation water for a term of 1 year or less. Either of the contracting parties may invite the public to observe contract proceedings. All public participation procedures will be coordinated with those involved in complying with the National Environmental Policy Act. Pursuant to the "Final Revised Public Participation Procedures" for water resource-related contract negotiations, published in 47 FR 7763, February 22, 1982, a tabulation is provided of all proposed contractual actions in each of the five Reclamation regions. When contract negotiations are completed, and prior to execution, each proposed contract form must be approved by the Secretary of the Interior, or pursuant to delegated or redelegated authority, the Commissioner of Reclamation or one of the regional directors. In some instances, congressional review and approval of a report, water rate, or other terms and conditions of the contract may be involved.

Public participation in and receipt of comments on contract proposals will be facilitated by adherence to the following procedures:

1. Only persons authorized to act on behalf of the contracting entities may negotiate the terms and conditions of a specific contract proposal.

2. Advance notice of meetings or hearings will be furnished to those parties that have made a timely written request for such notice to the appropriate regional or project office of Reclamation.

3. Written correspondence regarding proposed contracts may be made available to the general public pursuant to the terms and procedures of the Freedom of Information Act, as amended.

4. Written comments on a proposed contract or contract action must be submitted to the appropriate regional officials at the locations and within the time limits set forth in the advance public notices.

5. All written comments received and testimony presented at any public hearings will be reviewed and summarized by the appropriate regional office for use by the contract approving authority.

6. Copies of specific proposed contracts may be obtained from the appropriate regional director or his designated public contact as they become available for review and comment.

7. In the event modifications are made in the form of a proposed contract, the appropriate regional director shall determine whether republication of the notice and/or extension of the comment period is necessary.

Factors considered in making such a determination shall include, but are not limited to (i) the significance of the modification, and (ii) the degree of public interest which has been expressed over the course of the negotiations. At a minimum, the regional director shall furnish revised contracts to all parties who requested the contract in response to the initial public notice.

Definitions of Abbreviations Used in This Document

BCP Boulder Canyon Project.
Reclamation Bureau of Reclamation.
CAP Central Arizona Project.
CVP Central Valley Project.
CRSP Colorado River Storage Project.
FR Federal Register.
IDD Irrigation and Drainage District.
ID Irrigation District.
M&I Municipal and Industrial.
NMISC New Mexico Interstate Stream Commission.
O&M Operation and Maintenance.
P-SMBP Pick-Sloan Missouri Basin Program.
PPR Present Perfected Right.
RRA Reclamation Reform Act of 1982.
SOD Safety of Dams.
SRPA Small Reclamation Projects Act of 1956.
USACE U.S. Army Corps of Engineers.
WD Water District.

Pacific Northwest Region: Bureau of Reclamation, 1150 North Curtis Road, Suite 100, Boise, Idaho 83706-1234, telephone 208-378-5344.

Completed contract actions:

11. Three irrigation water user entities, Boise Project, Idaho: Amendatory repayment contract with New Union Ditch Company to reduce contract by 500 acre-feet of Lucky Peak

Reservoir storage space and new contracts with Wilderness Ranch Owners' Association for 200 acre-feet and with Osprey Subdivision Project Owners' Association for 300 acre-feet of Lucky Peak Reservoir storage space. The contracts have been executed.

12. Six irrigation water user entities, Rogue River Basin Project, Oregon: Long-term contracts for exchange of water service with six entities for the provision of up to 2,634 acre-feet of stored water from Applegate Reservoir (USACE project) for irrigation use in exchange for the transfer of out-of-stream water rights from the Little Applegate River to instream flow rights with the State of Oregon for instream flow use. The contracts have been executed.

Mid-Pacific Region: Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825-1898, telephone 916-978-5250.

Modified contract actions:

4. El Dorado County Water Agency, CVP, California: M&I water service contract to supplement existing water supply: Up to 15,000 acre-feet for El Dorado County Water Agency authorized by Pub. L. 101-514. The supply would be subcontracted to El Dorado ID and Georgetown Divide Public Utility District.

7. El Dorado ID, CVP, California: Execution of long-term Warren Act contracts for conveyance of nonproject water (one contract for Weber Reservoir and pre-1914 ditch rights in the amount of 4,560 acre-feet and one contract for Project 184 water in the amount of 17,000 acre-feet). The contracts will allow CVP facilities to be used to convey nonproject water to El Dorado ID for use within its service area.

16. Sacramento Suburban WD, CVP, California: Execution of a long-term Warren Act contract for conveyance of up to 29,000 acre-feet of nonproject water. The contract will allow CVP facilities to be used to convey nonproject water provided from the Placer County Water Agency to Sacramento Suburban WD for use within its service area.

Lower Colorado Region: Bureau of Reclamation, PO Box 61470 (Nevada Highway and Park Street), Boulder City, Nevada 89006-1470, telephone 702-293-8192.

Completed contract actions:

7. All-American Canal, BCP, California: Agreement among Reclamation, Imperial ID, Metropolitan WD, and Coachella Valley WD for the federally funded construction of a reservoir(s) and associated facilities that will improve the regulation and management of Colorado River water.

Agreement was executed on December 13, 2007.

13. City of Yuma, BCP, Arizona: Amendment to extend contract to allow for the diversion of water through Yuma Project facilities for an additional term of 10 years. Contract was executed on January 8, 2008.

Upper Colorado Region: Bureau of Reclamation, 125 South State Street, Room 6107, Salt Lake City, Utah 84138-1102, telephone 801-524-3864.

New contract actions:

30. Florida Water Conservancy District, Florida Project, Colorado: The District has requested a long-term water service contract for M&I water from the Florida Project.

31. Strawberry High Line Canal Company, Strawberry Valley Project, Utah: The Company has requested a contract for carriage of nonproject water in Strawberry Valley Project canals.

32. Jordan Valley Water Conservancy District, Metropolitan WD of Salt Lake and Sandy, and others; Provo River Project, Utah: The entities have requested contracts for storage of nonproject water in Deer Creek Reservoir.

Completed contract action:

29. Carlsbad ID and New Mexico Interstate Stream Commission, Carlsbad Project, New Mexico: Contract, for a 5-year term, for the District to perform phreatophyte (Salt Cedar) control and for the Commission to provide annual funding of \$150,000. Contract was executed on January 14, 2008.

Great Plains Region: Bureau of Reclamation, PO Box 36900, Federal Building, 316 North 26th Street, Billings, Montana 59101, telephone 406-247-7752.

New contract action:

39. Hanover ID, Boysen Unit, P-SMBP, Wyoming: Request for renewal of their long-term water service contract.

Modified contract actions:

11. Fryingpan-Arkansas Project, Colorado: Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District and the Colorado Springs Utilities.

36. Turtle Lake ID, Garrison Diversion Unit, North Dakota: Turtle Lake ID, water users, and individual irrigators have requested water service contracts, which may be short- or long-term under the Dakota Water Resources Act of 2000.

Discontinued contract action:

32. Hamlin Construction, Inc., Helena Valley Unit, P-SMBP, Montana: Request for a long-term water service contract for M&I purposes for up to 500 acre-feet per year.

Completed contract actions:

11. Fryingpan-Arkansas Project, Colorado: Consideration of requests for long-term contracts for the use of excess capacity in the Fryingpan-Arkansas Project from the Southeastern Colorado Water Conservancy District, the City of Aurora, and the Colorado Springs Utilities. The contract with the City of Aurora was executed on September 12, 2007.

24. Colorado River Water Conservation District, Ruedi Reservoir, Fryingpan-Arkansas Project, Colorado: Consideration of a request for a second round of water sales or repayment contract from the regulatory capacity of Ruedi Reservoir for up to 5,000 acre-feet annually for M&I uses and also providing water to the endangered fish and supplementing in-stream flows. Contract was executed on December 28, 2007.

33. Richard Davis, Helena Valley Unit, P-SMBP, Montana: Request for a long-term water service contract for M&I purposes for up to 24 acre-feet per year. Contract was executed on January 1, 2008.

Dated: April 8, 2008.

Roseann Gonzales,

Director, Office of Program and Policy Services, Denver Office.

[FR Doc. E8-10347 Filed 5-8-08; 8:45 am]

BILLING CODE 4310-MN-P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337-TA-640]

In the Matter of Certain Short-Wavelength Light Emitting Diodes, Laser Diodes and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Granting Complainant's Motion To Amend the Complaint and the Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination ("ID") (Order No. 5) of the presiding administrative law judge ("ALJ") granting complainant's motion to amend the complaint and the notice of investigation.

FOR FURTHER INFORMATION: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3152. Copies of the ID and all other

nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810. General information concerning the Commission may also be obtained by accessing its Internet server (<http://www.usitc.gov>). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at <http://edis.usitc.gov>.

SUPPLEMENTARY INFORMATION: On March 25, 2008, the Commission instituted an investigation under section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, based on a complaint filed by Gertrude Neumark Rothschild of Hartsdale, New York, alleging a violation of section 337 in the importation, sale for importation, and sale within the United States after importation of certain short-wavelength light emitting diodes, laser diodes and products containing same that infringe certain claims of U.S. Patent No. 5,252,499. 73 FR 1575 (March 25, 2008). The complainant named numerous entities as respondents.

On April 1, 2008, complainant moved to amend the complaint and notice of investigation to (1) correct the name of the Samsung respondent entity from Samsung Group to Samsung Electronics Co., Ltd., and (2) add Ben Q Corporation as a respondent.

On April 15, 2008, the ALJ issued Order No. 5 granting complainant's motion. No party petitioned for review of Order No. 5. The Commission has determined not to review the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in section 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.42(h)).

By order of the Commission.

Issued: May 6, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-10349 Filed 5-8-08; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-1111 (Final)]

Glycine From India; Determination

On the basis of the record¹ developed in the subject investigation, the United States International Trade Commission (Commission) determines,² pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from India of glycine, provided for in subheading 2922.49 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce (Commerce) to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective March 30, 2007, following receipt of a petition filed with the Commission and Commerce by GEO Specialty Chemicals, Inc., Lafayette, IN. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by Commerce that imports of glycine from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the final phase of the Commission's investigation 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 28, 2007 (72 FR 55247). The hearing was held in Washington, DC, on November 28, 2007, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 5, 2008. The views of the Commission are contained in USITC Publication 3997 (May 2008), entitled *Glycine from India: Investigation No. 731-TA-1111 (Final)*.

By order of the Commission.

¹ The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

² Commissioners Irving A. Williamson and Dean A. Pinkert dissenting.

Issued: May 5, 2008.

Marilyn R. Abbott,

Secretary to the Commission.

[FR Doc. E8-10352 Filed 5-8-08; 8:45 am]

BILLING CODE 7020-02-P

INTERNATIONAL TRADE COMMISSION

[USITC SE-08-010]

Government in the Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 16, 2008 at 11 a.m.

PLACE: Room 101, 500 E Street SW., Washington, DC 20436, *Telephone:* (202) 205-2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meetings: none.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 701-TA-455 and 731-TA-1149 and 1150 (Certain Circular Welded Carbon Quality Steel Line Pipe from China and Korea)—briefing and vote. (The Commission is currently scheduled to transmit its determinations to the Secretary of Commerce on or before May 19, 2008; Commissioners' opinions are currently scheduled to be transmitted to the Secretary of Commerce on or before May 27, 2008.)

5. Outstanding action jackets: none.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: May 6, 2008.

William R. Bishop,

Hearings and Meetings Coordinator.

[FR Doc. E8-10357 Filed 5-8-08; 8:45 am]

BILLING CODE 7020-02-P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—PXI Systems Alliance, Inc.

Notice is hereby given that, on March 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), PXI Systems Alliance, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade

Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ranatec Instrument AB, Flöjelbergsgatan, Mölndal, SWEDEN; One Stop Systems, Inc., Escondido, CA; and BAE Systems, San Diego, CA have been added as parties to this venture. Also, MEN Micro, Inc., Ambler, PA has withdrawn as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PXI Systems Alliance, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 22, 2000, PXI Systems Alliance, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 8, 2001 (66 FR 13971).

The last notification was filed with the Department on January 8, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10066).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-10133 Filed 5-8-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Green Building Certification Institute

Notice is hereby given that, on March 27, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Green Building Certification Institute ("GBCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the name and principal place of business of the standards development organization and (2) the nature and scope of its standards development activities. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the name and principal place of

business of the standards development organization: Green Building Certification Institute, Washington, DC. The nature and scope of GBCI's standards development activities are: The development of consensus standards for competency in measuring and increasing the environmental efficiency of buildings and communities.

Patricia A. Brink,
Deputy Director of Operations, Antitrust Division.
[FR Doc. E8-10147 Filed 5-8-08; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—IMS Global Learning Consortium, Inc.

Notice is hereby given that, on March 31, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), IMS Global Learning Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Follett Corporation, Oak Brook, IL; Georgetown University, Washington, DC; IVIMEDS Consortium, Dundee, Scotland, UNITED KINGDOM; and Tekville.com, Inc., Kangman-ku, Seoul, REPUBLIC OF KOREA have been added as parties to this venture. Also, HarvestRoad Ltd., Perth, WA, AUSTRALIA; University of Wisconsin Madison, Madison, WI; Houghton Mifflin Company, Boston, MA; Sun Microsystems, Inc., Broomfield, CO; and ADL (Advanced Distributed Learning), Alexandria, VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and IMS Global Learning Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On April 7, 2000, IMS Global Learning Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the

Act on September 13, 2000 (65 FR 55283).

The last notification was filed with the Department on January 10, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 2008 (73 FR 7592).

Patricia A. Brink,
Deputy Director of Operations, Antitrust Division.
[FR Doc. E8-10143 Filed 5-8-08; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—LiMo Foundation

Notice is hereby given that, on March 27, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), LiMo Foundation ("LiMo") filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, TrollTech ASA, Oslo, NORWAY; Purple Labs SA, Le Bourget du Lac, FRANCE; Access Co., Ltd., Tokyo, JAPAN; Shenzhen Huawei Communication Technologies Co., Ltd., Shenzhen, PEOPLE'S REPUBLIC OF CHINA; Advanced Micro Devices, Inc., Markham, Ontario, CANADA; FueTrek Co., Ltd., Osaka, JAPAN; Samsung SDS, Seoul, REPUBLIC OF KOREA; Renases Technology Corporation, Tokyo, JAPAN; STMicroelectronics, Milan, ITALY; Open-Plug, Sophia Antipolis, FRANCE; and France Telecom S.A. (Orange Personal Communications Services Limited), Moulinaux, FRANCE, have been added as parties to this venture.

In addition, Celunite, Inc., changed its name to Azingo, Sunnyvale, CA.

No other changes have been made in either the membership or planned activity of this group research project. Membership in this group research project remains open, and LiMo intends to file additional written notifications disclosing all changes in membership.

On March 1, 2007, LiMo filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on April 9, 2007 (72 FR 17583).

The last notification was filed with the Department on January 15, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 25, 2008 (73 FR 10065).

Patricia A. Brink,
Deputy Director of Operations, Antitrust Division.
[FR Doc. E8-10135 Filed 5-8-08; 8:45 am]
BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Centric Operations Industry Consortium, Inc.

Notice is hereby given that, on March 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Network Centric Operations Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Iridium Satellite LLC, Bethesda, MD; AEG SPIN S.A., Warsaw, POLAND; AMPER Programas de Electronica y Comunicaciones, S.A., Getafe, Madrid, SPAIN; Bellcomm Information Systems, Madrid, SPAIN; Technopôle Defence & Security, Quebec City, Quebec, CANADA; HAVELSAN Hava Elektronik Sanayi ve Ticaret A.S., Ankara, TURKEY; and BEA Government Systems, McLean, VA have been added as parties to this venture.

Also, ANT's Software Inc., Burlingame, CA; Whitney, Bradley & Brown, Inc., Vienna, VA; Cubic Defense Applications, Inc., San Diego, CA; and Argon ST, Inc., Fairfax, VA have withdrawn as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Network Centric Operations Industry Consortium, Inc. intends to file additional written notifications disclosing all changes in membership.

On November 19, 2004, Network Centric Operations Industry Consortium, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal**

Register pursuant to Section 6(b) of the Act on February 2, 2005 (70 FR 5486).

The last notification was filed with the Department on January 8, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on February 8, 2008 (73 FR 7592).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-10136 Filed 5-8-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Open SystemC Initiative

Notice is hereby given that, on March 25, 2008, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Open SystemC Initiative ("OSCI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Maple Design Automation Co., Ltd., Gwacheon, REPUBLIC OF KOREA; Texas Instruments Incorporated, Stafford, TX; and Virtutech, Inc., San Jose, CA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and OSCI intends to file additional written notifications disclosing all changes in membership.

On October 9, 2001, OSCI filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on January 3, 2002 (67 FR 350).

The last notification was filed with the Department on December 11, 2007. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on January 28, 2008 (73 FR 4918).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-10146 Filed 5-8-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Ultrafine Grained Titanium for Near-Net Shape Forging—A Pathway to Titanium Market Expansion

Notice is hereby given that, on December 17, 2007, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Ultrafine Grained Titanium for Near-net Shape Forging—A Pathway to Titanium Market Expansion has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties to the venture and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Pursuant to Section 6(b) of the Act, the identities of the parties to the venture are: ATI Allvac, Monroe, NC; and GE Global Research, Niskayuna, NY. The general area of this group research project's planned activity is to develop a novel ultrafine grained titanium billet process that will enable both near-net shape forging of standard alloys into complex components for aviation, energy, transportation and military markets.

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E8-10139 Filed 5-8-08; 8:45 am]

BILLING CODE 4410-11-M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 4-08]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings for the transaction of Commission business and other matters specified, as follows:

DATE AND TIME: Thursday, May 29, 2008, at 1 p.m.

SUBJECT MATTER: Issuance of Proposed Decisions, Amended Proposed

Decisions, and Orders in claims against Albania.

STATUS: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616-6988.

Dated at Washington, DC.

Mauricio J. Tamargo,

Chairman.

[FR Doc. 08-1247 Filed 5-7-08; 2:43 pm]

BILLING CODE 4410-01-P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

[Application Nos. D-11363 & D-11435]

Proposed Exemptions Involving: D-11363—Citation Box and Paper Co. Profit Sharing Plan and Retirement Trust; and D-11435—Merrill Lynch & Co., Inc. and BlackRock, Inc.

AGENCY: Employee Benefits Security Administration, Labor

ACTION: Notice of proposed exemption.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemption, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. **ADDRESSES:** All written comments and requests for a hearing (at least three

copies) should be sent to the Employee Benefits Security Administration (EBSA), Office of Exemption Determinations, Room N-5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. _____, stated in each Notice of Proposed Exemption. Interested persons are also invited to submit comments and/or hearing requests to EBSA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: moffitt.betty@dol.gov, or by FAX to (202) 219-0204 by the end of the scheduled comment period. The application for exemption and the comments received will be available for public inspection in the Public Documents Room of the Employee Benefits Security Administration, U.S. Department of Labor, Room N-1513, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemption was requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, this notice of proposed exemption is issued solely by the Department.

The application contains representations with regard to the proposed exemption which is summarized below. Interested persons are referred to the application on file with the Department for a complete statement of the facts and representations.

Citation Box and Paper Co. Profit Sharing Plan and Retirement Trust (the Plan), Located in Chicago, Illinois

[Exemption Application Number: D-11363].

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570 Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a)(1)(A) and (D), and sections 406(b)(1) and (b)(2) of the Act, and the sanctions resulting from the application of section 4975 of the Code, by reason of sections 4975(c)(1)(A), (D), and (E) of the Code, shall not apply to the proposed sale of improved real property (the Property) by the Plan to a partnership to be comprised of Anthony J. Kostiuk (the Applicant and Plan Fiduciary), Anthony L. Kostiuk, Edmund Chmiel, Andre Frydl, and David Marinier, each of whom is a party in interest with respect to the Plan, provided that the following conditions are satisfied:

(a) The sale is a one-time transaction for cash;

(b) As a result of the sale, the Plan receives the greater of: (i) \$975,000; (ii) The fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser; or (iii) The cost to the Plan to acquire and hold the Property;

(c) The Plan pays no commissions, fees or other expenses in connection with the sale;

(d) The terms and conditions of the sale are at least as favorable as those obtainable in an arm's length transaction with an unrelated third party;

(e) With respect to any lease payments for the occupancy of the Property that were made by the Citation Box and Paper Co. (the Company) to the Plan on or after July 1, 1996 and which (in the opinion of an MAI-certified, qualified independent appraiser) amounted to less than the fair market rental value of the Property at the time of such payment, the Company reimburses the Plan, prior to publication of a final grant of this requested prohibited transaction exemption, for the full amount of all such rental shortfalls in the form of a lump sum payment in arrears plus interest as calculated in conformity with the requirements of section 5(b)(5) of the Department's Voluntary Fiduciary Correction (VFC) Program described at 71 FR 20262 (April 19, 2006); and

(f) To the extent that there are rental shortfalls referenced in paragraph (e), the Applicant shall provide the Department with all relevant documentation pertaining to the calculation of such shortfall (including

the fair market rental value of the Property for each applicable lease year, the amount of the rental shortfall for each year, the interest attributable to the rental shortfall for each year, and proof that the reimbursement was paid to the Plan) prior to publication of a final grant of this requested prohibited transaction exemption.

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan sponsored by the Citation Box and Paper Co. (the Company), which is headquartered in Chicago, Illinois. As of June 30, 2006, the Plan had approximately 34 participants and total assets of approximately \$3,107,545. The Plan's current and sole trustee is the Applicant, who is also a participant in the Plan and the owner of the Company. Anthony L. Kostiuk, Edmund Chmiel, Andre Frydl, and David Marinier are also participants in the Plan and, together with the Applicant, intend to establish a partnership that will purchase a parcel of improved real property (the Property), located at 4700 West Augusta Boulevard in Chicago, Illinois, from the Plan. The Applicant states that, in submitting this exemption application to the Department, he is authorized to represent the interests of his intended co-partners (Messrs. A. L. Kostiuk, Chmiel, Frydl, and Marinier) in the acquisition of the Property from the Plan.

2. The Applicant represents that the Property covers a gross area of 76,444 square feet, and is irregular in shape. The Applicant represents that the Property was acquired by the Plan from the Company on November 18, 1971 at a cost of \$294,000.¹ The Property contains a two-story loft industrial structure (the Building) that houses the Company's warehouse and office facilities. The Applicant represents that the surface area of the Building at ground level totals 41,821 square feet.

The Applicant represents that a parcel of land adjacent to the Property (the Adjacent Parcel) previously owned by the Belt Railway Company (the Railway) of Chicago was purchased in 2005 by

¹ The Applicant has provided a copy of the 1984 exemption application (the 1984 Application) submitted on behalf of the Plan which culminated in the grant of PTE 85-7. The 1984 Application states that the Property was originally purchased by the Plan in 1971 for a price of \$294,000. According to the Applicant, the 1984 Notice of Proposed Exemption (49 FR 43131, October 26, 1984) contains a typographical error, because it states that the Property was acquired by the Plan for \$249,000. In addition, the Notice of Proposed Exemption states that the Property is approximately 76,000 square feet in area; In the current application, as noted above, the Applicant represents that the more precise figure is 76,444 square feet.

Citation Properties, LLC, a single-member limited liability company whose sole member is the Applicant. Prior to its acquisition by the Company, the Applicant represents that Adjacent Parcel had been leased to the Company by the Railway to provide parking facilities, as well as access to and egress from the Property. The Applicant represents that this lease predated the Department's issuance of a previous administrative exemption, PTE 85-7 (50 FR 1006, January 8, 1985), involving the Plan and the Property at issue in this proposal. The Applicant represents that the Adjacent Parcel is rectangular in shape and covers an area of 17,600 square feet. The Applicant represents that the Plan has not paid the Company or Citation Properties, LLC for the use of the Adjacent Parcel since it was acquired from the Railway. The Applicant also represents that the remaining lots adjacent to the Property are owned by persons unrelated to the Company, the Applicant, and the intended co-partners.

3. PTE 85-7 (the Original Exemption) permitted the Plan to lease the Property to the Company on a continuous basis on or after July 1, 1984, provided that "the terms and conditions of such leasing are at least as favorable to the Plan as those which the Plan could receive in a similar transaction with an unrelated party." The material facts and representations supporting the Department's grant of the Original Exemption were contained in a Notice of Proposed Exemption published on October 26, 1984, at 49 FR 43131 (the 1984 Notice).

4. Since it acquired the Property in 1971, the Plan has leased the Property to the Company on a continuous basis. Each of the successive lease agreements executed between the Plan and the Company since the time of the acquisition have been "absolute net leases" requiring the company to be responsible for all upkeep, repair, fire insurance premiums, and taxes on the Property. According to the Summary of Facts and Representations contained in the 1984 Notice published prior to the issuance of PTE 85-7, the Original Exemption was intended to permit the continued leasing (the Lease) of the Property by the Plan to the Company until June 30, 1994, with three five-year options from such date.

The 1984 Notice further stated that "[t]he Lease provides that for each three-year period during the initial ten-year term and during each option period thereafter the rental amount would be adjusted based upon an MAI appraisal report as to the then-current fair rental value." The terms of the original Lease

executed on January 16, 1984, stipulated that the fair rental value of the Property would be updated two months prior to July 1, 1987 (and triennially thereafter through the year 2008), by an independent, MAI-certified appraiser.

5. According to the 1984 Notice, an independent fiduciary (originally Unibanc Trust Company, subsequently replaced in March of 1986 by Harris Trust and Savings Bank (Harris Trust)) was to exercise authority and control over and have responsibility for the operation of the lease. In addition, the 1984 Notice represented that this fiduciary was to have sole discretion to monitor the lease and enforce the rights of the Plan under the terms and conditions of any such lease.² In April of 2004, the Company informed Harris Trust that it was exercising its option under the lease agreement to extend the term of the lease for an additional period of five years beginning on July 1, 2004, and ending on June 30, 2009.

The Applicant represents that Harris Trust notified the Company in April of 2004 that it would no longer serve as an independent fiduciary to the Plan after May 31, 2004, because it was no longer providing retirement plan services to its clients. This line of business was sold by Harris Trust to another financial institution, Wells Fargo Investment and Trust Company (Wells Fargo). Upon receiving notification of Harris Trust's withdrawal, the Plan Fiduciary contacted Wells Fargo to inquire about its willingness to serve as a replacement independent fiduciary with respect to the monitoring of the Lease described in the Original Exemption. While it did assume various retirement plan services for the Plan previously performed by Harris Trust, Wells Fargo declined the Plan Fiduciary's request to serve as an independent fiduciary with respect to the Lease. The Applicant represents that the Plan Fiduciary then approached two other financial institutions to serve as a replacement independent fiduciary. However, neither of these institutions expressed a willingness to serve the Plan in such a capacity.

6. As part of its current exemption application with the Department, the Plan Fiduciary submitted copies of a series of fair market rental appraisals of the Property for several prior lease terms. The applicant represents that each of these prior appraisals was prepared by a qualified, independent appraiser, Urban Real Estate Research, Inc. (Urban Real Estate) of Chicago,

Illinois, and signed by Mr. Arthur J. Murphy, MAI, a certified general real estate appraiser licensed by the State of Illinois. In each of these appraisal reports, Urban Real Estate reported that the Property covered an approximate area of 72,844 square feet. In providing this approximate square footage figure (which is less than the 76,444 square foot area represented by the Applicant as the accurate size of the Property), the Applicant represents that Urban Real Estate used the measurement from the Realty Atlas Map. The Applicant also represents that the Realty Atlas Map is almost illegible, and appeared to indicate that the Property occupied approximately 241.31 feet of frontage along the north side of West Augusta Boulevard. The Applicant further represents, however, that a plat of survey conducted by the National Survey Service, Inc. shows that the actual frontage is actually 291.31 feet, a 50-foot difference. The Applicant also acknowledges that, since at least July 1, 2006 (*i.e.*, during the pendency of the current prohibited transaction exemption request), the annual rent paid by the Company to the Plan for the Property has been less than the fair rental value of the Property as determined by Urban Real Estate.

7. The Applicant further represents that a second real estate appraiser, Muriello Appraisal and Consulting (Muriello Appraisal) of Elk Grove Village, Illinois, was retained by the Plan for the purpose of determining the fair market value of the Property in connection with the sale. The Applicant represents that Muriello Appraisal is independent of, and unrelated to, the Company, the Applicant, and the intended co partners. Muriello Appraisal represents that less than 1% of its gross annual revenue was derived from appraisal services performed for the Plan and the Company.

On June 18, 2007, an updated appraisal report was issued by Muriello Appraisal concerning the fair market value of the Property as of June 11, 2007. The updated report was signed by Frank J. Muriello, MAI (a general real estate appraiser licensed by the State of Illinois) and Paul J. Muriello, a senior appraiser also licensed by the State of Illinois. In this updated report, Muriello Appraisal states that consideration was given in the appraisal to three approaches to value: The cost approach, the sales comparison approach, and the income capitalization approach. Relying upon the sales comparison approach, Muriello Appraisal issued a report dated June 18, 2007 which stated that the fair market value of the Property was \$975,000 as of June 11, 2007. The

² The Department expresses no opinion herein as to whether the Plan's continued ownership and leasing of the Property is consistent with the general fiduciary responsibility provisions of Part 4 of Title I of the Act.

Applicant later determined, however, that the appraisal report improperly aggregated the values of both the Property and the Adjacent Parcel in arriving at the \$975,000 figure. The Applicant represents that Paul Muriello has subsequently acknowledged in writing that, if the Adjacent Parcel were disaggregated from the June, 2007, appraisal, the standalone value of the Property may have to be adjusted below \$975,000. Nevertheless, the Applicant represents that the proposed partnership is willing to pay the Plan the greater of \$975,000 or the fair market value of the Property on the date of the transaction.

8. Accordingly, the Applicant proposes a one-time cash sale of the Property by the Plan to the proposed partnership for the greater of (1) \$975,000 or (2) the fair market value of the Property on the date of the transaction as established by a qualified, independent appraiser. The Applicant represents that no Plan assets or monies allocated to individual participant accounts in the Plan will be utilized to purchase the Property. The Applicant further states that the proposed partnership intends to obtain financing from a financial institution to enable the sale of the Property in exchange for cash; the financial institution selected for this purpose shall be independent of and unrelated to the Company, the Applicant, and the intended copartners. Any mortgage obtained by the proposed partnership in connection with the acquisition of the Property shall be a nonrecourse loan with no obligations or liability to the Plan. The Applicant represents that the sale of the Property by the Plan is administratively feasible in that it will be a one-time transaction for cash. The Applicant also represents that the sale is in the interests of the Plan because it would provide additional liquidity to the Plan. In addition, the Applicant represents that the sale is protective of the interests of the Plan because the cash proceeds derived from the sale of the Property will be invested in a manner that diversifies the assets of the Plan.

9. In summary, the proposed transaction satisfies the requirements of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash; (b) As a result of the sale, the Plan receives the greater of (i) \$975,000, (ii) the fair market value of the Property as of the date of the transaction as determined by a qualified, independent appraiser, or (iii) the cost to the Plan to acquire and hold the Property; (c) The Plan pays no commissions, fees or other expenses in connection with the sale; (d) The terms and conditions of the sale are at least as favorable as those

obtainable in an arm's length transaction with an unrelated third party; (e) With respect to any lease payments for the occupancy of the Property that were made by the Company to the Plan on or after July 1, 1996 and which (in the opinion of an MAI-certified, qualified independent appraiser) amounted to less than the fair market rental value of the Property at the time of such payment, the Company reimburses the Plan, prior to publication of a final grant of this requested prohibited transaction exemption, for the full amount of all such rental shortfalls in the form of a lump sum payment in arrears plus interest as calculated in conformity with the requirements of section 5(b)(5) of the Department's Voluntary Fiduciary Correction (VFC) Program described at 71 FR 20262 (April 19, 2006); and (f) To the extent that there are rental shortfalls referenced in paragraph (e), the Applicant shall provide the Department with all relevant documentation pertaining to the calculation of such shortfall (including the fair market rental value of the Property for each applicable lease year, the amount of the rental shortfall for each year, the interest attributable to the rental shortfall for each year, and proof that the reimbursement was paid to the Plan) prior to publication of a final grant of this prohibited transaction exemption.

Notice to Interested Persons: A copy of this notice of the proposed exemption (the Notice) shall be given to all interested persons in the manner agreed upon by the applicant and the Department within fifteen (15) days of the date of its publication in the **Federal Register**. The Department must receive all written comments and requests for a hearing no later than forty-five (45) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Judge of the Department, telephone (202) 693-8339. (This is not a toll-free number.)

Merrill Lynch & Co., Inc. (ML&Co.) and BlackRock, Inc. (BlackRock); (Collectively, the Applicants), Located in New York, New York

[Exemption Application No. D-11435].

Proposed Exemption

Based on the facts and representations set forth in the application, the Department of Labor (the Department) is considering granting an exemption under the authority of section 408(a) of the Employee Retirement Income Security Act of 1974 (the Act) and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) and in

accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990):

1. Definitions

(a) For purposes of this proposed exemption, the term "Merrill Lynch/BlackRock Related Entity or Entities" includes all entities listed in Section I(a)(1), (a)(2) and (a)(3):

(1) Merrill Lynch & Co. (*i.e.*, ML&Co.) and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with ML&Co.,

(2) BlackRock, Inc. (*i.e.*, BlackRock) and any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with BlackRock, and

(3) Any entity that meets the definition of a Merrill Lynch/BlackRock Related Entity during the term of the exemption.

(b) For purposes of section (a), the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

2. General Conditions

(a) The applicable Merrill Lynch/BlackRock Related Entity or Entities maintain(s) or cause(s) to be maintained for a period of six (6) years from the date of any transaction described herein, such records as are necessary to enable the persons described in paragraph (b) to determine whether the conditions of this exemption were met, except that—

(1) If the records necessary to enable the persons described in paragraph (b)(1)(i)–(iv) to determine whether the conditions of the exemption have been met are lost or destroyed, due to circumstances beyond the control of the Merrill Lynch/BlackRock Related Entity or Entities, then no prohibited transaction will be considered to have occurred solely on the basis of the unavailability of those records; and

(2) No party in interest with respect to a plan which engages in the covered transactions, other than any Merrill Lynch/BlackRock Related Entity or Entities, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by section 4975(a) and (b) of the Code if the records have not been maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided below in paragraph (b)(2), and notwithstanding the provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to above in paragraph (a) above are unconditionally available for

examination during normal business hours at their customary location to the following persons or an authorized representative thereof—

(i) Any duly authorized employee or representative of the Department or the Internal Revenue Service, or the SEC; or

(ii) Any fiduciary of any plan that engages in the covered transactions, or any duly authorized employee or representative of such fiduciary; or

(iii) Any employer of participants and beneficiaries and any employee organization whose members are covered by a plan that engages in the transactions covered herein, or any authorized employee or representative of these entities; or

(iv) Any participant or beneficiary of a plan that engages in the transactions covered herein, or duly authorized representative of such participant or beneficiary;

(2) None of the persons described above in paragraph (b)(1)(ii)–(iv) shall be authorized to examine trade secrets of the Merrill Lynch/BlackRock Related Entity or Entities, or commercial or financial information, which is privileged or confidential; and

(3) Should the Merrill Lynch/BlackRock Related Entity or Entities refuse to disclose information on the basis that such information is exempt from disclosure, pursuant to paragraph (b)(2) above, the Merrill Lynch/BlackRock Related Entity or Entities shall, by the thirtieth (30th) day following the request, provide a written notice advising that person of the reasons for the refusal and that the Department may request such information.

3. Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers and Banks—Underwritings

The restrictions of sections 406 of the Act, and the taxes imposed by reason of section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase or other acquisition of certain securities by an employee benefit plan during the existence of an underwriting or selling syndicate with respect to such securities, from any person other than a Merrill Lynch/BlackRock Related Entity or Entities, when such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary with respect to such plan, and a member of such syndicate, provided that the following conditions are met:

(a) No Merrill Lynch/BlackRock Related Entity or Entities which is involved in any way in causing the plan

to make the purchase is a manager of such underwriting or selling syndicate. For purposes of this exemption, the term “manager” means any member of an underwriting or selling syndicate who, either alone or together with other members of the syndicate, is authorized to act on behalf of the members of the syndicate in connection with the sale and distribution of the securities being offered or who receives compensation from the members of the syndicate for its services as a manager of the syndicate.

(b) The securities to be purchased or otherwise acquired are—

(1) Part of an issue registered under the Securities Act of 1933 or, if exempt from such registration requirement, are (i) issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States, (ii) issued by a bank, (iii) issued by a common or contract carrier, if such issuance is subject to the provisions of section 20a of the Interstate Commerce Act, as amended, (iv) exempt from such registration requirement pursuant to a Federal statute other than the Securities Act of 1933, or (v) are the subject of a distribution and are of a class which is required to be registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), and the issuer of which has been subject to the reporting requirements of section 13 of the Act (15 U.S.C. 78m) for a period of at least 90 days immediately preceding the sale of securities and has filed all reports required to be filed thereunder with the Securities and Exchange Commission during the preceding 12 months.

(2) Purchased at not more than the public offering price prior to the end of the first full business day after the final term of the securities have been fixed and announced to the public, except that—

(i) if such securities are offered for subscription upon exercise of rights, they are purchased on or before the fourth day preceding the day on which the rights offering terminates; or

(ii) if such securities are debt securities, they may be purchased at a public offering price on a day subsequent to the end of such first full business day, provided that the interest rates on comparable debt securities offered to the public subsequent to such first full business day and prior to the purchase are less than the interest rate of the debt securities being purchased.

(3) Offered pursuant to an underwriting agreement under which the members of the syndicate are

committed to purchase all of the securities being offered, except if—

(i) such securities are purchased by others pursuant to a rights offering; or

(ii) such securities are offered pursuant to an over-allotment option.

(c) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one of the following rating organizations: Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., Dominion Bond Ratings Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto;

(2) Such securities are issued or fully guaranteed by a person described in paragraph (b)(1)(i) of this exemption; or

(3) Such securities are issued or fully guaranteed by a person who has issued securities described in paragraph (b)(1)(ii), (iii), (iv) or (v), and this paragraph (c) of this exemption.

(d) The amount of such securities to be purchased or otherwise acquired by the plan does not exceed 3% of the total amount of such securities being offered.

(e) The consideration to be paid by the plan in purchasing or otherwise acquiring such securities does not exceed three percent of the fair market value of the total assets of the plan as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if such consideration exceeds \$1 million, it does not exceed 1% of such fair market value of the total assets of the plan.

If such securities are purchased by the plan from a party in interest or disqualified person with respect to the plan, such party in interest or disqualified person shall not be subject to the civil penalty which may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the conditions of this exemption are not met. However, if such securities are purchased from a party in interest or disqualified person with respect to the plan, the restrictions of section 406(a) of the Act shall apply to any fiduciary with respect to the plan and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall apply to such party in interest or disqualified person, unless the conditions for exemption of PTE 75–1 (40 FR 50845, October 31, 1975), Part II (relating to certain principal transactions) are met.

4. Exemptions From Prohibitions Respecting Certain Classes of Transactions Involving Employee Benefit Plans and Certain Broker-Dealers, Reporting Broker-Dealers and Banks—Market-Making

The restrictions of sections 406 of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to any purchase or sale of any securities by an employee benefit plan from or to a Merrill Lynch/BlackRock Related Entity or Entities which is a market-maker with respect to such securities, when a Merrill Lynch/BlackRock Related Entity or Entities is also a fiduciary with respect to such plan, provided that the following conditions are met:

(a) The issuer of such securities has been in continuous operation for not less than three years, including the operations of any predecessors, unless—

(1) Such securities are non-convertible debt securities rated in one of the four highest rating categories by at least one of the following rating organizations: Standard & Poor's Rating Services, Moody's Investors Service, Inc., Fitch Ratings Inc., Dominion Bond Ratings Service Limited, and Dominion Bond Rating Service, Inc., or any successors thereto;

(2) Such securities are issued or guaranteed by the United States or by any person controlled or supervised by and acting as an instrumentality of the United States pursuant to authority granted by the Congress of the United States; or

(3) Such securities are fully guaranteed by a person described in this paragraph (a).

(b) As a result of purchasing such securities—

(1) The fair market value of the aggregate amount of such securities owned, directly or indirectly, by the plan and with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, does not exceed 3% of the fair market value of the assets of the plan with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, provided that if the fair market value of such securities exceeds \$1 million, it does not exceed one percent of such fair market value of such assets of the plan, except that this paragraph shall not apply to securities described in (a)(2) of this exemption; and

(2) The fair market value of the aggregate amount of all securities for

which such Merrill Lynch/BlackRock Related Entity or Entities is a market-maker, which are owned, directly or indirectly, by the plan and with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, does not exceed 10% of the fair market value of the assets of the plan with respect to which such Merrill Lynch/BlackRock Related Entity or Entities is a fiduciary, as of the last day of the most recent fiscal quarter of the plan prior to such transaction, except that this paragraph shall not apply to securities described in paragraph (a)(2) of this exemption.

(c) At least one person other than a Merrill Lynch/BlackRock Related Entity or Entities is a market-maker with respect to such securities.

(d) The transaction is executed at a net price to the plan for the number of shares or other units to be purchased or sold in the transaction which is more favorable to the plan than that which such Merrill Lynch/BlackRock Related Entity or Entities acting as fiduciary and acting in good faith, reasonably believes to be available at the time of such transaction from all other market-makers with respect to such securities.

For purposes of this exemption, the term "market-maker" shall mean any specialist permitted to act as a dealer, and any dealer who, with respect to a security, holds himself out (by entering quotations in an inter-dealer communications system or otherwise) as being willing to buy and sell such security for his own account on a regular or continuous basis.

5. Exemption Involving Mutual Fund In-House Plans

The restrictions of sections 406 and 407(a) of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the acquisition or sale of shares of an open-end investment company registered under the Investment Company Act of 1940 by an employee benefit plan covering only employees of such investment company, employees of the investment adviser or principal underwriter for such investment company, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of such investment adviser or principal underwriter, provided that the investment adviser or principal underwriter or their affiliates are a Merrill Lynch/BlackRock Related Entity or Entities, and the following conditions are met (whether or not such investment company, investment adviser, principal underwriter or any affiliated person

thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory or similar fee to such investment adviser, principal underwriter or affiliated person. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company prospectus in effect both at the time of the acquisition of such shares and at the time of such sale.

(c) The plan does not pay a sales commission in connection with such acquisition or sale.

(d) All other dealings between the plan and the investment company, the investment adviser or principal underwriter for the investment company, or any affiliated person of such investment adviser or principal underwriter are on a basis no less favorable to the plan than such dealings are with other shareholders of the investment company.

6. Exemption for Certain Transactions Between Investment Companies and Employee Benefit Plans

The restrictions of section 406 of the Act and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the purchase or sale by an employee benefit plan of shares of an open-end investment company registered under the Investment Company Act of 1940, where the investment adviser of the investment company is a Merrill Lynch/BlackRock Related Entity or Entities, who is also a fiduciary with respect to the plan but not an employer of employees covered by the plan, provided that the following conditions are met:

(a) The plan does not pay a sales commission in connection with such purchase or sale.

(b) The plan does not pay a redemption fee in connection with the sale by the plan to the investment company of such shares unless (1) such redemption fee is paid only to the investment company, and (2) the existence of such redemption fee is disclosed in the investment company

prospectus in effect both at the time of the purchase of such shares and at the time of such sale.

(c) The plan does not pay an investment management, investment advisory or similar fee with respect to the plan assets invested in such shares for the entire period of such investment. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940. This condition also does not preclude payment of an investment advisory fee by the plan based on total plan assets from which a credit has been subtracted representing the plan's *pro rata* share of investment advisory fees paid by the investment company. If, during any fee period for which the plan has prepaid its investment management, investment advisory or similar fee, the plan purchases shares of the investment company, the requirement of this paragraph (c) shall be deemed met with respect to such prepaid fee if by a method reasonably designed to accomplish the same, the amount of the prepaid fee that constitutes the fee with respect to the plan assets invested in the investment company shares (1) is anticipated and subtracted from the prepaid fee at the time of payment of such fee, (2) is returned to the plan no later than during the immediately following fee period, or (3) is offset against the prepaid fee for the immediately following fee period or for the fee period immediately following thereafter. For purposes of this paragraph (c), a fee shall be deemed to be prepaid for any fee period if the amount of such fee is calculated as of a date not later than the first day of such period.

(d) A second fiduciary with respect to the plan, who is independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof, receives a current prospectus issued by the investment company, and full and detailed written disclosure of the investment advisory and other fees charged to or paid by the plan and the investment company, including the nature and extent of any differential between the rates of such fees, the reasons why the fiduciary/investment adviser may consider such purchases to be appropriate for the plan, and whether there are any limitations on the fiduciary/investment adviser with respect to which plan assets may be invested in shares of the investment company and, if so, the nature of such limitations. For purposes of this paragraph (d), such second fiduciary

will not be deemed to be independent of and unrelated to the fiduciary/investment adviser or any affiliate thereof if:

(1) Such second fiduciary directly or indirectly controls, is controlled by, or is under common with the fiduciary/investment adviser or any affiliate thereof;

(2) Such second fiduciary, or any officer, director, partner, employee or relative of such second fiduciary is an officer, director, partner, employee or relative of such fiduciary/investment adviser or any affiliate thereof; or

(3) Such second fiduciary directly or indirectly receives any compensation or other consideration for his or her own personal account in connection with any transaction described in this exemption.

If an officer, director, partner, employee or relative of such fiduciary/investment adviser or any affiliate thereof is a director of such second fiduciary, and if he or she abstains from participation in (i) the choice of the plan's investment adviser, (ii) the approval of any such purchase or sale between the plan and the investment company, and (iii) the approval of any change of fees charged to or paid by the plan, then paragraph (d) of this exemption shall not apply.

For purposes of paragraph (d)(1) above, the term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual, and the term "relative" means a "relative" as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or a sister.

(e) On the basis of the prospectus and disclosure referred to in paragraph (d), the second fiduciary referred to in paragraph (d) approves such purchases and sales consistent with the responsibilities obligations, and duties imposed on fiduciaries by Part 4 of Title I of the Act. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by the plan and need not relate to any other aspects of such investments. In addition, such approval must be either (1) set forth in the plan documents or in the investment management agreement between the plan and the fiduciary/investment adviser, (2) indicated in writing prior to each purchase or sale, or (3) indicated in writing prior to the commencement of a specified purchase or sale program in the shares of such investment company.

(f) The second fiduciary referred to in paragraph (d), above, or any successor thereto, is notified of any change in any of the rates of fees referred to in paragraph (d) and approves in writing the continuation of such purchases or sales and the continued holding of any investment company shares acquired by the plan prior to such change and still held by the plan. Such approval may be limited solely to the investment advisory and other fees paid by the mutual fund in relation to the fees paid by the plan and need not relate to any other aspects of such investment.

7. Exemption Involving Closed-End Investment Company In-House Plans

The restrictions of sections 406 and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code, by reason of section 4975(c)(1) of the Code, shall not apply to the acquisition, ownership or sale of shares of a closed-end investment company which is registered under the Investment Company Act of 1940 and is not a small business investment company as defined by section 103 of the Small Business Investment Company Act of 1958, by an employee benefit plan covering only employees of such investment company, employees of the investment adviser of such investment company, or employees of any affiliated person (as defined in section 2(a)(3) of the Investment Company Act of 1940) of such investment company or investment adviser, provided that such entity or entities are a Merrill Lynch/BlackRock Related Entity or Entities, and the following conditions are met (whether or not such investment company, investment adviser or any affiliated person thereof is a fiduciary with respect to the plan):

(a) The plan does not pay any investment management, investment advisory, or similar fee to such investment adviser or affiliated person. This condition does not preclude the payment of investment advisory fees by the investment company under the terms of its investment advisory agreement adopted in accordance with section 15 of the Investment Company Act of 1940.

(b) The plan does not pay a sales commission in connection with such acquisition or sale to any such investment company or to any such investment company, investment adviser or affiliated person; and

(c) All other dealings between the plan and such investment company, the investment adviser, or affiliated person, are on a basis no less favorable to the plan than such dealings are with other

shareholders of the investment company.

8. Exemption for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

Section I: Definition and Special Rules

The following definitions and special rules apply to this exemption:

(a) The term “Merrill Lynch/BlackRock Related Entity or Entities” includes affiliates of such entity or entities.

(b) An “affiliate” of a Merrill Lynch/BlackRock Related Entity or Entities includes the following:

(1) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), brother, sister, or spouse of a brother or sister, of the Merrill Lynch/BlackRock Related Entity or Entities; and

(2) any corporation or partnership of which the Merrill Lynch/BlackRock Related Entity or Entities is an officer, director or partner.

A person is not an affiliate of another person solely because one of them has investment discretion over the other's assets.

(c) An “agency cross transaction” is a securities transaction in which the same Merrill Lynch/BlackRock Related Entity or Entities act(s) as agent for both any seller and any buyer for the purchase or sale of a security.

(d) The term “covered transaction” means an action described in Section II (a), (b) or (c) of this exemption.

(e) The term “effecting or executing a securities transaction” means the execution of a securities transaction as agent for another person and/or the performance of clearance, settlement, custodial or other functions ancillary thereto.

(f) A plan fiduciary is independent of a Merrill Lynch/BlackRock Related Entity or Entities only if the fiduciary has no relationship to or interest in such Merrill Lynch/BlackRock Related Entity or Entities that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) The term “profit” includes all charges relating to effecting or executing securities transactions, less reasonable and necessary expenses including reasonable indirect expenses (such as overhead costs) properly allocated to the performance of these transactions under generally accepted accounting principles.

(h) The term “securities transaction” means the purchase or sale of securities.

(i) The term “nondiscretionary trustee” of a plan means a trustee or custodian whose powers and duties

with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term “nondiscretionary trust services and services” means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person does not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Section II: Covered Transactions

If each condition of Section III of this exemption is either satisfied or not applicable under Section IV of this exemption, the restrictions of section 406(b) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) and (F) of the Code shall not apply to—

(a) A Merrill Lynch/BlackRock Related Entity or Entities that is a plan fiduciary using its authority to cause a plan to pay a fee to a Merrill Lynch/BlackRock Related Entity or Entities as agent for the plan, for effecting or executing securities transactions, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency;

(b) A Merrill Lynch/BlackRock Related Entity or Entities that is a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; or

(c) The receipt by any Merrill Lynch/BlackRock Related Entity or Entities that is a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party from one or more other parties to the transaction.

Section III: Conditions

Except to the extent otherwise provided in Section IV of this exemption, Section II of this exemption applies only if the following conditions are satisfied:

(a) The Merrill Lynch/BlackRock Related Entity engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(b)(1) The covered transaction is performed under a written authorization executed in advance by a fiduciary of each plan whose assets are involved in the transaction, which plan fiduciary is independent of the Merrill Lynch/

BlackRock Related Entity or Entities engaging in the covered transaction.

(2) For purposes of this exemption, Section III(b) will be deemed satisfied for the period commencing September 29, 2006, notwithstanding Merrill Lynch Investment Managers, LLC (MLIM)'s reliance on written authorizations obtained prior to the consummation of the Merger³, provided that after the closing of the Merger, MLIM notified each such authorizing plan fiduciary of the fact that: (A) As a result of the Merger, MLIM had become a subsidiary of BlackRock; (B) the existing authorization by such authorizing plan fiduciary would continue to permit MLIM to engage in the covered transaction on behalf of the plan; (C) such authorization is terminable at will by the plan, without penalty to the plan, upon receipt by MLIM of written notice from an authorizing plan fiduciary of termination; (D) a form expressly providing an election to terminate the authorization with instructions on the use of such form was supplied to each such authorizing plan fiduciary; and (E) failure to return such termination form would result in the continued authorization of MLIM to engage in the covered transactions on behalf of the plan. Notwithstanding the foregoing, this exception does not apply to new authorizations to engage in covered transactions entered into after the consummation of the Merger.

(c) The authorization referred to in paragraph (b) of this Section is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Merrill Lynch/BlackRock Related Entity or Entities of written notice of termination. A form expressly providing an election to terminate the authorization described in paragraph (b) of this Section with instructions on the use of the form must be supplied to the authorizing plan fiduciary no less than annually. The instructions for such form must include the following information:

(1) The authorization is terminable at will by the plan, without penalty to the plan, upon receipt by the authorized Merrill Lynch/BlackRock Related Entity or Entities of written notice from the authorizing plan fiduciary or other plan official having authority to terminate the authorization; and

(2) Failure to return the form will result in the continued authorization of the authorized Merrill Lynch/BlackRock

³ On September 29, 2006, ML&Co. and BlackRock consummated a transaction (the Merger), in which ML&Co. contributed MLIM and various other assets and subsidiaries that comprised its investment management business to BlackRock in exchange for approximately 45% of the outstanding voting securities of BlackRock.

Related Entity or Entities to engage in the covered transactions on behalf of the plan.

(d) Within three months before an authorization is made, the authorizing plan fiduciary is furnished with any reasonably available information that the Merrill Lynch/BlackRock Related Entity or Entities seeking authorization reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be made including (but not limited to) a copy of this exemption, the form for termination of authorization described in Section III(c) of this exemption, a description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, and any other reasonably available information regarding the matter that the authorizing plan fiduciary requests.

(e) The Merrill Lynch/BlackRock Related Entity or Entities engaging in a covered transaction furnishes the authorizing plan fiduciary with either:

(1) A confirmation slip for each securities transaction underlying a covered transaction within ten business days of the securities transaction containing the information described in Rule 10b-10(a)(1-7) under the Securities Exchange Act of 1934, 17 CFR 240.10b-10; or

(2) at least once every three months and not later than 45 days following the period to which it relates, a report disclosing:

(A) A compilation of the information that would be provided to the plan pursuant to subparagraph (e)(1) of this Section during the three-month period covered by the report;

(B) The total of all securities transaction-related charges incurred by the plan during such period in connection with such covered transactions; and

(C) The amount of the securities transaction-related charges retained by such Merrill Lynch/BlackRock Related Entity or Entities and the amount of such charges paid to other persons for execution or other services.

For purposes of this paragraph (e), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such Merrill Lynch/BlackRock Related Entity or Entities engages in covered transactions on behalf of a pooled fund in which the plan participates.

(f) The authorizing plan fiduciary is furnished with a summary of the information required under paragraph (e)(1) of this Section at least once per year. The summary must be furnished within 45 days after the end of the

period to which it relates, and must contain the following:

(1) The total of all securities transaction-related charges incurred by the plan during the period in connection with covered securities transactions.

(2) The amount of the securities transaction-related charges retained by the authorized Merrill Lynch/BlackRock Related Entity or Entities and the amount of these charges paid to other persons for execution or other services.

(3) A description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, if such practices have materially changed during the period covered by the summary.

(4) (i) A portfolio turnover ratio is calculated in a manner which is reasonably designed to provide the authorizing plan fiduciary with the information needed to assist in discharging its duty of prudence. The requirements of this paragraph (f)(4)(i) will be met if the "annualized portfolio turnover ratio", calculated in the manner described in paragraph (f)(4)(ii), is contained in the summary.

(ii) The "annualized portfolio turnover ratio" shall be calculated as a percentage of the plan assets consisting of securities or cash over which the authorized Merrill Lynch/BlackRock Related Entity or Entities had discretionary investment authority, or with respect to which such Merrill Lynch/BlackRock Related Entity or Entities rendered, or had any responsibility to render, investment advice (the portfolio) at any time or times (management period(s)) during the period covered by the report. First, the "portfolio turnover ratio" (not annualized) is obtained by dividing (A) the lesser of the aggregate dollar amounts of purchases or sales of portfolio securities during the management period(s) by (B) the monthly average of the market value of the portfolio securities during all management period(s). Such monthly average is calculated by totaling the market values of the portfolio securities as of the beginning and ending of each management period and as of the end of each month that ends within such period(s), and dividing the sum by the number of valuation dates so used. For purposes of this calculation, all debt securities whose maturities at the time of acquisition were one year or less are excluded from both the numerator and the denominator.

The "annualized portfolio turnover ratio" is then derived by multiplying the "portfolio turnover ratio" by an annualizing factor. The annualizing

factor is obtained by dividing (C) the number twelve by (D) the aggregate duration of the management period(s) expressed in months (and fractions thereof).

(iii) The information described in this paragraph (f)(4) is not required to be furnished in any case where the authorized Merrill Lynch/BlackRock Related Entity or Entities acting as plan fiduciary has not exercised discretionary authority over trading in the plan's account during the period covered by the report.

For purposes of this paragraph (f), the words "incurred by the plan" shall be construed to mean "incurred by the pooled fund" when such Merrill Lynch/BlackRock Related Entity or Entities engages in covered transactions on behalf of a pooled fund in which the plan participates.

(g) If an agency cross transaction to which Section IV(b) of this exemption does not apply is involved, the following conditions must also be satisfied:

(1) The information required under Section III(d) or IV(d)(1)(B) of this exemption includes a statement to the effect that with respect to agency cross transactions, the Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the transactions will have a potentially conflicting division of loyalties and responsibilities regarding the parties to the transactions;

(2) The summary required under Section III(f) of this exemption includes a statement identifying the total number of agency cross transactions during the period covered by the summary and the total amount of all commissions or other remuneration received or to be received from all sources by the Merrill Lynch/BlackRock Related Entity or Entities engaging in the transactions in connection with those transaction during the period;

(3) The Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the agency cross transaction has the discretionary authority to act on behalf of, and/or provide investment advice to, either (A) one or more sellers or (B) one or more buyers with respect to the transaction, but not both.

(4) The agency cross transaction is a purchase or sale, for no consideration other than cash payment against prompt delivery of a security for which market quotations are readily available; and

(5) The agency cross transaction is executed or effected at a price that is at or between the independent bid and independent ask prices for the security prevailing at the time of the transaction.

(h) A trustee (other than a nondiscretionary trustee) may only

engage in a covered transaction with a plan that has total net assets with a value of at least \$50 million and in the case of a pooled fund, the \$50 million net asset requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans each of which has total net assets with a value of at least \$50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the \$50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing plan fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

For purposes of this paragraph (i), the words "paid by the plan" should be construed to mean "paid by the pooled fund" when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Section IV: Exceptions From Conditions

(a) Certain plans not covering employees. Section III of this exemption does not apply to covered transactions to the extent they are engaged in on behalf of individual retirement accounts meeting the conditions of 29 CFR 2510.3-2(d), or plans, other than training programs, that cover no employees within the meaning of 29 CFR 2510.3-3.

(b) Certain agency cross transactions. Section III of this exemption does not apply in the case of an agency cross transaction, provided that the Merrill Lynch/BlackRock Related Entity or Entities effecting or executing the transaction:

(1) Does not render investment advice to any plan for a fee within the meaning

of section 3(21)(A)(ii) of the Act with respect to the transaction;

(2) Is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction, see 29 CFR 2510.3-21(d); and

(3) Does not have the authority to engage, retain or discharge any person who is or is proposed to be a fiduciary regarding any such plan assets.

(c) Recapture of profits. Section III(a) of this exemption does not apply in any case where the Merrill Lynch/BlackRock Related Entity or Entities engaging in a covered transaction returns or credits to the plan all profits earned by that Merrill Lynch/BlackRock Related Entity or Entities in connection with the securities transactions associated with the covered transaction.

(d) Special rules for pooled funds. In the case of a Merrill Lynch/BlackRock Related Entity or Entities engaging in a covered transaction on behalf of an account or fund for the collective investment of the assets of more than one plan (pooled fund):

(1) Section III (b), (c), and (d) of this exemption does not apply if—

(A) The arrangement under which the covered transaction is performed is subject to the prior and continuing authorization, in the manner described in this paragraph (d)(1), of an authorizing plan fiduciary with respect to each plan whose assets are invested in the pooled fund that is independent of the Merrill Lynch/BlackRock Related Entity or Entities. The requirement that the authorizing plan fiduciary be independent of the Merrill Lynch/BlackRock Related Entity or Entities shall not apply in the case of a plan covering only employees of the Merrill Lynch/BlackRock Related Entity or Entities, if the requirements of Section IV(d)(2)(A) and (B) of this exemption are met.

(B) The authorizing plan fiduciary is furnished with any reasonably available information that the Merrill Lynch/BlackRock Related Entity or Entities engaging or proposing to engage in the covered transactions reasonably believes to be necessary for the authorizing plan fiduciary to determine whether the authorization should be given or continued, not less than 30 days prior to implementation of the arrangement or material change thereto, including (but not limited to) a description of the Merrill Lynch/BlackRock Related Entity or Entities' brokerage placement practices, and, where requested, any reasonable available information regarding the matter upon the reasonable request of the authorizing plan fiduciary at any time.

(C) In the event an authorizing plan fiduciary submits a notice in writing to the Merrill Lynch/BlackRock Related Entity or Entities engaging in or proposing to engage in the covered transaction objecting to the implementation of, material change in, or continuation of, the arrangement, the plan on whose behalf the objection was tendered is given the opportunity to terminate its investment in the pooled fund, without penalty to the plan, within such time as may be necessary to effect the withdrawal in an orderly manner that is equitable to all withdrawing plans and to the nonwithdrawing plans. In the case of a plan that elects to withdraw under this subparagraph (d)(1)(C), the withdrawal shall be effected prior to the implementation of, or material change in, the arrangement; but an existing arrangement need not be discontinued by reason of a plan electing to withdraw.

(D) In the case of plans whose assets are proposed to be invested in the pooled fund subsequent to the implementation of the arrangement that has not authorized the arrangement in the manner described in subparagraphs (d)(1)(B) and (C) of this Section, the plan's investment in the pooled fund is subject to the prior written authorization of an authorizing plan fiduciary who satisfies the requirements of subparagraph (d)(1)(A).

(2) To the extent that Section III(a) of this exemption prohibits any Merrill Lynch/BlackRock Related Entity or Entities from being the employer of employees covered by a plan investing in a pool managed by the Merrill Lynch/BlackRock Related Entity or Entities, Section III(a) of this exemption does not apply if—

(A) The Merrill Lynch/BlackRock Related Entity or Entities is an "investment manager" as defined in section 3(38) of the Act, and

(B) Either (i) the Merrill Lynch/BlackRock Related Entity or Entities returns or credits to the pooled fund all profits earned by the Merrill Lynch/BlackRock Related Entity or Entities in connection with all covered transactions engaged in by the Merrill Lynch/BlackRock Related Entity or Entities on behalf of the fund, or (ii) the pooled fund satisfies the requirements of paragraph IV(d)(3).

(3) A pooled fund satisfies the requirements of this paragraph for a fiscal year of the fund if—

(A) On the first day of such fiscal year, and immediately following each acquisition of an interest in the pooled fund during the fiscal year by any plan covering employees of any Merrill

Lynch/BlackRock Related Entity or Entities, the aggregate fair market value of the interests in such fund of all plans covering employees of any Merrill Lynch/BlackRock Related Entity or Entities does not exceed twenty percent of the fair market value of the total assets of the fund; and

(B) The aggregate brokerage commissions received by any Merrill Lynch/BlackRock Related Entity or Entities, in connection with covered transactions engaged in by any Merrill Lynch/BlackRock Related Entity or Entities on behalf of all pooled funds in which a plan covering employees of any Merrill Lynch/BlackRock Related Entity or Entities participates, do not exceed five percent of the total brokerage commissions received by any Merrill Lynch/BlackRock Related Entity or Entities from all sources in such fiscal year.

9. Exemption for Cross-Trades of Securities by Index and Model-Driven Funds

Section I. Proposed Exemption for Cross-Trading of Securities by Index and/or Model-Driven Funds

The restrictions of sections 406(a)(1)(A) and 406(b)(2) of the Act, and the sanctions resulting from the application of section 4975(c)(1)(A) of the Code, shall not apply to the transactions described below if the applicable conditions set forth in Sections II and III of this exemption, below, are satisfied.

(a) The purchase and sale of securities between an Index Fund or a Model-Driven Fund (either, a Fund; or collectively, the Funds), as defined in Section IV(a) and (b) of this exemption, below, and another Fund, at least one of which holds "plan assets" subject to the Act; or

(b) The purchase and sale of securities between a Fund and a Large Account, as defined in Section IV(e) of this exemption, below, at least one of which holds "plan assets" subject to the Act, pursuant to a portfolio restructuring program, as defined in Section IV(f) of this exemption, below, of the Large Account;

Notwithstanding the foregoing, this exemption shall apply to cross-trades between two or more Large Accounts pursuant to a portfolio restructuring program if such cross-trades occur as part of a single cross-trading program involving both Funds and Large Accounts for which securities are cross-traded solely as a result of the objective operation of the program.

Section II. Specific Conditions

(a) The cross-trade is executed at the closing price, as defined in Section IV(h) of this exemption below.

(b) Any cross-trade of securities by a Fund occurs as a direct result of a "triggering event," as defined in Section IV(d) of this exemption, and is executed no later than the close of the third business day following such "triggering event."

(c) If the cross-trade involves a Model-Driven Fund, the cross-trade does not take place within three (3) business days following any change made by the Manager to the model underlying the Fund.

(d) The Manager has allocated the opportunity for all Funds or Large Accounts to engage in the cross-trade on an objective basis which has been previously disclosed to the authorizing fiduciaries of plan investors, and which does not permit the exercise of discretion by the Manager (e.g., a pro rata allocation system).

(e) No more than twenty (20) percent of the assets of the Fund or Large Account at the time of the cross-trade is comprised of assets of employee benefit plans maintained by the Manager for its own employees (Manager Plans) for which the Manager exercises investment discretion.

(f)(1) Cross-trades of equity securities involve only securities that are widely-held, actively-traded, and for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information. For purposes of this requirement, the terms "widely-held" and "actively-traded" shall be deemed to include any security listed in an Index, as defined in Section IV(c) of this exemption; and

(2) Cross-trades of fixed-income securities involve only securities for which market quotations are readily available from independent sources that are engaged in the ordinary course of business of providing financial news and pricing information to institutional investors and/or the general public, and are widely recognized as accurate and reliable sources for such information.

(g) The Manager receives no brokerage fees or commissions as a result of the cross-trade.

(h) As of the date this exemption is granted, a plan's participation in the cross-trading program of a Manager, as a result of investments made in any Index or Model-Driven Fund that holds

plan assets is subject to a written authorization executed in advance of such investment by a fiduciary of the plan which is independent of the Manager engaging in the cross-trade transactions. For purposes of this exemption, the requirement that the authorizing plan fiduciary be independent of the Manager shall not apply in the case of a Manager Plan.

(i) With respect to existing plan investors in any Index or Model-Driven Fund that holds plan assets as of the date this exemption is granted, the independent fiduciary is furnished with a written notice, not less than forty-five (45) days prior to the implementation of the cross-trading program, that describes the Fund's participation in the cross-trading program of the Manager, provided that:

(1) Such notice allows each plan an opportunity to object to the plan's participation in the cross-trading program as a Fund investor by providing the plan with a special termination form;

(2) The notice instructs the independent plan fiduciary that failure to return the termination form to the Manager, by a specified date (which shall be at least 30 days following the plan's receipt of the form) shall be deemed to be an approval by the plan of its participation in the Manager's cross-trading program as a Fund investor; and

(3) If the independent plan fiduciary objects to the plan's participation in the cross-trading program as a Fund investor by returning the termination form to the Manager by the specified date, the plan is given the opportunity to withdraw from each Index or Model-Driven Fund without penalty prior to the implementation of the cross-trading program, within such time as may be reasonably necessary to effectuate the withdrawal in an orderly manner.

(j) Prior to obtaining the authorization described in Section II(h) of this exemption, and in the notice described in Section II(i) of this exemption, the following statement must be provided by the Manager to the independent plan fiduciary:

Investment decisions for the Fund (including decisions regarding which securities to buy or sell, how much of a security to buy or sell, and when to execute a sale or purchase of securities for the Fund) will not be based in whole or in part by the Manager on the availability of cross-trade opportunities and will be made prior to the identification and determination of any cross-trade opportunities. In addition, all cross-trades by a Fund will be based solely upon a "triggering event" set

forth in this exemption. Records documenting each cross-trade transaction will be retained by the Manager.

(k) Prior to any authorization set forth in Section II(h) of this exemption, and at the time of any notice described in Section II(i) of this exemption, the independent plan fiduciary must be furnished with any reasonably available information necessary for the fiduciary to determine whether the authorization should be given, including (but not limited to) a copy of this exemption, an explanation of how the authorization may be terminated, detailed disclosure of the procedures to be implemented under the Manager's cross-trading practices (including the "triggering events" that will create the cross-trading opportunities, the independent pricing services that will be used by the Manager to price the cross-traded securities, and the methods that will be used for determining closing price), and any other reasonably available information regarding the matter that the authorizing plan fiduciary requests. The independent plan fiduciary must also be provided with a statement that the Manager will have a potentially conflicting division of loyalties and responsibilities to the parties to any cross-trade transaction and must explain how the Manager's cross-trading practices and procedures will mitigate such conflicts.

With respect to Funds that are added to the Manager's cross-trading program or changes to, or additions of, triggering events regarding Funds, following the authorizations described in Section II(h) or Section II(i) of this exemption, the Manager shall provide a notice to each relevant independent plan fiduciary of each plan invested in the affected Funds prior to, or within ten (10) days following, such addition of Funds or change to, or addition of, triggering events, which contains a description of such Fund(s) or triggering event(s). Such notice will also include a statement that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner.

(l) At least annually, the Manager notifies the independent fiduciary for each plan that has previously authorized participation in the Manager's cross-trading program as a Fund investor, that the plan has the right to terminate its participation in the cross-trading program and its investment in any Index Fund or Model-Driven Fund that holds plan assets

without penalty at any time, as soon as is necessary to effectuate the withdrawal in an orderly manner. This notice shall also provide each independent plan fiduciary with a special termination form and instruct the fiduciary that failure to return the form to the Manager by a specified date (which shall be at least thirty (30) days following the plan's receipt of the form) shall be deemed an approval of the subject plan's continued participation in the cross-trading program as a Fund investor. In lieu of providing a special termination form, the notice may permit the independent plan fiduciary to utilize another written instrument by the specified date to terminate the plan's participation in the cross-trading program, provided that in such case the notice explicitly discloses that a termination form may be obtained from the Manager upon request. Such annual re-authorization must provide information to the relevant independent plan fiduciary regarding each Fund in which the plan is invested, as well as explicit notification that the plan fiduciary may request and obtain disclosures regarding any new Funds in which the plan is not invested that are added to the cross-trading program, or any new triggering events (as defined in Section IV(d) of this exemption) that may have been added to any existing Funds in which the plan is not invested, since the time of the initial authorization described in Section II(h) of this exemption, or the time of the notice described in Section II(i) of this exemption.

(m) With respect to a cross-trade involving a Large Account:

(1) The cross-trade is executed in connection with a portfolio restructuring program, as defined in Section IV(f) of this exemption, with respect to all or a portion of the Large Account's investments which an independent fiduciary of the Large Account (other than in the case of any assets of a Manager Plan) has authorized the Manager to carry out or to act as a "trading adviser," as defined in Section IV(g) of this exemption, in carrying out a Large Account-initiated liquidation or restructuring of its portfolio;

(2) Prior to the cross-trade, a fiduciary of the Large Account who is independent of the Manager (other than in the case of any assets of a Manager Plan)⁴ has been fully informed of the Manager's cross-trading program, has

been provided with the information required in Section II(k) of this exemption, and has provided the Manager with advance written authorization to engage in cross-trading in connection with the restructuring, provided that—

(A) Such authorization may be terminated at will by the Large Account upon receipt by the Manager of written notice of termination.

(B) A form expressly providing an election to terminate the authorization, with instructions on the use of the form, is supplied to the authorizing Large Account fiduciary concurrent with the receipt of the written information describing the cross-trading program. The instructions for such form must specify that the authorization may be terminated at will by the Large Account, without penalty to the Large Account, upon receipt by the Manager of written notice from the authorizing Large Account fiduciary;

(3) All cross-trades made in connection with the portfolio restructuring program must be completed by the Manager within sixty (60) days of the initial authorization (or initial receipt of assets associated with the restructuring, if later) to engage in such restructuring by the Large Account's independent fiduciary, unless such fiduciary agrees in writing to extend this period for another thirty (30) days; and,

(4) No later than thirty (30) days following the completion of the Large Account's portfolio restructuring program, the Large Account's independent fiduciary must be fully apprised in writing of all cross-trades executed in connection with the restructuring. Such writing shall include a notice that the Large Account's independent fiduciary may obtain, upon request, the information described in Section III(a) of this exemption, subject to the limitations described in Section III(b) of this exemption. However, if the program takes longer than sixty (60) days to complete, interim reports containing the transaction results must be provided to the Large Account fiduciary no later than fifteen (15) days following the end of the initial sixty (60) day period and the succeeding thirty (30) day period.

Section III. General Conditions

(a) The Manager maintains or causes to be maintained for a period of six (6) years from the date of each cross-trade the records necessary to enable the persons described in paragraph (b) of this Section to determine whether the conditions of this exemption have been met, including records which identify:

⁴ However, proper disclosures must be made to, and written authorization must be made by, an appropriate plan fiduciary for the Manager Plan in order for the Manager Plan to participate in a specific portfolio restructuring program as part of a Large Account.

(1) On a Fund by Fund basis, the specific triggering events which result in the creation of the model prescribed output or trade list of specific securities to be cross-traded;

(2) On a Fund by Fund basis, the model prescribed output or trade list which describes: (A) Which securities to buy or sell; and (B) how much of each security to buy or sell; in detail sufficient to allow an independent plan fiduciary to verify that each of the above decisions for the Fund was made in response to specific triggering events; and

(3) On a Fund by Fund basis, the actual trades executed by the Fund on a particular day and which of those trades resulted from triggering events.

Such records must be readily available to assure accessibility and maintained so that an independent fiduciary, or other persons identified below in paragraph (b) of this Part, may obtain them within a reasonable period of time. However, a prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of the Manager, the records are lost or destroyed prior to the end of the six-year period, and no party in interest other than the Manager shall be subject to the civil penalty that may be assessed under section 502(i) of the Act or to the taxes imposed by sections 4975(a) and (b) of the Code if the records are not maintained or are not available for examination as required by paragraph (b) below.

(b)(1) Except as provided in paragraph (b)(2) and notwithstanding any provisions of sections 504(a)(2) and (b) of the Act, the records referred to in paragraph (a) of this Part are unconditionally available at their customary location for examination during normal business hours by—

(A) Any duly authorized employee or representative of the Department of Labor or the Internal Revenue Service,

(B) Any fiduciary of a Plan participating in a cross-trading program who has the authority to acquire or dispose of the assets of the Plan, or any duly authorized employee or representative of such fiduciary,

(C) Any contributing employer with respect to any Plan participating in a cross-trading program or any duly authorized employee or representative of such employer, and

(D) Any participant or beneficiary of any Manager Plan participating in a cross-trading program, or any duly authorized employee or representative of such participant or beneficiary.

(2) If, in the course of seeking to inspect records maintained by a

Manager pursuant to this Part, any person described in paragraph (b)(1)(B) through (D) seeks to examine trade secrets, or commercial or financial information of the Manager that is privileged or confidential, and the Manager is otherwise permitted by law to withhold such information from such person, the Manager may refuse to disclose such information provided that, by the close of the thirtieth (30th) day following the request, the Manager gives a written notice to such person advising the person of the reasons for the refusal and that the Department of Labor may request such information.

(3) The information required to be disclosed to persons described in paragraph (b)(1)(B) through (D) shall be limited to information that pertains to cross-trades involving a Fund or Large Account in which they have an interest.

Section IV. Definitions

The following definitions apply for purposes of this exemption:

(a) “Index Fund”—Any investment fund, account, or portfolio sponsored, maintained, trustee, or managed by a Manager or an Affiliate, in which one or more investors invest, and—

(1) Which is designed to track the rate of return, risk profile, and other characteristics of an Index, as defined in Section IV(c) of this exemption, by either (i) replicating the same combination of securities which compose such Index or (ii) sampling the securities which compose such Index based on objective criteria and data;

(2) For which the Manager does not use its discretion, or data within its control, to affect the identity or amount of securities to be purchased or sold;

(3) That either contains “plan assets” subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and,

(4) That involves no agreement, arrangement, or understanding regarding the design or operation of the Index Fund which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(b) “Model-Driven Fund”—Any investment fund, account, or portfolio sponsored, maintained, trustee, or managed by the Manager or an Affiliate

in which one or more investors invest, and—

(1) Which is composed of securities the identity of which and the amount of which are selected by a computer model that is based on prescribed objective criteria using independent third party data, not within the control of the Manager, to transform an Index, as defined in Section IV(c) of this exemption;

(2) Which either contains “plan assets” subject to the Act, is an investment company registered under the Investment Company Act of 1940, or contains assets of one or more institutional investors, which may include, but not be limited to, such entities as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; and

(3) That involves no agreement, arrangement, or understanding regarding the design or operation of the Model-Driven Fund or the utilization of any specific objective criteria which is intended to benefit a Manager or an Affiliate, or any party in which a Manager or an Affiliate may have an interest.

(c) “Index”—A securities index that represents the investment performance of a specific segment of the public market for equity or debt securities in the United States and/or foreign countries, but only if—

(1) The organization creating and maintaining the index is—

(A) Engaged in the business of providing financial information, evaluation, advice, or securities brokerage services to institutional clients,

(B) A publisher of financial news or information, or

(C) A public securities exchange or association of securities dealers; and,

(2) The index is created and maintained by an organization independent of the Manager, as defined in Section IV(i) of this exemption; and,

(3) The index is a generally accepted standardized index of securities which is not specifically tailored for the use of the Manager.

(d) “Triggering Event”:

(1) A change in the composition or weighting of the Index underlying a Fund by the independent organization creating and maintaining the Index;

(2) A material amount of net change in the overall level of assets in a Fund, as a result of investments in and withdrawals from the Fund, provided that:

(A) Such material amount has either been identified in advance as a specified amount of net change relating to such Fund and disclosed in writing as a "triggering event" to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days following, its inclusion as a "triggering event" for such Fund or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to Section II(k) of this exemption the parameters for determining a material amount of net change, including any amount of discretion retained by the Manager that may affect such net change, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given; and

(B) Investments or withdrawals as a result of the Manager's discretion to invest or withdraw assets of a Manager Plan, other than a Manager Plan which is a defined contribution plan under which participants direct the investment of their accounts among various investment options, including such Fund, will not be taken into account in determining the specified amount of net change;

(3) An accumulation in the Fund of a material amount of either:

(A) Cash which is attributable to interest or dividends on, and/or tender offers for, portfolio securities; or

(B) Stock attributable to dividends on portfolio securities; provided that such material amount has either been identified in advance as a specified amount relating to such Fund and disclosed in writing as a "triggering event" to an independent fiduciary of each plan having assets held in the Fund prior to, or within ten (10) days after, its inclusion as a "triggering event" for such Fund, or the Manager has otherwise disclosed in the description of its cross-trading practices pursuant to Section II(k) of this exemption the parameters for determining a material amount of accumulated cash or securities, including any amount of discretion retained by the Manager that may affect such accumulated amount, in sufficient detail to allow the independent fiduciary to determine whether the authorization to engage in cross-trading should be given;

(4) A change in the composition of the portfolio of a Model-Driven Fund mandated solely by operation of the formulae contained in the computer model underlying the Model-Driven Fund where the basic factors for making such changes (and any fixed frequency for operating the computer model) have

been disclosed in writing to an independent fiduciary of each plan having assets held in the Model-Driven Fund, prior to, or within ten (10) days after, its inclusion as a "triggering event" for such Model-Driven Fund; or

(5) A change in the composition or weighting of a portfolio for an Index Fund or a Model-Driven Fund which results from an independent fiduciary's direction to exclude certain securities or types of securities from the Fund, notwithstanding that such securities are part of the index used by the Fund.

(e) "Large Account"—Any investment fund, account, or portfolio that is not an Index Fund or a Model-Driven Fund sponsored, maintained, trustee (other than a Fund for which the Manager is a nondiscretionary trustee) or managed by the Manager, which holds assets of either:

(1) An employee benefit plan within the meaning of section 3(3) of the Act that has \$50 million or more in total assets (for purposes of this requirement, the assets of one or more employee benefit plans maintained by the same employer, or controlled group of employers, may be aggregated provided that such assets are pooled for investment purposes in a single master trust);

(2) An institutional investor that has total assets in excess of \$50 million, such as an insurance company separate account or general account, a governmental plan, a university endowment fund, a charitable foundation fund, a trust or other fund which is exempt from taxation under section 501(a) of the Code; or

(3) An investment company registered under the Investment Company Act of 1940 (e.g., a mutual fund) other than an investment company advised or sponsored by the Manager; provided that the Manager has been authorized to restructure all or a portion of the portfolio for such Large Account or to act as a "trading adviser" (as defined in Section IV(g) of this exemption) in connection with a portfolio restructuring program (as defined in Section IV(f) of this exemption) for the Large Account.

(f) "Portfolio restructuring program"—Buying and selling the securities on behalf of a Large Account in order to produce a portfolio of securities which will be an Index Fund or a Model-Driven Fund managed by the Manager or by another investment manager, or in order to produce a portfolio of securities the composition of which is designated by a party independent of the Manager, without regard to the requirements of Section IV(a)(3) or (b)(2) of this exemption, or to

carry out a liquidation of a specified portfolio of securities for the Large Account.

(g) "Trading adviser"—A Merrill Lynch/BlackRock Related Entity or Entities whose role is limited with respect to a Large Account to the disposition of a securities portfolio in connection with a portfolio restructuring program that is a Large Account-initiated liquidation or restructuring within a stated period of time in order to minimize transaction costs. The Merrill Lynch/BlackRock Related Entity or Entities does not have discretionary authority or control with respect to any underlying asset allocation, restructuring or liquidation decisions for the account in connection with such transactions and does not render investment advice [within the meaning of 29 CFR 2510.3-21(c)] with respect to such transactions.

(h) "Closing price"—The price for a security on the date of the transaction, as determined by objective procedures disclosed to investors in advance and consistently applied with respect to securities traded in the same market, which procedures shall indicate the independent pricing source (and alternates, if the designated pricing source is unavailable) used to establish the closing price and the time frame after the close of the market in which the closing price will be determined.

(i) "Manager"—A Merrill Lynch/BlackRock Related Entity which is:

(1) A bank or trust company, or any Affiliate thereof, which is supervised by a state or federal agency; or

(2) An investment adviser or any Affiliate thereof which is registered under the Investment Advisers Act of 1940.

(j) "Affiliate"—An affiliate of a Manager includes:

(1) Any person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the Manager;

(2) Any officer, director, employee or relative of such Manager, or partner of any such Manager; and

(3) Any corporation or partnership of which such Manager is an officer, director, partner or employee.

(k) "Control"—The power to exercise a controlling influence over the management or policies of a person other than an individual.

(l) "Relative"—A relative is a person that is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in section 4975(e)(6) of the Code), or a brother, a sister, or a spouse of a brother or sister.

(m) "Nondiscretionary trustee"—A plan trustee whose powers and duties

with respect to any assets of the plan are limited to (1) the provision of nondiscretionary trust services to the plan, and (2) duties imposed on the trustee by any provision or provisions of the Act or the Code. The term "nondiscretionary trust services" means custodial services and services ancillary to custodial services, none of which services are discretionary. For purposes of this exemption, a person who is otherwise a nondiscretionary trustee will not fail to be a nondiscretionary trustee solely by reason of having been delegated, by the sponsor of a master or prototype plan, the power to amend such plan.

Background

On September 29, 2006, ML&Co. and BlackRock consummated a transaction (the Merger), in which ML&Co. contributed Merrill Lynch Investment Managers, LLC (MLIM) and various other assets and subsidiaries that comprised its investment management business to BlackRock in exchange for approximately 45% of the outstanding voting securities of BlackRock. Prior to the Merger, ML&Co. and its affiliates engaged in various types of transactions, involving employee benefit plans, in reliance on, and in accordance with the conditions of various class exemptions (the Applicable Exemptions)⁵ issued by the Department. Also, prior to the Merger, affiliates of ML&Co. engaged in the same transactions as described in the Applicable Exemptions, involving plans, with affiliates of BlackRock for which no exemption was required because ML&Co. had, at most, a *de minimis* ownership interest in BlackRock.

As a result of the Merger, certain transactions involving companies affiliated with ML&Co. and companies affiliated with BlackRock may now be prohibited transactions as defined in section 406 of the Act. However, the ownership interest existing between ML&Co. and its affiliates and BlackRock and its affiliates may nevertheless not result in the various entities being considered "affiliates" of each other as defined in the Applicable Exemptions. As the Applicable Exemptions extend relief only to affiliated entities, as defined thereunder, ML&Co. and its affiliates, and BlackRock and its affiliates may not be able to take

advantage of the relief provided by the Applicable Exemptions.

Accordingly, the Department is proposing an individual exemption which will enable the Applicants to engage in the transactions described in the Applicable Exemptions, provided the conditions contained herein are met.

Summary of Facts and Representations

1. BlackRock, headquartered in New York, NY, is one of the largest publicly-traded investment management firms in the world. BlackRock, through its Securities and Exchange Commission (SEC)-registered investment advisor subsidiaries, currently manages assets for institutional and individual investors worldwide through a variety of equity, fixed income, cash management and alternative investment products. As of June 30, 2007, BlackRock had approximately \$1.2 trillion in assets under management.

2. ML&Co. is a holding company that, through its subsidiaries, provides broker-dealer, investment banking, financing, wealth management, advisory, insurance, lending and related products and services on a global basis. ML&Co. is subject to group-wide supervision by the SEC.

3. On September 29, 2006, ML&Co. combined its asset management business with BlackRock (*i.e.*, the Merger). Prior to the Merger, PNC Financial Services Group, Inc. (PNC) owned approximately 70.6% of BlackRock. As a result of the Merger, ML&Co. now owns a 50.3% economic interest and an approximate 45% voting interest in BlackRock, and PNC's ownership interest has been reduced to approximately 34% of BlackRock. The remaining interest in BlackRock is owned by the public and by BlackRock employees.

4. All BlackRock capital stock beneficially owned from time to time by ML&Co. and its related companies (other than in certain fiduciary capacities and customer or market-making accounts) is subject to the terms and provisions of a Stockholders' Agreement as amended by Amendment No. 1 thereto (the Stockholders' Agreement), which was entered into on February 15, 2006.

5. The Stockholders' Agreement will remain in effect until ML&Co. beneficially owns less than 20% of BlackRock's voting stock or until five years after the closing date of the Merger (Closing Date), whichever comes later, except that the transfer restrictions will continue to apply until ML&Co. beneficially owns less than 5% of such voting stock. Additionally, the restrictions, obligations and

prohibitions on ML&Co. ownership of BlackRock securities may not be modified, amended or waived unless approved by either all of the independent directors of BlackRock or at least two-thirds of the directors of BlackRock. These restrictions, obligations and prohibitions fall into four broad categories: Corporate governance, share ownership, transfer restrictions, and non-competition.

6. ML&Co.'s rights to vote the shares of BlackRock voting stock, communicate with other BlackRock stockholders and to otherwise express its interests are expressly limited in the Stockholders' Agreement as follows: (i) ML&Co. may designate only two directors, each in a separate class, to the 17-member Board of Directors of BlackRock (the Board) and, of the 17-member Board, seven directors were members of the Board prior to the Merger and were independent of BlackRock, ML&Co. and PNC, for purposes of NYSE Listed Company Manual Section 303A.02 and Section 10A of the Securities Exchange Act of 1934, and were not proposed by ML&Co. or PNC; two additional directors were determined by BlackRock's pre-Merger board and satisfy the foregoing independence standard; four directors are members of management (including three from BlackRock and one from pre-Merger MLIM); two directors, as noted, are designated by ML&Co. and two directors are designated by PNC, thereby resulting in a Board with a majority of directors who are independent of management, ML&Co. and PNC, less than 12% of whom are designated by ML&Co. or PNC and nearly 25% of whom are members of BlackRock management; (ii) All committees of the Board (other than its executive committee) must consist solely of independent directors; (iii) ML&Co. must ensure that all of its BlackRock voting stock is present at any stockholder meeting, either in person or by proxy, for purposes of establishing a quorum; (iv) ML&Co. must vote all of its BlackRock voting stock on all matters (including elections of directors) as recommended by the Board as long as consistent with the terms of the Stockholders' Agreement; (v) ML&Co. has agreed that neither it nor its affiliated companies nor any of their directors, officers or agents will seek, solicit or make any statement to BlackRock or its affiliated companies or their boards or managements, any stockholder of BlackRock or any other person regarding any proposal seeking (1) to control or influence the management, the Board or the policies of BlackRock or its affiliated companies,

⁵ Parts III and IV of PTE 75-1 (40 FR 50845, October 31, 1975); PTE 77-3 (42 FR 18734, April 8, 1977); PTE 77-4 (42 FR 18732, April 8, 1977); PTE 79-13 (44 FR 25533, May 1, 1979); PTE 86-128 (51 FR 41686, November 18, 1986; as amended by 67 FR 64137, October 17, 2002); and PTE 2002-12 (67 FR 9483, March 1, 2002).

(2) any acquisition of BlackRock stock in excess of its permitted holdings, (3) any acquisition of any securities, assets or business of BlackRock or its affiliated companies, or (4) any recapitalization, business combination or other extraordinary transaction involving BlackRock or its affiliated companies; (vi) Certain limited matters designated in the Stockholders' Agreement require approval by two-thirds of the independent directors of BlackRock (including appointment of a new CEO of BlackRock, sale of BlackRock, major acquisitions and charter amendments), and certain other extraordinary matters require consent from ML&Co. (the ML Consent Rights) (such as sale of BlackRock to a major global competitor of ML&Co., sale of BlackRock within the first five years of the Closing Date, sale in any one year of BlackRock subsidiaries that produce more than 20% of BlackRock's revenue, changes to certain of BlackRock's by-laws which would adversely affect ML&Co.'s interests, settlement of regulatory matters that would result in a loss of license by ML&Co., voluntary bankruptcy, actions that would cause ML&Co. to become a bank holding company or amendment of the parallel arrangements with PNC in a manner materially averse to ML&Co. or materially beneficial to PNC); and (vii) The first three of the ML Consent Rights terminate if there is a change in control of ML&Co., and if such change occurs during the first five years after the Merger, ML&Co. must also reduce its holdings below 25% or exchange all of its shares for nonvoting participating preferred stock.

7. Among the restrictions that ML&Co. has agreed to in the Stockholders' Agreement, there are two fundamental restrictions with respect to its ownership of BlackRock capital stock: (i) ML&Co. and its related companies may not seek to acquire or acquire beneficial ownership of any BlackRock capital stock or equivalent securities if, after giving effect to any such acquisition, ML&Co. and its related companies would beneficially own in excess of 49.8% of the total voting power of all outstanding BlackRock voting securities, or BlackRock voting securities and preferred stock in excess of 49.8% of the outstanding BlackRock voting securities and preferred stock combined on a fully diluted basis; and (ii) ML&Co. must sell stock as necessary to keep its holdings below such levels.

8. In light of the difficulty ML&Co. may experience in acquiring additional BlackRock capital stock if BlackRock issues additional voting securities beyond certain levels, ML&Co. will have

the right to purchase additional preferred stock to maintain its then current economic ownership level and to purchase additional voting securities if necessary to prevent dilution below 90% of its voting securities limitation.

9. ML&Co. is prohibited by the terms of the Stockholders' Agreement from transferring any of its BlackRock capital stock to any person who would as a result beneficially own more than 5% of BlackRock's voting stock. ML&Co. is also restricted in the following ways: (i) ML&Co. may sell its BlackRock capital stock only in broadly distributed public offerings, or in ordinary unsolicited broker transactions to persons who will not beneficially own more than 5% of BlackRock's voting stock after such sale (after providing BlackRock with a right to match any offer), or to one of its related companies which agrees in writing with BlackRock to be bound by the Stockholders' Agreement as if it were an initial signatory thereto; (ii) ML&Co. must obtain prior written consent to engage in any transfers not provided for in (i) above; and (iii) If ML&Co. wishes to or is required to transfer an amount of BlackRock voting stock constituting more than 10% of the total voting power, ML&Co. must coordinate such transfer with BlackRock.

10. The Stockholders' Agreement substantially curtails ML&Co.'s ability to compete with BlackRock in the asset management business as well as BlackRock's ability to compete with ML&Co. in the retail securities brokerage business.

11. The transactions described in this proposed exemption are the same as the transactions described in PTEs 75-1, Parts III and IV; PTE 77-3; PTE 77-4; PTE 79-13; PTE 86-128; and PTE 2002-12 (*i.e.*, the Applicable Exemptions), and the conditions would be the same conditions provided for in the Applicable Exemptions. However, the Applicable Exemptions contain definitions of the term "affiliate" which might not apply to all of the entities related to ML&Co. and to BlackRock after the Merger. Accordingly, the Applicants have sought the individual exemption proposed herein in order that such entities may continue to engage in the transactions described in the Applicable Exemptions.

12. The Applicants have also requested relief for their related entities which may satisfy this individual exemption in the future. For a variety of business reasons, the Applicants may reorganize their respective businesses or establish new entities that will perform the same or similar functions as existing entities. Further, the Applicants may

acquire entities that act as investment advisers or other service providers to plans or may otherwise be considered parties in interest to plans by virtue of their relationship to the Applicants. However, the Applicants are not requesting relief, nor is the Department herein proposing any relief, for an entity that would be a successor of ML&Co. or of BlackRock.

13. The Applicants had discussions concerning the possible ramifications of the Merger with respect to the Applicable Exemptions with the Department both prior to and continuing after the date of the Merger. The Applicants are requesting relief retroactive to September 29, 2006, the date of the Merger, to the extent that they and their related entities have been engaging in transactions described in the Applicable Exemptions in accordance with the conditions therein (other than the definition of "affiliate").

14. The Applicants represent that transactions covered by the proposed individual exemption have been engaged in in accordance with the conditions of the Applicable Exemptions following consummation of the Merger. However, with regard to Section VIII of the proposed individual exemption pertaining to PTE 86-128, it should be noted that prior to the effective date of the merger, MLIM, as a subsidiary of ML&Co., engaged in transactions in reliance on, and in accordance with, the conditions of PTE 86-128. In this regard, it is represented that certain independent plan fiduciaries authorized MLIM to utilize the relief provided by PTE 86-128 with respect to transactions involving any broker-dealer that is affiliated with ML&Co. As a result of the Merger, MLIM became a subsidiary of BlackRock and it is represented that MLIM continued to engage in those same transactions for which relief is provided by PTE 86-128. The Applicants maintain that reliance on the existing consents obtained from certain independent plan fiduciaries was appropriate, because MLIM, notwithstanding the fact that it had become a subsidiary of BlackRock, was continuing an existing practice for which it had already obtained affirmative consent in accordance with the requirements of PTE 86-128. Accordingly, instead of seeking new authorization, BlackRock sent a letter to the authorizing plan fiduciary of each client plan and pooled fund subject to the Act or the Code after the closing of the Merger notifying such fiduciaries of the Merger and that the authorization remained in place, unless such fiduciaries elected to terminate such authorization. It is represented that in

the case of plans covered by the Act, a termination form was included with such letter. The Applicants maintain that provision of notice of the Merger and the right to terminate an authorization was consistent with the annual "negative consent" provided for in Part III(c) of PTE 86-128. With respect to existing client plans of BlackRock and any of its affiliates, on the effective date of the Merger, and client plans that retained BlackRock or any of its affiliates following the effective date of the Merger, it is represented that BlackRock has implemented a compliance program designed to comply with the requirements of PTE 86-128. In this regard, for BlackRock and any of its affiliates that had not been relying on PTE 86-128 prior to the consummation of the Merger, affirmative consents have been and will be obtained.

15. In summary, the Applicants represent that the subject transactions meet the statutory criteria for an exemption under section 408(a) of the Act and section 4975(c)(2) of the Code because: (a) The transactions covered by the proposed exemption are the same as the transactions described in the Applicable Exemptions; (b) The conditions contained in the proposed exemption are the same as those in the Applicable Exemptions (except for the definition of "affiliate" therein); (c) The rationale for providing the same exemptive relief as is available under the Applicable Exemptions is the same as providing the proposed exemptive relief described herein; and (d) Absent the requested relief, plan participants and beneficiaries would be precluded from gaining access to certain favorable investment opportunities or receiving certain services from the Applicants and their related entities.

Temporary Nature of Exemption

The Department has determined that the relief provided by this exemption is temporary in nature. The exemption, if granted, will be effective September 29, 2006, and will expire on the day which is five (5) years from the date of the publication of the final exemption in the **Federal Register**. Accordingly, the relief provided by this exemption will not be available upon the expiration of such five year period for any new or additional transactions, as described herein, after such date, but would continue to apply beyond the expiration of such five year period for continuing transactions entered into during the effective dates of this exemption; provided the conditions of this exemption continue to be satisfied. Should the Applicants wish to extend,

beyond the expiration of such five year period, the relief provided by this exemption to new or additional transactions, the Applicants may submit another application for exemption. In this regard, the Department would require that prior to filing another exemption application seeking relief for new or additional transactions, the Applicants must document compliance with the conditions of this exemption.

Notice to Interested Persons

The Applicants represent that because those plans proposing to engage in the covered transactions cannot all be identified, the only practical means of notifying independent plan fiduciaries or plan participants of such affected plans is by publication of the proposed exemption in the **Federal Register**. Therefore, any comments from interested persons must be received by the Department no later than *June 9, 2008*.

Written Comments and Hearing Requests

All interested persons are invited to submit written comments and/or requests for a public hearing on the pending exemption to the address, as set forth above, within the time frame, as set forth above. All comments and requests for a public hearing will be made a part of the record. Comments and hearing requests should state the reasons for the writer's interest in the proposed exemption. A request for a public hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. Comments and hearing requests received will also be available for public inspection with the referenced application at the address, as set forth above.

FOR FURTHER INFORMATION CONTACT: Ms. Blessed ChukSORJI, Office of Exemption Determinations, Employee Benefits Security Administration, U.S. Department of Labor, telephone (202) 693-8540. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404

of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemption, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemption, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 29th day of April, 2008.

Ivan Strasfeld,

*Director of Exemption Determinations,
Employee Benefits Security Administration,
U.S. Department of Labor.*

[FR Doc. E8-10263 Filed 5-8-08; 8:45 am]

BILLING CODE 4510-29-P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA-2008-0005]

Request for Comments on Proposed Guidance on Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for comments.

SUMMARY: The Department of Labor is inviting comments on its document entitled "Proposed Guidance on

Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza” (Proposed Guidance). The Proposed Guidance is available on OSHA’s Web page and through its publications office. Interested persons may submit written or electronic comments on the Proposed Guidance as discussed below.

DATES: Written Comments: You must submit your comments by the following dates:

Regular mail, hand-delivery, express delivery, messenger, or courier service: You must submit your comments (postmarked or sent) by July 8, 2008.

Facsimile and electronic transmission: You must submit your comments by July 8, 2008. OSHA is providing the public with 60 days to submit comments on the *Proposed Guidance on Workplace Stockpiling of Respirators and Facemasks for Pandemic Influenza*.

ADDRESSES:

I. Submitting Comments

You may submit comments and information in response to this document as a hard copy, fax transmission (facsimile), or electronically. Submitted materials must include and clearly identify your name, date, and Docket No. OSHA–2008–0005 (the docket number associated with the Proposed Guidance), so OSHA can place them in the appropriate docket and, if necessary, attach them to your prior submissions.

(1) *Regular mail, hand-delivery, express delivery, messenger, or courier service:* You must submit three copies of your comments and attachments to the OSHA Docket Office, Docket No. OSHA–2008–0005, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–2350 (OSHA’s TTY number is (877) 889–5627). The OSHA Docket Office and the Department of Labor hours of operation are 8:15 a.m. to 4:45 p.m., ET.

Because of security-related procedures, the use of regular mail may cause a significant delay in the receipt of submissions. Please contact the OSHA Docket Office at: (202) 693–2350 (TTY (877) 889–5627) for information about security procedures concerning the delivery of materials by express delivery, hand delivery, and messenger service.

(2) *Facsimile:* If your comments, including any attachments, do not exceed 10 pages, you may fax them to the OSHA Docket Office at (202) 693–1648. You must include the docket number of this document, Docket No. OSHA–2008–0005, in your comments.

(3) *Electronically:* You may submit your comments and attachments electronically at: <http://www.regulations.gov>, which is the Federal e-Rulemaking Portal. Information on using the <http://www.regulations.gov> Web site to submit these materials, and to access the docket, is available at the Web site’s “User Tips” link. You may supplement electronic submissions by uploading document attachments and files electronically. If, instead, you wish to mail additional materials in reference to an electronic or fax submission, you must submit three copies to the OSHA Docket Office. As discussed above, submitted materials must include and clearly identify your name, date, and Docket No. OSHA–2008–0005. Contact the OSHA Docket Office for assistance in using the Internet to locate docket submissions.

II. Obtaining Copies of the Proposed Guidance

You can download the Proposed Guidance from OSHA’s Web site at <http://www.osha.gov>. A printed copy of the Proposed Guidance is available from the OSHA Office of Publications, Room N–3101, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, or by telephone at (800) 321–OSHA (6742). You may fax your request for a copy of the Proposed Guidance to (202) 693–2498.

FOR FURTHER INFORMATION CONTACT:

Andrew Levinson, Acting Director, Office of Biological Hazards, OSHA Directorate of Standards and Guidance, Room N–3718, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 693–1950.

SUPPLEMENTARY INFORMATION:

I. Internet Access to Comments

All comments and submissions will be available for inspection and copying at the OSHA Docket Office at the above address. Comments and submissions will be posted without change at <http://www.regulations.gov>. Therefore, OSHA cautions commenters about submitting personal information such as social security numbers, dates of birth, etc. Although all submissions are listed in the <http://www.regulations.gov> index, some information (e.g., copyrighted material) is not publicly available to read or download through <http://www.regulations.gov>. Contact the OSHA Docket Office at (202) 693–2350 (TTY (877) 889–5627) for information about materials not available through the OSHA Web site and for assistance in

using the Web site to locate docket submissions.

Electronic copies of this **Federal Register** document are available at <http://www.regulations.gov>. This document, news releases and other relevant information, also are available at OSHA’s Web page at <http://www.osha.gov>.

II. Background

An influenza pandemic could have a major effect on society and the global economy, including travel, trade, tourism, food, consumption, and investment and financial markets. Planning for pandemic influenza by business and industry is essential to minimize a pandemic’s impact. During a pandemic, employers will play a key role in protecting employees’ health and safety as well as in limiting the impact of a pandemic on the economy and society. Employers will likely experience increased employee absences, changes in patterns of commerce and interrupted supply and delivery schedules. Therefore, as with any catastrophe, having a contingency plan is essential.

The President announced the *National Strategy for Pandemic Influenza* in November of 2005, which outlines the Federal Government’s approach to prepare for and respond to an influenza pandemic (<http://www.pandemicflu.gov>). To further assist in National pandemic preparedness efforts, the Department of Labor (DOL), in coordination with the Department of Health and Human Services (HHS), developed the Proposed Guidance on stockpiling of respirators and facemasks in occupational settings. The Proposed Guidance is designed to help private sector and government employers in making purchasing and stockpiling decisions regarding these protective devices, thereby allowing them to better protect their employees as well as lessen the impact of a pandemic. The document provides employers with recommendations and a methodology for calculating workplace stockpiling needs for respirators and facemasks in the event of an influenza pandemic.

The Proposed Guidance is supplementary to the existing DOL/HHS *Guidance on Preparing Workplaces for an Influenza Pandemic* that was released February 2007 (<http://www.osha.gov/Publications/OSHA3327pandemic.pdf>). The existing guidance includes information on how employers and employees can evaluate their risk of occupational exposure to pandemic influenza and explains steps that employers can take at each exposure risk level (very high, high,

medium and low) to protect employees. The existing guidance document contains recommendations on the use of personal protective equipment (e.g. respirators and facemasks) at each risk level. More specifically, it recommends that employees at very high risk and high risk of exposure to pandemic influenza use respirators, while workers at medium risk of exposure use facemasks. Neither facemasks nor respirators are recommended for employees at lower risk of exposure to pandemic influenza.

The Proposed Guidance supplements the existing guidance by informing employers about various types of respirators, their advantages, disadvantages, and approximate costs. In addition, when employers determine that they have employees who are at medium or higher exposure risk, the Proposed Guidance provides them with methodology to determine how many respirators and/or facemasks they would have to stockpile based upon the assumption that an influenza pandemic is expected to come in two waves, each lasting up to 12 weeks, extending over an 18-month period.

OSHA encourages interested parties to comment on all aspects of the Proposed Guidance. The Agency is particularly interested in addressing the following questions:

1. Is the guidance clear and useful in helping employers determine if they should stockpile respirators and/or facemasks for their employees and the quantity of each device that should be stockpiled?

2. Are there any parts of the guidance that are not clear and if so, how can they be clarified?

3. Do the underlying assumptions used to estimate stockpiling needs, as well as cost estimates, for various types of facemasks and respirators, appear to be appropriate? If not, please explain why you feel they are inappropriate and suggest an alternative and your rationale for the alternative.

- A. If you have already addressed stockpiling needs for your facility, could you please provide your underlying assumptions and methodology?

- B. Are employers that should stockpile respirators and/or facemasks currently stockpiling these devices and if not, how can the guidance be modified to encourage them to begin stockpiling?

III. Authority and Signature

This notice was prepared under the direction of Edwin G. Foulke, Jr., *Assistant Secretary of Labor for Occupational Safety and Health*. It is issued under sections 4 and 8 of the

Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 657).

Issued at Washington, DC, this 5th day of May, 2008.

Edwin G. Foulke, Jr.,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. E8-10312 Filed 5-8-08; 8:45 am]

BILLING CODE 4510-26-P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104-13. This is the second notice for public comment; the first was published in the **Federal Register** at 73 FR 12222, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725 17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission may be obtained by calling 703-292-7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Application for NATO Advanced Study Institutes Travel Award and NATO Advanced Study Institutes Travel Award Report Form.

OMB Approval Number: 3145-0001.

Abstract: The North Atlantic Treaty Organization (NATO) initiated its Advanced Study Institutes Program in 1958 modeled after a small number of very successful summer science "courses" that were held in Europe and that sought to rebuild Europe's science strength following World War II. The goal was to bring together both students and researchers from the leading centers of research in highly targeted fields of science and engineering to promote the "American" approach to advanced learning, spirited give-and-take between students and teachers, that was clearly driving the rapid growth of U.S. research strength. Today the goal remains the same; but due to the expansion of NATO, each year an increasing number of ASIs are held in NATO Partner Countries along with those held in NATO Member Countries. In the spirit of cooperation with this important activity, the Foundation inaugurated in 1959 a small program of travel grants for advanced graduate students to assist with the major cost of such participation, that of transatlantic travel. It remains today a significant means for young scientists and engineers to develop contact with their peers throughout the world in their respective fields of specialization.

The Advanced Study Institutes (ASI) travel awards are offered to advanced graduate students, to attend one of the NATO's ASIs held in the NATO member and partner countries of Europe. The NATO ASI program is targeted to those individuals nearing the completion of their doctoral studies in science, technology, engineering and mathematics (STEM) who can take advantage of opportunities to become familiar with progress in their respective fields of specialization in other countries.

The Division of Graduate Education (DGE) in the Education and Human Resources (EHR) Directorate administers

the NATO ASI Travel Awards Program. The following describes the procedures for the administration of the Foundation's NATO Advanced Study Institute (ASI) Travel Awards, which provide travel support for a number of U.S. graduate students to attend the ASIs scheduled for Europe.

• ADVANCED STUDY INSTITUTE DETERMINATION

Once NATO has notified DGE that the schedule of institutes is final, and DGE has received the descriptions of each institute, DGE determines which institutes NSF will support. The ASI travel award program supports those institutes that offer instruction in the STEM fields traditionally supported by NSF as published in *Guide to Programs*.

The program will not support institutes that deal with clinical topics, biomedical topics, or topics that have disease-related goals. Examples of areas of research that will not be considered are epidemiology; toxicology; the development or testing of drugs or procedures for their use; diagnosis or treatment of physical or mental disease, abnormality, or malfunction in human beings or animals; and animal models of such conditions. However, the program does support institutes that involve research in bioengineering, with diagnosis or treatment-related goals that apply engineering principles to problems in biology and medicine while advancing engineering knowledge. The program also supports bioengineering topics that aid persons with disabilities. Program officers from other Divisions in NSF will be contacted should scientific expertise outside of DGE be required in the determination process.

• SOLICITATION FOR NOMINATIONS

Following the final determination as to which Advanced Study Institutes NSF will support, DGE contacts each institute director to ask for a list of up to 5 nominations to be considered for NSF travel support.

• DGE/EHR CONTACT WITH THE INDIVIDUALS NOMINATED

Each individual who is nominated by a director will be sent the rules of eligibility, information about the amount of funding available, and the forms (NSF Form 1379, giving our Division of Financial Management (DFM) electronic banking information; NSF Form 1310 (already cleared), and NSF Form 192 (Application for International Travel Grant)) necessary for our application process.

• THE FUNDING PROCESS

Once an applicant has been selected to receive NSF travel award support, his or her application is sent to DFM for funding. DFM electronically transfers

the amount of \$1000 into the bank or other financial institution account identified by the awardee.

Our plan is to have the \$1000 directly deposited into the awardee's account prior to the purchase of their airline ticket. An electronic message to the awardee states that NSF is providing support in the amount of \$1000 for transportation and miscellaneous expenses. The letter also states that the award is subject to the conditions in F.L. 27, *Attachment to International Travel Grant*, which states the U.S. flag-carrier policy.

As a follow-up, each ASI director may be asked to verify whether all NSF awardees attended the institute. If an awardee is identified as not utilizing the funds as prescribed, we contact the awardee to retrieve the funds. However, if our efforts are not successful, we will forward the awardee's name to the Division of Grants and Agreements (DGA), which has procedures to deal with that situation.

We also ask the awardee to submit a final report on an NSF Form 250, which we provide as an attachment to the electronic award message.

• SELECTION OF AWARDEES

The criteria used to select NSF Advanced Study Institute travel awardees are as follows:

1. The applicant is an advanced graduate student.
2. We shall generally follow the order of the nominations, listed by the director of the institute, within priority level.
3. Those who have not attended an ASI in the past will have a higher priority than those who have.
4. Nominees from different institutions and research groups have higher priority than those from the same institution or research group. (Typically, no more than one person is invited from a school or from a research group.)

Use of the Information: For NSF Form 192, information will be used in order to verify eligibility and qualifications for the award. For NSF Form 250, information will be used to verify attendance at Advanced Study Institute and will be included in Division reports.

Estimate of Burden: Form 192—1.5 hours. Form 250—2 hours.

Respondents: Individuals.

Estimated Number of Responses per Award: 150 responses, broken down as follows: For NSF Form 250, 75 respondents; for NSF Form 192, 75 respondents.

Estimated Total Annual Burden on Respondents: 262.5 hours, broken down by 150 hours for NSF Form 250 (2 hours per 75 respondents); and 112.5 hours for

NSF Form 192 (1.5 hours per 75 respondents).

Frequency of Responses: Annually.

Comments: Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Dated: May 6, 2008.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. E8-10353 Filed 5-8-08; 8:45 am]

BILLING CODE 7555-01-P

NATIONAL TRANSPORTATION SAFETY BOARD

Proposed Information Collection Activity: Submission for OMB Review, Comment Request

AGENCY: National Transportation Safety Board (NTSB).

ACTION: Notice.

SUMMARY: The NTSB is announcing that it has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for approval, in accordance with the Paperwork Reduction Act. This ICR describes a voluntary web site that the NTSB proposes to use to obtain feedback from the public regarding the NTSB Web site. This Notice informs the public that they may submit comments concerning the NTSB's proposed collection of information to the NTSB Desk Officer at the OMB.

DATES: Submit written comments regarding this proposed collection of information by June 9, 2008.

ADDRESSES: Respondents may submit written comments on the collection of information to the Office of Information and Regulatory Affairs of the Office of Management and Budget, Attention: Desk Officer for the National Transportation Safety Board, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Christine Fortin, NTSB Office of Chief Information Officer, at (202) 314-6607.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act, the NTSB previously published a Notice in the **Federal Register** indicating its proposal to collect feedback concerning its public Web site, and sought comments from the public concerning this proposed ICR. The NTSB did not receive any comments. At this juncture, in accordance with OMB regulations that require this additional Notice for proposed ICRs, the NTSB seeks to notify the public that it may submit comments on this proposed ICR to OMB. 5 CFR 1320.10(a).

The NTSB Online Customer Satisfaction Survey will seek the public's feedback regarding a variety of aspects of the current NTSB Web site. In particular, the survey will solicit feedback concerning the public's satisfaction with the content of information on the Web site, as well as the presentation and organization of information that is available on the NTSB Web site. The survey will also ask the public for opinions regarding the overall utility of certain categories of the existing Web site. The survey will also seek responses to questions concerning ways to improve the Web site, such as whether the public would find it helpful to include certain information. In addition, the survey will seek general comments regarding ways the NTSB can improve its Web site. Finally, the survey will inquire into whether respondents are affiliated with a particular group, industry, or profession, and how often respondents visit the NTSB Web site.

Respondents' participation in the survey is voluntary. The survey will only be available on the NTSB Web site, and the NTSB has carefully reviewed the survey to ensure that it has used plain, coherent, and unambiguous terminology in its requests for information and feedback. The survey is not duplicative of other agencies' collections of information. The survey will consist of seven questions, and imposes minimal burden on respondents: the NTSB estimates that respondents will spend approximately 10 minutes in completing the survey. The NTSB estimates that approximately

100 respondents will participate in the survey.

Dated: May 2, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8-10117 Filed 5-8-08; 8:45 am]

BILLING CODE 7533-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 13, 2008.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: The one item is open to the public.

MATTERS TO BE CONSIDERED: 7853A Railroad Accident Report-Derailment of Norfolk Southern Railway Company Train 68QB 119 with Release of Hazardous Materials and Fire, New Brighton, Pennsylvania, October 20, 2006.

News Media Contact: Telephone: (202) 314-6100.

Individuals requesting specific accommodations should contact Antoin Downs at (202) 314-6557 by Friday, May 9, 2008.

The public may view the meeting via a live or archived Webcast by accessing a link under "News & Events" on the NTSB home page at <http://www.nts.gov>.

For More Information Contact: Vicky D'Onofrio, (202) 314-6410.

Dated: May 2, 2008.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. E8-10120 Filed 5-8-08; 8:45 am]

BILLING CODE 7533-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Implementation of Textile Safeguard Measure Under the Dominican Republic—Central America—United States Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Pursuant to Proclamation 8228 of March 28, 2008 (73 Fed. Reg. 18,141 (2008)), the United States Trade Representative (USTR) is providing notice of a modification to the Harmonized Tariff Schedule of the United States (HTS) to reflect a textile safeguard measure under the Dominican Republic—Central America—United States Free Trade Agreement (CAFTA-DR or the Agreement).

EFFECTIVE DATE: May 1, 2008.

ADDRESSES: Inquiries may be mailed, delivered, or faxed to Rachel A. Alarid, Director of Textile Trade Policy, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508, fax number (202) 395-5639.

FOR FURTHER INFORMATION CONTACT: Rachel A. Alarid, Office of the United States Trade Representative, 202-395-3026.

SUPPLEMENTARY INFORMATION: On April 25, 2008, the Committee for the Implementation of Textile Agreements (CITA) determined, pursuant to Section 322(a)-(b) of the Dominican Republic—Central America—United States Free Trade Agreement Implementation Act (Pub. L. 109-53; 19 U.S.C. 4082), to impose a textile safeguard measure on certain cotton socks of Honduras. This measure takes the form of an increase in the rate of duty in the amount of 5 percent *ad valorem* on all CAFTA-DR originating cotton socks of Honduras classifiable in subheading 6115.95 of the HTS that are entered, or withdrawn from warehouse, for consumption during the period July 1, 2008 through December 31, 2008. This duty will be applied on the full value of the entered goods, regardless of the value of any United States content of such goods. *See* 73 Fed. Reg. 23,196 (2008).

In Proclamation 8228 of March 28, 2008, the President directed the USTR to modify the HTS to reflect CAFTA-DR textile safeguard determinations by CITA. Pursuant to this authority, effective with respect to goods of Honduras, under the terms of general note 29 to the HTS, that are entered, or withdrawn from warehouse for consumption, on or after July 1, 2008 and before the close of December 31, 2008, subchapter XV of chapter 99 of the HTS is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by inserting the following new sentence immediately before the final sentence to the text of such note:

“Goods of a party to the Agreement as defined in general note 29(a) to the tariff schedule, and described in subheading 9915.50.01 (or in any subsequent subheadings of this subchapter which may hereafter be established), are subject to duty at the special rate of duty set forth therein in lieu of the special rate of duty provided for in chapters 1 through 97 or subchapter II of chapter 98 of the tariff schedule, unless such goods are entered at the appropriate general duty rate provided for in chapters 1 through 97 of the tariff schedule.”

2. The following new subheading is inserted in numerical sequence in such subchapter, with the material inserted in the columns entitled “Heading/Subheading”, “Article Description”, “Rates of Duty 1 General” and “Rates of Duty 1 Special”, respectively:

“9915.50.01	: Socks, stockings and other hosiery and footwear	:	:	:
	: without applied soles, of cotton, knitted or crocheted	:	:	:
	: (provided for in subheading 6115.95.60 or 6115.95.90,	:	:	:
	: and including such goods eligible for entry under	:	:	:
	: heading 9802.00.80 or 9822.05.10), the foregoing which	:	:	:
	: are originating goods of Honduras under the terms of	:	:	:
	: general note 29 to the tariff schedule and are entered	:	:	:
	: during the period from July 1, 2008 through December	:	:	:
	: 31, 2008, inclusive.	: No change	: 5% on the full	:
:	:	:	: value of the im-	:
:	:	:	: ported article”	:

Susan C. Schwab,

U.S. Trade Representative.

[FR Doc. E8–10350 Filed 5–8–08; 8:45 am]

BILLING CODE 3190–W8–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for Extension, Without Change, of a Currently Approved Information Collection: RI 38–45

AGENCY: Office of Personnel
Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) has submitted to the Office of Management and Budget (OMB) a request for extension, without change, of a currently approved information collection. RI 38–45, We Need the Social Security Number of the Person Named Below, is used by the Civil Service Retirement System and the Federal Employees Retirement System to identify the records of individuals with similar or the same names. It is also needed to report payments to the Internal Revenue Service.

Approximately 3,000 RI 38–45 forms will be completed annually. Each form requires approximately 5 minutes to

complete. The annual estimated burden is 250 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, FAX (202) 418–3251 or via E-mail to MaryBeth.Smith-Toomey@opm.gov. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 30 calendar days from the date of this publication.

ADDRESSES: Send or deliver comments to—

Ronald W. Melton,
Deputy Assistant Director,
Retirement Services Program,
Center for Retirement and Insurance
Services,
U.S. Office of Personnel Management,
1900 E Street, NW., Room 3305,
Washington, DC 20415–3500;
and
Brenda Aguilar,
OPM Desk Officer,
Office of Information & Regulatory
Affairs,
Office of Management and Budget,
New Executive Office Building, NW.,
Room 10235,
Washington, DC 20503.

*For Information Regarding
Administrative Coordination—Contact:*
Cyrus S. Benson, Team Leader,
Publications Team, RIS Support
Services/Support Group, (202) 606–
0623.

Office of Personnel Management.

Howard Weizmann,

Deputy Director.

[FR Doc. E8–10356 Filed 5–8–08; 8:45 am]

BILLING CODE 6325–38–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Personnel Demonstration Project; Alternative Personnel Management System for the U.S. Department of Agriculture, Food Safety and Inspection Service

AGENCY: U.S. Office of Personnel
Management.

ACTION: Notice of a proposed
demonstration project plan.

SUMMARY: Chapter 47 of title 5, United States Code, authorizes the U.S. Office of Personnel Management (OPM), directly or in agreement with one or more agencies, to conduct demonstration projects that experiment with new and different human resources management concepts to determine whether changes in human resources policy or procedures result in improved Federal human resources management. The Food Safety and Inspection Service (FSIS), the United States Department of Agriculture (USDA), and OPM propose to test a results-based, competency-linked pay-for-performance system that is combined with a simplified, pay banding classification and compensation system. Section 4703 of

title 5 requires OPM to publish the proposed project plan in the **Federal Register**. This notice fulfills that requirement.

DATES: To be considered, written comments must be submitted on or before June 9, 2008. A public hearing will be held on the proposed project plan on Thursday, June 26, 2008, and will begin at 10 a.m., Eastern Standard Time. *The location of the hearing is:* U.S. Department of Agriculture, South Building, 1400 Independence Avenue, SW., Washington, DC 20250. You must use the 7th wing entrance which is accessible from Independence Avenue.

Public parking is limited, but the building is conveniently accessible to the "Smithsonian" Metro stations. The South Building is a secure facility. Members of the public must show a government-issued photo ID (e.g. State driver's license). Attendees will undergo electronic screening, and their personal belongings will be subject to a physical search. Personal items prohibited in the South Building include devices that can transmit and record, weapons (guns, knives, explosives, etc.), and alcohol. A member of the public possessing such items will be barred from entering, and such items are subject to confiscation. There will be a sign-in table set up in the lobby of the Jefferson Auditorium. A greeter and signs will direct attendees to the auditorium location.

There will be a telephone call-in number for members of the public and agency who cannot attend in person. That number will be 888-790-4330 (Passcode: Demonstration Project), and the line will be active from 10 a.m. Eastern Standard Time until the conclusion of the hearing.

At the time of the hearing, interested persons or organizations may present their written or oral comments on the proposed demonstration project. The hearing will be informal. However, anyone wishing to testify should contact the person listed under **FOR FURTHER INFORMATION CONTACT**, so that FSIS, USDA, and OPM can plan the hearing and provide sufficient lead time for all interested persons and organizations to be heard. Priority will be given to those on the schedule, with others speaking in any remaining available time. Each speaker's presentation will be limited to five minutes. Written comments may be submitted to supplement oral testimony during the public comment period.

ADDRESSES: Comments may be mailed to Demonstration Projects, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7677, Washington, DC 20415 or submitted by e-mail to Demoprojects@opm.gov.

FOR FURTHER INFORMATION CONTACT: (1) FSIS, Laurie Lindsay, Director, HR Demonstration Project Staff, (202) 720-7983, 1400 Independence Avenue, SW., Room 2134 South Building, Washington D.C. 20250; (2) Office of Personnel Management, Patsy Stevens, Systems Innovation Group Manager, (202) 606-1574, U.S. Office of Personnel Management, 1900 E Street, NW., Room 7456, Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The goals of this demonstration project are to improve workforce performance and promote mission accomplishment by making employees' pay increases more performance-sensitive, so that only Fully Successful and higher performers will receive any pay adjustments and the best performers will receive the largest pay adjustments. This will produce such measurable outcomes as improving the quality of new hires, increasing the proportion of agency positions that remain filled, improving supervisors' and employees' commitment to a highly effective performance culture, retaining good performers, making line managers more responsible and accountable for human resources management, improving the effectiveness and efficiency of human resources systems, and closing human capital gaps for supervisory and mission-critical occupations (e.g., the gap between the number of employees required at each competency proficiency level to perform current and future missions and the number of existing employees at those levels).

Linda M. Springer,
Director.

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I. Executive Summary

This project was designed by the United States Department of Agriculture (USDA), including the Food Safety and Inspection Service (FSIS), with participation of and review by the U.S. Office of Personnel Management (OPM). The demonstration project will pursue several key objectives: to simplify the current classification system for greater flexibility in classifying work and paying employees; to reaffirm the performance management and rewards system for improving individual and organizational performance; to assure that the allocation of annual pay increases reflects distinctions in levels of performance in a meaningful way; and to test the effectiveness of multi-grade pay bands in recruiting, advancing and retaining employees. The duration of the project will be 5 years, except that the project may be extended by OPM if further testing and evaluation are warranted.

The proposed project will test whether a results-based, competency-linked pay-for-performance system can be successful in USDA. Previous alternative pay systems that used competency models (e.g., the Government Accountability Office (GAO) compensation system and the Department of Defense (DOD) Acquisition Workforce Demonstration Project) did not focus on missions or occupations related to public health or food defense. Moreover, the workforce covered by the proposed demonstration project is predominantly supervisory (about 40%), and it is important to

establish effective pay-for-performance policies and procedures for supervisory positions before extending such systems to large numbers of line worker positions throughout the Federal Government. Finally, a substantial number of the covered employees (approximately 30 percent) have working conditions that are dramatically different from other white-collar workers (e.g., shift-oriented work in slaughter or meat processing facilities), including the requirement for substantial amounts of regularly-scheduled and intermittent overtime.

II. Introduction

A. Purpose

The purpose of the proposed project is to strengthen the contribution of human resources management in helping to achieve the missions of the specific program areas of FSIS. The proposed project will test whether a results-based, competency-linked, pay-for-performance system and related innovations will produce successful results in a public health regulatory environment with distinct working conditions and an ever-present concern for food defense and security.

B. Problems with the Present System

The USDA Strategic Human Capital Plan and the President's Management Agenda require FSIS to manage human capital in the 21st century very aggressively. FSIS must achieve comprehensive human capital goals for strategic workforce planning, learning and workforce development, recruitment and retention, and evolution of a highly effective performance culture.

The FSIS Strategic Plan calls for continued transformation of the existing workforce, which was recruited and trained during a time when food safety was considered a conventional inspection program governed by legislation such as the Federal Meat Inspection Act of 1906, the Poultry Products Inspection Act of 1957, the Wholesome Meat Act of 1967, the Wholesome Poultry Products Inspection Act of 1968, and the Egg Products Inspection Act of 1970. This legislation was enacted when food industry practices were characterized by carcass-by-carcass organoleptic inspection. To carry out its public health regulatory missions today, FSIS must assure science-based development and execution of policy and must also emphasize risk-oriented assessment, planning, analysis, inspection, and management activities. Also, FSIS must recruit, develop, retain, and accomplish

life-cycle management for a workforce that is educated and skilled in public health, food defense, food safety, public education, and emergency-response systems, programs, practices, and technologies. In addition to inspecting poultry and meat animals, poultry and meat products, and egg products, FSIS must accomplish a growing list of advanced public health functions to include conducting risk assessments to identify and evaluate the potential human health outcomes from the consumption of meat, poultry, and egg products.

At best, the personnel system that currently covers USDA and FSIS employees is based on 20th century assumptions about the nature of public service. Although the current Federal personnel management system is based on important core principles, those principles operate in an inflexible, one-size-fits-all system of defining work, hiring staff, managing people, assessing and rewarding performance, and advancing personnel. These inherent weaknesses make support of the FSIS mission complex, costly, and, ultimately, risky from the standpoint of public health. Currently, pay and the movement of personnel are pegged to outdated, narrowly-defined work definitions, hiring processes are cumbersome, and high performers and low performers are generally paid alike. These systemic inefficiencies detract from the potential effectiveness of the public health workforce.

The challenges facing USDA and FSIS today to assure and improve the public health from farm to table require a workforce transformation. FSIS employees are being asked to assume new and different responsibilities, take more initiative, and be more innovative, agile, and accountable than ever before. It is critical that USDA and FSIS support the entire public health workforce with modern systems, particularly a human resources management system that supports and protects their critical role in public health, food safety, and food security.

C. Changes Required/Expected Benefits

The innovations of the project and their objectives are summarized below.

1. Pay Banding and Classification

Occupational groups will be placed in appropriate career paths, pay bands will replace grades, and agency pay band standards will replace OPM position classification standards. The classification system will be automated as much as possible through intranet-based classification tools, and authority will be delegated to line managers (at

least one level below the Deputy Assistant Administrator level).

These changes are intended to simplify and speed up the classification process, make the process more serviceable and understandable, improve the effectiveness of classification decision-making and accountability, and facilitate pay for performance.

Pay bands, which generally correspond to multiple grade levels, provide larger classification targets that can be defined by shorter, simpler, and more understandable classification standards. This simpler system will be easier to automate, will require fewer resources to operate, and will facilitate delegation to line managers.

By providing broader and more flexible pay ranges for setting entry pay, pay banding will provide hiring officials with an important tool for attracting high-quality candidates and thus contribute to the objective of increasing the quality of new hires.

By providing more flexible pay progression based on performance, pay banding will give managers the ability to increase the pay of good performers to higher and more competitive levels, thus improving the retention of good performers. At the same time, the potential for higher pay increases for good performance, supported by the broader pay ranges of a pay banding system, will contribute to the objective of improving organizational and individual performance.

2. Staffing

Additional staffing tools will include such elements as flexible entry salaries, staffing supplements for employees in the applicable special rate categories, developmental pay increases, and more flexible pay increases associated with promotion.

These changes are intended to attract high-quality candidates and increase the retention of good performers. Flexible pay-setting for new hires is a recruiting tool that gives hiring officials greater flexibility to offer more competitive salaries to high-quality candidates, addressing the objective of improving the quality of new hires. This will be used in conjunction with existing recruitment and retention incentives under title 5.

3. Pay

The most important change in pay administration is the introduction of a pay-for-performance system. The pay-for-performance system will support several objectives. It will strengthen the organization's performance culture. It will promote fairness through the

results-based, competency-linked, performance rating process. It will provide a motivational tool as well as a retention tool. As a motivational tool, the promise of higher pay increases for good performance encourages high achievement. As a retention tool, a pay-for-performance system allows the organization to quickly move the salaries of good performers to levels that are more competitive in the labor market. The promise of higher pay increases for good performance will encourage achievement and promote the objective of improved individual and organizational performance.

Under the proposed pay-for-performance system, employee performance ratings will govern individual pay progression within pay bands. Any general increase in GS rates of basic pay approved by Congress and the President will be applied only to the FSIS band ranges (*i.e.*, band minimums and maximums). Demonstration project employees will receive pay increases based on their rating of record. Funds currently applied to within-grade increases, quality step increases, and the annual GS pay adjustment will be used to grant these performance-based pay increases. Employees rated below Fully Successful will not receive any basic pay increase, nor will they receive pay increases when locality pay percentages are increased. (See section III.C.)

In addition, employees in developmental positions may receive additional pay increases. Funds used for career ladder promotions from one grade to a higher grade will initially be used to fund these developmental pay increases. These pay increases may be granted to an employee to recognize the faster progression that can occur in a developmental position. This pay flexibility addresses the objective of improving retention by raising the pay of high-performing employees while also supporting the objective of preserving merit system principles (*e.g.*, equal pay for work of equal value). (See section III.D.)

4. Performance Appraisal

The demonstration project will continue to use the current FSIS appraisal program including the current five-level rating process, which incorporates competencies into the performance standards. (The five-level rating system has the following levels: 1—Unacceptable, 2—Marginal, 3—Fully Successful, 4—Superior, and 5—Outstanding.) The performance appraisal process is intended to (1) promote good performance; (2) encourage a continuing dialogue between supervisors and employees on

organizational objectives, supervisory expectations, employee performance, employee needs for assistance and guidance, and employee development; and (3) provide a basis for performance-related decisions in employee development, pay, rewards, assignment, promotion, and retention. The program will more effectively communicate to employees how they are performing, the rewards of good performance, and the consequences of poor performance.

5. Pay for Performance

The most important feature of the demonstration project is that it links the employee's rating of record to shares of a performance pay pool. Performance-based pay increases give an operating unit the ability to raise the pay of good performers more rapidly, thus improving retention of good performers. Performance pay is distributed to employees either in the form of increases in base pay or, when the employee reaches a band maximum (or is on retained pay), in the form of a performance bonus. The number and type of performance pay pools will be described in implementing guidance, but performance ratings will be linked to performance pay shares so that employees who earn a level five rating (the highest) will earn the greatest number of performance pay shares, employees who earn a level four rating will earn a smaller number of shares, and employees who earn a level three rating will earn the fewest number of performance shares. Employees rated below level three will not be eligible for performance pay increases.

6. Performance Awards

Existing programs for both non-monetary and monetary recognition will remain under the plan in accordance with chapter 45 of title 5, United States Code.

Awards address two objectives. First, rewarding achievement will make high achievers more likely to remain, thus improving retention of the best performers. Second, the potential for awards for achievement will encourage improved individual performance. Although FSIS is not testing any new procedures under the demonstration project authority in chapter 47 of title 5, awards are a key part of a performance pay system and therefore noted here to clarify their use and provide a full picture of the project plan.

7. Line Management Authority

The program areas will delegate greater authority and accountability to line managers. This delegation is intended to improve the effectiveness of

human resources management by strengthening the role of line managers as the human resources managers of their units. The project will be managed by the FSIS Demonstration Project Management Board (DPMB), composed of representatives from each operating unit (program area) and chaired by the Assistant Administrator for the Office of Management.

D. Participating Organizations

The Department proposes that FSIS be the only agency participating in this project. The Department and FSIS have determined that employees in all program areas in the agency, including headquarters and field employees, will participate, except that all bargaining-unit members will be excluded. Including all bargaining unit members would cause the project to exceed the 5,000 limit on the number of participating employees. Included in the project are all non bargaining-unit employees located in meat and poultry plants throughout the United States (excluding intermittent food inspection personnel (GS-1863) appointed under Schedule A 213.3113(1)(3) and Schedule C employees), 15 District Offices, 3 Field Laboratories, a Technical Service Center in Omaha NE, a Financial Processing Center in Des Moines IA, a Human Resources Field Office in Minneapolis MN, as well as all Headquarters program offices. Each of these units is committed to operating a credible, robust performance appraisal program aligned to the organization's strategic goals and objectives. These organizations have demonstrated this commitment the past two years, as FSIS implemented a comprehensive performance management training program within the agency.

E. Participating Employees

The demonstration project covers all General Schedule employees (with pay plan codes GS and GM) in non-bargaining unit positions. The excluded bargaining unit positions are nonsupervisory positions in the food technology (GS-1382), food inspection (GS-1863), and consumer safety inspection (GS-1862) series and non-bargaining food inspection (GS-1863) employees appointed under Schedule A 213.3113(1)(3).

Also excluded from coverage of this project are all Senior Executive Service (SES), Senior Level (SL), and Federal Wage System (WG) employees, and all Schedule C employees.

Table 1 shows the number of employees subject to coverage under this project by occupational series and

grade. The OPM occupational series will be retained for all covered positions.

TABLE 1.—COVERED EMPLOYEES, BY SERIES AND GRADE (AS OF 01/08/08)

Series	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	Total
0018												4	1			5
0080														1		1
0099				1												1
0101															1	1
0110													1	4		5
0199				1												1
0201									10		4	26	41	21	4	106
0203					6	5	17									28
0260									3		1	1	8	4	1	18
0299							1		2							3
0301							1		46	1	1	23	20	19	11	122
0303	3		3	14	9	4	12		1							46
0305			1	5	1											7
0318					4	16	37	8	4							69
0326		1		14		9										24
0335				1		5	1									7
0340														35	28	63
0341											1		1			2
0342									1				1	1		3
0343							1		16		15	34	52	32	14	164
0344					1	4	35									40
0361							1			1						2
0391												1	1			2
0399				1												1
0401													4	1	2	7
0403									6		2	30	35	16	2	91
0404			5	2	1	1	8		11		2					30
0414												1				1
0415													2	1		3
0499		1	1	1	1											4
0501							2		5		4	2	6	6	3	28
0503				2	22	6	5	3								38
0510												8	10	3		21
0544							3									3
0560									1			5	3	3	1	13
0561							1									1
0599				1												1
0601													6	6	1	13
0602														1		1
0690												1	1			2
0696							2		3		14	161	83	2		265
0699				2												2
0701											74	678	184	25	6	967
0799							19				1					20
0896													1	1		2
1035							1		1		3	5	7	1		18
1071											2					2
1084											1					1
1101													3	1	1	5
1102									1			3	3	2		9
1301													2	2		4
1311				1	1	1			6		2					11
1320									2		5	33	20	6		66
1382													8	3		11
1412											1	7	1	1		10
1501													3	2		5
1515												1	1			2
1529													2	1		3
1654											1	1	1			3
1701													1			1
1702						1		1								2
1801							1		1		41	71	30	16	2	162
1810												6	2	1		9
1862								15	115							130
1863												1	4			5
1899				1	1											2
2001											3		2			5
2005						1										1
2210									2		2	34	30	18	3	89
2299									1							1
Total	3	2	10	47	56	44	148	27	238	2	180	1,137	581	236	80	2,791

F. Labor Participation

No bargaining-unit employees are covered in this project.

G. Project Design

The project methodology is to introduce into all FSIS program areas (for covered positions) certain innovations in human resources management, and to evaluate over time the effects of those innovations on the ability of the program areas to manage their human resources. The methodology includes the following steps:

1. *Selection of Innovations:* The Department and FSIS have determined that particular pay banding and performance-based pay progression innovations that are linked to a framework of core competencies should be included in the proposed project. These innovations, and the procedures associated with them, are described below under *Pay Banding Classification and Pay System, Performance Appraisal System, Performance-based Pay Increases and Awards, Developmental Pay Increases, Staffing and Reduction-in-Force* (See Section III, A through F).

2. *Selection of Program Areas:* The Department and FSIS have selected all program areas of the agency for inclusion in the project since the total number of non-bargaining unit employees is approximately 2,900 (part-time, full-time, and intermittent) and falls within the maximum of 5,000 allowed for a demonstration project.

3. *Goals and Objectives:* The specific project objectives are listed under **SUPPLEMENTARY INFORMATION** and *Executive Summary* and are directly related to the issues identified under Section II.B, *Problems with the Present System*.

4. *Partnership:* The Department and FSIS have limited the covered workforce to non-bargaining unit positions. Therefore, input from labor representatives is not required. However, consistent with the policy of the agency Administrator, FSIS will seek input from two employee associations whose membership overlaps with the covered workforce.

5. *Baseline Evaluation:* To provide a basis of comparison between employee opinions of the current system and their future opinions of the project system, each employee in the covered program areas will be asked to complete an

opinion questionnaire comparable to the Federal Human Capital Survey prior to implementation of the project. To establish a baseline for cost analysis, each operating unit will be required to analyze its personnel costs during fiscal years 2005, 2006, and 2007.

6. *Training:* The agency and the program areas will provide training to managers, employees, and human resources staff prior to implementation of the project and will provide additional training to managers on the pay-for-performance system prior to the end of the first performance cycle. (See Section IV, *Training*.)

7. *Implementation:* To ensure a smooth implementation, the agency will emphasize top management support; the development of detailed operating procedures and implementing directives prior to implementation; thorough training of managers, employees and human resources staff; step-by-step implementation planning; adequate backup systems, particularly in automated personnel and payroll systems; and sufficient operating resources.

8. *Program Evaluation:* The Department and FSIS will arrange for periodic evaluation of the project under an OPM-approved evaluation plan. (See Section VIII, *Project Evaluation*.) The evaluation will be designed to determine whether the innovations are achieving project goals and objectives and are operating within acceptable cost limits. (See Section IX, *Costs*.)

III. Personnel System Changes

A. Pay Banding Classification and Pay System

1. Establishment of Career Paths and Pay Bands

In coordination with OPM, FSIS may establish, and adjust over time, career paths that group one or more occupational categories together and provide a common pay banding structure (i.e., a set of work levels and rate ranges) for occupations within a given career path. Initially, FSIS intends to establish four career paths as follows:

(a) *Professional, Scientific, and Administrative [AP]:* Policy, staff, line, supervisory, and managerial positions in science, veterinary medicine, consumer safety, food technology, mathematics, accounting, and other comparable occupations with a positive

education requirement. Examples of occupational series are 0403-Microbiology, 0510-Accounting, 0696-Consumer Safety, 0701-Veterinary Medical Science, and 1301-General Physical Science. In addition, this career path will include policy, staff, line, supervisory, and managerial positions in such fields as finance, procurement, human resources management, public information, management and program analysis, compliance investigation, and other two-grade interval occupations that do not maintain a positive education requirement. Examples of these occupational series are 0201-Human Resources Management, 0343-Management and Program Analysis, 1035-Public Affairs.

(b) *Supervisory Inspection [AI]:* Supervisory positions that direct the work of inspectors at an import warehouse, a plant, or in a circuit of plants within a geographic area. These positions are 1862-Supervisory Consumer Safety Inspectors.

(c) *Scientific and Technical Support [AS]:* Line positions, predominantly in agency laboratories, which support professional and scientific operations. Examples include 0404-Biological Science Technician, 1311-Physical Science Technician and similar traditional one-grade interval technician support occupations in agency laboratories.

(d) *Management Support [AO]:* Nonsupervisory and supervisory clerical and assistant positions that support positions not fitting the definition of any other career paths. Examples include 203-Human Resources Assistant, 318-Secretary, 326-Office Automation Assistant, 344-Management Assistant and similar traditional one-grade interval technician and administrative support occupations.

Each career path will be subdivided into pay bands. Each pay band will correspond to one or more GS grades. Pay bands provide larger classification targets that can be defined by shorter, simpler and more understandable classification standards. In coordination with OPM, FSIS may establish, and adjust over time, a career path's pay band structure. Initially, the pay bands within each career path and their relationship to GS grades will be as follows:

TABLE 2.—SAMPLE PAY BANDS UNDER PHRS

Career path	Pay band 1	Pay band 2	Pay band 3	Pay band 4	Pay band 5	Pay band 6
Administrative, Professional, and Scientific (AP).	GS-1/4 (Student Trainee).	GS-5/7 Trainee	GS-9/11 Intermediate.	GS-12/13* Full Performance.	GS-14 Expert .. Pay Band 5S GS-13/14 Supervisor.	GS-15 Senior Expert Pay Band 6S GS-15 Manager
Supervisory Inspection (AI) .....	.....	.....	GS-8/9 Supervisory Inspectors.	GS-10/11 Senior Supervisors.		
Scientific & Technical (AS)	GS-1/4 (Aide) ..	GS-5/6/7 Entry	GS-8/9 Independent.	GS-10/11 Expert & Supervisory.		
Management Support (AO)	GS-1/4 Clerical (Entry).	GS-5/6/7 Assistant or Clerical Supervisor.	GS-8/9/10 Senior or Lead Assistant, and Supervisor.			

* Also includes supervisory positions where the band-controlling work is actually personally performed non-supervisory work.

The final pay banding architecture will be described in implementing guidance. FSIS will coordinate changes in career paths or pay banding structures with OPM. After coordination with OPM, FSIS will give affected employees advance notice and an opportunity to comment before effecting a change with respect to career paths or pay banding structure.

2. Position Classification

Occupational groups will be placed in career paths, pay bands will replace grades, and FSIS pay band standards will replace OPM position classification standards. The General Schedule occupational series will be retained.

Each classification standard will describe the threshold of work encompassed by each pay band based on general duties and responsibilities, knowledge, skills, and abilities. FSIS will establish classification standards in consultation with OPM. Positions must meet or exceed the threshold to be classified into a pay band. These bases complement each other at each pay band in a career path and may not be separated in classifying a position. OPM classification standards will not be used directly, but may be used indirectly to establish competency criteria that distinguish pay bands or pay levels within a key career path.

3. Delegation of Classification Authority

The agency has delegated classification authority to SES and GS-15 executives and managers since July 2004. The delegated classification authority (DCA) provisions of this project continue this initiative and increase the number of managers who receive classification authority. Managers must successfully complete DCA training before classification authority may be exercised. The

delegation of classification authority will be facilitated by the expansion of an intranet-based Position Description Library, which will include standard descriptions of all key positions in all career paths and pay bands. Line managers will utilize this intranet-based Position Description Library to select or classify most positions. These changes are intended to simplify and speed up the classification process, make the process more serviceable and understandable, improve the effectiveness of classification decision-making and accountability, and facilitate pay for performance. Implementing guidance will describe the modified DCA policies and procedures.

4. Classification Appeals

An employee covered by the FSIS Demonstration Project may appeal the occupational series, official title, or pay band of his or her position at any time to the agency, Department or directly to the Office of Personnel Management consistent with procedures currently prescribed under 5 CFR part 511, subpart F. Implementing guidance will describe the classification appeals process.

5. Elimination of Fixed Steps

Employees will be converted from existing 15-grade GS position classification and pay system established under 5 U.S.C. chapter 51 and chapter 53, subchapter III, to the new pay banding system. The 10 fixed steps of each GS grade will not apply to employees participating in the demonstration project. The fixed-step system operates primarily to reward longevity. A pay banding pay system is an important element of any effort to make pay more performance-sensitive. No employee's pay will be reduced as

a result of becoming covered by the demonstration project. (See section V.A.) However, demonstration project employees will no longer receive longevity-based, within-grade pay increases at prescribed intervals. Instead, they will be granted annual performance increases and bonuses as described in section III.C below.

6. Rate Range

The normal minimum and maximum rates of the rate range for each pay band will equal the applicable step 1 rate and step 10 rate, respectively, for the lowest and highest grades, respectively, in the GS that are included in the pay band. The normal minimum and maximum rates of each band will be increased at the time of a general pay increase under 5 U.S.C. 5303 so they equal the new minimum and maximum rates of the grades corresponding to the band.

The minimum rate of the pay band is extended 5 percent below the normal minimum for employees with a rating of record below Fully Successful. Such an employee's rate may fall below the normal pay band minimum when that minimum increases as a result of a pay band adjustment, but the employee cannot receive a pay increase because the employee's rating of record is below Fully Successful, as described in section III.C.4.

The maximum rate of each pay band is extended 5 percent above the normal maximum for all employees with a rating of record at the highest level (currently called "Outstanding" in FSIS). This feature will help to ensure that the range of available pay rates will be adequate to recognize truly outstanding performance. The upper range extension is reserved for employees with an Outstanding rating. If an employee in the upper range extension is rated below the

Outstanding level, special provisions apply, as described in section III.A.11.

7. Locality Pay

Locality-based comparability payments under 5 U.S.C. 5304 will be paid on top of the rate of basic pay in the same manner as those payments apply to GS employees (except as otherwise provided in this plan). Staffing supplements may apply as described in section III.A.12. When a locality-based comparability payment established under 5 U.S.C. 5304 is increased, a demonstration project employee whose most recent rating of record is Fully Successful or higher is entitled to the increased locality payment.

A demonstration project employee whose most recent rating of record is below Fully Successful is entitled to the increased locality payment, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. This reduction is necessary to ensure, in an administratively feasible way, that an employee rated less than Fully Successful will not receive a pay increase. It does not constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (Exception: An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5 percent below the normal range minimum.)

A locality rate cap 5 percent higher than the normal EX-IV cap is established to accommodate those Outstanding performers in the 5 percent upper rate range extension. This higher cap will apply only to employees receiving a rate within the upper range extension. If the locality rate for an employee at the normal band maximum is affected by the EX-IV cap, resulting in an "effective locality pay percentage" that is less than the regular locality pay percentage, the locality rate for an employee in the upper rate range extension of the same band will be computed using that same effective locality pay percentage. (For example, if the regular locality pay percentage is 30 percent, but the EX-IV cap causes the amount of locality pay actually received by an employee at the normal band maximum to be 20 percent, that effective locality pay percentage of 20 percent would be used to compute locality pay for an employee in the upper range extension of the same band.)

8. Rate of Basic Pay Upon Initial Appointment

Upon appointment to a demonstration project position under Delegated Examining, Direct-Hire Authorization or other authority primarily designed for initial entry into the Federal service (e.g., Veterans Employment Opportunity Act, 30% Disabled Veteran Appointment), an appointee's rate of basic pay may be set at any rate within the normal pay band range. In exercising this flexibility, FSIS will consider the appointee's qualifications, competing job offers, FSIS's need for the appointee's talents, the appointee's potential contributions to FSIS mission accomplishment, and the rates received by on-board employees. This flexibility will allow FSIS to compete more effectively with private industry for the best talent available. Implementing guidance will provide managers with assistance in setting pay to assure fair and equitable treatment of a diverse workforce.

9. Rate of Basic Pay Upon Promotion

Upon promotion to a higher pay band within a career path or to a pay band in another career path with a higher maximum rate, an employee's rate of basic pay will be set at a rate within the higher pay band that provides a pay increase of 8 percent, unless a greater increase is necessary to set pay at the normal range minimum. (See section III.E.3 for definition of "promotion.") In consultation with OPM, FSIS may establish exceptions to this policy to deal with employees receiving a retained rate, employees who are re-promoted shortly after demotion, employees with exceptional performance warranting a larger increase with higher-management approval, etc. FSIS may adopt, in consultation with OPM, policies providing a promotion-equivalent increase in appropriate circumstances to a Federal employee outside the demonstration project who accepts a position covered by the demonstration project.

10. Rate of Basic Pay in Noncompetitive Lateral Actions

Upon non-competitive lateral movement (e.g., via transfer or reassignment, not conversion of position) to a demonstration project position from another Federal position, an employee's pay rate (including any locality payment or staffing supplement) will be set at an amount that is equal (after any geographic pay conversion) to the employee's existing pay rate (including any locality payment or

equivalent basic pay supplement), subject to the applicable normal range maximum. For such an employee moving from a position outside the demonstration project, FSIS may provide an increase in the rate of basic pay immediately after movement to reflect the prorated value of the employee's next scheduled within-grade increase under the former pay system, consistent with the requirements in section V.A.

11. Other Pay Administration Provisions

Annual performance-based pay increases described in section III.C.3 will be made to the rate of basic pay. These increases are scheduled to be made on the same date that the annual rate range adjustments normally take effect—i.e., the first day of the first pay period beginning on or after January 1. To be eligible for an annual performance pay increase an employee must have a rating of record of Fully Successful or higher.

Annual performance awards described in section III.C.5. provide for lump-sum cash payments recognizing performance and will be made at the same time as the annual performance pay increase. To be eligible for a performance award, an employee must have a rating of record of Fully Successful or higher.

Developmental pay increases described in Section III.D may be paid no more than once during any 52-week period, following the mid-year progress review.

The grade retention provisions in 5 U.S.C. 5362 and 5 CFR part 536 are not applicable (i.e., no pay band retention). The pay retention rules in 5 U.S.C. 5363 and 5 CFR part 536 apply to demonstration project employees, subject to the following exceptions:

(1) An employee with a rating of record below Fully Successful may not receive an increase in his or her retained rate under the 50-percent adjustment rule in 5 U.S.C. 5363(b)(2)(B);

(2) The cap on retained rates is equal to the rate for level IV of the Executive Schedule plus 5 percent (instead of the EX-IV cap established in 5 CFR 536.306) in order to accommodate the upper range extension;

(3) An employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other pay action; and

(4) The range maximum rate used in computing retained rate adjustments under the 50-percent adjustment rule will be the maximum rate of the highest applicable rate range (including any applicable locality payment or staffing

supplement) taking into consideration an employee's rating of record. For retained rate employees rated Outstanding, the increase is 50 percent of the dollar change in the applicable adjusted rate for the upper range extension maximum. (Note that an employee rated Outstanding must have a retained rate in excess of the upper range extension maximum adjusted rate, since he or she would otherwise be converted to a rate within that range extension.) For retained rate employees rated below Outstanding, the increase is 50 percent of the dollar change in the applicable adjusted rate for the normal band maximum.

If an employee is receiving a retained rate that is less than the applicable adjusted maximum rate (including any applicable locality payment or staffing supplement) for the upper range extension for the employee's band, and if that employee receives a rating of record of Outstanding, the employee's retained rate will be terminated and converted to an equal adjusted rate (base rate in upper range extension plus applicable locality payment or staffing supplement). This conversion must be processed before any other pay adjustment.

For a retained rate employee with a rating of record of Outstanding, if a retained rate increase provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the upper range extension maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the maximum rate of the upper range extension.

For a retained rate employee with a rating of record of Fully Successful or Superior, if a retained rate adjustment provided at the time of a range adjustment results in the retained rate falling below the applicable adjusted rate for the normal band maximum, the employee's retained rate will be terminated, and the employee's pay will be set at the normal band maximum rate.

For a retained rate employee with a rating of record below Fully Successful, the retained rate is frozen and not subject to adjustment. When such an employee's retained rate falls below the applicable adjusted rate for the normal band maximum, the employee's retained rate will be terminated, and the employee's pay will be set at an adjusted rate equal to the retained rate (i.e., the rate is not set at the range maximum).

As required by 5 CFR 536.304(a)(2) and 536.305(a)(2), any general pay adjustment, including a retained rate

adjustment as described in the preceding paragraphs, must be processed before any other simultaneous pay action (such as a geographic pay conversion).

When applicable, the saved pay rules in 5 U.S.C. 3594 and 5 CFR 359.705 for former SES members continue to apply to demonstration project employees, except that (1) an employee with a rating of record below Fully Successful may not receive an increase in his or her saved rate under 5 U.S.C. 3594(c)(2); and (2) the 50-percent adjustment rule must be applied in the same manner as it is applied for a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs. The rules regarding termination of a saved rate when it falls below the applicable adjusted maximum rate must be parallel to those governing termination of a retained rate under 5 U.S.C. 5363, subject to the modifications described in the preceding paragraphs.

FSIS may adopt supplemental pay administration policies governing matters not specifically addressed in this plan, subject to any OPM guidance. In addressing geographic conversions and simultaneous pay actions, such rules must be consistent with 5 CFR 531.205 and 5 CFR 531.206, respectively.

12. Staffing Supplements

An employee who is assigned to an occupational series and geographic area covered by an OPM-established special rates schedule, and who meets any other applicable coverage requirements, will be entitled to a staffing supplement if the maximum adjusted rate for a covered position in the GS grades corresponding to the employee's band is a special rate that exceeds the applicable maximum GS locality rate. The staffing supplement is added on top of the rate of basic pay in the same manner as locality pay. An employee will receive the higher of the applicable locality payment or staffing supplement.

For employees being converted into the demonstration project, the employee's total pay immediately after conversion will be the same as immediately before, but a portion of the total will be in the form of a staffing supplement. Adverse action and pay retention provisions will not apply to the conversion process as there will be no change in the total salary rate. The staffing supplement is calculated as described below.

Upon conversion, the demonstration base rate will be established by dividing the employee's former GS adjusted rate (the higher of special rate or locality rate) by the staffing factor. The staffing

factor will be determined by dividing the maximum special rate for the banded grades by the GS base rate corresponding to that special rate (step 10 GS base rate for the same grade as the special rate). The employee's demonstration staffing supplement is derived by multiplying the demonstration base rate by the staffing factor minus one. Therefore, the employee's final demonstration special staffing rate equals the demonstration base rate plus the special staffing supplement; this amount will equal the employee's former GS adjusted rate.

Simplified, the formula is this:

Staffing factor = (Maximum special rate for banded grades) / (GS base rate corresponding to that special rate)
 Demonstration base rate = (Former GS adjusted rate [special or locality rate]) / (Staffing factor)

Staffing supplement = demonstration base rate × (staffing factor – 1)

Salary upon conversion = demonstration base rate + staffing supplement [sum will equal existing rate]

If a special rate employee is converted to a band where the maximum GS adjusted rate for the banded grades is a locality rate, when the employee is converted into the demonstration project, the demonstration base rate is derived by dividing the employee's former special rate by the applicable locality pay factor (for example, in the Washington-Baltimore area, the locality pay factor is 1.2089 in 2008). The employee's demonstration locality-adjusted rate will equal the employee's former GS adjusted rate.

Any GS or special rate schedule adjustment will require recomputation of the staffing supplement. Employees receiving a staffing supplement remain entitled to an underlying locality rate, which may over time supersede the need for a staffing supplement. If OPM discontinues or decreases a special rate schedule, pay retention provisions will be applied, as appropriate. Upon geographic movement, an employee who receives the special staffing supplement will have his or her entitlement to a staffing supplement redetermined; any resulting reduction in the supplement will not be considered an adverse action or a basis for pay retention.

When a staffing supplement is increased, a demonstration project employee whose rating of record is below Fully Successful is entitled to the increased supplement, but his or her underlying rate of basic pay will be reduced in a manner that ensures the employee's total rate of pay does not increase. Such a reduction does not

constitute a reduction in pay for purposes of applying the adverse action procedures in chapter 75 of title 5, United States Code. (*Exception:* An employee's rate of basic pay may not be reduced under this paragraph to the extent that the reduction would cause an employee's rate to fall more than 5 percent below the normal range minimum.)

Established salary including the staffing supplement will be considered basic pay for the same purposes as a special rate under 5 CFR 530.308—e.g., for purposes of retirement, life insurance, premium pay, severance pay, and advances in pay. It will also be used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave.

Adjusted rates that include a staffing supplement are subject to an Executive Schedule Level IV (EX-IV) cap, except that an adjusted rate cap 5 percent higher than the EX-IV rate is established exclusively for Outstanding-rated employees in the upper range extension. If the adjusted rate for an employee at the normal band maximum is affected by the EX-IV cap, resulting in an "effective staffing supplement percentage" that is less than the regular staffing supplement percentage, the adjusted rate for an employee in the upper rate range extension of the same band and in the same staffing supplement category will be computed using that same effective staffing supplement percentage. (For example, if the regular staffing supplement percentage is 35 percent, but the EX-IV cap causes the amount of the staffing supplement actually received by an employee at the normal band maximum to be 20 percent, that effective staffing supplement percentage of 20 percent would be used to compute the staffing supplement for an employee in the upper range extension of the same band.)

OPM may approve staffing supplements for categories of employees within the demonstration project who are not in approved special rate categories for GS employees, consistent with the provisions in 5 U.S.C. 5305(a) and (b).

13. Status as GS Employees

Notwithstanding the waiver of laws governing the GS classification and pay system, demonstration project employees will be considered to be GS employees in applying other laws, regulations, and policies, except as otherwise provided in this plan. For example, demonstration project employees will remain eligible for locality pay under 5 U.S.C. 5304

(subject to exceptions described in this plan), hazardous duty differentials under 5 U.S.C. 5545(d), and recruitment, relocation, and retention incentives under 5 U.S.C. 5753–5754. Demonstration project employees will be covered by the regulations in 5 CFR part 300, subpart F, except that "grade" will be replaced with "pay band." (See section III.E.3. for a 52-week time-in-band requirement.) However, project employees will not be covered by the supervisory differential provision in 5 U.S.C. 5755.

A demonstration project employee who converts from the project position to a GS position without a break in service will be considered a GS employee for the purpose of applying the GS promotion rule under 5 U.S.C. 5334(b). (See section V.B.)

B. Performance Appraisal System

FSIS will use its current performance management program under the Department of Agriculture appraisal system that has been approved by OPM, consistent with chapter 43 of title 5, United States Code. Throughout the duration of the demonstration project, the effectiveness of performance management within the project will be monitored by examining metrics and assessments that will be included in the demonstration project evaluation plan.

1. Program Requirements

The FSIS performance appraisal program requires written performance plans for each covered employee containing the employee's performance elements and standards. The performance plan links the performance elements and standards for individual employees to the organization's strategic goals and objectives. Ongoing feedback and dialogue between employees and their supervisors regarding performance is required. In addition, the program provides for, at a minimum, one midyear progress review.

The FSIS appraisal program, including its performance levels and standards, provides for making meaningful distinctions in performance. The program currently uses a five-level summary rating pattern to summarize performance and three levels to appraise performance at the element level. Its summary level pattern under 5 CFR 430.208(d) uses Pattern H with Levels 1, 2, 3, 4, and 5, which FSIS has labeled Unacceptable, Marginal, Fully Successful, Superior, and Outstanding, respectively. Employees must be covered by their performance plan for at least 90 days before they can be assigned a rating of record. Supervisors and managers apply the appraisal

program in a way that makes appropriate differentiations in performance. These differentiations reflect overall organizational performance. Employees receive a written performance appraisal (i.e., a rating of record) annually. Forced distributions of ratings are prohibited. Each annual appraisal period will begin on October 1 and end on the following September 30. Performance appraisals will be completed in a timely manner to support pay decisions in accordance with section III.C.

Additional guidance on the performance appraisal program is provided in current FSIS directives. Performance appraisal is an evolutionary process, and changes may be made during the course of the demonstration project based on findings from our ongoing evaluations and reviews. Any changes will be communicated to affected employees, and they will be given a chance to comment before FSIS implements the changes.

2. Supervisory Accountability

Supervisors are responsible for providing appropriate consequences for employee performance by addressing poor performance and recognizing exceptional performance. The performance plans for supervisors and managers include the degree to which supervisors and managers plan, assess, monitor, develop, correct, rate, and reward subordinate employees' performance. It is recognized that specific training must be provided to prepare supervisors and managers to exercise these responsibilities. FSIS understands that this demonstration project will heighten the need for continuing supervisory training to support the accurate and realistic appraisal of performance.

3. Reconsideration of Ratings

To support fairness and transparency for the program and its consequences, employees have an opportunity to request reconsideration of a rating of record by a management official other than the rating official. Such reconsiderations must be initiated no more than 15 days after the official rating of record is assigned, consistent with the applicable administrative grievance policy. If the reconsideration of the appraisal results in a different rating of record, the revised rating of record will become the basis for the employee's pay increase(s) in accordance with section III.C. If the adjustment occurs after all pay deliberations have been finalized, it

does not result in a recalculation of other employees' pay increases.

If, after an opportunity to improve, an employee's performance is still not satisfactory, the Rating Official will give the employee a rating of Level 1, Unacceptable, and must take action to reassign or remove the employee, or place the employee in a lower pay band, in accordance with performance action provisions in law and regulation.

C. Performance-based Pay Increases and Awards

1. Performance Shares

FSIS will establish rating/share patterns for each pay pool—that is, the relationship between ratings of record and numbers of shares. A share mechanism will be used (1) to ensure that employees with higher ratings of record receive greater pay increases than employees with relatively lower ratings, and (2) to control costs without resorting to a forced distribution of ratings, which is prohibited.

FSIS may adjust rating/share patterns over time after coordination with OPM, and after giving affected employees advance notice. A change in the rating/share pattern may be applied in computing performance increases based on an appraisal period only if it takes effect at least 120 days before the end of that appraisal period.

Each employee will be assigned a certain number of shares, based on his or her rating or record. Initially, the number of shares for each rating level will be as follows: 9 shares are assigned to the Outstanding rating; 6 shares to the Superior rating; and 4 shares to the Fully Successful rating. No shares may be assigned to any rating of record below Fully Successful, since no pay increase is payable to employees with such a rating of record.

After the ratings of record and shares are assigned to employees the value of a single share can be calculated. The value of each performance share will be expressed as a percentage of the rate of basic pay. The agency will provide training to all project participants to assure fair, accurate performance ratings and equitable performance payouts.

2. Performance Pay Pools

Funds that otherwise would be spent on the annual GS pay adjustment, within-grade increases (WGI's), and quality step increases (QSI's) for demonstration project employees will instead be placed into a pay pool, which will be used to fund annual performance increases. Unlike GS employees, participating employees whose most recent rating of record is

below Fully Successful will not receive any increase in their rate of basic pay.

Participating programs will establish pay pools for allocating performance-based pay increases. FSIS will determine which participating employees are covered by any pay pool and determine the dollar value of each pay pool. In setting the value of the pay pool, FSIS will initially allocate an amount for performance-based pay increases equal to the estimated value of the WGI's, QSI's and the annual GS pay adjustments that otherwise would have been paid to participating employees. In computing the estimated value of WGI's, and QSI's, FSIS may use Governmentwide or agency historical averages.

3. Performance-based Pay Increases

FSIS will determine the value of one performance share, expressed as a percentage of the employee's rate of basic pay, based on the value of the pay pool and the distribution of shares among pay pool employees. An individual employee's performance payout is determined by multiplying the determined percentage value of a performance share by the number of shares assigned to the employee. On the first day of the first pay period beginning on or after January 1 of each year, this amount will be paid as an increase in the employee's rate of basic pay, but only to the extent that it does not cause the employee's rate to exceed the applicable maximum of the employee's rate range. Notwithstanding the preceding sentence, employees in the upper range extension rated below the highest rating level are subject to special rules as described in sections III.A.6 and III.A.11. Any portion of an employee's performance pay increase amount that cannot be delivered as a basic pay increase will be paid out as a lump-sum performance bonus (with no charge to the pay pool). Such a lump-sum payment is not basic pay for any purpose and is not a cash award under chapter 45 of title 5, United States Code.

An employee with a rating of record of Fully Successful or higher may not receive a performance payout that is less than the percentage value of any simultaneous rate range adjustment, except for (1) an employee receiving a retained rate and (2) an employee in the upper range extension with a rating of record below Outstanding (Level 5) who is converted to a retained rate (as provided in section III.A.11.). This guaranteed amount will be used in place of any lower performance payout resulting from the share methodology. Any additional costs of using the guaranteed amount will be funded

outside the pay pool. Otherwise, the guaranteed amount is applied in the same manner as the regular performance payout.

An employee who does not have a rating of record for the appraisal period most recently completed will be treated the same as employees in the same pay pool who received the modal rating for that period, subject to FSIS proration policies.

FSIS may establish policies on prorating the performance-based pay increases and/or lump-sum payments for an employee who, during the period between annual pay adjustments, was (1) hired or promoted, (2) in leave-without-pay status, (3) on a part-time work schedule, or (4) in other circumstances that make proration appropriate. Such proration policies will provide each eligible employee with the full percentage adjustment used to adjust base rate ranges (if any) and will prorate any additional amount of performance pay increase that would be applicable to the employee but for the proration requirement.

If any employee's rating of record that is the basis for a performance payout is retroactively revised (after the regular effective date of performance payouts) through a reconsideration or grievance process, the employee's performance payout must be retroactively recomputed using the share value as originally determined. Any such retroactive corrections are not funded out of the pay pool and do not affect the performance payouts provided to other employees in the pay pool. In setting the size of a future pay pool, management will take into account past and projected corrections.

Special provision for employees receiving a retained rate: An employee receiving a retained rate under 5 U.S.C. 5363 or 5 U.S.C. 3594 is not eligible for a basic pay increase except in conjunction with (1) a rate range adjustment as described in section III.A.11 or (2) a geographic conversion under 5 CFR.359.705(e) or 536.303(b), as applicable. At the discretion of an authorized agency official, a retained rate employee may receive the same lump-sum payment payable to an employee in the same pay pool who is at the applicable range maximum and who has the same rating of record and number of shares.

Special provisions for employees returning to duty after a period of service in the uniformed services or in receipt of workers' compensation benefits: Special pay-setting provisions apply to employees who do not have a rating of record to support a pay adjustment but who are returning to

duty status after a period of leave-without-pay or separation during which the employee (1) was serving in the uniformed services (as defined in 38 U.S.C. 4303 and 5 CFR 353.102) with legal restoration rights (e.g., 38 U.S.C. 4316), or (2) was receiving workers' compensation benefits under 5 U.S.C. chapter 81, subchapter I. In these cases, FSIS will determine the employee's prospective rate of basic pay upon return to duty by making performance-based pay increases for the intervening period based on the modal rating of record for employees in the same pay pool. The performance pay increases during the intervening period may not be prorated based on periods covered by this provision. In addition, a performance pay increase that is effective after the employee's return to duty may not be prorated based on periods covered by this provision. A lump-sum payment for a period including actual service performed after the employee's return to duty must be prorated (based on service covered by this provision) under the same agency proration policies that apply generally to periods of leave without pay.

4. Employees Who Cannot Receive a Performance Pay Increase

Employees with a rating of record below Fully Successful are prohibited from receiving a performance payout. When an employee does not receive a performance pay increase because of performance below Fully Successful, his or her pay rate may fall below the normal minimum rate of the pay band, since that range minimum may be increasing. However, in no case may an employee's rate of basic pay be set more than 5 percent below the normal range minimum.

If FSIS later chooses to give such an employee a new rating of record of Fully Successful or higher before the end of the next appraisal period, the employee is entitled to an increase effective on the first day of the first pay period beginning on or after the date the new rating of record is final. The increase must be the same dollar amount as the increase the employee would have received if he or she had been rated Fully Successful at the time the increase was initially denied.

Each employee who does not receive an increase in basic pay because his or her performance is less than Fully Successful will be entitled to be notified promptly in writing of that fact. At the same time, the employee must be informed in writing of the right to request that the agency reconsider its determination, under the same procedures prescribed by OPM

regarding the determination not to provide a within-grade increase under 5 U.S.C. 5335(c). The Merit Systems Protection Board will process any appeals under this section in the same manner that it processes appeals under 5 U.S.C. 5335(c).

See section III.A.7 and section III.A.12 regarding the recomputation of an employee's rate of basic pay to prevent a pay increase resulting from an increase in the applicable locality payment or staffing supplement.

5. Performance Awards

Performance awards may be granted to any employee with a rating of record at Level 3 (Fully Successful) or higher and are given at the end of the performance year in conjunction with decisions on performance pay increases. FSIS will adopt supplemental award administration policies not specifically covered under the plan to improve implementation of existing authorities prescribed under chapter 45, title 5, United States Code. These performance awards are separate from performance pay increases.

D. Developmental Pay Increases

Employees in developmental positions (i.e., positions with promotion potential to a higher pay band) may receive additional pay increases (in addition to the annual performance pay increase) as they acquire the competencies, skills and knowledge necessary to advance to the full performance level of their position. An employee in a developmental position may be awarded a pay increase within his or her pay band that ranges up to 7 percent of basic pay to recognize the faster progression that can occur in a developmental position. Employees must be performing at the Fully Successful level or higher to be eligible for a developmental pay increase. Developmental pay increases may be paid no more than once during a 52-week period and following the mid-year progress review in accordance with implementing guidance. Developmental pay increases must be approved by the program's Assistant Administrator or his or her designee to ensure equity and accountability. The funds previously used for career promotions for the GS grade levels will initially be used to fund the developmental pay increases in the first fiscal year of the program's implementation. In all future fiscal years, FSIS will allocate a fixed amount of funds within the annual appropriation, and these funds will go into a pool for distribution to each FSIS program area to cover developmental pay increases.

E. Staffing

1. Minimum Qualification Requirements

Application of the OPM Operating Manual: Qualification Standards for General Schedule Positions is simplified by allowing a candidate to qualify for a specific pay band if the candidate meets (or exceeds) the requirements for the lowest grade included in that specific pay band. For example, a candidate for a 403-Microbiologist position assigned to Pay Band 2 (GS-5 through GS-7) need only meet the qualification requirements for a GS-0403 Microbiologist position at the GS-5 level.

For FSIS demonstration project employees and employees of other Federal agencies who are in sufficiently similar pay banding systems (as described in FSIS implementing policies), the common OPM requirement of 1 year of experience "at the next lower grade in the normal line of progression for the occupation" is changed to "at the next lower pay band in the normal line of progression for the occupation."

2. Flexible Pay Setting for New Hires

Upon appointment to a demonstration project position under Delegated Examining, Direct-Hire Authorization or other authority primarily designed for initial entry into the Federal service (e.g., Veterans Employment Opportunity Act, 30% Disabled Veteran Appointment), an appointee's pay rate may be set at any rate within the normal pay band range. In exercising this flexibility, FSIS will consider the appointee's qualifications, competing job offers, the agency's need for the appointee's talents, the availability of other candidates, the appointee's potential contributions to FSIS mission accomplishment, and the rates received by on-board employees. This flexibility will allow FSIS to compete more effectively with private industry for the best talent available. Implementing guidance will provide managers with assistance in setting pay to assure fair and equitable treatment of a diverse workforce.

3. Promotions

A promotion is a change to (1) a higher pay band in the same career path or (2) a pay band in another career path with a higher maximum rate of basic pay. To be eligible for promotion, an employee must have a current performance rating of Fully Successful or higher. The time-in-band requirement for promotion eligibility is 52 weeks, with one exception: An employee may be promoted from Pay Band 1 to Pay

Band 2 in the Management Support Career Path or in the Scientific and Technical Support Career Path without time restriction. (See section III.A.9. for pay setting upon promotion.) When employees are competitively selected for a position with promotion potential, and are subsequently moved to a higher pay band in their career path, the action is processed as a non-competitive pay band promotion until the full performance level of the position is reached.

F. Reduction in Force

If, during the life of the demonstration project, FSIS enters into a reduction in force (RIF), the RIF will be conducted in accordance with 5 U.S.C. 1302 and 3502 and 5 CFR part 351, except as follows:

(a) Each of the career paths in each FSIS local commuting area will constitute separate competitive areas (i.e., separate from the other career paths, and separate from the competitive areas of other FSIS employees);

(b) FSIS will establish competitive levels consisting of all positions in a competitive area which are in the same pay band and classification series, and which are similar enough in duties, qualification requirements, pay schedules, and working conditions so that the incumbent of one position may be reassigned to any of the other positions in the level without undue interruption. Each demonstration project competitive level will become a Retention List for purposes of competition when employees are released from their competitive levels, displaced by higher-standing employees, or placed during the exercise of assignment rights.

(c) Assignment rights will be modified by substituting "one pay band" for "three grades" and "two pay bands" for "five grades."

(d) FSIS will use retention standing when it chooses to offer vacant positions within the meaning of 5 CFR 351.704.

Prior to conducting a RIF, FSIS will issue and implement a policy in accordance with 5 CFR part 330, subpart B, except that the establishment and operation of a reemployment priority list (RPL) will be designed to assist current FSIS competitive service demonstration project employees who will be separated as a result of a RIF and, subsequently, former FSIS competitive service demonstration project employees who have been separated as a result of a RIF, or who have fully recovered from a compensable injury after more than 1 year, in their efforts to be reemployed at

FSIS, by affording them reemployment priority over certain outside job applicants for FSIS competitive service demonstration project vacancies.

FSIS will develop and adopt supplemental RIF administration procedures to augment the RIF policies stipulated by this plan.

IV. Training

Training will be provided to all participating employees, supervisors, and managers before the project is launched and throughout the life of the project. It is important that employees perceive the performance management program as fair and transparent; therefore, supervisors and managers will be trained extensively in setting and communicating performance expectations; monitoring performance and providing timely feedback; developing employee performance and addressing poor performance; rating employees' performance based on expectations; and involving employees in the development and implementation of the performance appraisal program. Supervisors and managers will be held accountable for the effective management of the performance of employees they supervise through performance expectations set for and appraisals made of their own performance in this regard.

All employees will be trained in the performance appraisal process and the pay adjustment mechanism. Various types of training are being considered, including video conferencing, on-line tutorials, simulation, and train-the-trainer concepts.

V. Conversion

A. Conversion to the Demonstration Project

1. Only General Schedule (pay plan codes GS and GM) employees who are not in a bargaining unit will be converted to this project (excludes non-bargaining unit food inspection (GS-1863) employees appointed under Schedule A 213.3113(1)(3) and Schedule C employees). Employees whose positions become covered by the demonstration project will convert into the career path and pay band covering the occupational series and grade of their position of record. Employees will convert to the demonstration project with no change in their total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement or staffing supplement). Special conversion rules apply to special rate employees as described in section III.A.12, Staffing Supplements. Any simultaneous pay action that is

scheduled to take effect under the GS pay system on the date of conversion must be processed before processing the conversion to the pay banding system. FSIS implementing policies will provide procedures for converting an employee on grade retention under 5 U.S.C. 5362 or receiving a retained rate under 5 U.S.C. 5363 or a saved rate under 5 U.S.C. 3594 to the demonstration project.

2. Immediately after conversion, eligible employees will receive an increase in basic pay reflecting the prorated value of the next scheduled within-grade increase (WGI). The prorated value is determined by calculating the portion of the time in step employees have completed towards the waiting period for their next WGI. This WGI "buy-in" adjustment will not be paid to (1) employees who are at the step 10 rate for their grade immediately before conversion to the demonstration project, (2) employees who are receiving a retained rate of pay under 5 U.S.C. 5363 or saved rate under 5 U.S.C. 3594 immediately before conversion to the demonstration project, or (3) employees whose rating of record is below Fully Successful.

3. Adverse action provisions under 5 U.S.C. chapter 75, subchapter II, do not apply to reductions in pay upon conversion into the demonstration project as long as the employee's total rate of pay (including basic pay, plus any applicable locality payment, special rate supplement) is not reduced upon conversion.

4. The first performance-based pay increase under the project's pay adjustment mechanism will be effective on the first day of the first pay period beginning on or after January 1, 2010.

5. For employees who enter the demonstration project by lateral reassignment or transfer (i.e., not by conversion of position), FSIS may apply parallel pay conversion rules, including rules for providing a prorated adjustment reflecting time accrued toward a GS within-grade increase or similar within-range adjustment under another pay system. If conversion into the demonstration project is accompanied by a geographic move, the employee's pay entitlements under the former pay system in the new geographic area must be determined before performing the pay conversion.

B. Conversion to the General Schedule

FSIS implementing guidance will provide procedures for converting an employee's pay band and pay rate to a GS-equivalent grade and rate of pay if the employee moves out of the demonstration project to a GS position.

The converted GS-equivalent grade and rate of pay will be determined before any geographic move, promotion, or other simultaneous action that occurs simultaneously with conversion back to the GS system. The new employing organization must use the converted GS-equivalent grade and rate of pay in applying various pay administration rules that govern how pay is set in the GS position (e.g., rules for promotion and highest previous rate under 5 CFR part 531, subpart B, and pay retention under 5 CFR part 536). The converted GS rate will not be adjusted to match a step rate before applying those rules. The converted GS grade and rate of pay are deemed to have been in effect at the time the employee left the demonstration project pay banding system. The rules for determining the converted GS grade for pay administration purposes do not apply to the determination of an employee's GS-equivalent grade for other purposes, such as reduction-in-force or adverse action. FSIS will perform the computations for employees who remain within FSIS and USDA. FSIS may perform the computations, as a courtesy, for employees who move to other Federal agencies. At a minimum, FSIS will provide a copy of the conversion procedures to gaining Federal agencies for their use. If an employee moves out of the demonstration project to a non-GS system, the employee's pay will be set under the pay-setting rules governing that system.

VI. Project Modification

Demonstration projects require modification from time to time as experience is gained, results are analyzed, and conclusions are reached on how the system is working. FSIS may modify and adjust features and elements of this project plan over time. FSIS will coordinate such modifications with OPM and gain its approval prior to implementing the modification. Depending on the nature and extent of the modification, OPM may require that the modification be published as a notice in the **Federal Register**.

VII. Project Duration

The initial implementation period for the demonstration project will be 5 years. However, with OPM's concurrence, the project may be extended for additional testing or terminated before the expiration of the 5-year period.

VIII. Project Evaluation

Chapter 47 of title 5, United States Code, requires an evaluation of the

results of the demonstration project. FSIS, in coordination with USDA and OPM, will develop a plan to evaluate the demonstration project to determine the extent to which the pay increases paid to participating employees reflect meaningful distinctions among their levels of performance and the extent to which the project is achieving its other stated goals. Workforce data will be analyzed to make this assessment. Key features of successful performance-based pay systems, including leadership commitment, communication, stakeholder involvement, training, planning, mission alignment, and the rewarding of performance, will be assessed to determine the effectiveness of the demonstration project and ensure compliance with stated project goals. The evaluation will address the extent to which the project has incorporated the elements required by section 1126 of Public Law 108–136 (5 U.S.C. 4701 note). In addition, the project will be examined during each phase of the evaluation to assess that costs are being managed effectively. Moreover, cost discipline will be examined during each phase of the evaluation to ensure spending remains within acceptable limits. Finally, employee feedback will be sought through surveys, interviews, and focus groups to assess employee perceptions of the fairness and integrity of the performance appraisal and pay adjustment processes.

IX. Costs

A. Buy-in Costs

Upon conversion to the demonstration system many employees will receive an increase in basic pay for the prorated time in grade towards their next within-grade increase. However, these costs will be offset by the elimination of within-grade step increases that otherwise would have occurred.

B. Recurring Costs

All funding will be provided through the organization's budget. Each project program area will maintain compensation during the project at the level it would have reached under the current system. No additional funding will be requested specifically for this project; all costs will be charged to available funds through existing appropriations. To ensure appropriate carryover of costs from pre-project to project years, a base assessment will be made using 3 base years: Fiscal Years 2005, 2006, and 2007. For example, data associated with average annual salary, pay increases and promotions, turnover, and other relevant data will be collected

to ensure a thorough analysis of costs which are impacted by pay banding. Budget discipline will be required and achieved by imposing specific funding principles. Finally, both longitudinal and site comparisons will be used to ensure that spending remains within acceptable limits.

X. Waiver of Laws and Regulations Required

A. Title 5, United States Code

Chapter 35, section 3594: Saved pay for former members of the Senior Executive Service (only to the extent necessary to (1) bar employees with a rating of record lower than Fully Successful from receiving saved rate increases under 5 U.S.C. 3594(c)(2); (2) provide a saved rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (3) provide the range maximum rate used to compute saved rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employee with an Outstanding rating of record; and (4) provide when a frozen saved rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the saved rate will be terminated and the employee's pay will be set at an adjusted rate equal to the saved rate).

Chapter 51: Classification (except that (1) sections 5111 and 5112 are retained with "grade" replaced by "pay bands" and (2) for the purpose of applying any other laws, regulations, or policies that refer to GS employees or to chapter 51 of title 5, United States Code, the modified classification system established under this plan must be considered to be a GS classification system under chapter 51; this includes, but is not limited to, the reference to the General Schedule in section 5545(d) (relating to hazard pay).

Chapter 53, section 5302(1)(A), (8) and (9): Definitions (only to the extent necessary to provide that employees under the demonstration project are not considered to be GS employees for the purposes of annual adjustments under section 5303 or similar provision of law governing annual adjustments for employees covered by section 5303).

Chapter 53, section 5303: Annual adjustments to pay schedules Chapter 53, section 5304(g)(1): Locality-based comparability payments (only to the extent necessary to (1) provide a locality rate may not exceed the rate for EX-IV plus 5 percent for employees in the upper range extension) and (2) apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in the plan).

Chapter 53, section 5305: Special pay authority.

Chapter 53, subchapter III: General Schedule pay rates (except that, for purposes of applying any other laws, regulations, or policies that refer to GS employees or to subchapter III of chapter 53 of title 5, United States Code, the modified pay system established under this plan must be considered to be a GS pay system established under such subchapter III, except as otherwise provided in this plan; this includes, but is not limited to, references to the General Schedule in section 5304 (relating to locality pay), section 5545(d) (relating to hazard pay), and sections 5753–5754 (dealing with recruitment, relocation, and retention incentives).

Chapter 53, section 5362: Grade retention.

Chapter 53, section 5363: Pay retention (only to the extent necessary to (1) replace "grade" with "pay band;" (2) bar employees with a rating of record lower than Fully Successful from receiving retained rate increases under 5 U.S.C. 5363(b)(2)(B); (3) provide that pay retention provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total pay rate is not reduced; (4) provide the pay (including any locality adjustment or staffing supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (5) provide a retained rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (6) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employees with an Outstanding rating of record; and (7) provide when

a retained rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Chapter 55, section 5542(a): Overtime rates (only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category that would otherwise apply to an employee (but for the existence of the demonstration project) is deemed to be the "applicable special rate of pay" in determining the overtime hourly rate cap).

Chapter 55, section 5547: Limitation on premium pay (only to the extent necessary to provide that an applicable staffing supplement is added to the GS–15, step 10, rate in lieu of the applicable locality payment).

Chapter 59, section 5941: Cost-of-living allowances and post differentials (only to the extent necessary to provide that employees in the demonstration project pay system are eligible for coverage under section 5941).

Chapter 75, section 7512(3): Adverse actions (only to the extent necessary to replace "grade" with "pay band").

Chapter 75, section 7512(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement increase as a result of receiving a rating of record below Fully Successful).

Note: If any of the provisions of title 5, United States Code, listed above are amended during the period this demonstration project is in effect, FSIS may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. FSIS must notify OPM when any such waiver is terminated.

B. Title 5, Code of Federal Regulations

Part 300, subpart F: Time-in-grade restrictions (only to the extent necessary to replace "grade" with "pay band").

Part 330, subpart B, section 330.201: Establishment and maintenance of Reemployment Priority List (RPL) (only to the extent necessary to establish and maintain a reemployment priority list exclusively for FSIS competitive service demonstration project employees).

Part 351, subpart D, section 351.402: Competitive area (only to the extent necessary to permit the use of career paths in conjunction with

organizational units and geographic locations when establishing competitive areas).

Part 351, subpart D, section 351.403: Competitive level (only to the extent necessary to substitute "same pay band" for "same grade").

Part 351, subpart G, section 351.701: Assignment involving displacement (only to the extent necessary to substitute "one pay band" for "three grades" and "two pay bands" for "five grades").

Part 359, subpart G, section 359.705: Pay (only to the extent necessary to (1) bar employees with a rating of record lower than Fully Successful from receiving a saved rate increase under 5 CFR 359.705(d)(1); (2) provide a saved rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (3) provide the range maximum rate used to compute saved rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employees with an Outstanding rating of record; and (4) provide when a saved rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the saved rate will be terminated and the employee's pay will be set at an adjusted rate equal to the saved rate).

Part 430, subpart B, section 430.203: Definitions (only to the extent necessary to allow an additional rating of record to support a pay decision under section III.C.3 or 4 of this project plan).

Part 511, subpart B: Coverage of the General Schedule.

Part 511, section 511.607: Nonappealable issues.

Part 530, subpart C: Special Rate Schedules for Recruitment and Retention.

Part 531, subpart B: Determining Rate of Basic Pay.

Part 531, subpart D: Within-Grade Increases.

Part 531, subpart E: Quality Step Increases.

Part 531, section 531.604: Determining an employee's locality rate (only to the extent necessary to apply an "effective" locality pay percentage for employees in the upper range extension under circumstances described in the plan).

Part 531, section 531.606: Maximum limits on locality rates (only to the extent necessary to provide a locality rate may not exceed the rate for EX-IV plus 5 percent for employees in the upper range extension).

Part 536, subpart B: Grade Retention.

Part 536, subpart C: Pay Retention (only to the extent necessary to (1) replace "grade" with "pay band;" (2) bar employees with a rating of record lower than Fully Successful from receiving retained rate increases under 5 CFR 536.305; (3) provide that pay retention provisions do not apply to conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total pay rate is not reduced); (4) provide that a retained rate may not exceed the rate for EX-IV plus 5 percent; (5) provide the pay (including any locality adjustment or staffing supplement) of an employee in the upper range extension who is rated below Outstanding will be converted to a retained rate before processing any other actions; (6) provide a retained rate that is less than the maximum rate (including any locality adjustment or staffing supplement) of the upper range extension for an employee who receives a rating of record of Outstanding will be terminated and converted to an equal adjusted rate; (7) provide the range maximum rate used to compute retained rate adjustments is the normal range maximum rate (including any locality adjustment or staffing supplement) for employees with a rating of record below Outstanding and the upper range maximum rate (including any locality adjustment or staffing supplement) for an employee with an Outstanding rating of record; and (8) provide when a retained rate for an employee with a rating of record below Fully Successful falls below the applicable adjusted rate for the normal band maximum, the retained rate will be terminated and the employee's pay will be set at an adjusted rate equal to the retained rate).

Part 550, sections 550.106–107: Biweekly and annual maximum earnings limitation (only to the extent necessary to provide that an applicable staffing supplement is added to the GS–15, step 10, rate in lieu of the applicable locality payment).

Part 550, section 550.113(a): Computation of overtime pay (only to the extent necessary to provide that the GS–10 minimum special rate (if any) for the special rate category that would otherwise apply to an employee (but for the existence of the demonstration project) is deemed to be the "applicable special rate of pay" in determining the overtime hourly rate cap).

Part 550, section 550.703: Definitions (to the extent necessary to modify paragraph (c)(4) of the definition of "reasonable offer" by replacing "two grade or pay levels" with "one pay band level" and "grade or pay level" with "pay band level").

Part 591, subpart B, section 591.204: Cost-of-living allowances and post differentials (only to the extent necessary to provide that the demonstration project pay system is a qualifying pay plan).

Part 752, section 752.401(a)(3): Adverse actions (only to the extent necessary to replace "grade" with "pay band").

Part 752, section 752.401(a)(4): Adverse actions (only to the extent necessary to provide that adverse action provisions do not apply to (1) conversions into the demonstration project from the General Schedule or other pay system, as long as the employee's total rate of pay is not reduced and (2) reductions in rates of basic pay to offset a locality pay or staffing supplement rate increase as a result of receiving a rating of record below Fully Successful).

Note: If any of the provisions of title 5, Code of Federal Regulations, listed above are revised during the period this demonstration project is in effect, FSIS may choose to terminate the waiver of one or more such provisions with respect to employees participating in the project, without formally modifying the project itself. FSIS must notify OPM when any such waiver is terminated.

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SECURITIES AND EXCHANGE COMMISSION

File No. 500–1

In the Matter of: ABS Group, Inc. (n/k/a The Motion Picture Group, Inc.), Accrue Software, Inc., iAsiaworks, Inc., Premier Laser Systems, Inc., Siskon Gold Corp., and Syquest Technology, Inc. (n/k/a SYQT, Inc.); Order of Suspension of Trading

May 7, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of ABS Group, Inc. (n/k/a The Motion Picture Group, Inc.), because it has not filed any periodic reports since the period ended June 30, 1998.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Accrue

Software, Inc., because it has not filed any periodic reports since the period ended December 28, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of iAsiaworks, Inc., because it has not filed any periodic reports since the period ended September 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Premier Laser Systems, Inc., because it has not filed any periodic reports since the period ended December 31, 1999.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Siskon Gold Corp., because it has not filed any periodic reports since the period ended December 31, 1997.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Syquest Technology, Inc. (n/k/a SYQT, Inc.), because it has not filed any periodic reports since the period ended June 30, 1998.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 7, 2008, through 11:59 p.m. EDT on May 20, 2008.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 08–1241 Filed 5–7–08; 10:47 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of: National Manufacturing Technologies, Inc., Natural Solutions Corp., Natural Wonders, Inc., Net Nanny Software International, Inc., Netcentives, Inc., and Netcruise.com, Inc.; Order of Suspension of Trading

May 6, 2008.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of National

Manufacturing Technologies, Inc. because it has not filed any periodic reports since the period ended December 31, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Natural Solutions Corp. because it has not filed any periodic reports since the period ended January 31, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Natural Wonders, Inc. because it has not filed any periodic reports since the period ended October 28, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Net Nanny Software International, Inc. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Netcentives, Inc. because it has not filed any periodic reports since the period ended June 30, 2001.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Netcruise.com, Inc. because it has not filed any periodic reports since the period ended September 30, 2000.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed companies.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the above-listed companies is suspended for the period from 9:30 a.m. EDT on May 6, 2008, through 11:59 p.m. EDT on May 19, 2008.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 08-1242 Filed 5-7-08; 10:47 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57770; File No. SR-Amex-2008-37]

Self-Regulatory Organizations; American Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Extending the Roll-Out of the Amex Book Clerk Program

May 2, 2008.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on May 1, 2008, the American Stock Exchange LLC ("Exchange" or "Amex") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by the Exchange. The Exchange has designated this proposal as non-controversial under section 19(b)(3)(A)(iii) of the Act³ and Rule 19b-4(f)(6) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to extend the implementation period of the Amex Book Clerk ("ABC") program from May 2, 2008 through December 31, 2008. The text of the proposed rule change is available on the Exchange's Web site (<http://www.amex.com>), at the Exchange's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Commission recently approved the Exchange's proposed rule change (1) to eliminate the obligation and ability of an Exchange options specialist to act as an agent in connection with orders in his or her assigned options classes; and (2) to amend certain Exchange rules relating to the operation of the ABC program.⁵

Exchange Rule 995-ANTE originally provided that the roll-out of the ABC Proposal would occur over a six-month period ending on May 1, 2008. The Exchange herein proposes an extension of the roll-out period commencing on May 2, 2008 and ending on December 31, 2008. The Exchange submits that complexities associated with a proposed transaction with NYSE Euronext, Inc. have caused a delay in the original ABC Proposal roll-out schedule. The Exchange believes that an extension of the roll-out of the ABC Proposal through December 31, 2008 will allow the Exchange to complete the implementation and roll-out of the ABC Proposal in a reasonable and measured manner.

As set forth in the ABC Proposal and the Exchange's Regulatory Circular 2008-03 (January 23, 2008), during the roll-out period, options specialists who continue to operate the customer limit order book will continue to be subject to the same agency obligations as are currently provided under Amex Rules 950-ANTE(l) and 958-ANTE(e).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b)⁶ of the Act in general and section 6(b)(5)⁷ in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, and processing of information with respect to facilitating transactions in securities, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the proposed rule change is not designed to

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(iii).

⁴ 17 CFR 240.19b-4(f)(6).

⁵ See Securities Exchange Act Release No. 56804 (November 16, 2007), 72 FR 66002 (November 26, 2007) (SR-Amex-2006-107) ("ABC Proposal").

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(5).

permit unfair discrimination between customers, issuers, brokers and dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has designated the proposed rule change as one that: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest.⁸ Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act⁹ and subparagraph (f)(6) of Rule 19b-4 thereunder.¹⁰ The Exchange has asked the Commission to waive the operative delay to permit the extension of the implementation period of the ABC program to become operative prior to the 30th day after filing, in order to allow the implementation period to continue without interruption.

The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest and will allow the Exchange to extend the roll-out of the ABC program, which expired on May 1, 2008, without interruption.¹¹ Therefore, the Commission designates the proposal operative upon filing.

⁸ In addition, Rule 19b-4(f)(6)(iii) requires a self-regulatory organization to provide the Commission with written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. 17 CFR 240.19b-4(f)(6)(iii). The Exchange has fulfilled this requirement.

⁹ 15 U.S.C. 78s(b)(3)(A).

¹⁰ 17 CFR 240.19b-4(f)(6).

¹¹ For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File No. SR-Amex-2008-37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-Amex-2008-37. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commissions Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All

submissions should refer to File Number SR-Amex-2008-37 and should be submitted on or before May 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹²

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-10340 Filed 5-8-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57775; File No. SR-FINRA-2007-035]

Self-Regulatory Organizations: Financial Industry Regulatory Authority, Inc.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Relating to Options Supervision Requirements

May 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 18, 2007, Financial Industry Regulatory Authority, Inc. ("FINRA") (f/k/a National Association of Securities Dealers, Inc. ("NASD")) filed with the Securities and Exchange Commission ("Commission") and amended on April 17, 2008³ the proposed rule change as described in Items I and II below, which Items have been substantially prepared by FINRA. This order provides notice of the proposed rule change as modified by Amendment No. 1 and approves the proposed rule change as amended on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend NASD Rule 1022 (Categories of Principal Registration), NASD Rule 2220 (Options Communications with the Public) and NASD Rule 2860 (Options) to eliminate the requirement for separate designations of Senior Registered Options Principal ("SROP") and Compliance Registered Options Principal ("CROP") and require a member to integrate the responsibility for supervision of its public customer options business into its overall supervisory and compliance program.

¹² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Amendment No. 1 to SR-FINRA-2007-035 replaced and superseded the original rule filing filed on December 18, 2007.

Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

1022. Categories of Principal Registration

(a) through (e) No Change.
 (f) Limited Principal—Registered Options and Security Futures
 (1) Every member of [the Association]*NASD* that is engaged in, or that intends to engage in transactions in security futures or [put or call] options with the public shall have at least one Registered Options and Security Futures Principal who shall have satisfied the requirements of this subparagraph. [As to options transactions, each member shall also designate a Senior Registered Options Principal and a Compliance Registered Options Principal in accordance with the provisions of Rule 2860(b)(20) and identify such persons to the Association.] Every person engaged in *the supervision of options and security futures sales practices, including a person designated pursuant to Rule 3010(a)(2)* [the management of the day-to-day options or security futures activities of a member] shall [also] be registered as a Registered Options and Security Futures Principal.
 (2) through (5) No Change.
 (g) through (h) No Change.

2220. Options Communications with the Public

(a) No Change.
 (b) Approval by [Compliance]*a Registered Options and Security Futures Principal and Recordkeeping*
 All advertisements, sales literature (except completed worksheets), and educational material issued by a member or member organization pertaining to options shall be approved in advance by [the Compliance Registered Options Principal or designee]*a Registered Options and Security Futures Principal designated by the member's written supervisory procedures*. Copies thereof, together with the names of the persons who prepared the material, the names of the persons who approved the material and, in the case of sales literature, the source of any recommendations contained therein, shall be retained by the member or member organization and be kept at an easily accessible place for examination by [the Association]*NASD* for a period of three years.
 (c) through (d) No Change.

2860. Options

(a) No Change.
 (b) Requirements

(1) through (15) No Change.
 (16) Opening of Accounts
 (A) through (D) No Change.
 (E) Uncovered Short Option Contracts
 Each member transacting business with the public in writing uncovered short option contracts shall develop, implement and maintain specific written procedures governing the conduct of such business which shall include, at least, the following:
 (i) through (ii) No Change.
 (iii) Designation of [the Senior Registered Options Principal and/or Compliance Registered Options Principal] *a specific Registered Options and Security Futures Principal(s)* as [the person] responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved;
 (iv) through (v) No Change.
 (17) No Change.
 (18) Discretionary Accounts

(A) Authorization and Approval

(i) No Change.
 (ii) [The Senior Registered Options Principal]*Each firm shall designate specific Registered Options and Security Futures Principals to review discretionary accounts. A Registered Options and Security Futures Principal other than the Registered Options and Security Futures Principal who accepted the account shall review the acceptance of each discretionary account to determine that the Registered Options and Security Futures Principal accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed, and shall maintain a record of the basis for such determination. [Each discretionary order shall be approved and initialed on the day entered by the branch office manager or other Registered Options Principal, provided that if the branch office manager is not a Registered Options Principal, such approval shall be confirmed within a reasonable time by a Registered Options Principal. Each] Every discretionary order shall be identified as discretionary on the order at the time of entry. Discretionary accounts shall receive frequent appropriate supervisory review by [the Compliance Registered Options Principal]*a Registered Options and Security Futures Principal who is not exercising the discretionary authority*. The provisions of this subparagraph (18) shall not apply to discretion as to the price at which or the time when an order given by a customer for the*

purchase or sale of a definite number of option contracts in a specified security shall be executed, *except that the authority to exercise time and price discretion will be considered to be in effect only until the end of the business day on which the customer granted such discretion, absent specific, written contrary indication signed and dated by the customer. This limitation shall not apply to time and price discretion exercised in an institutional account, as defined in Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. Any exercise of time and price discretion must be reflected on the order ticket.*

(iii) Any member that does not utilize computerized surveillance tools for the frequent and appropriate review of discretionary activity must establish and implement procedures to require specific Registered Options and Security Futures Principals who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered.
 (B) through (C) No Change.

(19) No Change.
 (20) Supervision of Accounts
 (A) Duty to Supervise[; Senior Registered Options Principal]
 [Every member shall develop and implement a written program providing for the diligent supervision of all of its customer accounts, and all orders in such accounts, to the extent such accounts and orders relate to options contracts, by a general partner (in the case of a partnership) or officer (in the case of a corporation) of the member who is a Registered Options Principal and who has been specifically identified to the Association as the member's Senior Registered Options Principal. A Senior Registered Options Principal, in meeting his responsibilities for supervision of customer accounts and orders, may delegate to qualified employees (including other Registered Options Principals) responsibility and authority for supervision and control of each branch office handling transactions in option contracts, provided that the Senior Registered Options Principal shall have overall authority and responsibility for establishing appropriate procedures of supervision and control over such employees. Every such member shall also develop and implement specific written procedures concerning the manner of supervision of customer accounts maintaining uncovered short option positions and specifically providing for frequent supervisory review of such accounts.]*Each member that conducts a public customer options business shall ensure that its written supervisory*

system policies and procedures pursuant to Rules 3010, 3012, and 3013 adequately address the member's public customer options business.

[(B) Compliance Registered Options Principal]

[Every member shall designate and specifically identify to the Association a Compliance Registered Options Principal (CROP), who may be the Senior Registered Options Principal, who shall have no sales functions and who shall be responsible to review and to propose appropriate action to secure the member's compliance with securities laws and regulations and Association Rules in respect of its options business. The CROP shall regularly furnish reports directly to the Compliance officer (if the CROP is not himself the Compliance officer) and to other senior management of the member. The requirement that the CROP have no sales functions shall not apply to a member that has received less than \$1,000,000 in gross commissions on options business for either of the preceding two fiscal years or that currently has ten or fewer registered representatives.]

[(C)](B) Branch Offices

No branch office of a member shall transact an options business unless the principal supervisor of such branch office accepting options transactions has been qualified as either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor; provided that this requirement shall not apply to branch offices in which no more than three registered representatives are located, so long as the options activities of such branch offices are appropriately supervised by either a Registered Options and Security Futures Principal or a Limited Principal—General Securities Sales Supervisor.

[(D)](C) Headquarters Review of Accounts

Each member shall maintain at the principal supervisory office having jurisdiction over the office servicing customer accounts, or have readily accessible and promptly retrievable, information to permit review of each customer's options account on a timely basis to determine:

(i) The compatibility of options transactions with investment objectives and with the types of transactions for which the account was approved;

(ii) The size and frequency of options transactions;

(iii) Commission activity in the account;

(iv) Profit or loss in the account;

(v) Undue concentration in any options class or classes, and

(vi) Compliance with the provisions of Regulation T of the Federal Reserve Board.

(21) through (24) No Change.

(c) No Change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FINRA is proposing to amend its options rules to integrate the responsibility for supervision of a member's public customer options business into its overall supervisory and compliance program. The proposed rule change is substantively similar to recent amendments to the rules of the Chicago Board Options Exchange ("CBOE"), which were approved by the Commission.⁴ As part of these changes, FINRA proposes to eliminate the requirement that a firm must designate a SROP and CROP to be responsible for the overall supervision and compliance programs, respectively, for a member's public customer options activities. FINRA believes that the supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

FINRA does not believe that eliminating the SROP and CROP requirements would lead to a reduction in supervision, as firms have an obligation to designate an appropriately registered principal(s) to supervise their public customer options activities pursuant to NASD Rule 3010(a)(2).⁵ The

proposed rule change would provide firms greater flexibility to incorporate supervision into existing, firm-wide supervisory structures.

The proposed rule change would amend NASD Rule 1022 (Categories of Principal Registration) to delete the reference to the SROP and CROP and clarify that if a person is engaged in the supervision of options and security futures sales practices, including a person designated pursuant to NASD Rule 3010(a)(2), then such person must be registered as a Registered Options and Security Futures Principal ("ROSFP").

The proposed rule change also makes a few technical changes. All references to "Registered Options Principal" would be changed to "Registered Options and Security Futures Principal" to reflect the change in title when rules governing security futures were adopted.⁶ All references to "the Association" would be changed to "NASD" for ease of reference while the rules continue to be part of the legacy NASD rulebook until such time as the legacy NASD and incorporated NYSE rules are consolidated into the FINRA rule book when all references to "NASD" will be changed to "FINRA." Finally, all references to "put and call" would be deleted before options and "options" will mean all types of options.

The proposed rule change would amend NASD Rule 2220(b) (Options Communications with the Public) to delete the reference to the CROP and instead require that all advertisements, sales literature (except completed worksheets), and educational material issued by a member or member organization pertaining to options be approved in advance by a ROSFP designated by the member's written supervisory procedures.

In addition, the proposed rule change would amend NASD Rule 2860 (Options) in several respects. First, paragraph (b)(16)(E)(iii) would be amended to delete the reference to the SROP and CROP and require that a specific ROSFP(s) be designated to be responsible for approving customer accounts that do not meet the specific criteria and standards for writing uncovered short option transactions and for maintaining written records of the reasons for every account so approved. The proposed rule change would allow

with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required."

⁶ See Securities Exchange Act Release No. 46663 (October 15, 2002), 67 FR 64944 (October 22, 2002) (Approval Order for File No. SR-NASD-2002-040).

⁴ See Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (Approval Order for File No. SR-CBOE-2007-106).

⁵ NASD Rule 3010(a)(2) requires that members designate "an appropriately registered principal(s)

members the flexibility to assign this responsibility, which currently rests with the SROP and/or CROP, to a specific ROSFP(s).

Second, the proposed rule change would amend paragraph (b)(18) and the treatment of options discretionary accounts. Specifically, under the proposed rule change, each firm would be required to designate specific ROSFPs to review discretionary accounts.⁷ A ROSFP other than the ROSFP who accepted the account would review the acceptance of each discretionary account to determine that the ROSFP accepting the account had a reasonable basis for believing that the customer was able to understand and bear the risk of the strategies or transactions proposed and must maintain a record of the basis for such determination.

In addition, the proposed rule change would eliminate the requirement in paragraph (b)(18) that discretionary options orders be approved and initialed on the day of entry by the branch office manager or authorized Registered Options Principal ("ROP") or confirmed within a reasonable time by a ROP if the branch office manager is not a ROP, if a firm uses computerized surveillance tools. Under the proposed rule change, discretionary orders would be required to receive frequent appropriate supervisory review by a ROSFP who is not exercising discretionary authority (instead of a CROP) and be reviewed in accordance with a member's written supervisory procedures. The proposed rule change would ensure that supervisory responsibilities are assigned to specific ROSFP-qualified individuals, thereby enhancing the quality of supervision.

Firms that do not use computerized surveillance tools for the frequent and appropriate review of discretionary activity would be required to establish and implement procedures to require ROSFPs who have been designated to review discretionary accounts to approve and initial each discretionary order on the day entered. FINRA believes that any member that does not use computerized tools for the frequent and adequate surveillance of options discretionary account activity should continue to be required to perform the daily manual review of discretionary orders.

Paragraph (b)(18) also would be revised to limit the duration of the time and price discretionary authority to the

end of the business day on which the customer granted such discretion, absent specific written contrary indication signed and dated by the customer. The limitation would not apply to time and price discretion exercised in an institutional account, as defined in NASD Rule 3110(c)(4), pursuant to valid Good-Till-Cancelled instructions issued on a "not held" basis. The proposed rule change would require any exercise of time and price discretion to be reflected on the order ticket. The proposed rule change mirrors the limitations to discretionary authority provided in NASD Rule 2510(d). FINRA believes that it is appropriate to have consistent treatment of discretionary orders for options as for all other securities.

Third, the proposed rule change would amend paragraph (b)(20) to delete references to a supervision process involving a SROP and CROP, and instead would require each member that conducts a public customer options business to ensure that its written supervisory system policies and procedures pursuant to NASD Rules 3010, 3012, and 3013 adequately address the member's public customer options business. Although the proposed rule change would eliminate entirely the positions and titles of the SROP and CROP, a member would still be required pursuant to NASD Rule 3010(a)(2) to designate "an appropriately registered principal(s) with authority to carry out the supervisory responsibilities of the member for each type of business in which it engages for which registration as a broker/dealer is required," which would include designating a ROSFP to supervise a member's public customer options activities.

FINRA will announce the effective date of the proposed rule change in a *Regulatory Notice* to be published no later than 60 days following Commission approval. The effective date will be no later than 30 days following publication of the *Regulatory Notice* announcing Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,⁸ which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the

supervisory and compliance function of a member's public customer options activities would be better integrated into the matrix of a firm's overall supervisory and compliance functions rather than separately vested in a SROP and CROP.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-FINRA-2007-035 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-FINRA-2007-035. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

⁷ Under the existing rule, the SROP must review the acceptance of each discretionary account and the CROP must perform frequency supervisory review of such accounts.

⁸ 15 U.S.C. 78o-3(b)(6).

the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filings also will be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-FINRA-2007-035 and should be submitted on or before May 30, 2008.

IV. Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association.⁹ In particular, the Commission believes that the proposed rule change would help to better integrate the supervisory and compliance functions of a firm's public customer options activities into the firm's overall supervisory and compliance functions, thereby eliminating any uncertainty about where supervisory responsibility lies. Therefore, the Commission finds that the proposed rule change is consistent with Section 15A(b)(6) of the Act,¹⁰ which requires, among other things, that FINRA rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission also finds good cause to approve the proposed rule change prior to the thirtieth day after the date of publication of notice of filing of the amendment in the **Federal Register**. The proposed rule change is substantially similar to recent CBOE rule amendments concerning options supervision, which were approved by the Commission.¹¹ The Commission believes that approving the proposed rule change will simplify firms' compliance, and is consistent with the public interest and the investor protection goals of the Act. Finally, the Commission finds that it is in the public interest to approve the proposed rule

change as soon as possible to expedite its implementation.

Accordingly, the Commission believes good cause exists, consistent with Sections 15A(b)(6) and 19(b) of the Act,¹² to approve the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹³ that the proposed rule change (File No. SR-FINRA-2007-035), as modified by Amendment No. 1, be, and hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁴

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-10339 Filed 5-8-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57777; File No. SR-ISE-2008-25]

Self-Regulatory Organizations; International Securities Exchange, LLC; Order Approving Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Rescission of the "No MPM" Order Type

May 5, 2008.

On March 5, 2008, the International Securities Exchange, LLC ("ISE") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² a proposed rule change to amend its rules governing ISE Stock Exchange to rescind the "No MPM" order type. On March 17, 2008, ISE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as modified by Amendment No. 1, was published for comment in the **Federal Register** on April 1, 2008.³ The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change, as modified by Amendment No. 1.

The best bids and offers on the ISE Stock Exchange are displayed to the marketplace on a continuous basis. In addition, the ISE offers incoming orders

an opportunity to receive price improvement at the midpoint of the National Best Bid or Offer ("NBBO") through its MidPoint Match ("MPM") process. Specifically, before executing incoming orders against the ISE's displayed bid or offer, the system checks MPM to see if there is contra-side interest that can provide price improvement. However, under ISE's current rules, Equity Electronic Access Members may specify on orders that they do not want the orders to execute against MPM interest, thereby denying such orders the opportunity for price improvement.

The Exchange proposes to amend Rules 2104 and 2106 to eliminate the "No MPM" order type, and to clarify in Rule 2107 that all inbound orders will be exposed to MPM interest and be afforded price improvement, when available, before executing against the ISE's displayed quotations. The Exchange also proposes to amend Rule 2129 to clarify that MPM is a process by which ISE members may receive an execution price that is at the midpoint of the NBBO.

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5)⁵ of the Act, which requires that, among other things, the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that exposing all inbound orders to MPM interest should afford such orders an opportunity for price improvement by providing customers the opportunity to interact with an additional source of liquidity.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR-ISE-2008-25), as modified by Amendment No. 1, be, and it hereby is, approved.

⁹ In approving the proposed rule change, the Commission considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

¹⁰ 15 U.S.C. 78o-3(b)(6).

¹¹ See Securities Exchange Act Release No. 56971 (December 14, 2007), 72 FR 72804 (December 21, 2007) (Approval Order for File No. SR-CBOE-2007-106).

¹² 15 U.S.C. 78o-3(b)(6), and 78s(b).

¹³ 15 U.S.C. 78s(b)(2).

¹⁴ 17 CFR 200.30-3(a)(12).

¹⁵ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 57557 (March 26, 2008), 73 FR 17386.

⁴ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78(f)(b)(5).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.⁶

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-10372 Filed 5-8-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57776; File No. SR-NYSEArca-2008-43]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees and Charges for Exchange Services

May 5, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) ¹ and Rule 19b-4 thereunder, ² notice is hereby given that on April 22, 2008, NYSE Arca, Inc. (“NYSE Arca” or “Exchange”), through its wholly owned subsidiary NYSE Arca Equities, Inc. (“NYSE Arca Equities”), filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II, and III below, which Items have been substantially prepared by the Exchange. NYSE Arca has filed the proposal pursuant to Section 19(b)(3)(A) of the Act ³ and Rule 19b-4(f)(2) thereunder, ⁴ which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the section of its Schedule of Fees and Charges for Exchange Services (“Fee Schedule”) that applies to orders submitted by ETP Holders.⁵ While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2008. The text of the proposed rule change is available at NYSE Arca, the Commission’s Public Reference Room, and <http://www.nyse.com>.

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule as it applies to ETP Holders as follows:

Rebates on non-displayed Mid-Point Passive Liquidity Orders (“MPLs”). All customers will receive a rebate of \$0.0010 per share for MPLs in securities listed on the New York Stock Exchange LLC (“NYSE”) posted to the Book. Customers that provide more than 30 million average daily share volume per month in NYSE-listed securities will receive a rebate of \$0.0015 per share for MPLs posted to the Book. The MPL is an undisplayed limit order that offers price improvement to customers by executing at the mid-point of the National Best Bid and Offer.

New price tier in NYSE-listed securities. Customers who provide 40 million average daily share volume per month will be charged a take fee of \$0.0029 per share in NYSE-listed securities. This is a reduction from the take fee of \$0.003 currently charged when taking NYSE-listed shares from the Book. Customers who provide 30 million average daily share volume per month will be charged a routing fee of \$0.0008 per share for orders routed to NYSE (a reduction from the \$0.001 per share otherwise charged for orders routed to NYSE) and will continue to pay \$0.0030 per share for orders routed to other exchanges.

Elimination of rebate cap. To reward active liquidity providers, the Exchange will eliminate the current rebate cap of 100 million daily average shares per month in NYSE-listed securities and 75 million daily average shares per month in securities listed on The NASDAQ Stock Market LLC (“Nasdaq”).

Increased routing fees in Nasdaq-listed securities. In response to recent fee increases by Nasdaq, the Exchange

will increase its routing fee in Nasdaq-listed securities from \$0.0026 to \$0.0029 per share for: (i) Customers who transact an average daily share volume per month greater than 60 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and provide liquidity an average daily share volume per month greater than 30 million shares, and (ii) customers who transact an average daily share volume per month greater than 30 million shares (including transactions that take liquidity, provide liquidity, or route to away market centers) and provide liquidity an average daily share volume per month greater than 15 million shares.

The Exchange will also renumber certain footnotes contained within the Fee Schedule. While changes to the Fee Schedule pursuant to this proposal will be effective upon filing, the changes will become operative on May 1, 2008.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,⁶ in general, and with Section 6(b)(4) of the Act,⁷ in particular, in that it is intended to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities. The Exchange believes that the proposed fees and credits are reasonable. The proposed rates are part of the Exchange’s effort to attract and enhance participation on the Exchange, by offering increased credits and decreased fees where certain volume thresholds are satisfied. The Exchange also believes that the proposed changes to the Fee Schedule are equitable in that they apply uniformly to our Users. The increased routing fee in Nasdaq-listed securities seeks to recoup increased routing expenses resulting from Nasdaq fee increases.

B. Self-Regulatory Organization’s Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

⁶ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ See NYSE Arca Equities Rule 1.1(n).

⁶ 15 U.S.C. 78f.

⁷ 15 U.S.C. 78f(b)(4).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act⁸ and subparagraph (f)(2) of Rule 19b-4 thereunder⁹ because it establishes or changes a due, fee, or other charge applicable only to a member imposed by the self-regulatory organization. Accordingly, the proposal is effective upon Commission receipt of the filing. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NYSEArca-2008-43 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NYSEArca-2008-43. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NYSE Arca. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NYSEArca-2008-43 and should be submitted on or before May 30, 2008.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹⁰

Florence E. Harmon,
Deputy Secretary.

[FR Doc. E8-10354 Filed 5-8-08; 8:45 am]

BILLING CODE 8010-01-P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-57771; File No. SR-NASDAQ-2008-038]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change to Trade Shares of Certain PowerShares Actively Managed Exchange-Traded Funds Pursuant to Unlisted Trading Privileges

May 2, 2008.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 25, 2008, The NASDAQ Stock Market LLC ("Nasdaq" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been substantially prepared by Nasdaq. This order provides notice of filing of the

proposed rule change and approves it on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to trade the shares ("Shares") of four funds of the PowerShares Actively Managed Exchange-Traded Fund Trust ("Trust") pursuant to unlisted trading privileges ("UTP"). The text of the proposed rule change is available at Nasdaq's principal office, the Commission's Public Reference Room, and <http://www.nasdaq.complinet.com>.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change. The text of these statements may be examined at the places specified in Item III below. Nasdaq has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to trade the Shares of the following funds pursuant to UTP: (1) The PowerShares Active AlphaQ Fund; (2) the PowerShares Active Alpha Multi-Cap Fund; (3) the PowerShares Active Mega-Cap Portfolio; and (4) the PowerShares Active Low Duration Portfolio (collectively, the "Funds"). The Commission has recently approved the listing and trading of the Shares of the Funds on NYSE Arca Equities, Inc.³ The Shares are offered by the Trust, a business trust organized under the laws of the State of Delaware and registered with the Commission as an open-end management investment company.⁴ The Trust currently consists of the Funds,

³ See Securities Exchange Act Release No. 57619 (April 4, 2008), 73 FR 19544 (April 10, 2008) (SR-NYSEArca-2008-25) ("NYSE Arca Proposal").

⁴ The Trust is registered under the Investment Company Act of 1940 ("1940 Act"). On November 26, 2007, the Trust filed with the Commission a Registration Statement for the Funds on Form N-1A under the Securities Act of 1933 and under the 1940 Act (File Nos. 333-147622 and 811-22148) ("Registration Statement"). On November 16, 2007, the Trust filed with the Commission an Amended and Restated Application ("Application") for an Amended Order under Sections 6(c) and 17(b) of the 1940 Act. See Investment Company Act Release No. 28140 (February 1, 2008), 73 FR 7328 (February 7, 2008) (File No. 812-3386).

⁸ 15 U.S.C. 78s(b)(3)(A)(ii).

⁹ 17 CFR 240.19b-4(f)(2).

¹⁰ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

each of which is an actively managed exchange-traded fund. The Exchange represents that the Funds will not purchase or sell securities in markets outside the United States.

Description of the Funds and the Trust

PowerShares Capital Management LLC ("Advisor") is the investment advisor to the Funds. AER Advisors, Inc. ("AER") is the subadvisor to the PowerShares Active AlphaQ Fund and the PowerShares Active Alpha Multi-Cap Fund (the "Initial AER Funds"), and Invesco Institutional (N.A.) Inc. ("Invesco") is the subadvisor to the PowerShares Active Mega-Cap Portfolio and the PowerShares Active Low Duration Portfolio.⁵ The Advisor, AER, and Invesco are each registered as an investment adviser under the Investment Advisers Act of 1940.

AER will employ its unique stock screening methodology in the management of the Initial AER Funds. In employing its methodology, AER tracks and rates all U.S. stocks of companies with over \$400 million market capitalization and which are listed on a national securities exchange. It is anticipated by AER that less than 3% of all securities in the Master Stock List⁶ will be American Depositary Receipts ("ADRs") and that ADRs will not represent more than 3% of any one Fund. Each Initial AER Fund's investment objective will be to provide long-term capital appreciation by investing, under normal conditions, at least 95% of its total assets in stocks represented in its appropriate universe as determined by AER. The balance of the Initial AER Fund's assets may be invested in cash and money market instruments. Each Initial AER Fund's benchmark index will be a broad-based index relevant to its investment objective, strategy, and market capitalization. AER anticipates that the benchmark indexes for the Initial AER Funds will be as follows: (1) NASDAQ 100 Index for the PowerShares Active AlphaQ Fund; and (2) S&P 500 Index for the PowerShares Active Alpha Multi-Cap Fund.

The PowerShares Active Mega-Cap Portfolio's investment objective is long-term growth of capital. The PowerShares Active Mega-Cap Portfolio

seeks to meet its objective by normally investing at least 80% of its assets in a diversified portfolio of equity securities of mega-capitalization companies. The principal type of equity securities purchased by the Fund is common stock. The PowerShares Active Mega-Cap Portfolio may also invest in derivative instruments such as futures contracts and equity-linked derivatives. The PowerShares Active Low Duration Portfolio's investment objective is to provide total return. The PowerShares Active Low Duration Portfolio seeks to meet its investment objective by exceeding the total return of the Lehman Brothers 1–3 Year U.S. Treasury Index. The PowerShares Active Low Duration Portfolio seeks to meet its objective by normally investing at least 80% of its assets in a diversified portfolio of U.S. government and corporate debt securities. The PowerShares Active Low Duration Portfolio may invest in structured securitized debt securities, such as asset-backed securities and both residential and commercial mortgage-backed securities, and the Fund's investments may include investments in derivative instruments. Derivative instruments in which the Fund may invest include, but are not limited to, swaps including interest rate, total return, and credit default swaps; put options; call options; and futures contracts and options on futures contracts. The Fund may also utilize other strategies such as dollar rolls and reverse repurchase agreements. The Fund may invest up to 25% of its total assets in non-investment-grade securities (junk bonds).

The Exchange states that additional information regarding the Funds, the Shares, the Trust, creations and redemptions, Disclosed Portfolio (defined below), and Intraday Indicative Value can be found in the NYSE Arca Proposal⁷ and the Registration Statement,⁸ as applicable.

Availability of Information

The Funds' Web site (<http://www.powershares.com>) will include a form of the prospectus for each Fund. The Web site will also include additional quantitative information for each Fund updated on a daily basis, including: (1) Daily trading volume, the prior business day's reported closing price, the net asset value ("NAV") and the mid-point of the bid/ask spread at the time of calculation of such NAV (the "Bid/Ask Price"),⁹ and a calculation of

the premium and discount of the Bid/Ask Price against the NAV; and (2) data in chart format displaying the frequency distribution of discounts and premiums of the daily Bid/Ask Price against the NAV, within appropriate ranges, for each of the four previous calendar quarters. On each business day before commencement of the Regular Market Session on the Exchange,¹⁰ the Funds will disclose on their Web site the identities and quantities of the securities and other assets that will form the basis for the calculation of NAV for each Fund at the end of the business day ("Disclosed Portfolio").¹¹

Investors interested in a particular Fund can also obtain the Trust's Statement of Additional Information ("SAI"), each Fund's Shareholder Reports, and its Form N–CSR and Form N–SAR, filed twice a year. The Trust's SAI and Shareholder Reports are available free upon request from the Trust, and those documents and the Form N–CSR and Form N–SAR may be viewed on-screen or downloaded from the Commission's Web site (<http://www.sec.gov>).

Information regarding market price and volume is and will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. The NAV of each Fund will normally be determined as of the close of the Regular Market Session on Nasdaq (ordinarily 4 p.m. Eastern Time or "ET") on each business day. The previous day's closing price and trading volume information will be published daily in the financial section of newspapers. Quotations and last-sale information for the Shares will be available through the facilities of the Consolidated Tape Association ("CTA"). In addition, the Intraday Indicative Value¹² will be disseminated at least every 15 seconds during the Regular Market Session through the facilities of the CTA.

Exchange as of the time of calculation of such Fund's NAV. The records relating to Bid/Ask Prices will be retained by the Funds and their service providers.

¹⁰ See Nasdaq Rule 4120(b)(4) (describing the three trading sessions on the Exchange: (1) Pre-Market Session from 7 a.m. to 9:30 a.m.; (2) Regular Market Session from 9:30 a.m. to 4 p.m. or 4:15 p.m.; and (3) Post-Market Session from 4 p.m. or 4:15 p.m. to 8 p.m.).

¹¹ Under accounting procedures followed by the Funds, trades made on the prior business day ("T") will be booked and reflected in NAV on the current business day ("T+1"). Accordingly, the Funds will be able to disclose at the beginning of the business day the portfolio that will form the basis for the NAV calculation at the end of the business day.

¹² The Exchange states that the Intraday Indicative Value is also sometimes referred to as the "Portfolio Indicative Value" with respect to these securities.

⁵ The Exchange states that the information provided herein is based on information included in the Application.

⁶ "Master Stock List" is defined in the Registration Statement. See E-mail from Jonathan Cayne, Associate General Counsel, Nasdaq, to Edward Cho, Special Counsel, and Steve Varholik, Staff Attorney, Division of Trading and Markets, Commission, dated April 30, 2008 (referring to the Registration Statement for the definition of Master Stock List).

⁷ See *supra* note 3.

⁸ See *supra* note 4.

⁹ The Bid/Ask Price of a Fund is determined using the highest bid and the lowest offer on the

Trading Halts

Nasdaq will halt trading in the Funds under the conditions specified in Nasdaq Rules 4120 and 4121, including the provisions of Nasdaq Rule 4120(b) relating to temporary interruptions in the calculation or wide dissemination of the Intraday Indicative Value, among other values. In addition, if Nasdaq becomes aware that the NAV or the Disclosed Portfolio with respect to a Fund is not disseminated to all market participants at the same time, it will halt trading in such series until such time as the NAV and/or the Disclosed Portfolio, as the case may be, is available to all market participants. Nasdaq may also cease trading the Shares of the Funds if other unusual conditions or circumstances exist which, in the opinion of Nasdaq, make further dealings on Nasdaq detrimental to the maintenance of a fair and orderly market. Nasdaq will follow any procedures with respect to trading halts as set forth in Nasdaq Rule 4120(c). Finally, the Exchange states that the conditions for a halt include a regulatory halt by the listing market and will stop trading the Shares if the listing market delists them.

Trading Rules

Nasdaq deems the Shares to be equity securities, thus rendering trading in the Shares subject to Nasdaq's existing rules governing the trading of equity securities. Nasdaq will allow trading in the Shares 7 a.m. until 8 p.m.

Surveillance

The Exchange states that it intends to utilize its existing surveillance procedures applicable to derivative products (including exchange-traded funds) to monitor trading in the Shares. The Exchange represents that such procedures are adequate to address any concerns about the trading of the Shares on Nasdaq.

Trading of the Shares through Nasdaq will be subject to the surveillance procedures of the Financial Industry Regulatory Authority ("FINRA") applicable to equity securities, in general, and exchange-traded funds, in particular.¹³ The Exchange further states that it may obtain information via the Intermarket Surveillance Group ("ISG") from other exchanges that are members or affiliate members of ISG.

¹³ The Exchange states that FINRA surveils trading on Nasdaq pursuant to a regulatory services agreement. Nasdaq is responsible for FINRA's performance under this regulatory services agreement.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) The procedures for purchases and redemptions of Shares (and that Shares are not individually redeemable); (2) Nasdaq Rule 2310, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the Intraday Indicative Value is disseminated; (4) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction;¹⁴ (5) the risks involved in trading the Shares during the Pre-Market and Post-Market Sessions¹⁵ when an updated Intraday Indicative Value will not be calculated or publicly disseminated; (6) trading information; (7) any exemptive, no-action, or interpretive relief granted by the Commission from any rules under the Act; (8) that the Funds are subject to various fees and expenses described in the Registration Statement; (9) that the Commodities Futures Trading Commission has regulatory jurisdiction over the trading of futures contracts; (10) the trading hours of the Shares of the Funds; (11) that the NAV for the Shares will be calculated after 4 p.m. ET each trading day; and (12) that information about the Shares of each Fund will be publicly available on the Funds' Web site.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with Section 6(b) of the Act,¹⁶ in general, and Section 6(b)(5) of the Act,¹⁷ in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. Nasdaq's rules and procedures governing the trading of the Shares pursuant to UTP are also consistent

¹⁴ The Exchange notes that investors purchasing Shares directly from a Fund will receive a prospectus. Members purchasing Shares from a Fund for resale to investors will deliver a prospectus to such investors.

¹⁵ See *supra* note 10.

¹⁶ 15 U.S.C. 78f.

¹⁷ 15 U.S.C. 78f(b)(5).

with the goals of Section 6(b)(5) of the Act and the protection of investors. Specifically, the trading of the Shares is consistent with Section 6(b)(5) of the Act because it creates competition in the marketplace, for the benefit of investors and other market participants. In addition, Nasdaq believes that the proposal is consistent with Rule 12f-5 under the Act¹⁸ because it deems the Shares of the Funds to be equity securities, thus rendering trading in such Fund Shares subject to the Exchange's existing rules governing the trading of equity securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Nasdaq states that written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-NASDAQ-2008-038 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASDAQ-2008-038. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent

¹⁸ 17 CFR 240.12f-5.

amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-NASDAQ-2008-038 and should be submitted on or before May 30, 2008.

IV. Commission's Findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.¹⁹ In particular, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act,²⁰ which requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and national market system, and in general to protect investors and the public interest.

In addition, the Commission finds that the proposal is consistent with Section 12(f) of the Act,²¹ which permits an exchange to trade, pursuant to UTP, a security that is listed and registered on another exchange.²² The Commission

notes that it has approved the listing and trading of the Shares on NYSE Arca Equities, Inc.²³ The Commission also finds that the proposal is consistent with Rule 12f-5 under the Act,²⁴ which provides that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP. The Exchange has represented that it meets this requirement because it deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities.

The Commission further believes that the proposal is consistent with Section 11A(a)(C)(iii) of the Act,²⁵ which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities. Quotations for and last-sale information regarding the Shares are disseminated through the facilities of the CTA. In addition, the Intraday Indicative Value is calculated and disseminated through the facilities of the CTA at least every 15 seconds throughout Nasdaq's Regular Market Session, and, on each business day prior to the commencement of the Regular Market Session, the Funds disclose on their Web site the Disclosed Portfolio. The Funds' Web site also makes available the prospectus for each Fund and additional quantitative information for each Fund, including daily trading volume, previous closing prices, NAV, and other information relating to NAV and the Bid/Ask Price.

The Commission also believes that the proposal appears reasonably designed to preclude trading of the Shares if transparency is impaired or there is unfair dissemination of the NAV or Portfolio Disclosure. Trading in the Shares will be subject to Nasdaq Rule 4120(b), which provides that, if the listing market halts trading when the Intraday Indicative Value, among other values, is not being calculated or disseminated, the Exchange would also halt trading. Nasdaq also would halt trading of Shares with respect to a Fund

if it becomes aware that the NAV or the Disclosed Portfolio of that Fund is not disseminated to all market participants at the same time. Nasdaq would resume trading the Shares only when the NAV and/or Disclosed Portfolio, as the case may be, is available to all market participants.

The Commission notes that, if the Shares should be delisted by the listing exchange, the Exchange would no longer have the authority to trade Shares pursuant to this order.

In support of this proposal, the Exchange has made the following additional representations:

1. The Exchange's surveillance procedures are adequate to properly monitor Exchange trading of the Shares and to address any concerns about the trading of the Shares on Exchange.

2. Prior to the commencement of trading, the Exchange would inform its members in an Information Circular of the special characteristics and risks associated with trading the Shares.

3. The Information Circular would discuss, among other things, the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of the transaction and the risks involved in trading Shares during the Pre-Market and Post-Market Sessions when an updated Intraday Indicative Value will not be calculated or publicly disseminated.

This approval order is based on the Exchange's representations.

The Commission finds good cause for approving this proposed rule change before the thirtieth day after publication of notice thereof in the **Federal Register**. As noted above, the Commission previously found that the listing and trading of Shares on NYSE Arca Equities, Inc. is consistent with the Act. The Commission presently is not aware of any regulatory issue that should cause it to revisit that earlier finding or precludes the trading of such Shares on Nasdaq pursuant to UTP. For these reasons, accelerating approval of Nasdaq's proposal should benefit investors by creating, without undue delay, additional competition in the market for these Shares.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁶ that the proposed rule change (SR-NASDAQ-2008-038) be, and it hereby is, approved on an accelerated basis.

¹⁹ In approving this rule change, the Commission notes that it has considered the proposal's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

²⁰ 15 U.S.C. 78f(b)(5).

²¹ 15 U.S.C. 78l(f).

²² Section 12(a) of the Act, 15 U.S.C. 78l(a), generally prohibits a broker-dealer from trading a security on a national securities exchange unless the security is registered on that exchange pursuant to Section 12 of the Act. Section 12(f) of the Act excludes from this restriction trading in any security to which an exchange "extends UTP."

When an exchange extends UTP to a security, it allows its members to trade the security as if it were listed and registered on the exchange even though it is not so listed and registered.

²³ See *supra* note 3.

²⁴ 17 CFR 240.12f-5.

²⁵ 15 U.S.C. 78k-1(a)(1)(C)(iii).

²⁶ 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E8-10341 Filed 5-8-08; 8:45 am]

BILLING CODE 8010-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11206 and # 11207]

Arkansas Disaster Number AR-00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 5.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-1751-DR), dated 03/28/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 and continuing.

Effective Date: 05/01/2008.

Physical Loan Application Deadline Date: 05/27/2008.

EIDL Loan Application Deadline Date: 12/29/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the Presidential disaster declaration for the State of ARKANSAS, dated 03/28/2008 is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties: (Physical Damage and Economic Injury Loans): Arkansas, Desha, Hempstead, Poinsett, Van Buren.

Contiguous Counties: (Economic Injury Loans Only):

Arkansas: Chicot, Drew, Howard, Nevada, Pike.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-10345 Filed 5-8-08; 8:45 am]

BILLING CODE 8025-01-P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration # 11206 and # 11207]

Arkansas Disaster Number AR-00018

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 6.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Arkansas (FEMA-1751-DR), dated 03/28/2008.

Incident: Severe Storms, Tornadoes, and Flooding.

Incident Period: 03/18/2008 and continuing through 04/28/2008.

Effective Date: 04/28/2008.

Physical Loan Application Deadline Date: 05/27/2008.

EIDL Loan Application Deadline Date: 12/29/2008.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing And Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street, SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for the State of Arkansas, dated 03/28/2008 is hereby amended to establish the incident period for this disaster as beginning 03/18/2008 and continuing through 04/28/2008.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. E8-10346 Filed 5-8-08; 8:45 am]

BILLING CODE 8025-01-P

DEPARTMENT OF STATE

[PUBLIC NOTICE 6218]

Culturally Significant Objects Imported for Exhibition Determinations: "Dali: Painting and Film"

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority

No. 236 of October 19, 1999, as amended, and Delegation of Authority No. 257 of April 15, 2003 [68 FR 19875], I hereby determine that three objects to be added to a Salvador Dali exhibition (now entitled "Dali: Painting and Film"), imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art in The Joan and Preston Robert Tisch Gallery, New York, NY, from on or about June 29, 2008, until on or about September 15, 2008, and at possible additional exhibitions or venues yet to be determined, is in the national interest.

These three objects will be added to those covered by the Dali & Film" exhibition Determinations published at 72 FR 49,345-6 (Aug. 28, 2007).

Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202-453-8050)). The address is U.S. Department of State, SA-44, 301 4th Street, SW., Room 700, Washington, DC 20547-0001.

Dated: May 2, 2008.

C. Miller Crouch,

Principal Deputy Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. E8-10437 Filed 5-8-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF STATE

[Public Notice 6219]

Advisory Committee on International Economic Policy; Notice of Open Meeting

The Advisory Committee on International Economic Policy (ACIEP) will meet from 2 p.m. to 4 p.m. on Tuesday, May 27, 2008, at the U.S. Department of State, 2201 C Street, NW., Room 1107, Washington, DC. The meeting will be hosted by Assistant Secretary of State for Economic, Energy and Business Affairs Daniel S. Sullivan and Committee Chair Ted Kassinger. The ACIEP serves the U.S. Government in a solely advisory capacity, and provides advice concerning issues and challenges in international economic policy. The meeting will focus on

²⁷ 17 CFR 200.30-3(a)(12).

“Policies, Programs & Total Economic Engagement—The U.S.-Korea Relationship” with a particular emphasis on the geopolitical perspective and the U.S.-Korea Free Trade Agreement.

This meeting is open to public participation, though seating is limited. Entry to the building is controlled; to obtain pre-clearance for entry, members of the public planning to attend should provide, by Friday, May 23, their name, professional affiliation, valid government-issued ID number (*i.e.*, U.S. Government ID [agency], U.S. military ID [branch], passport [country], or drivers license [state]), date of birth, and citizenship to Sherry Booth by fax (202) 647-5936, e-mail (BoothSL@state.gov), or telephone (202) 647-0847. One of the following forms of valid photo identification will be required for admission to the State Department building: U.S. driver's license, U.S. Government identification card, or any valid passport. Enter the Department of State from the C Street lobby. In view of escorting requirements, non-Government attendees should plan to arrive not less than 15 minutes before the meeting begins.

For additional information, contact Senior Coordinator Nancy Smith-Nissley, Office of Economic Policy Analysis and Public Diplomacy, Bureau of Economic, Energy and Business Affairs, at (202) 647-1682 or Smith-NissleyN@state.gov.

Dated: May 2, 2008.

David R. Burnett,

Office Director, Office of Economic Policy Analysis and Public Diplomacy, Department of State.

[FR Doc. E8-10439 Filed 5-8-08; 8:45 am]

BILLING CODE 4710-07-P

DEPARTMENT OF STATE

[Public Notice 6098]

Renewal of Cultural Property Advisory Committee Charter

SUMMARY: The Charter of the Department of State's Cultural Property Advisory Committee (CPAC) has been renewed for an additional two years.

The Charter of the Cultural Property Advisory Committee is being renewed for a two-year period. The Committee was established by the Convention on Cultural Property Implementation Act of 1983, 19 U.S.C. 2601 *et seq.* It reviews requests from other countries seeking U.S. import restrictions on archaeological or ethnological material the pillage of which places a country's cultural heritage in jeopardy. The

Committee makes findings and recommendations to the Secretary of State, who, on behalf of the President, determines whether to impose the import restrictions. The membership of the Committee consists of private sector experts in archaeology, anthropology, or ethnology; experts in the international sale of cultural property; and representatives of museums and of the general public.

FOR FURTHER INFORMATION CONTACT:

Cultural Heritage Center, U.S. Department of State, Bureau of Educational and Cultural Affairs, State Annex 44, 301 4th Street, SW., Washington, DC 20547. Telephone: (202) 453-8800; Fax: (202) 453-8803.

Dated: April 24, 2008.

Maria P. Kouroupas,

Executive Director, Cultural Property Advisory Committee, Department of State.

[FR Doc. E8-10438 Filed 5-8-08; 8:45 am]

BILLING CODE 4710-05-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Draft Environmental Impact Statement (Draft EIS) for the Replacement of Runway 10R/28L, Development of a New Passenger Terminal, and Other Associated Airport Projects at Port Columbus International Airport (CMH) and Notice of Public Hearing

AGENCY: The lead Federal agency is the Federal Aviation Administration (FAA), Department of Transportation.

ACTION: Notice of availability, notice of public comment period, notice of public information meeting and public hearing.

SUMMARY: The FAA is issuing this Notice of Availability to advise the public that a Draft EIS will be available for public review beginning May 16, 2008. The document was prepared pursuant to major environmental directives to comply with NEPA: Section 102(2)(c) of the National Environmental Policy Act of 1969 (Pub. L. 91-190); Section 106 consultation for impacts to historic structures, as identified in 36 CFR 800.8, *Coordination with the National Environmental Policy Act*; U.S. Department of Transportation Section 303(c) consultation; and other applicable Federal and State environmental laws, regulations, and Executive Orders.

The Draft EIS was prepared in response to a proposal presented to the FAA by the Columbus Regional Airport Authority (CRAA), the owner and

operator of CMH and identified in the Draft EIS as the Airport Sponsor, for environmental review.

The FAA prepared this Draft EIS to analyze and disclose potential environmental impacts related to possible Federal actions at CMH. Numerous Federal actions would be necessary if airfield development were to be implemented. Proposed improvements include replacement of Runway 10R/28L, Development of a New Passenger Terminal, and other airfield projects (see below).

The Draft EIS presents the purpose and need for the proposed Federal action, analysis of reasonable alternatives, including the No Action alternative, discussion of impacts for each reasonable alternative, and supporting appendices. The FAA will consider all information contained in this Draft EIS and additional information that may be provided during the public comment period before issuing a Final EIS and Agency decision regarding the possible alternatives and Federal actions.

The Airport Sponsor proposes to replace Runway 10R/28L at CMH, approximately 700 feet south of the existing Runway 10R/28L; develop new terminal facilities in the midfield area; provide ancillary facilities in support of the replacement runway and midfield terminal; and implement noise abatement air traffic procedures developed for the replacement runway.

The replacement runway would be 10,113 feet long. This length would maintain CMH's ability to accommodate current and projected airport operations. Existing Runway 10R/28L would be decommissioned as a runway and converted into a taxiway upon commissioning of the replacement runway. In addition, a south taxiway and north parallel taxiways to proposed Runway 10R/28L would be constructed.

To meet future aircraft parking and passenger processing requirements, new midfield terminal facilities are needed. The Draft EIS assesses a development envelope that is defined as an area large enough to encompass Phase I and II of the CRAA terminal development program. The Draft EIS discusses the number of gates, approximate square footage, approximate curb frontage, and the number of passengers that the terminal would accommodate.

Ancillary facilities in support of the replacement runway and midfield terminal would be constructed. The facilities include roadway relocations and construction; parking improvements; property acquisition; and relocation of residences, as necessary.

The CRAA has prepared a 14 CFR Part 150 Noise Compatibility Study Update (Part 150 Update) to address the current and future noise conditions. The Part 150 Update includes an analysis of the potential noise and land use impacts resulting from the proposed development of relocating Runway 10R/28L to the south, as well as possible mitigation options. The noise abatement air traffic options recommended through the Part 150 Update are included in the EIS as part of the proposed project. In addition, the land use mitigation that is recommended in the Part 150 Update is included in the EIS as mitigation for impacts resulting from the proposed project.

Public Comment and Information Workshop/Public Hearing: The public comment period on the Draft EIS will start May 16, 2008 and will end on July 11, 2008. Two Public Information Workshops and Public Hearings will be held on June 11 and 12, 2008 from 5 p.m. to 8 p.m. at the following locations: June 11, 2008, Oakland Park at Brentnell Elementary School, 1270 Brentnell Avenue, Columbus, OH 43219; June 12, 2008, Whitehall Community Park, Activities Center, 402 North Hamilton Road, Whitehall, OH 43213.

The Public Hearings will conclude when the last registered speaker presents their oral comments for the record. In the event that it becomes necessary, time limits may be imposed.

Comments can only be accepted with the full name and address of the individual commenting. Mailed and faxed comments are to be submitted to Ms. Katherine Jones of the FAA, at the address shown in **FOR FURTHER INFORMATION CONTACT**. E-mailed comments should be sent to cmheis@faa.gov. All comments must be postmarked, faxed or e-mailed by no later than midnight, Friday, July 11, 2008. The Draft EIS may be reviewed for comment during regular business hours at the following locations:

1. Federal Aviation Administration, 11677 S. Wayne Rd., Suite 107, Romulus, MI 48174 (Telephone: 734-229-2958).
2. Columbus Regional Airport Authority, Port Columbus International Airport, Administrative Offices, 4600 International Gateway, Columbus, OH 43219 (Telephone: 614-239-4063).
3. City of Gahanna, 200 South Hamilton Road, Gahanna, OH 43230 (Telephone: 614-342-4000).
4. City of Whitehall, 360 South Yearling Road, Whitehall, OH 43213 (Telephone: 614-338-3106).
5. Jefferson Township, 6545 Havens Road, Blacklick, OH 43004 (Telephone: 614-855-4260).

6. City of Bexley, 2242 East Main Street, Bexley, OH 43209 (Telephone: 614-327-6200).

7. City of Reynoldsburg, 7232 East Main Street, Reynoldsburg, OH 43068 (Telephone: 614-322-6800).

8. Columbus Metropolitan Library, Main Branch, 96 South Grant Avenue, Columbus, OH 43215 (Telephone: 614-645-2275).

9. Columbus Metropolitan Library, Gahanna Branch, 310 Granville Street, Gahanna, OH 43230 (Telephone: 614-645-2275).

10. Columbus Metropolitan Library, Shepard Branch, 790 N. Nelson Road, Columbus, OH 43219 (Telephone: 614-645-2275).

11. Columbus Metropolitan Library, Linden Branch, 2432 Cleveland Avenue, Columbus, OH 43211 (Telephone: 614-645-2275).

12. Columbus Metropolitan Library, Whitehall Branch, 4371 East Broad Street, Whitehall, OH 43213 (Telephone: 614-645-2275).

13. Columbus Metropolitan Library, Reynoldsburg Branch, 1402 Brice Road, Reynoldsburg, OH 43068 (Telephone: 614-645-2275).

14. Bexley Public Library, 2411 East Main Street, Bexley, OH 43209 (Telephone: 614-231-2793).

15. CMH EIS Web site, <http://www.airportsites.net/cmh-eis>.

SUPPLEMENTARY INFORMATION: The FAA encourages all interested parties to provide comments concerning the scope and content of the Draft EIS. Comments should be as specific as possible. Comments should address the contents of the Draft EIS, such as the analysis of potential environmental impacts, the adequacy of the proposed action to meet the stated need, or the merits of the various alternatives. Reviewers should organize their participation to make it meaningful and effective in making the FAA aware of the reviewer's interests and concerns. Reviewers should use quotations, page references, and other specific citations to the text of the Draft EIS and related documents. This commenting procedure is intended to ensure that substantive comments and concerns are made available to the FAA in a timely and effective manner, so that the FAA has an opportunity to address them.

FOR FURTHER INFORMATION CONTACT: Ms. Katherine S. Jones, FAA Detroit Airports District Office, 11677 South Wayne Road, Suite 107, Romulus, Michigan 48174. Telephone: (734) 229-2958, Fax: (734) 229-2950.

Issued in Romulus, Michigan on April 30, 2008.

Matthew Thys,

Manager, FAA Detroit Airports District Office.

[FR Doc. E8-10184 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Airborne Omega Receiving Equipment, Omega Receiving Equipment Operating Within the Radio Frequency Range of 10.2 to 13.6 KiloHertz, and Airborne Area Navigation Equipment Using OmegafVLF Inputs Authorizations Technical Standard Orders (TSOs)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of cancellation of all Omega Technical Standard Orders (TSOs) and the revocation of all associated Technical Standard Order Authorizations (TSOAs).

SUMMARY: This notice announces the FAAs intentions to cancel all Omega Technical Standard Orders (TSOs) and revoke all associated Technical Standard Order Authorizations (TSOAs). If you have reason to believe that this proposed action will negatively impact aviation safety, we would like to solicit your comments.

DATES: Comments must be received by June 9, 2008.

ADDRESSES: Send all comments regarding cancelling the Omega TSOs and revoking the associated TSOAs to: Federal Aviation Administration, Aircraft Certification Service, Avionics Systems Branch, Room 815, 800 Independence Ave., SW., Washington, DC, 20591, ATTN: Kevin Bridges, AIR-130. Or deliver comments to: Federal Aviation Administration, Aircraft Certification Service, Room 815, 800 Independence Ave., SW., Washington, DC, 20591.

FOR FURTHER INFORMATION CONTACT: Kevin Bridges, AIR-130, Room 815, Federal Aviation Administration, 800 Independence Avenue SW., Washington DC 20591. Telephone (202) 385-4627, fax (202) 385-4651, or via e-mail at: kevin.bridges@faa.gov.

SUPPLEMENTARY INFORMATION:

Comments Invited

Submit written data, views, or arguments on the proposed cancellations to the above-specified address. Your comments should stipulate "Comments, cancellation of all Omega Technical Standard Orders

(TSOs) and the revocation of all associated Technical Standard Order Authorizations (TSOAs).” You may examine all comments received before and after the comment closing date by visiting Room 815, FAA Building, 800 Independence Avenue, SW., Washington, DC, weekdays except Federal holidays, between 8 a.m. and 4 p.m. The Director, Aircraft Certification Service, will consider all comments received on or before the closing date before issuing the final notice of cancellation.

Background

Because the Omega navigation system ceased operation on September 30, 1997, the FAA intends to cancel all Omega Technical Standard Orders (TSOs) and revoke all associated Omega Technical Standard Order Authorizations (TSOAs). Currently, the FAA database contains three TSOs and numerous TSOAs for the design and manufacture of Omega avionics equipment. This announcement serves as notice to all Omega TSOA holders that the FAA intends to cancel all TSOs (including active historical TSOs) and revoke all TSOAs for Omega avionics equipment. The affected TSOs are as follows:

- TSO-C94, Airborne Omega Receiving Equipment;
- TSO-C94a, Omega Receiving Equipment operating within the Radio Frequency Range of 10.2 to 13.6 Kilohertz; and
- TSO-C 120, Airborne Area Navigation Equipment Using Omega /VLF Inputs.

How to Obtain Copies

Copies are accessible online at <http://rgl.faa.gov/>. Select “Technical Standard Orders and Index.” Type TSO number in the “Search” box and Select “Go.”

Issued in Washington, DC, on May 1, 2008.

Susan J. M. Cabler,

Assistant Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. E8-10187 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Opportunity for Public Comment on Surplus Property Release at Myrtle Beach International Airport

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: Under the provisions of Title 49, U.S.C. Section 47 153(c), notice is being given that the FAA is considering a request from Horry County to waive the requirement that a 0.389 acre parcel of surplus property, located at the Myrtle Beach International Airport, be used for aeronautical purposes.

DATES: Comments must be received on or before June 9, 2008.

ADDRESSES: Comments on this notice may be mailed or delivered in triplicate to the FAA at the following address: Atlanta Airports District Office, Attn: Parks Preston, Program Manager, 1701 Columbia Ave., Suite 2-260, Atlanta, GA 30337-2747.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Robert J. Kemp, Director of Airports, at the following address: Myrtle Beach International Airport, 1100 Jetport Road, Myrtle Beach, SC 29577.

FOR FURTHER INFORMATION CONTACT:

Parks Preston, Program Manager, Atlanta Airports District Office, 1701 Columbia Ave., Suite 2-260, Atlanta, GA 30337-2747, (404) 305-7149. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA is reviewing a request by Horry County to release 0.389 acres of surplus property at the Myrtle Beach International Airport. The property will be purchased to allow for the realignment of Shine Avenue. The net proceeds from the sale of this property will be used for airport purposes. The proposed use of this property is compatible with airport operations.

Any person may inspect the request in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the request, notice, and other documents germane to the request in person at the Myrtle Beach International Airport.

Issued in Atlanta, Georgia on March 25, 2008.

Larry F. Clark,

Acting Manager, Atlanta Airports District Office, Southern Region.

[FR Doc. E8-10186 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Wayne County, Michigan

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of 30-day extension of the comment period for the Draft Environmental Impact Statement (DEIS) for the Detroit River International Crossing Study.

SUMMARY: FHWA is providing a 30-day extension of the original 60-day public comment period for the Draft Environmental Impact Statement (DEIS) for the Detroit River International Crossing Study (in Wayne County, Michigan). Pursuant to the National Environmental Policy Act (NEPA) of 1969, the FHWA made the DEIS available for public review and comments for a 60-day comment period that ended April 29, 2008. Two public hearings were held in March 2008. In response to several comments about the projects complexity and magnitude, FHWA is extending the comment period for an additional 30 days.

DATES: Public comments are due May 29, 2008.

The DEIS is available for an additional 30-day public review period. Comments must be e-mailed, faxed, or postmarked on or before May 29, 2008. A copy of the complete transcript, including all of the written and recorded oral comments received, will be available for public review at the listed locations. All submissions from organizations or businesses and from individuals identifying themselves as representatives or officials of organizations or businesses will be made available for public disclosures in their entirety.

ADDRESSES: 1. *Document Availability:* The document was made available to the public on February 25, 2008. Copies of the DEIS are available for public inspection and review on the project Web site <http://www.partnershipborderstudy.com> and at the following locations:

MDOT Bureau of Transportation Planning, 425 Ottawa St., Lansing; MDOT Metro Region Office, 18101 W. Nine Mile Rd., Southfield; MDOT Detroit Transportation Service Center, 1400 Howard St., Detroit; MDOT Taylor Transportation Service Center, 25185 Goddard, Taylor; Henry Ford Centennial Library, 16301 Michigan Ave., Detroit; Detroit Public Library, 5201 Woodward Ave., Detroit; Bowen Branch of the Detroit Public Library, 3648 W. Vernor, Detroit; Library at Southwestern High School, 6921 W. Fort St., Detroit; Delray Recreation Center, 420 Leigh St., Detroit; Allen Park Library, 8100 Allen Rd., Allen Park;

Ecorse Library, 4184 W. Jefferson Ave., Ecorse;
 Melvindale Library, 18650 Allen Rd., Melvindale;
 River Rouge Library, 221 Burke St., River Rouge;
 Kemeny Recreation Center, 2260 S. Fort St., Detroit;
 Campbell Brand Library, 8733 W. Vernor Hwy., Detroit;
 Neighborhood City Hall Central District, 2 Woodward Ave., Detroit;
 Neighborhood City Hall Northwestern District, 19180 Grand River Ave., Detroit;
 Neighborhood City Hall Northeastern District, 2328 E. Seven Mile Rd., Detroit;
 Neighborhood City Hall Western District, 18100 Meyers Road, Detroit;
 Neighborhood City Hall Eastern District, 7737 Kercheval St., Detroit;
 Neighborhood City Hall Southwestern District, 7744 W. Vernor St., Detroit.

Copies of the DEIS may be requested from Bob Parsons (Public Involvement and Hearings Officer) at the Michigan Department of Transportation, 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909 or by calling (517) 373-9534.

2. *Comments:* Send comments on the DEIS to Michigan Department of Transportation, c/o Bob Parsons (Public Involvement and Hearings Officer), 425 W. Ottawa Street, P.O. Box 30050, Lansing, MI 48909; Fax: (517) 373-9255; or e-mail: parsonsb@michigan.gov.

FOR FURTHER INFORMATION CONTACT:

Ryan Rizzo, Major Project Manager, FHWA Michigan Division, (517) 702-1833; David Williams, Environmental Program Manager, FHWA Michigan Division, (517) 702-1820.

SUPPLEMENTARY INFORMATION: The Detroit River International Crossing (DRIC) Study is a bi-national effort to complete the environmental study processes related to a new international crossing between Windsor, Ontario, and Detroit, Michigan. The Border Transportation Partnership (The Partnership) leads this study. It is formed of the following agencies: Federal Highway Administration (FHWA), Michigan Department of Transportation (MDOT), Transport Canada (TC) and Ontario Ministry of Transportation (MTO). The DRIC Study identifies solutions that support the region, State, provincial and national economies while addressing the civil and national defense and homeland security needs of the busiest trade corridor between the United States and Canada. The Detroit River, which separates the U.S. and Canada, currently has border crossings at the Ambassador Bridge (four lanes), the Detroit-Windsor

Tunnel (two lanes), the Detroit-Canada Rail Tunnels, and the Detroit-Windsor Truck Ferry. These multi modal transportation links provide the connections for freight and passenger movements between the two countries. The DRIC Study includes transportation alternatives that improve border-crossing facilities, operations, and connections to meet existing and future mobility and security needs.

Purpose and Need for the Project: The purpose of the DRIC Study is to provide safe, efficient and secure movement of people and goods across the U.S.-Canadian border in the Detroit River area to support the economies of Michigan, Ontario, Canada and the United States, and to support the mobility needs of national and civil defense to protect the homeland.

To address future border crossing mobility requirements through 2035, there is a need to:

- Provide new border-crossing capacity to meet increased long-term demand;
- Improve system connectivity to enhance the seamless flow of people and goods;
- Improve operations and processing capability in accommodating the flow of people and goods; and
- Provide reasonable and secure crossing options (*i.e.*, redundancy) in the event of incidents, maintenance, congestion, or other disruptions.

Alternatives Evaluated: The DEIS evaluates nine Build Alternatives in addition to a No Build Alternative. The nine Build Alternatives each include an interchange plaza, a customs inspection plaza, and a bridge from the plaza that spans the Detroit River. The DEIS analyzes the issues/impacts on the United State's side of the proposed new border crossing. A Canadian-produced set of documents analyzes the issues/impacts on the Canadian side.

The No-Build Alternative would not result in a new international border crossing system in the Detroit-Windsor area. Only the existing crossings, plazas and freeway connections, including the Gateway connection currently under construction, would continue operations. A second privately-owned bridge has been proposed by the Detroit International Bridge Company in the Ambassador Bridge Enhancement Environmental Assessment and was included in the No-Build Alternative.

Issued on: April 29, 2008.

James J. Steel,

Division Administrator, Lansing, Michigan.

[FR Doc. E8-10231 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

Sunshine Act Meetings; Unified Carrier Registration Plan Board of Directors

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

TIME AND DATE: June 9, 2008, from 1 p.m. until 5 p.m., and June 10, 2008, from 8 a.m. until 12 Noon, Eastern Daylight Time.

PLACE: This meeting will take place at The Brown Hotel, 335 West Broadway, Louisville, Kentucky 40202.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Unified Carrier Registration Plan Board of Directors (the Board) will continue its work in developing and implementing the Unified Carrier Registration Plan and Agreement and to that end, may consider matters properly before the Board.

FOR FURTHER INFORMATION CONTACT: Mr. Avelino Gutierrez, Chair, Unified Carrier Registration Board of Directors at (505) 827-4565.

Dated: May 1, 2008.

William A. Quade,

Associate Administrator for Enforcement and Program Delivery.

[FR Doc. 08-1246 Filed 5-7-08; 2:40 pm]

BILLING CODE 4910-EX-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

[Docket ID PHMSA-2007-0056]

Pipeline Safety: Information Collection Activities Under Office of Management and Budget Review

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Requests (ICR) abstracted below will be forwarded to the Office of Management and Budget (OMB) for review and comments. The ICRs describe the nature of the information collections and their expected burden. PHMSA published Notices in the **Federal Register** with 60-day comment periods soliciting comments on these collections of information. PHMSA did not receive any substantive comments

pertaining to the renewal of these information collections.

DATES: Submit comments on or before June 9, 2008.

ADDRESSES: Send comments regarding the burden estimate, including suggestions for reducing the burden, to OMB, Attention: Desk Officer for PHMSA, 725 17th Street, NW., Washington, DC 20503. Comments are invited on: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Barbara Betsock, U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, PHP-30, 1200 New Jersey Avenue, SE., East Building, 2nd Floor, Washington, DC 20590-0001, Telephone (202) 366-4595.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires PHMSA to provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collection requests that PHMSA will be submitting to OMB for renewal and extension. These information collections are contained in the pipeline safety regulations at 49 CFR parts 190-199. PHMSA has revised burden estimates, where appropriate, to reflect current reporting levels or adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) abstract of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. PHMSA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

PHMSA published a Notice in the **Federal Register** with a 60-day comment period soliciting comments on

the following collection of information (73 FR 5906; January 31, 2008) under Docket ID PHMSA-2007-0056. PHMSA again requests comments on this information collection:

Title: Pipeline Safety: Public Awareness Program.

OMB Control Number: 2137-0622.

Type of Request: Renewal of a currently approved information collection.

Abstract: Pipeline operators are required to implement a written continuing public education program that follows the guidance provided in the American Petroleum Institute's Recommended Practice 1162. (49 CFR 192.616 and 195.440). Upon request, an operator must submit its completed program to PHMSA or, in the case of an intrastate pipeline, the appropriate State agency. The operator must also make its program documentation and evaluation results available for periodic review by appropriate regulatory agencies.

Estimated number of respondents: 22,500.

Estimated annual burden hours: 517,480 hours.

Frequency of collection: On occasion.

PHMSA published a Notice in the **Federal Register** (73 FR 10509; February 27, 2008) with a 60-day comment period soliciting comments on the following collections of information under Docket ID PHMSA-2007-0056. PHMSA again requests comments on these information collections:

Title: Pipeline Safety: Recordkeeping and Accident Reporting for Hazardous Liquid Pipeline.

OMB Control Number: 2137-0047.

Type of Request: Extension of a currently approved information collection.

Abstract: Operators of hazardous liquid pipelines are required under 49 CFR part 195 to maintain records, make reports, and provide information to PHMSA and State pipeline safety agencies concerning the operations of their pipelines. The information aids Federal and State pipeline safety inspectors in conducting compliance inspections and investigating accidents.

Estimated number of respondents: 200.

Estimated annual burden hours: 51,011 hours.

Frequency of collection: Annually and on occasion.

Title: Pipeline Safety: Recordkeeping for Liquefied Natural Gas Facilities.

OMB Control Number: 2137-0048.

Type of Request: Renewal of a currently approved information collection.

Abstract: Operators of liquefied natural gas facilities are required under

49 CFR part 193 to maintain records, make reports, and provide information to PHMSA and State pipeline safety agencies concerning the operations of their pipelines. The information aids Federal and State pipeline safety inspectors in conducting compliance inspections and investigating incidents.

Estimated number of respondents: 101.

Estimated annual burden hours: 12,120 hours.

Frequency of collection: On occasion.

Title: Pipeline Safety: Recordkeeping for Gas Pipelines.

OMB Control Number: 2137-0049.

Type of Request: Renewal of a currently approved information collection.

Abstract: Operators of gas pipelines are required under 49 CFR part 192 to maintain records, make reports, and provide information to PHMSA and State pipeline safety agencies concerning the operations of their pipelines. The information aids Federal and State pipeline safety inspectors in conducting compliance inspections and investigating incidents.

Estimated number of respondents: 22,300.

Estimated annual burden hours: 940,454 hours.

Frequency of collection: On occasion.

Title: Pipeline Safety: Gas and Hazardous Liquid Pipeline Safety Program Certifications.

OMB Control Number: 2137-0584.

Type of Request: Renewal of a currently approved information collection.

Abstract: A State agency participating in the pipeline safety program must maintain records in order to demonstrate the agency is properly monitoring the operations of pipeline operators in the State. The agency submits a certificate to PHMSA annually verifying compliance. PHMSA uses the information to evaluate the State's eligibility for Federal grants.

Estimated number of respondents: 67.
Estimated annual burden hours: 3,820 hours.

Frequency of collection: Annually.

Title: Pipeline Safety: Integrity Management in High Consequence Areas for Operators with Less than 500 Miles of Hazardous Liquid Pipeline.

OMB Control Number: 2137-0605.

Type of Request: Renewal of a currently approved information collection.

Abstract: The pipeline integrity management regulations at 49 CFR part 195 require operators of less than 500 miles of hazardous liquid pipeline to have a program for integrity testing and

evaluation of their pipeline in high consequence areas. These are environmentally sensitive and populated areas in which a pipeline failure would have high consequences. Operators must maintain records of the testing and evaluation. The information aids Federal and State pipeline safety inspectors in conducting compliance inspections and investigating accidents.

Estimated number of respondents:
132.

Estimated annual burden hours:
267,960 hours.

Frequency of collection: Annually and on occasion.

Issued in Washington, DC on May 1, 2008.

Barbara Betsock,

Acting Director of Regulations.

[FR Doc. E8-10413 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-60-P

DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Special Permits Applications

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), PHMSA is publishing the following list of special permit applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: Delmer F. Billings, Director, Office of Hazardous Materials Special Permits and Approvals, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, East

Building, PHH-30, 1200 New Jersey Avenue, SE., Washington, DC 20590-0001, (202) 366-4535.

Key to "Reason for Delay"

1. Awaiting additional information from applicant.
2. Extensive public comment under review.
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis.
4. Staff review delayed by other priority issues or volume of special permit applications.

Meaning of Application Number Suffixes

- N—New application.
M—Modification request.
PM—Party to application with modification request.

Issued in Washington, DC, on April 30, 2008.

Delmer F. Billings,

Director, Office of Hazardous Materials, Special Permits and Approvals.

Application No.	Applicant	Reason for delay	Estimated date of completion
MODIFICATION TO SPECIAL PERMITS			
11579-M	Austin Powder Company Cleveland, OH	3,4	05-31-2008
10964-M	Kidde Aerospace & Defense Wilson, NC	4	05-31-2008
NEW SPECIAL PERMIT APPLICATIONS			
14385-N	Kansas City Southern Railway Company Kansas City, MO	4	05-31-2008
14566-N	Nantong CIMC Tank Equipment Co. Ltd. Nantong City, China	3	05-31-2008

[FR Doc. E8-10220 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation; Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held from 11 a.m. to 12:30 p.m. (EDT) on Wednesday, June 11, 2008, at the Corporation's Administration Headquarters, Suite W32-300, 1200 New Jersey Avenue, SE., Washington, DC, via conference call. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Quarterly Report; Old and New

Business; Closing Discussion; Adjournment.

Attendance at the meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact, not later than Friday, June 6, 2008, Anita K. Blackman, Chief of Staff, Saint Lawrence Seaway Development Corporation, 1200 New Jersey Avenue, SE., Washington, DC 20590; 202-366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC, on May 6, 2008.

Collister Johnson, Jr.,

Administrator.

[FR Doc. E8-10436 Filed 5-8-08; 8:45 am]

BILLING CODE 4910-61-P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 552 (Sub-No. 11)]

Railroad Revenue Adequacy—2006 Determination

AGENCY: Surface Transportation Board.

ACTION: Notice of decision.

SUMMARY: On May 6, 2008, the Board served a decision announcing the 2006 revenue adequacy determinations for the Nation's Class I railroads. Three carriers, the BNSF Railway Company, the Norfolk Southern Railway Company and the Soo Line Railroad Company, are found to be revenue adequate.

EFFECTIVE DATE: This decision is effective on May 6, 2008.

FOR FURTHER INFORMATION CONTACT: Paul Aguiar, (202) 245-0323. (Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339).

SUPPLEMENTARY INFORMATION: The Board is required to make an annual determination of railroad revenue adequacy. A railroad is considered revenue adequate under 49 U.S.C. 10704(a) if it achieves a rate of return on net investment (ROI) equal to at least the current cost of capital for the railroad industry. For 2006, the railroad industry's cost of capital was determined to be 9.94%. *See Railroad Cost of Capital—2006*, STB Ex Parte No. 558 (Sub-No. 10) (STB served Apr. 15, 2008). This revenue adequacy figure was compared with ROI data from each Class I railroad, and three carriers were found to be revenue adequate for 2006.

The Board's decision in this proceeding is posted on the Board's Web site at www.stb.dot.gov under "E-Library," and "Decisions & Notices."

Environmental and Energy Considerations

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose and effect of the action is merely to update the annual railroad industry revenue adequacy finding. No new reporting or other regulatory requirements are imposed, directly or indirectly, on small entities.

Decided: May 1, 2008.

By the Board, Chairman Nottingham, Vice Chairman Mulvey, and Commissioner Buttrey.

Anne K. Quinlan,

Acting Secretary.

[FR Doc. E8-10369 Filed 5-8-08; 8:45 am]

BILLING CODE 4915-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Ad Hoc IRS Forms and Publications/Language Services Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Ad Hoc IRS Forms and Publications/Language Services Issue Committee of the Taxpayer Advocacy Panel will be conducted. The Taxpayer Advocacy

Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 11, 2008, Thursday, June 12, 2008, and Friday, June 13, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227 or 954-423-7979.S

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Ad Hoc IRS Forms and Publications/Language Services Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, June 11, 2008, 1 to 5 p.m., Thursday, June 12, 2008, 8 a.m. to 5 p.m., and Friday, June 13, 2008, 8 a.m. to Noon in Plantation, FL. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or you can post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-10394 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 1 Taxpayer Advocacy Panel (Including the States of New York, Connecticut, Massachusetts, Rhode Island, New Hampshire, Vermont and Maine)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 1 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 17, 2008.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 1 Taxpayer Advocacy Panel will be held Tuesday, June 17, 2008, at 9 a.m., Eastern Time via a telephone conference call. For more information or to confirm attendance, notification if intent to attend the meeting must be made with Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085. If you would like to have the TAP consider a written statement, please write Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201, or you can post comments to the Web site: <http://www.improveirs.org>.

The agenda will include various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-10399 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 2 Taxpayer Advocacy Panel (Including the States of Delaware, North Carolina, South Carolina, New Jersey, Maryland, Pennsylvania, Virginia, West Virginia and the District of Columbia)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 2 Taxpayer Advocacy Panel will be conducted via telephone conference call.

The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 18, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or 954-423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 2 Taxpayer Advocacy Panel will be held Wednesday, June 18, 2008, at 2:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000

South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-10398 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 3 Taxpayer Advocacy Panel (Including the States of Florida, Georgia, Alabama, Mississippi, Louisiana, Arkansas, and the Territory of Puerto Rico)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 3 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Monday, June 16, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or 954-423-7979.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10 (a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 3 Taxpayer Advocacy Panel will be held Monday, June 16, 2008, at 12:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Rd., Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-10397 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 4 Taxpayer Advocacy Panel (Including the States of Illinois, Indiana, Kentucky, Michigan, Ohio, Tennessee, and Wisconsin)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 4 Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 17, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 4 Taxpayer Advocacy Panel will be held Tuesday, June 17, 2008, at 1 p.m., Central Time via a telephone conference call. You can submit written comments to the panel by faxing the comments to (414) 231-2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 231-2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-10448 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 5 Taxpayer Advocacy Panel (Including the States of Iowa, Kansas, Minnesota, Missouri, Nebraska, Oklahoma, and Texas)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 5 Taxpayer Advocacy Panel will be conducted via a telephone conference call. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 10, 2008.

FOR FURTHER INFORMATION CONTACT: Mary Ann Delzer at 1-888-912-1227, or (414) 231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Area 5 Taxpayer Advocacy Panel will be held Tuesday, June 10, 2008, at 9:30 a.m. Central Time via a telephone conference call. You can submit written comments to the panel by faxing to (414) 231-2363, or by mail to Taxpayer Advocacy Panel, Stop 1006MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or you can contact us at <http://www.improveirs.org>. Please contact Mary Ann Delzer at 1-888-912-1227 or (414) 231-2360 for dial-in information.

The agenda will include the following: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.

[FR Doc. E8-10444 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 6 Taxpayer Advocacy Panel (Including the States of Arizona, Colorado, Idaho, Montana, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 6 committee of the Taxpayer Advocacy Panel will be conducted (via

teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service. The TAP will use citizen input to make recommendations to the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 3, 2008.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1-888-912-1227, or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 6 Taxpayer Advocacy Panel will be held Tuesday, June 3, 2008, from 1 p.m. Pacific Time to 2:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1-888-912-1227 or 206-220-6096, or you can contact us at <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10445 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Area 7 Taxpayer Advocacy Panel (Including the States of Alaska, California, Hawaii, and Nevada)

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Area 7 committee of the Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 18, 2008.

FOR FURTHER INFORMATION CONTACT: Janice Spinks at 1-888-912-1227 or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Area 7 Taxpayer Advocacy Panel will be held Wednesday, June 18, 2008, from 2 to 3:30 p.m. Pacific Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Janice Spinks, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Janice Spinks. Miss Spinks can be reached at 1-888-912-1227 or 206-220-6096, or you can contact us at <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10446 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Joint Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Joint Committee of the Taxpayer Advocacy Panel will be held. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday, June 19, Friday, June 20, and Saturday, June 21, 2008.

FOR FURTHER INFORMATION CONTACT: Patricia Robb at 1-888-912-1227 or (414) 231-2360.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Joint Committee of the Taxpayer Advocacy Panel (TAP) will be held Thursday, June 19, 2008, 8 a.m. to 5 p.m., Friday, June 20, 8 a.m. to 5 p.m., and Saturday, June

21, 2008, 8 a.m. to Noon, in St. Louis, MO. If you would like to have the Joint Committee of TAP consider a written statement, please call 1-888-912-1227 or (414) 231-2360, or write Patricia Robb, TAP Office, MS-1006-MIL, 211 West Wisconsin Avenue, Milwaukee, WI 53203-2221, or Fax to (414) 231-2363, or you can contact us at <http://www.improveirs.org>. For information to join the Joint Committee meeting, contact Patricia Robb at the above number.

The agenda will include the following: discussion of issues and responses brought to the Joint Committee, office report, and discussion of annual meeting.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10395 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Small Business/Self Employed—Taxpayer Burden Reduction Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Small Business/Self Employed—Taxpayer Burden Reduction Issue Committee will be conducted. The Taxpayer Advocacy Panel is soliciting public comment, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Thursday June 12, 2008.

FOR FURTHER INFORMATION CONTACT: Marisa Knispel at 1-888-912-1227 or (718) 488-3557.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that a meeting of the Taxpayer Advocacy Panel Small Business/Self Employed—Taxpayer Burden Reduction Issue Committee will be held Thursday, June 12, 2008, at 2 p.m. Eastern Time via a telephone conference call. You can submit written comments to the panel by faxing to (718) 488-2062, or by mail to Taxpayer Advocacy Panel, 10 Metro Tech Center, 625 Fulton Street, Brooklyn, NY, 11201, or you can contact us at <http://www.improveirs.org>. Public

comments will also be welcome during the meeting. Please contact Marisa Knispel at 1-888-912-1227 or (718) 488-3557 for additional information.

The agenda will include the following: Various IRS Issues

Dated: May 2, 2008.

Sandra L. McQuin.

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10391 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 11, 2008.

FOR FURTHER INFORMATION CONTACT: Audrey Y. Jenkins at 1-888-912-1227 or 718-488-2085.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Advocacy Panel Earned Income Tax Credit Issue Committee will be held Wednesday, June 11, 2008, from 1 to 2 p.m. Eastern Time via a telephone conference call. The public is invited to make oral comments. Individual comments will be limited to 5 minutes. For information or to confirm attendance, notification of intent to attend the meeting must be made with Audrey Y. Jenkins. Ms. Jenkins may be reached at 1-888-912-1227 or (718) 488-2085. Send written comments to Audrey Y. Jenkins, TAP Office, 10 MetroTech Center, 625 Fulton Street, Brooklyn, NY 11201 or post comments to the Web site: www.improveirs.org. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made in advance.

The agenda will include various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10431 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS) Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be conducted (via teleconference). The Taxpayer Advocacy Panel (TAP) is soliciting public comments, ideas, and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Tuesday, June 24, 2008.

FOR FURTHER INFORMATION CONTACT: Dave Coffman at 1-888-912-1227 or 206-220-6096.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Taxpayer Assistance Center Committee of the Taxpayer Advocacy Panel will be held Tuesday, June 24, 2008, from 9 a.m. Pacific Time to 10:30 a.m. Pacific Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 206-220-6096, or write to Dave Coffman, TAP Office, 915 2nd Avenue, MS W-406, Seattle, WA 98174. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Dave Coffman. Mr. Coffman can be reached at 1-888-912-1227 or 206-220-6096, or you can contact us at <http://www.improveirs.org>.

The agenda will include the following: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10396 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting.

SUMMARY: An open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be conducted via telephone conference call. The Taxpayer Advocacy Panel is soliciting public comments, ideas and suggestions on improving customer service at the Internal Revenue Service.

DATES: The meeting will be held Wednesday, June 18, 2008.

FOR FURTHER INFORMATION CONTACT: Sallie Chavez at 1-888-912-1227, or 954-423-7979

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an open meeting of the Wage & Investment Reducing Taxpayer Burden (Notices) Issue Committee of the Taxpayer Advocacy Panel will be held Wednesday, June 18, 2008, at 12:30 p.m. Eastern Time via a telephone conference call. If you would like to have the TAP consider a written statement, please call 1-888-912-1227 or 954-423-7979, or write Sallie Chavez, TAP Office, 1000 South Pine Island Road, Suite 340, Plantation, FL 33324. Due to limited conference lines, notification of intent to participate in the telephone conference call meeting must be made with Sallie Chavez. Ms. Chavez can be reached at 1-888-912-1227 or 954-423-7979, or post comments to the Web site: <http://www.improveirs.org>.

The agenda will include: Various IRS issues.

Dated: May 2, 2008.

Sandra L. McQuin,

Acting Director, Taxpayer Advocacy Panel.
[FR Doc. E8-10393 Filed 5-8-08; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92-463 (Federal Advisory Committee Act) that the Veterans' Advisory Committee on

Education will meet on May 20–21, 2008. The May 20 session will be held at Fort Hood in Killeen, Texas, at the Howze Auditorium from 9:45 a.m. to 12:15 p.m. It will continue at the Soldier Development Center, Bldg. 33009, room G–254, second floor, from 1:15 p.m. to 4:30 p.m. The May 21 session will be held at the Hyatt Place North Central in Austin, Texas, from 8:30 a.m. to 3 p.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the administration of education and training programs for veterans, servicepersons, reservists, and dependents of veterans under Chapters 30, 32, 35, and 36 of title 38, and Chapter 1606 of title 10, United States Code.

On May 20, the meeting will begin with opening remarks and an overview by Mr. James Bombard, Committee Chair. The agenda for this meeting will include an introduction of new members and a “town hall” forum at 11 a.m. with active duty, reservists and National Guard personnel. The agenda will also include an overview of pending legislation affecting the educational assistance programs VA administers and licensing and certification opportunities. Oral statements from the public will be heard at 4:15 p.m. on May 20. On May 21, the Committee will reconvene and hold a second “town hall” forum beginning at 9 a.m. The Committee will then review and summarize issues raised during these sessions. Oral statements from the

public will be heard at 2:45 p.m. on May 21.

Interested persons may submit written statements to the Committee before the meeting, or within 10 days after the meeting, with Mr. Salminio Gamer, Designated Federal Officer, Department of Veterans Affairs, Veterans Benefits Administration (225B), 810 Vermont Avenue, NW., Washington, DC 20420. Any member of the public wishing to attend the meeting should contact Mr. Salminio Garner or Mr. Barrett Bogue at (202) 461–9832.

Dated: April 30, 2008.

By direction of the Secretary.

E. Philip Riffin,

Committee Management Officer.

[FR Doc. E8–10162 Filed 5–8–08; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register

Vol. 73, No. 91

Friday, May 9, 2008

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2008-0175; Directorate Identifier 2007-CE-105-AD; Amendment 39-15455; AD 2008-08-03]

RIN 2120-AA64

Airworthiness Directives; Pacific Aerospace Limited Model 750XL Airplanes

Correction

In rule document E8-7167 beginning on page 19967 in the issue of Monday,

April 14, 2008 make the following correction:

§ 39.13 [Corrected]

On page 19968, in § 39.13(f), in the second line, “service May 19, 2008” should read “service after May 19, 2008”.

[FR Doc. Z8-7167 Filed 5-8-08; 8:45 am]

BILLING CODE 1505-01-D



Federal Register

**Friday,
May 9, 2008**

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 60

**Flight Simulation Training Device Initial
and Continuing Qualification and Use;
Final Rule**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 60

[Docket No. FAA-2002-12461; Amendment No. 60-3]

RIN 2120-AJ12

Flight Simulation Training Device Initial and Continuing Qualification and Use

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Qualification Performance Standards (QPS) for flight simulation training devices (FSTD) to provide greater harmonization with international standards for simulation. In addition, the rule adds a new level of simulation for helicopter flight training devices (FTD) and establishes FSTD Directive 1, which requires all existing FSTD airport models that are beyond the number of airport models required for qualification to meet specified requirements. The intended effect of this rule is to ensure that the flight training and testing environment is accurate and realistic. Except for the requirements of FSTD Directive 1, these technical requirements do not apply to simulators qualified before May 30, 2008. This rule results in minimal to no cost increases for manufacturers and sponsors.

DATES: These amendments become effective May 30, 2008.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this final rule, contact Edward Cook, Air Transportation Division (AFS-200), Flight Standards Service, Federal Aviation Administration, 100 Hartsfield Centre Parkway, Suite 400, Atlanta, GA 30354; telephone: 404-832-4700; e-mail: Edward.D.Cook@faa.gov. For legal questions concerning this final rule, contact Anne Bechdolt, Office of Chief Counsel (AGC-200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone 202-267-7230; e-mail: Anne.Bechdolt@faa.gov.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

This rulemaking is promulgated under the authority described in 49 U.S.C. 44701. Under that section, the FAA is charged with regulating air commerce in a way that best promotes safety of civil aircraft.

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I. Background

On October 30, 2006, the FAA published Title 14, Code of Federal Regulations, Part 60, with an effective date of October 30, 2007 (71 FR 63392). The intent of the rule was to promote standardization and accountability for FSTD maintenance, qualification, and evaluation. The regulation codified the standards contained in advisory circulars (ACs) and implemented the Qualification Performance Standards (QPS) appendices format. The QPS appendices allow regulatory requirements and corresponding information to be presented in one location. The QPS appendices format promotes ease of use and greater insight about the FAA's intent behind the regulation and the required and approved methods of compliance. On October 22, 2007 (72 FR 59598), the FAA delayed the effective date of part 60 to coincide with the effective date of this final rule, which revises the appendices of part 60 that were originally published on October 30, 2006.

A. Summary of the Notice of Proposed Rulemaking (NPRM)

On October 22, 2007, the FAA published an NPRM (72 FR 59600) to revise the QPS appendices. The primary purpose of the NPRM was to ensure that the flight training and testing environment is accurate and realistic and to provide greater harmonization with the international standards documents for simulation issued by the Joint Aviation Authority (JAA) (JAR-STD 1A, Aeroplanes, and JAR-STD 1H, Helicopters), and the International Civil Aviation Organization (ICAO) (Doc 9625-AN/938, as amended, Manual of Criteria for the Qualification of Flight Simulators). The proposed requirements were expected to reduce expenses and workload for simulator sponsors by eliminating conflicts between the U.S.

standards and the standards of other civil aviation authorities. The proposed amendments incorporated technological advances in simulation and standardized the initial and continuing qualification requirements for FSTDs to harmonize with the international standards documents. The comment period for the NPRM closed December 21, 2007.

B. Summary of the Final Rule

This final rule:

- Provides a listing of the tasks for which a simulator may be qualified.
- Requires, during aircraft certification testing, the collection of objective test data for specific FSTD functions, including: Idle and emergency descents and pitch trim rates for use in airplane simulators; engine inoperative rejected takeoffs for use in helicopter simulators; and takeoffs, hover, vertical climbs, and normal landings for use in helicopter FTDs.

• Provides in the QPS appendices additional information for sponsors on the testing requirements for FSTDs, including the use of alternative data sources when complete flight test data are not available or less technically complex levels of simulation are being developed.

- Clarifies and standardizes existing requirements for motion, visual, and sound systems, including subjective buffeting motions, visual scene content, and sound replication.

• Requires, by FSTD Directive 1, all existing FSTD airport models used for training, testing, or checking under this chapter that are beyond the number of airport models required for qualification to meet the requirements described in Table A3C (Appendix A, Attachment 3) or Table C3C (Appendix C, Attachment 3), as appropriate.

Except for FSTD Directive 1, manufacturers and sponsors are not required to incorporate any of the changes listed above for existing FSTDs. The appendices and attachments to part 60 affected by this final rule only apply to FSTDs that come into service after part 60 is effective (May 30, 2008). This final rule results in minimal to no cost increases for manufacturers and sponsors.

C. Summary of Comments

The FAA received 18 comments on the proposed rule. Commenters include airlines (Northwest, American, United, and FedEx), industry organizations (Air Transport Association (ATA) and Helicopter Association International (HAI)), training organizations (Alteon), manufacturers (Boeing, Thales, CAE, and Rockwell Collins), and individuals.

All of the commenters generally supported the proposal, but the majority of commenters had specific suggestions to revise the proposed rule. Most of these suggested revisions were technical edits. None of the comments resulted in any substantive changes to the proposed requirements, and we have incorporated the suggestions where appropriate. We have also made minor editorial revisions where appropriate.

The FAA received comments on the following general topics:

- Administrative.
- Simulator Qualification and Evaluation.
- FSTD Testing: Objective and Subjective.
- General.
- Visual Systems.
- Motion or Vibration Requirements.
- Sound Requirements.
- Helicopters.
- Quality Management System (QMS).
- Miscellaneous.

II. Discussion of the Final Rule and Comments

A. Administrative

The ATA recommended that the FAA make the effective date of the final rule at least 90 days following the publication date.

Part 60 has been available to the public for review for over 1 year. The revisions to the appendices of Part 60 reflect international standards that have been in existence for more than 4 years. Further, when the FAA delayed the effective date to Part 60, we also delayed the compliance dates of certain sections of the rule to provide adequate time for transition. Because of the notice provided and delayed compliance dates of certain sections, the FAA has determined that delaying the effective date by 90 days is not necessary.

Several of the comments were beyond the scope of the proposal. For example, CAE and others suggested including objective tests for Heads-Up Displays (HUD) and Enhanced Visual Systems (EVS). Further, several commenters suggested adopting standards currently being developed by the International Working Group (IWG) of the Royal Aeronautical Society (RAeS).

The FAA has not addressed in detail the comments that are beyond the scope of the NPRM. In addition, the FAA has determined it would be premature for the FAA to incorporate into this final rule the standards currently under review by the IWG. Once the RAeS has adopted the IWG's recommendations, the FAA will review them for incorporation in the QPS appendices.

Several commenters noted differences between the proposed standards and the current international standards and suggested adopting the international standards. As stated, one of the purposes of this rule is to harmonize with the current international standards documents for simulation issued by the JAA and ICAO. These recommendations are within the scope of the proposal and have been incorporated into this final rule as appropriate.

Some commenters to the proposed rule noted typographical and formatting errors in the proposal. The Office of the Federal Register issued a correction document addressing some of these errors on March 5, 2008 (73 FR 11995). The FAA has addressed the remaining errors in this document.

B. Simulator Qualification and Evaluation

CAE and others noted that the listing of tasks for which an FSTD may be qualified do not correspond to the tasks set forth in the FAA Air Carrier Operations Inspector's Handbook and are not the same as those tasks in the tables that outline the Functions and Subjective tests for which each FSTD may be evaluated. Commenters also suggested that the objective and subjective tests used to evaluate the FSTD be aligned with the tasks for which the FSTD may be qualified.

The FAA recognizes that the FSTD qualification tasks do not mirror the tasks set forth in the FAA Air Carrier Operations Inspector's Handbook, the "Functions and Subjective tests" tables in Attachment 3 of Appendices A–D, and the "Tasks vs. Simulator Level" tables in Attachment 1 of Appendices A–D. However, there are differences between the tasks used to evaluate the handling, performance, and other characteristics of the FSTD and those tasks for which an FSTD may be qualified for pilot training, testing, or checking activities. Thus, the list of tasks set forth in the "Functions and Subjective tests" tables and "Tasks vs. Simulator Level" tables are not necessarily the same, nor should they be the same.

CAE, ATA, Rockwell Collins, and others asked whether the Level B simulator authorizations in Table A1B should be listed as an "X" instead of an "R" for most of the landing tasks.

As the legend in Table A1B indicates, the "R" denotes authorization for Recurrent activities while the "X" denotes authorization for Initial, Transition, Upgrade, and Recurrent activities. The landing tasks for Level B simulators are restricted to Recurrent activities and the "R" in the table at

those points is the correct reference. However, the FAA acknowledges that the authorizations for Taxiing and for Normal and Crosswind Takeoffs for the Level B simulator were inadvertently left blank, and the FAA has placed an "R" in those positions in this table, indicating an authorization for Recurrent activities in this level of simulation.

American, the ATA, and others stated that the differences between "update" and "upgrade," as used in Appendix A, Paragraph 13, Previously Qualified FFS, subparagraph "h," were not clear. They recommended clarifying the differences and moving the subparagraph from the information section to the QPS Requirements section.

The information in subparagraph "h" allows for Full Flight Simulators (FFS) to be updated without requiring an evaluation under the new standards. Because this language is permissive in nature, we have moved it to the QPS Requirements section as requested. To clarify the meaning of these terms, we have added a definition of "update" that reflects current practice to Appendix F.

CAE and others suggested revising the note in Table A1B, entry 3.f, Recovery from Unusual Attitudes, by replacing the statement "supported by applicable simulation validation data" with "supported by the simulation models."

The suggested revised language would allow an individual to go beyond the flight-test-validated flight-envelope in a flight simulator. This is not an acceptable practice because of the lack of information about aircraft performance and handling beyond those limits. Therefore, the FAA has not adopted the recommendation.

The ATA, Northwest, and others suggested clarifying that the 24-hour "look back" period for the functional preflight check (Table E1, entry E1.20) is from the beginning of the scheduled training period. Additionally, commenters questioned whether the FSTD use-period, if started within 24 hours of a functional preflight check, could continue beyond that 24-hour "look-back" period and whether the functional preflight check is required for Level 4 "touch screen" FTDs. Further, commenters questioned whether Level 4 FTDs remain under the responsibility of the Training Program Approval Authority (TPAA).

The proposed requirement for conducting a functional preflight check within 24 hours prior to using the FSTD is to ensure that technical personnel with the requisite preflight training have determined the readiness level of the FSTD. An FSTD use-period does not begin unless a functional preflight check

has been completed in the previous 24 hours. If a training session begins near the end of the 24 hours after the functional preflight check was completed, the training session may continue beyond that 24 hours. However, any subsequent training session may not begin until another functional preflight check is conducted.

The National Simulator Program Manager (NSPM) is the FAA manager responsible for the evaluation and qualification of all FSTDs qualified under part 60, including Level 4 FTDs. The NSPM will continue to exercise this responsibility through inspectors and engineers assigned to the National Simulator Program (NSP) staff and others to whom the NSPM may delegate that responsibility and authority. This responsibility and authority is not intended to undermine or compromise the duties and responsibilities of the assigned TPAA with regard to the approved use of the FSTD.

CAE and others questioned when it would be necessary to complete an additional initial qualification evaluation after a modification to the FSTD. They also asked what principles would be used in determining whether an evaluation for additional authorization(s) is necessary and if an evaluation is necessary, when it must take place.

Whether a modification necessitates an additional initial qualification evaluation, necessitates part of an initial qualification evaluation, or does not necessitate an additional evaluation, depends on (1) the extent of the modification; (2) whether the modification impacts, or is impacted by, other systems or equipment in the FSTD; and (3) whether, as a result of the modification, the FSTD operation is consistent with the airplane system it is simulating. After review of these factors, the FAA will determine on a case-by-case basis whether an evaluation for additional authorizations is required and when it will take place.

The ATA, Northwest, and others suggested that the windshear provisions in Table A1A for each Level C and Level D FFS not be required for evaluation and qualification purposes because not all aircraft are required to have windshear equipment and not all pilots are required to train on recovery from inadvertent windshear encounters. Further, the commenters also suggested clarifying the aircraft conditions under which the windshear demonstrations must be conducted.

Only operations conducted in accordance with 14 CFR part 121 that use aircraft listed in § 121.358 require windshear training for crewmembers.

Accordingly, the FAA has modified Table A1A to address only these operations. We have also clarified the aircraft conditions under which the windshear demonstrations must be conducted.

C. FSTD Testing: Objective and Subjective

1. General

The ATA, Rockwell Collins, and others recommended requiring Level A and Level B simulators to meet the standards in Table A2A, entry 1.b.7, Dynamic Engine Failure After Takeoff.

The standards for testing of dynamic engine failures after takeoff were first established by ICAO and were limited to advanced simulators, now referred to as Level C and Level D. One purpose of this final rule is to harmonize FAA standards with current international standards. Because current international standards do not set forth standards for testing dynamic engine failure after takeoff for level A and B simulators, the FAA has not adopted the recommendation.

The ATA, Northwest, Boeing, CAE, and others suggested the FAA review all the references in Appendix A, Attachment 2, Table A2A, Table of Objective Tests, that include references to Computer Controlled Aircraft (CCA) to ensure that the control state testing requirements (i.e., normal control state or non-normal control state) are correctly addressed.

The FAA recognizes that there were errors made in the proposal regarding CCA testing requirements. The FAA has reviewed the CCA testing requirements to address the correct control state and made appropriate revisions.

CAE, Rockwell Collins, ATA, and others submitted several comments on Appendix A, Attachment 1, Table A1A, General Simulator Requirements. CAE suggested that (1) the manual and automatic testing, described in entry 2.f, and simulator control feel dynamics, as described in entry 3.e, apply to Level A and Level B simulators in addition to Level C and Level D simulators; (2) the NSPM should further clarify the number of malfunctions that are required or provide a list of the necessary malfunctions that should be present; and (3) the instructor controls, as described in entry 4.c, either list all the expected environmental conditions over which the instructor should have control or remove the reference to “wind speed and direction.” The ATA and others requested that the statements about additional field-of-view capability for Level A and Level B simulators in

entry 6.b of Table A1A be moved to the Information/Notes column.

Automatic testing and control feel dynamics was first required in 1980 with the publication of the FAA’s Advanced Simulation Plan and was limited to advanced simulators, now referred to as Level C and Level D. The FAA is not expanding the requirements for automatic testing and control feel dynamics testing to Level A and Level B simulators because that would result in differing technical requirements for these simulator levels while authorizing the same training, testing, and checking tasks. The additional field-of-view reference in entry 6.b was designed to allow the option of including a larger field-of-view than the provision requires, with the understanding that the minimum fields of view would have to be retained. This reference is more informative than regulatory and the FAA has moved the statements to the Information/Notes column.

The ATA and others suggested defining the term “least augmented state” as used in Appendix A, Attachment 2, paragraph 2.j, and requested confirmation that the “least augmented state” is one that the pilot may select using normal switches found in the airplane flight deck.

The FAA has determined that a general definition of the term “least augmented state” is not appropriate because these states are dependent on the aircraft type involved. Additionally, the least augmented state is not necessarily achieved by the use of switches found in the flight deck. Therefore, the FAA will evaluate FSTDs in accordance with the least augmented state data supplied by the aircraft manufacturer or other data supplier.

The ATA, Rockwell Collins, and others suggested that the primary controls of the simulated aircraft should be tested objectively to verify correct forces and responses whether simulated aircraft parts or actual aircraft parts are used. Further, they recommended that the FAA require a Statement of Compliance and Capability (SOC) that describes how and where the control forces are generated in the aircraft, and lists all hardware required to generate these control forces.

The FAA does not require testing of flight controls in these circumstances because these aircraft controls must be maintained as if they were installed in an aircraft to provide crewmembers the same control feedback as felt in the actual aircraft. The sponsor is required to provide a statement that the aircraft hardware meets the appropriate manufacturer’s specifications for the controls and the sponsor must have

information supporting that statement available for NSPM review. Accordingly, the FAA has not adopted the recommendation.

Boeing suggested, with regard to Table A2A, entry 1.c.2, that the test for "One Engine Inoperative" should be named "One Engine Inoperative, Second Segment Climb."

The test is required for airplanes certificated under both parts 23 and 25. The term "Second Segment Climb" applies only to airplanes certificated under part 25. Therefore, the FAA has not adopted the suggested change.

The ATA, Rockwell Collins, CAE, and others recommended that the tests in entries 1.e.1 and 1.e.2, Stopping Time and Distance, of Table A2A, not apply to Level A and Level B simulators because these simulator levels are not authorized to perform this landing task.

The FAA did not adopt this change because both Level A and Level B simulators are authorized to perform Rejected Takeoff Maneuvers. In addition, Level B simulators are authorized to perform landings in recurrent training and checking. Therefore, these tests are necessary to determine the stopping capabilities of the FSTD.

The ATA, Boeing, CAE, and others expressed concern over how to read the test requirements for Engine Acceleration and Engine Deceleration (Table A2A, entries 1.f.1 and 1.f.2). The commenters recommended various ways of publishing the established tolerances. CAE also recommended defining the terms " T_i " and " T_r ."

The published tolerances for these tests are consistent with international standards documents. As proposed, T_i and T_r were defined in the Tables as well as in the Abbreviations list in Appendix F. For clarification, we have moved these terms to the definitions section of Appendix F and added cross references in the tables to Appendix F.

The ATA, Northwest, and others noted that the Short Period Dynamics test in Table A2A, entry 2.c.10 erroneously did not apply to Level A simulators. They also noted that entry 2.d.7, Dutch Roll (yaw damper off), erroneously applied to all levels of simulators when it should apply only to Levels B, C, and D.

The FAA acknowledges that applicability to Level A simulators for the Short Period test was inadvertently omitted and the Dutch Roll test was inadvertently included, although the correct standards appear in FAA standards documents and international standards documents. The FAA has corrected these errors in this final rule.

CAE suggested the FAA clarify Table A2A, entry 2.d.8, Steady State Sideslip, by stating that this test "may be a series of snapshot test results using at least two rudder positions, one of which should be near maximum allowable rudder."

The FAA agrees and has clarified the requirement where appropriate. CAE and others suggested that the definition of the term "snapshot" be modified from "a presentation of one or more variables at a given instant of time" to "a presentation of one or more variables at a given instant of time or from a time-average of a steady flight condition."

The FAA has determined that the suggested modification would create confusion because of the subjective nature of the phrase "steady flight condition" and has not adopted the suggestion.

The ATA and others suggested a change to Table A2A, entry 2.e.6, All Engines Operating, Autopilot, Go-Around, to require a manual test and, if applicable, an autopilot test.

The FAA currently requires a manual test when performing a one engine inoperative go-around. The all engines operating, autopilot, go-around test applies only when the airplane is authorized to use the autopilot function during a go-around. Because both tests are currently required, the FAA has not adopted the suggested changes.

The ATA, Rockwell Collins, and others suggested that the tests described in entries 2.e.8 and 2.e.9 of Table A2A, should be conducted differently (i.e., with the nosewheel steering disconnected or castering), unless the FAA's intent was to evaluate overall aircraft response, in which case no change is necessary.

The intent of these tests is to evaluate the aircraft response. Therefore, no change is necessary.

CAE and Boeing recommended substituting the term "mass properties" with the term "fuel slosh" in Appendices A and C, paragraph 8.h(2)(c) because mass properties are rarely, if ever, run in an integrated manner as described.

The FAA does not agree that mass properties are not run in an integrated manner. The FAA has chosen the term mass properties because it is consistent with international standards. Therefore, the FAA has not adopted the suggested change.

CAE and Boeing recommended deleting paragraph 9.b(3) in Appendices A and C because a data provider should not have to demonstrate that data gathered from an engineering simulation (in lieu of a flight test source) has necessary qualities to qualify an FSTD.

The FAA did not intend that an engineering simulation be qualified, or be capable of being qualified, as an FSTD. The data obtained from the engineering simulation would be appropriate as a replacement for flight test data when the data obtained from the engineering simulation is programmed into an FSTD. Therefore, we have clarified the information in paragraph 9.b(3) to state that in these cases, the data provider should submit validation data from an audited engineering simulator/simulation to supplement specific segments of the flight test data.

CAE and Boeing requested that paragraph 11.a(1) not apply to Table A2A, entries 1.f.1 and 1.f.2, objective tests for engine acceleration and deceleration. Rather, they suggested applying 100% of flight test tolerances to these objective tests. CAE also suggested when flight test data for an alternate engine fit is unavailable, the objective testing of engine acceleration and engine deceleration (Table A2A, tests 1.f.1 and 1.f.2) should be exempt from the 20% tolerance for the application of engineering simulator/simulation because the actual tolerance would be less than the simulation iteration rate.

Applying 100% of flight test tolerances to the objective tests results in these entries is not an acceptable routine procedure. Full flight test tolerances are appropriate when comparing FSTD results to airplane data, and 20% of those airplane tolerances are appropriate when comparing FSTD results to flight engineering simulation data because it is easier to match "computer to computer" data than to match "computer to airplane" data. Any circumstance that does not fit within these parameters would likely be acceptable under the "best fit" data selection set forth in Appendix A, Attachment 2, paragraph 2.d. Therefore, the FAA has not adopted these changes.

The ATA and others stated that the Rudder Response test in Table B2A, entry 2.b.6.b is confusing because it would not test the rudder power in the yaw axis. They suggested modifying the tolerance column to read " $\pm 2^\circ/\text{sec}$ or $\pm 10\%$ yaw rate, OR Roll rate $\pm 2^\circ/\text{sec}$, bank angle $\pm 3^\circ$."

This test was originally required as a rudder test using roll rate and bank angle for the parameters. However, the FAA agrees that this test may be accomplished using either yaw rate or roll rate and bank angle. Therefore, the FAA has added a note in the Information/Notes column that this test

may be accomplished as a yaw response test.

The ATA, Northwest, CAE, and others suggested eliminating the ± 2 degree tolerance on bank angle above stick shaker or initial buffet speeds in Table A2A, entry 2.c.8, Stall Characteristics, to be consistent with international standards.

The FAA acknowledges that the ± 2 degree tolerance on bank angle above stick shaker or initial buffet speeds is not included in the international standards. However, requiring zero tolerance in these instances would be very stringent without appreciable difference in FSTD performance or handling characteristics. Accordingly, the FAA has not eliminated the tolerance.

Boeing, United, and others recommended clarifying paragraph 11.b(5) Validation Test Tolerances, and adding a new paragraph 11.b(6) allowing errors greater than 20% if the simulator sponsor provides an adequate explanation.

The FAA generally agrees with the suggestion and has modified paragraph 11.b(5) to reflect this information. The FAA has determined that adding a new paragraph 11.b(6) is not necessary.

One commenter, citing paragraph 17.a, "Alternative Data Sources, Procedures, and Instrumentation: Level A and Level B Simulators Only," questioned whether the alternative data collection sources, procedures, and instrumentation listed in Table A2E were the only sources for data collection that the FAA would allow.

Appendix A, paragraph 11, Initial (and Upgrade) Qualification Requirements, requires objective data to be acquired through traditional aircraft flight testing. It also allows for the use of "another approved" source. The FAA has included Table A2E to provide alternative sources, procedures, or instrumentation acceptable to the FAA that may be used to acquire the necessary objective data for Level A or Level B simulators. At this time, the alternative data collection sources, procedures, and instrumentation listed in Table A2E are the only alternatives acceptable without prior approval by the NSPM.

The ATA, Rockwell Collins, and others questioned the necessity of having sounds of precipitation and rain removal devices for Level C simulators but not requiring the corresponding visual effect.

The FAA recognizes the error in the proposed language and has made the necessary changes. Level C simulators are required to be subjectively tested for the sound, motion and visual effects of

light, medium and heavy precipitation near a thunderstorm and the effect of rain removal devices.

The ATA and others requested that aircraft certified with auto-ice detection coupled with auto-anti-ice or auto-de-ice capabilities be exempt from the effects of airframe and engine icing tests listed in Table A3F, Special Effects.

Because it is possible for flight crews to experience the effects of airframe or engine icing if the auto-ice detection systems are inoperative, the flight crews must be trained to recognize and respond to icing situations. Therefore, the FAA has not adopted the recommendation.

2. Visual Systems

The ATA, Northwest, Rockwell Collins, United, and several others recognized that the definition of an FSTD Directive is "a document issued by the FAA to an FSTD sponsor requiring a modification to the FSTD due to a safety-of-flight issue and amending the qualification basis for the FSTD." These commenters asserted that the FAA has not provided any safety analysis to support the issuance of FSTD Directive 1. Further, these commenters asked how the FAA determines what constitutes a safety issue that would warrant the issuance of an FSTD Directive. Some commenters asserted that updating airport modeling is a complicated problem because of the difficulty in removing airport models from the instructor operating station (IOS) in some FSTDs, particularly in those FSTDs not owned or controlled by the sponsor. In addition, some commenters noted the cost of updating an existing airport model and suggested that the FAA continue to allow custom airport models meeting individual training requirements to be used without modification. Further, the commenters requested the FAA extend the timeframe for updating airport models to match any modification to the actual airport.

As proposed, FSTD Directive 1 requires each certificate holder to ensure that each airport model used for training, testing or checking, except those airport models used to qualify the simulator at the designated level, meets the requirements of a Class II or Class III airport model. The FAA acknowledges that FSTD Directives may be issued only for safety-of-flight purposes. These determinations will be made on a case-by-case basis. The FAA has determined that updating airport modeling is a safety-of-flight concern because pilots have landed airplanes on wrong runways, landed on taxiways, landed at the wrong airport,

unknowingly taxied across active runways, and taken off from the wrong runway. Many FSTD users have expressed concern regarding the accuracy of these models with respect to real world airports. Training, testing, or checking in an FSTD with incomplete or inaccurate airport models representing real world airports can contribute to incomplete planning or poor decision making by pilots if they subsequently operate into or out of that real world airport. While these potentially disastrous occurrences happen infrequently, inaccurate airport modeling is a safety-of-flight issue that warrants the issuance of this FSTD Directive.

The proposed FSTD Directive is designed to address qualified FSTDs that contain airport models that were not evaluated. The FSTD Directive ensures that each model used in an FSTD for training, testing, or checking activities meets the acceptable minimum standards. Although the FAA is responsible for ensuring that these standards are met, the FSTD sponsor is responsible for maintaining the FSTD, and each certificate holder using the FSTD is responsible for ensuring that all of the FSTD components are in compliance with these standards and report any deficiencies.

Upon review of the comments, however, we have clarified the language of the FSTD Directive. The FSTD Directive still requires each certificate holder to ensure that, by May 30, 2009, except for the airport model(s) used to qualify the FSTD at the designated level, each airport model used by the certificate holder's instructors or evaluators for training, testing, or checking under 14 CFR chapter I in an FFS, meets the definition of a Class II, or Class III airport model as defined in part 60, Appendix F. We originally proposed to require removal of all airport models that did not meet the standards of a Class II or Class III model. In light of comments regarding the expense of such removal and issues regarding the sponsorship and leasing of FSTDs, FSTD Directive 1 now requires only the airport models used for training, testing or checking to meet the appropriate requirements; it does not require removal of other airport models. Additionally, we have revised the definition of a generic airport model in Appendix F to clearly describe a Class III airport model that combines correct navigation aids for a real world airport with an airport model that does not depict that real world airport. Use of such an airport model may require some limitations on that use. The clarified language in the FSTD Directive and the

revised definitions may mitigate the actual cost of updating airport models. In addition, the FAA recognizes that it takes time to design, construct, and implement changes to computer programming. The FAA has decided to modify the time requirements in paragraph 1(f) of Attachment 3, Appendix A, and clarify the process for requesting an extension for the update in paragraph 1(g) of Attachment 3, Appendix A.

Further, the ATA and others suggested adding a statement in the Information/Notes column of Table B1A regarding visual systems that FSTD Directive 1 does not apply to Level A standards for an FTD visual system.

If a visual system installed in any level of FTD is not being used to acquire additional training credits, FSTD Directive 1 does not apply. However, if the visual system is being used to acquire training credits, the visual system must meet the requirements of at least a Level A FFS visual system. In these circumstances, FSTD Directive 1 could affect the airport models used in that system. Therefore, the FAA has not added the suggested statement.

The ATA, Rockwell Collins, and others noted that the terms visual scenes, visual models, and airport models, appear to be used interchangeably in the NPRM.

The FAA has adopted the term "airport model" instead of the terms "visual scene" or "visual model" throughout this final rule. We also have deleted the definition of "visual model" from Appendix F and changed the definition of "visual database" to "a display that may include one or more airport models" for consistency. Since there are three classes of airport models, we clarified the differences between Class I, Class II, and Class III in the definition of airport model.

ATA, Rockwell Collins, and others questioned the need for 16 moving models as well as the training tasks that would be able to be met by having these moving models. The commenters also requested clarification regarding what constitutes gate clutter.

The primary goal of the NPRM was to harmonize with international standards. The intent of the 16 moving objects requirement, which is an international standard, is to enhance the "realism" of the displayed visual scene. The FAA has added a definition of gate clutter in Appendix F, as described in entry 2.f in Table A3B.

The ATA, Rockwell Collins, and others stated that the Class II airport model requirements are excessive, especially for areas other than the "in-

use" runway itself and noted that there are no model content requirements for "generic airport models."

The Class II airport model requirements mirror the long-standing guidance in AC 120-40B, Airplane Simulator Qualification, Appendix 3, and are consistent with international standards. The FAA has determined that providing specific model content requirements for "generic airport models" would restrict unnecessarily the capability and flexibility that currently exists. Accordingly, the FAA has not made any changes to the Class II airport model requirements or created any specific requirements for "generic airport models."

The ATA, Rockwell Collins, CAE, and others questioned whether "ambient lighting" in Daylight Visual Scenes is required.

Ambient lighting is not required in daylight visual scenes because of its distorting effects on the visual scene and inside the flight deck. The FAA has removed the requirement for ambient flight deck lighting where appropriate.

The ATA and others requested that the FAA clarify the Surface Movement Guidance and Control System (SMGCS) as referenced in Table A3B, entry 2.j.

Entry 2.j requires that a low visibility taxi route must be demonstrated for qualification of a Level D simulator. A low visibility taxi route could be satisfied, according to the Table A3B, by a depiction of one of the following means: an SMGCS taxi route, a follow-me truck, or low visibility daylight taxi lights. For further information on SMGCS, see AC 120-57A (December 19, 1996).

The ATA, Rockwell Collins, and others questioned the language in the preamble of the NPRM describing the visual system proposal as requiring a "field of view and system capacity requirements" * * * increased by 20 percent over the present requirement." The commenters asserted that the proposed surfaces and light point requirements are "considerably in excess of a 20% increase."

The 20% increase, as described in the NPRM preamble, should have applied only to the field-of-view requirements. However, the actual requirements stated in the proposed rule language for field-of-view and system capacity for generating surface and light points are consistent with current international standards. Further, the metrics simulator manufacturers are currently using to construct their equipment correspond to the proposed system capacity for generating surface and light points. Therefore, no changes to the rule language are necessary.

The ATA, Rockwell Collins, and others objected to the larger field-of-view requirements for FSTDs previously built but not evaluated by the FAA for qualification, and for FSTDs previously evaluated and qualified, but returning to service after a 2-year inactive interval. The concern is that these FSTDs would be required to meet the new field-of-view requirements.

The first time an FSTD is evaluated by the FAA for qualification, the FSTD is evaluated in accordance with the set of standards current at that time. An FSTD placed into an inactive status for 2 or more years will not necessarily be evaluated under any new criteria in effect at the time of re-entry into service. The NSPM, however, considers a full range of factors before deciding whether to require an FSTD coming out of an inactive period to be evaluated in accordance with its original qualification basis or in accordance with the set of standards current at that time.

CAE and others recommended modifying in Table A1A, entry 6.p, to require the visual system be free from apparent and distracting quantization, instead of only apparent quantization.

Eliminating the slightest traces of quantization cannot be technically accomplished. However, because distracting quantization can be minimized to such a level that it does not affect the performance of the visual system, the FAA has made this change.

CAE, ATA, Rockwell Collins, and others questioned why realistic color and directionality of all airport lighting is not a requirement for Level A, Level B, and Level C simulators in addition to Level D simulators.

As proposed, the airport lighting requirements for Level A and B simulators are consistent with international standards. Therefore, the FAA has not made the requested change.

The ATA, Northwest, and others suggested including a test in Table A2A, entry 4.b.3, for Level C simulators to evaluate visual systems with 150° horizontal and 30° vertical field-of-view or a monitor-based system.

The primary goal of the NPRM was to harmonize with international standards. The current international standard, as reflected in the NPRM, for Level C simulators is 180° horizontal by 40° vertical field-of-view. Therefore, the FAA has not adopted the change.

The ATA, Rockwell Collins, and others stated that the test in Table A2A, entry 4.f, Surface Resolution, does not reflect current practice for runway markings. Commenters recommended that this test mirror the current practice

and international standards that runway stripes and spaces be 5.75 feet wide.

The FAA has modified this language where appropriate to reflect current practice and international standards.

The ATA, Rockwell Collins, CAE, and others questioned why the tolerances allowed in entry 4.i, Visual Ground Segment (VGS), of Table A2A are different from the current international standards. They also suggested that the Qualification Test Guide (QTG) contain calculations to compare the altitude used against the altitude specified when performing this test and questioned whether the test must be performed manually. They also requested deleting or correcting the conversion of feet to meters.

The international standards prescribe the application of the VGS tolerance to the far end of the VGS with no tolerance provided at the near end of the VGS. To ensure harmonization, the FAA has made the appropriate changes to the application of this VGS tolerance. The requirements for the QTG contain provisions regarding the calculation of altitude references. The FAA has stated that the altitude calculations are computed with the aircraft at 100 ft (30 m) above the runway touchdown zone and centered on the Instrument Landing System (ILS) electronic glide slope. The typical reference for modern turbojet aircraft operations for height above touchdown is the height of the main landing gear above that touchdown zone reference plane, with the aircraft at a specified weight and landing configuration. To clarify these calculations, the FAA has modified the Flight Conditions column for entry 4.i of Table A2A to reflect this information. The distances expressed in metric units are not direct conversions to U.S. customary units, nor were they intended to be. Rather, these are the appropriate standards depending on which system is being used. Therefore, the FAA has not removed the metric references.

The ATA and others requested clarification regarding the term “in-use runway” in Tables A3B and A3C. The commenters stated that using the general term “in-use runway” would require modeling all taxiways rather than the primary one used, which may overload the visual system and negatively impact training.

Each “in-use” runway is a single, one-direction runway, used for takeoffs and landings, that has the required surface lighting and markings. New visual systems are capable of generating substantially more detail than required by this final rule. However, because of the concern raised regarding associated taxiways, the FAA has modified the

language in Appendices A, C, and D regarding airport model content to require the use of only the primary taxi route from parking to the end of the runway instead of requiring the modeling of all potential taxi routes.

One commenter requested the FAA provide a definition of the term “dynamic response programming,” to clarify the requirements in Table A1A, entry 6.h. CAE and others questioned the use of the terms “correlate with integrated airplane systems, where fitted,” and “dynamic response programming,” as they are used in Tables A3B and A1A. Commenters also noted that Table A3B, entry 6.d erroneously applied the requirements for “correlate with integrated airplane systems” to all levels of simulators rather than just Levels C and D.

The term “dynamic response” is used in its typical engineering context. As used in Tables A1A (entry 6.h) and C1A (entry 6.i) “dynamic response programming” requires the visual system display to respond with the continuous movement of the simulated aircraft. We have clarified the language in Tables A3b (entry 6.d), C3b (entry 6.d) and D3B (entry 5.d) by removing the phrase “where fitted.” The requirement that the visual scene correlate with the integrated aircraft systems is to ensure that all installed integrated aircraft systems correctly respond to what appears in the visual scene. This visual correspondence requirement applies to only Level C and D simulators and the FAA has corrected this error in Tables A3B and C3B.

The ATA, Rockwell Collins, and others suggested there should be no difference between entries 6.e and 8.g in Table A3B.

These two entries are designed to test separate conditions. Entry 6.e tests the external lights to ensure correlation with the airplane and associated equipment while entry 8.g tests the environmental effects of the external lights in the visual system. Because of the separate, distinct purposes of these entries, they should not be the same, and the FAA has not adopted the recommendation.

The ATA, Rockwell Collins, and others objected to the inclusion of several visual, sound, or motion systems features (e.g., the effect of rain removal devices; sound of light, medium, and heavy precipitation; and nosewheel scuffing) in the airport model presentations because they are not airport model functions.

These features are a function of the visual, sound, or motion systems. These features must be available and operate correctly in conjunction with the airport

models presented during training, testing, or checking activities. These features are meaningful only when they are presented as part of the airport model. Therefore, the FAA has not removed these features from the airport model requirements.

The ATA, Northwest, Rockwell Collins, and others expressed concern that the discussion of entry 10 in Table A3B regarding the combination of two airport models to achieve two “in-use” runways at one airport, may impede control of the radio aids and terrain elevation and create distracting effects in the visual scene display.

The discussion in entry 10 of Table A3B is an authorization, not a requirement. If an FSTD has limitations such that this combination would impede control or create distracting effects, this particular authorization is not applicable. The FAA has added clarifying language in entry 10 to address this concern.

The ATA, Rockwell Collins, and others stated the requirement that “slopes in runways, taxiways, and ramp areas must not cause distracting or unrealistic effects” in entry 4.b in Table A3C implies that Level A and Level B simulators are required to have sloping terrain modeling, making the Class II airport models more stringent than Class I airport models.

Level A and B simulators are not required to have sloping terrain modeling. This provision, however, sets forth the requirements for such modeling if a sponsor elects to incorporate sloping terrain modeling in the FSTD. The FAA has clarified this requirement by adding the qualifier “if depicted in the visual scene,” in the appropriate tables in Appendices A, C, and D.

CAE and others requested the FAA establish a list of individuals or corporations who work as visual modelers and can provide detailed information about airports without creating national security concerns.

Anyone with a legitimate need for the acquisition of detailed airport information for accurate modeling of any U.S. airport for simulation modeling purposes should contact the NSPM for assistance.

3. Motion or Vibration Requirements

Rockwell Collins, CAE, the ATA, and others stated that Motion Cueing Performance Signature tests can provide an objective means of determining loss in motion system performance. The commenters were concerned that if these tests were conducted only during the Initial Qualification Evaluation, sponsors would not have objective

information available to determine the continuing status of the motion system.

The proposal required the results of these tests to be included in the MQTG. Because sponsors are required to run the complete quarterly MQTG inspections, these tests are not intended to be one-time-only tests. The sponsor and NSPM regularly review these tests. The FAA agrees that the statement "this test is not required as part of continuing qualification evaluations" is misleading and has deleted this statement where appropriate.

The ATA, Rockwell Collins, and others questioned whether Level B simulators must be subjectively tested for nosewheel scuffing motion effects when this level of simulator was not authorized for the taxi task.

Level B simulators are authorized for Rejected Takeoff Maneuvers. At higher speeds, the movement of the nosewheel steering mechanism can be more sensitive and may cause the nosewheel to be turned beyond smooth tracking angles, resulting in nosewheel scuffing during Rejected Takeoff Maneuvers. Therefore, the FAA has determined that subjective testing for nosewheel scuffing motion effects is necessary and did not make any change.

4. Sound Requirements

The ATA, Rockwell Collins, and others suggested that in Table A2A, entry 5, Sound Requirements, the tests listed should have a defined frequency spectrum within which the tests should be conducted similar to that set forth in international standards.

Because the text in the proposal describes these processes and similar statements appear in international standards, the FAA has added language similar to the international standards to the sound test requirements of entry 5, Table A2A.

The ATA, Rockwell Collins, and others suggested requiring all levels of FTDs to be able to represent all the flight deck aural warning sounds and sounds from pilot actions instead of limiting this standard to level 6 FTDs, as it currently appears in entry 7.a of Table B1A.

A Level 6 FTD is the only level of FTD that is required to have all aircraft systems installed and operational. This requirement has been in effect for over 16 years and is consistent with current international standards. The suggested requirement is also outside the scope of this rulemaking. Accordingly, the FAA has not adopted the change.

CAE and others suggested entry 7.c, Accurate Simulation of Sounds, in Table A1A, address abnormal operations in addition to the sound of

normal operations and the sound of a crash.

The current international standards contain a requirement for sounds addressing abnormal operations, which include the sound of a crash, and normal operations. To harmonize with international standards the FAA has made the change.

D. Helicopters

CAE and others noted that an SOC is not necessary for entries 1.a, 1.b, and 2.a in Table C1A. Thales also suggested that the language in entry 2.a be modified to reflect helicopter operations.

The FAA has removed the SOC requirement in entries 1.a and 1.b because it is not necessary. The SOC for entry 2.a is necessary because it describes a flight dynamics model that must account for combinations of drag and thrust normally encountered in flight. However, the FAA has modified the language in entry 2.a to better reflect helicopter operations.

Thales and others stated that the motion onset requirements in Table C1A, entry 2.e, are new requirements for helicopter simulation.

The FAA included the requirements in this entry in the October 30, 2006, final rule (71 FR 63426), and again in the NPRM for this rule. These requirements codify existing practice (e.g., AC 120-63, Helicopter Simulator Qualification).

CAE and others suggested that the Information/Notes column in Table C1A, entry 2.f, include "roll" as well as "pitch," "side loading," and "directional control characteristics," when simulating brake and tire failure dynamics.

The FAA has clarified the Information/Notes column by adding the phrase "in the appropriate axes," which includes roll, pitch, yaw, heave, sway (side loading), and surge.

Thales, CAE, and others suggested that the requirements in Table C1A, entry 2.g.1, regarding ground effect should apply to Level B simulators as it appears in table C1A, entry 2.c.1.

The FAA has separated these two requirements because helicopter simulator Levels B, C, and D may be required to perform running takeoffs and running landings, as described in entry 2.c.1. However, only Level C and D simulators are required to perform takeoffs or landings to or from a hover, as noted in entry 2.g, thus requiring separate table entries. Accordingly, the FAA has not adopted the recommendation.

CAE and others requested clarification regarding the kinds of aircraft system variables and

environmental conditions as listed in Table C1A, entry 4, that must be used in simulation. Commenters suggested removing the reference to "wind speed," including other environmental controls, and including "water spray" when hovering over water.

There is no specific list of system variables that must be available in a helicopter simulator. The requirement is that the instructor or evaluator be able to control all the system variables and insert all abnormal or emergency conditions into the simulated helicopter systems as described in the sponsor's FAA-approved training program, or as described in the relevant FSTD operating manual. The FAA has reviewed the entries for environmental controls and has included additional examples of environmental conditions that may be available in the FSTD. We also have included "water vapor" as an example of what may be expected to be re-circulated when hovering above the surface, as suggested by the commenters.

CAE, Thales, and others suggested including vortex ring and high-speed rotor vibrations for motion effects programming requirements in Table C1A, entry 5.e. Commenters also suggested requiring Level B and C simulators to demonstrate air turbulence models.

As proposed, entry 5.e included requirements for buffet due to settling with power and rotor vibrations. As the commenters noted, these terms are better expressed as buffet due to vortex ring, and high-speed rotor vibrations. The FAA has clarified the requirements as requested. The FAA also has clarified the statement in the Information/Notes column regarding the use of air turbulence models. Further changes regarding air turbulence modeling are beyond the scope of the NPRM.

Thales and others recommended adjusting surface resolution from the currently proposed three (3) arc-minutes to two (2) arc-minutes in Table C1A, entry 6.i.(4). Additionally, Thales recommended the FAA add "helipad" or "heliport" lighting effects specific to helicopter operations for subjective testing.

As noted by the commenter, the two (2) arc-minutes requirement is the current international standard. Therefore, the FAA has made the recommended change. However, there are specific requirements for both airport and helicopter landing area models for training, testing, and checking purposes in attachment 3, and the FAA has not included the "helipad" or "heliport" lighting effects in Table C1A.

CAE, Thales, and others suggested that the tolerance of ± 3 knots, in Table C2A, entry 1.c, Takeoff, and entry 1.j, Landing, be applied to either airspeed or ground speed, because data collected at airspeeds below 30–40 knots are often unreliable. Thales suggested that for entries 1.c.2 and 1.c.3, the specific type of takeoff (Category A, Performance, Confined area, etc.) be recorded so proper comparisons can be made.

The FAA recognizes the difficulties in applying tolerances to airspeeds when the airspeed value itself may not be accurate and has added a general authorization for Takeoff tests and Landing tests. Also, the FAA has added a note in the Information/Notes column to address the differing types of takeoff profiles used for each of these tests.

CAE and others stated that in helicopter simulation, flight test data containing all the required parameters for a complete power-off landing is not always available. CAE recommended modifying the language in Tables C2A and D2A, entry 1.j.4, Autorotational Landing, to state that in those cases where data are not available, and other qualified flight test personnel are not available to acquire this data, the sponsor must coordinate with the NSPM to determine if it is appropriate to accept alternative testing means.

The FAA agrees that, in certain circumstances, the sponsor must coordinate with the NSPM to determine if it is appropriate to accept an alternative testing means. The FAA has made the appropriate changes.

CAE and others stated that Table C2A, entry 1.h.2, Autorotation Performance, requires data be recorded for speeds from 50 knots, ± 5 knots, through at least maximum glide distance airspeed. However, the maximum allowable autorotation airspeed is often slower than the maximum glide distance airspeed, which would prevent accurate data for autorotation entry.

The FAA has modified the test details to include maximum allowable autorotation airspeed.

CAE and others suggested reducing the tolerance for control displacement to ± 0.10 inches in Table C2A, entry 2.a.6, Control System Freeplay. The commenters also suggested harmonizing the tolerance requirements for FTDs in Table D2A, entry 2.a.6.

The FAA agrees and has made the appropriate changes, which reflect current international standards.

CAE and others suggested that the proposed $\pm 10\%$ tolerances on pitch and airspeed for non-periodic responses, in Table C2A, entry 2.c.3.a, Dynamic Stability, Long Term Response, be relaxed because the proposal is too

restrictive. They noted non-periodic Augmentation-On responses generally exhibit less than 5 degrees peak pitch attitude change from trim. Further, commenters recommended adding a statement to the Information/Notes column to clarify the relationship between non-periodic responses and flight-test data. The rationale for these recommendations is to avoid requirements that are unduly restrictive with divergent results, while ensuring that the non-periodic responses are accurately reproduced.

The FAA agrees with the commenter's suggestions and rationale and has made the appropriate changes in Table C2A for FFSs and in Table D2A for FTDs.

CAE and others suggested relating the proposed tolerances in Table C2A, entry 2.d.3.a, Dynamic Lateral and Directional Stability, Lateral-Directional Oscillations test. The commenters stated that the non-periodic responses may be divergent, weakly convergent, or deadbeat. The commenters stated that the proposed tolerances may be too restrictive for deadbeat responses. Additionally, the commenters stated that oscillatory responses that satisfy the period and damping ratio tolerances would not necessarily meet the proposed time history tolerances because of the non-periodic nature of the response. The rationale for these recommendations is to avoid requirements that are unduly restrictive with divergent results while ensuring that the non-periodic responses are reproduced with sufficient accuracy.

The FAA agrees with the commenters' suggestions and rationale and has made the appropriate changes in Table C2A for FFSs and in Table D2A for FTDs.

Thales, CAE, and others were concerned that there are no tolerances specified for the tests listed in Table C2A, entry 3.a, Frequency Response, 3.b, Leg Balance, and 3.c, Turn Around Check.

Because of the way the tests are used, the FAA has determined it is appropriate that these specific tests do not have a specified tolerance other than the performance as established by the FSTD manufacturer in coordination with the sponsor. These tests are conducted during the initial evaluation and made part of the MQTG. While the sponsor is not required to run these tests again during continuing qualification evaluations, the test results are available if a question arises about the performance of the motion system hardware or the integrity of the motion set-up at any time subsequent to the initial qualification evaluation. The test results recorded during the initial qualification evaluation provide a

benchmark against which subsequent comparisons can be made.

CAE and others questioned whether a motion signature (Table C2A, entry 3.e, Motion Cueing Performance Signature) is required for a test that only requires a snapshot test result or a series of snapshot test results, and if a sponsor may submit a result of their choice if multiple results are available for a specific test.

The specific motion cueing performance signature tests have specifically associated tests that are indicated in the Information/Notes column. When these tests are conducted, the sponsor records the motion system as an additional parameter, providing a cross-sectional benchmark for the motion system performance. When the test authorizes the result to be provided as "a series of snapshot tests," the sponsor may choose to record the motion cueing performance signature tests as a time history or as a series of snapshot tests.

Thales, HAI, and others requested that sponsors be allowed to use alternative data sources for Helicopter FTDs, as authorized for Airplane FTDs.

At this time, alternative data source information has not been developed for Helicopter FTDs. The FAA developed the alternative data source information for airplanes in coordination with industry prior to this rulemaking. Anyone interested in researching and developing alternatives for helicopter FTDs for future rulemakings should contact the NSPM.

The HAI and others suggested expanding the vertical field-of-view requirements for level 7 helicopter FTDs to at least 70° in paragraph 24 of Appendix D, Helicopter Flight Training Devices. CAE further noted that the field-of-view requirements for Level 7 FTDs appear to be more stringent than the requirements for a Level B simulator.

Peripheral vision is a critical cue in helicopter operations. Therefore, the FAA determined that the field-of-view standards for Level C helicopter simulators, which have been in effect since 1994, provide the adequate peripheral cues for the new level 7 helicopter FTD. Because peripheral vision is the critical cue, the FAA has not expanded the vertical field-of-view requirement.

CAE and others suggested revising the requirements for handling qualities for the level 7 helicopter FTD listed in Table D1A, given the list of tasks that may be authorized for the FTD.

Although the tasks listed in the referenced table may seem extensive for a device that is not an FFS, the FAA

does not intend that a student would be completely trained or trained to proficiency in any of the tasks authorized for that FTD. In each case, the task requires additional training, either in an aircraft or in a higher level FSTD, and a proficiency test in an aircraft or in a higher level FSTD upon completion of such training. Therefore, the FAA has not revised the handling qualities for the level 7 helicopter FTD.

CAE and others suggested modifying Table D1A, entries 1.a and 1.b, to clarify the location of bulkheads and the location and operation of circuit breakers.

The FAA has included clarifying language in entry 1.a of Table D1A.

CAE and others suggested removing the statement "An SOC is required" from Table D1A, entries 1.a, 1.b, 2.a, 6.a.1, 6.a.2, 6.a.3, 6.a.4, 6.a.5, 6.a.6, and 6.b.

The FAA agrees with the commenters with respect to entries 1.a and 1.b and has removed the SOC statement because a visual observation is sufficient. However, for the remainder of the entries, the SOC statements are still necessary because a visual observation will not reveal the data necessary to demonstrate and explain compliance with the specific requirements.

CAE and others suggested including a requirement for an SOC to explain how the computer will address the delay timing requirements for relative responses in Table D1A, entry 2.c.

The entry preceding 2.c sets forth the requirement to have a computer (analog or digital) with the capabilities necessary to meet the qualification level sought. At this point, an SOC is required. The SOC will supply the information about the delay timing tests. Therefore, an additional SOC requirement in entry 2.c is not necessary.

CAE, HAI, and others suggested requiring in Table D1A, entry 5, Motion system, that all FTD levels have a motion system instead of allowing an open authorization with the limitation that, if installed, it may not be distracting.

The current training equipment for helicopter FTDs is not designed to include motion systems. The FAA recognizes, however, that some sponsors may wish to include these systems as part of their training equipment. If a sponsor elects to install a motion system, the system must not be distracting. Further, if the system will be used for additional training, testing, or checking credits, it must meet certain other requirements outlined in Appendix C. Accordingly, the FAA has not required helicopter FTDs to have

motion systems. However, as proposed, all level 7 FTDs are required, at the very least, to have a vibration system.

HAI and others questioned why "mast bumping" was not authorized for Level 6 FTDs, as it is for Level 7 FTDs.

As noted in entry 5.b of Table D1A, only Level 7 FTDs are required to have a vibration system. Because the primary cue that would alert the pilot to the onset of mast bumping would be an increase in the vibration felt from the rotor system, this task is only authorized for Level 7 FTDs.

CAE stated that in Table D2A, entry 2.b.3.d, Vertical Control Response, the augmentation condition under the flight condition column is not specified, which is different from the previous three tests for control response in that table.

The FAA agrees with the commenter and has amended the referenced flight condition column to indicate that the augmentation condition for the test is both on and off, as it is for the preceding three control response tests in Table D2A.

CAE and others questioned whether the requirements of FSTD Directive 1 should be extended to helicopter FTDs.

The provisions of FSTD Directive 1 are applicable to those FSTD airport models currently in existence. Currently, there are no helicopter FTDs that have required visual systems. Therefore, there is no need to extend the requirements set out in FSTD Directive 1 to helicopter FTDs. The requirements for airport models are included in attachment 3 of Appendix D and are applicable to newly qualified Level 7 helicopter FTDs.

HAI and others questioned the necessity and cost of requiring Table D3B, entry 5.f, Effect of Rain Removal Devices.

The visual system requirement for the Level 7 helicopter FTD was designed to mirror the Level C helicopter FFS visual system requirement, which includes rain removal devices. This requirement is necessary to ensure that the FTD adequately reflects the actual helicopter being simulated. If the actual helicopter does not have rain removal devices, the FTD is not required to demonstrate the effect of rain removal devices. The FAA notes that these devices are not always a "windshield wiper," but may be high-pressure air or an application of rain-repelling fluid.

E. Quality Management System (QMS)

Federal Express, ATA, and others questioned which Quality Management System (QMS) would apply when an FSTD (including FSTDs owned by foreign entities), is installed in a

Training Center with a different QMS, or if the FSTD is maintained by a contractor with a different QMS.

The system and processes outlined in the QMS should enable the sponsor to monitor compliance with all applicable regulations and ensure correct maintenance and performance of the FSTD in accordance with part 60. Thus, the sponsor's QMS must include provisions to ensure that the FSTD will only be used when it is in compliance with the sponsor's own QMS and the regulatory requirements of part 60.

The ATA, Rockwell Collins, and others requested that the voluntary elements for the QMS, as published on October 30, 2006 (71 FR 63426), be included in Appendix E of the final rule. One commenter suggested that the concept of a "basic" and a "voluntary" QMS be removed and a single QMS be required.

As noted in the NPRM (72 FR 59604), the FAA removed the voluntary QMS from Appendix E. As proposed, Appendix E sets forth the basic requirements for a QMS. Although commenters requested that we include in part 60 the voluntary program, the voluntary program does not expand, further explain, or correspond to specific regulatory requirements. Therefore, the FAA has not included the voluntary program in the final rule.

The ATA, Northwest, and others questioned the inspection responsibilities of the NSPM in evaluating the QMS as opposed to FAA entities conducting ATOS audits.

The NSPM is responsible for evaluating the FSTD, including the QMS associated with the FSTD. The ATOS inspections determine whether the incorporation of the FSTD into an FAA-approved flight training program provides the necessary tool(s) to complete the required training program activities. The FAA has determined that the ATOS inspections will not include review of the actual FSTD or the QMS associated with that FSTD.

Federal Express and others questioned whether only the Management Representative (MR) should receive Quality System training and brief other personnel on procedures and suggested that the wording be changed to allow others, besides the MR, to brief other personnel. They were also concerned that the MR, in most cases, is the Director of Operations. They also questioned what would be considered "appropriate" quality system training.

The FAA does not require that the MR be the Director of Operations or hold any other specific position for a certificate holder. The MR, as

determined by the sponsor, may delegate his or her responsibilities so long as the delegation does not compromise the QMS. If the MR delegates his or her responsibilities, the MR must ensure that the person to whom the MR delegates his or her responsibilities is capable of adequately briefing other personnel on QMS procedures. Further, anyone can receive QMS training. The FAA, however, is requiring only that the MR receive QMS training. The FAA agrees that the word "appropriate" is not necessary in this context and has removed it.

Federal Express and others questioned the proposed requirement to notify the NSPM within 10 working days of the sponsor becoming aware of an addition to, or revision of, flight-related data or airplane systems-related data used to program or operate a qualified FSTD. The commenters are concerned because systems data may not be provided to the sponsor in a timely manner. They requested the notification time be changed to 10 working days of performing a modification, an addition, or a revision of FSTD software that affects the flight or system operations of a qualified FSTD.

The requirement that the sponsor must submit notification within 10 calendar days is only a statement that the sponsor is aware that an addition to, amendment of, or a revision of data that may relate to FFS performance or handling characteristics is available. This notification does not require any information regarding how the change is to be accomplished, nor does it commit the sponsor to implementing the particular change. Rather, information regarding the sponsor's proposed course of action must be submitted within 45 calendar days of the sponsor becoming aware of the data. Therefore, the FAA did not change the notification time requirement as requested by the commenters.

The ATA and others suggested the FAA set forth the minimum requirements for a discrepancy prioritization system or include a note in Appendix E (QMS Systems) that a prioritization system is a required element in an acceptable QMS.

There is no requirement for the development or the implementation of a discrepancy prioritization system for the correction of FSTD discrepancies. Such a system is completely voluntary. If the sponsor elects to develop such a system, the NSPM must approve the system. As stated in Note 1 to entry E1.31.b of Appendix E, if a sponsor has an approved prioritization system, the QMS must describe how discrepancies

are prioritized, what actions are taken, and how the sponsor will notify the NSPM if a missing, malfunctioning, or inoperative component (MMI) has not been repaired or replaced within the specified timeframe. Because this prioritization system is voluntary, the FAA has not adopted the changes.

F. Miscellaneous

United, the ATA, and others suggested that the FAA clarify and confirm that elements of the QPS appendices that go beyond current requirements not apply to FSTDs qualified before May 30, 2008. Also, the commenters recommended continuing to allow currently qualified FSTDs to be updated under the guidance effective when the simulator was initially qualified.

Except for FSTD Directive 1, the rule as proposed does not require currently qualified FSTDs to meet the requirements of the QPS Appendices A–D, attachments 1, 2, and 3, as long as the FSTD continues to meet the test requirements of its original qualification (see paragraph 13, subparagraph b of Appendices A–D). In response to comments, the FAA has clarified that FSTD updates will continue to be allowed under the standards in the current Master Qualification Test Guide (MQTG) for that FSTD.

CAE and others noted that the statement "a subjective test is required" in Table C1A is inconsistent with international standards.

The references to "a subjective test is required" and "an objective test is required" in Tables A1A, B1A, C1A, and D1A were redundant of the requirements in Attachments 2 and 3 in Appendices A–D. Therefore, we have removed these references. The objective and subjective test requirements in Attachments 2 and 3 in Appendices A–D are consistent with international standards.

The ATA, Northwest, Boeing, CAE, and others recommended adding references to the Airplane Flight Manual (AFM) in the regulatory requirements sections of the QPS appendices.

The FAA is not referencing the AFM as requested because the AFM provides specific standards based on aircraft type. Where the AFM provides helpful data, it may be used as guidance and as an additional data source, if appropriate.

CAE and others expressed concern that correcting known data calibration errors may not be permitted because of the language contained in Appendix A, Attachment 2, paragraph 9, (FSTD) Objective Data Requirements, subparagraph b(5).

The FAA acknowledges that the correction of recognized data calibration errors is often accomplished in data collection and reduction exercises. Therefore, the FAA has added language where appropriate in Appendices A–D to permit the correction of known data calibration errors provided that an explanation of the methods used to correct the errors appears in the QTG.

CAE requested the FAA explain how percentages are calculated when tolerances are expressed as a percentage in attachment 2, paragraph 2.b, of Appendices A–D.

The FAA has included an explanation of how these percentages are calculated in Appendices A–D, attachment 2, paragraph 2.b.

The ATA, Northwest, and others expressed concern over the submission of an FSTD modification notification to the NSPM as described in Appendix A, Paragraph 17, subparagraph a. The commenters were concerned that the results of the modification might not be known until after the notice of the modification is submitted to the NSPM.

The notification is not intended to be a detailed summary of each specific result. The notification must simply include a plan of action and a general description of the expected results.

The ATA, Rockwell Collins, and others requested clarification of the use of the term MMI component. Some sought clarification as to whether an MMI component was a hardware component, a software component, or a component that directly affected the training mission of the FSTD. In addition, some commenters requested an inclusive list of components such as: Flight deck hardware, a system line replaceable unit (LRU) of hardware or software, or a major FSTD system. Further, commenters asked who is responsible for determining whether an MMI component is necessary for a particular maneuver, procedure, or task.

The FAA has determined it is unnecessary to further clarify the meaning of missing, malfunctioning, or inoperative component. These words have their typical dictionary meanings. In this rule, an FSTD component could be a piece of hardware, a piece of software that performs as a piece of hardware (e.g., software functioning as an autopilot), or a piece of software that is used in the operation of the simulated aircraft or of the FSTD itself. Each FSTD component is present to serve a purpose—whether that purpose is to allow the simulation to work or to simulate a component of the aircraft being simulated. Since an FSTD is used to train, test, or check flight crewmembers, if one or more

component of the FSTD becomes missing, is not working, or is not working correctly, there would be some impact on the function of the FSTD. Developing an inclusive list of components that are necessary for a particular maneuver, procedure, or task is impractical because of the unique characteristics of each FSTD and unnecessary because of the obvious nature and effect of an MMI component on the overall operation of the FSTD. We have added language to the information in paragraph 18, Operation with Missing, Malfunctioning, or Inoperative Components (§ 60.25) in Appendices A–D to clarify that it is the responsibility of the instructor, check airman, or representative of the administrator conducting training, testing, or checking, to exercise reasonable and prudent judgment to determine whether an MMI component is necessary for a particular maneuver, procedure, or task.

Boeing and others commented on the repetition of the definitions of the weight ranges (near maximum, medium, and light). In addition to appearing in Appendix F, the definitions also appear in Attachment 2 of Appendices A–D. The commenters are concerned that the repetition may cause confusion in the application of these ranges. Further, CAE stated that the terms may not apply to light-class helicopters.

The FAA has removed the definitions of these terms from the QPS Requirement in Appendices A–D because they are defined in Appendix F. In some cases, these gross weight ranges are not within the appropriate ranges for light-class helicopters. Therefore, in Appendices C and D, we have added a statement that these terms may not be appropriate for light-class helicopters. Prior coordination with the NSPM is required to determine the acceptable gross weight ranges for light-class helicopters.

The ATA, Northwest, and others questioned how the FAA could use Personally Identifiable Information (PII) for investigation, compliance, or enforcement purposes and then bring enforcement action against a person, not certificated by the FAA, who may have worked on an FSTD.

The FAA must ensure that FSTDs used by flight crewmembers for training, testing, and checking purposes are maintained and used properly and in accordance with all regulatory requirements. If the FAA finds grounds for investigation or enforcement action, the FAA may request, administratively subpoena, or seek a court order for the sponsor's records, which may contain PII. The FAA may use those records,

and any PII contained therein, in the course of inspection, investigation, and enforcement. Furthermore, if, for example, the FAA discovered during the course of such an investigation that an individual made false or misleading statements, the FAA could use its statutory and regulatory authority to issue a cease and desist order to prohibit the individual from conducting any future maintenance on any FSTD, regardless of whether he or she holds an FAA certificate.

Paperwork Reduction Act

Information collection requirements associated with this final rule have been approved previously by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and have been assigned OMB Control Number 2120–0680.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

III. Regulatory Evaluation, Regulatory Flexibility Determination, International Trade Impact Assessment, and Unfunded Mandates Assessment

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of

\$100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule codifies existing practice by requiring all existing FSTD visual scenes beyond the number required for qualification to meet specified requirements. The final rule also reorganizes certain sections of the QPS appendices and provides additional information on validation tests, established parameters for tolerances, acceptable data formats, and the use of alternative data sources. The changes ensure that the training and testing environment is accurate and realistic, codify existing practice, and provide greater harmonization with the international standards document for simulation. Except for the amendment to codify existing practice regarding certain visual scene requirements, these technical requirements do not apply to simulators qualified before May 30, 2008. The impact of this final rule results in minimal to no cost increases for manufacturers and sponsors.

The FAA has, therefore, determined that this rule is not a “significant regulatory action” as defined in section 3(f) of Executive Order 12866, and is not “significant” as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.” The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule codifies existing practice by requiring all existing FSTD visual scenes beyond the number required for qualification to meet specified requirements. The final rule also reorganizes certain sections of the QPS appendices and provides additional information on validation tests, established parameters for tolerances, acceptable data formats, and the use of alternative data sources. The changes ensure that the training and testing environment is accurate and more realistic, codify existing practice, and provide greater harmonization with the international standards document for simulation. Except for the amendment to codify existing practice regarding certain visual scene requirements, these technical requirements do not apply to simulators qualified before May 30, 2008. The impact of this rule results in minimal or no cost for manufacturers and sponsors. Therefore, as the individual delegated with authority to sign this final rule on behalf of the Acting Administrator of the FAA, I certify that this rule does not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39) prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the effect of this rule and has determined that it imposes the same costs on domestic and international entities and thus has a neutral trade impact.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of \$100 million or more (adjusted annually for inflation with the base year 1995) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a “significant regulatory action.” The FAA currently uses an inflation-adjusted value of \$136.1 million in lieu of \$100 million. This rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have federalism implications.

Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this proposed rule action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). We have determined that it is not a “significant energy action” under the executive order because it is not a “significant regulatory action” under Executive Order 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Availability of Rulemaking Documents

You can get an electronic copy of rulemaking documents using the Internet by—

1. Searching the Federal eRulemaking Portal (<http://www.regulations.gov>);

2. Visiting the FAA’s Regulations and Policies Web page at http://www.faa.gov/regulations_policies/; or

3. Accessing the Government Printing Office’s Web page at <http://www.gpoaccess.gov/fr/index.html>.

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the amendment number or docket number of this rulemaking.

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT’s complete Privacy Act statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477–78) or you may visit <http://DocketsInfo.dot.gov>.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. If you are a small entity and you have a question regarding this document, you may contact your local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. You can find out more about SBREFA on the Internet at http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.

List of Subjects in 14 CFR Part 60

Airmen, Aviation safety, Reporting and recordkeeping requirements.

IV. The Amendment

- In consideration of the foregoing, the Federal Aviation Administration amends Chapter I of Title 14, Code of Federal Regulations as follows:

PART 60—FLIGHT SIMULATION TRAINING DEVICE INITIAL AND CONTINUING QUALIFICATION AND USE

- 1. The authority citation for part 60 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, and 44701.

- 2. Part 60 is amended by revising appendices A–F to read as follows:

Appendix A to Part 60—Qualification Performance Standards for Airplane Full Flight Simulators

Begin Information

This appendix establishes the standards for Airplane FFS evaluation and qualification. The NSPM is responsible for the development, application, and implementation of the standards contained within this appendix. The procedures and criteria specified in this appendix will be used by the NSPM, or a person assigned by the NSPM, when conducting airplane FFS evaluations.

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1. Introduction.
 2. Applicability (§§ 60.1 and 60.2).
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 7. Additional Responsibilities of the Sponsor (§ 60.9).
 8. FFS Use (§ 60.11).
 9. FFS Objective Data Requirements (§ 60.13).
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 11. Initial (and Upgrade) Qualification Requirements (§ 60.15).
 12. Additional Qualifications for a Currently Qualified FFS (§ 60.16).
 13. Previously Qualified FFSs (§ 60.17).
 14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements (§ 60.19).
 15. Logging FFS Discrepancies (§ 60.20).
 16. Interim Qualification of FFSs for New Airplane Types or Models (§ 60.21).
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 18. Operations With Missing, Malfunctioning, or Inoperative Components (§ 60.25).
 19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27).
 20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29).
 21. Record Keeping and Reporting (§ 60.31).
 22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33).
 23. Specific FFS Compliance Requirements (§ 60.35).
 24. [Reserved]
 25. FFS Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37).
- Attachment 1 to Appendix A to Part 60—General Simulator Requirements.
- Attachment 2 to Appendix A to Part 60—FFS Objective Tests.
- Attachment 3 to Appendix A to Part 60—Simulator Subjective Evaluation.
- Attachment 4 to Appendix A to Part 60—Sample Documents.
- Attachment 5 to Appendix A to Part 60—Simulator Qualification Requirements for Windshear Training Program Use.

Attachment 6 to Appendix A to Part 60—FSTD Directives Applicable to Airplane Flight Simulators.

End Information

1. Introduction

Begin Information

a. This appendix contains background information as well as regulatory and informative material as described later in this section. To assist the reader in determining what areas are required and what areas are permissive, the text in this appendix is divided into two sections: “QPS Requirements” and “Information.” The QPS Requirements sections contain details regarding compliance with the part 60 rule language. These details are regulatory, but are found only in this appendix. The Information sections contain material that is advisory in nature, and designed to give the user general information about the regulation.

b. Questions regarding the contents of this publication should be sent to the U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, National Simulator Program Staff, AFS-205, 100 Hartsfield Centre Parkway, Suite 400, Atlanta, Georgia 30354. Telephone contact numbers for the NSP are: Phone, 404-832-4700; fax, 404-761-8906. The general e-mail address for the NSP office is: 9-aso-avr-sim-team@faa.gov. The NSP Internet Web site address is: http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/nspl/. On this Web site you will find an NSP personnel list with telephone and e-mail contact information for each NSP staff member, a list of qualified flight simulation devices, advisory circulars (ACs), a description of the qualification process, NSP policy, and an NSP “In-Works” section. Also linked from this site are additional information sources, handbook bulletins, frequently asked questions, a listing and text of the Federal Aviation Regulations, Flight Standards Inspector’s handbooks, and other FAA links.

c. The NSPM encourages the use of electronic media for all communication, including any record, report, request, test, or statement required by this appendix. The electronic media used must have adequate security provisions and be acceptable to the NSPM. The NSPM recommends inquiries on system compatibility, and minimum system requirements are also included on the NSP Web site.

d. Related Reading References.

- (1) 14 CFR part 60.
- (2) 14 CFR part 61.
- (3) 14 CFR part 63.
- (4) 14 CFR part 119.
- (5) 14 CFR part 121.
- (6) 14 CFR part 125.
- (7) 14 CFR part 135.
- (8) 14 CFR part 141.
- (9) 14 CFR part 142.

(10) AC 120-28, as amended, Criteria for Approval of Category III Landing Weather Minima.

(11) AC 120-29, as amended, Criteria for Approving Category I and Category II Landing Minima for part 121 operators.

(12) AC 120-35, as amended, Line Operational Simulations: Line-Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation.

(13) AC 120-40, as amended, Airplane Simulator Qualification.

(14) AC 120-41, as amended, Criteria for Operational Approval of Airborne Wind Shear Alerting and Flight Guidance Systems.

(15) AC 120-57, as amended, Surface Movement Guidance and Control System (SMGCS).

(16) AC 150/5300-13, as amended, Airport Design.

(17) AC 150/5340-1, as amended, Standards for Airport Markings.

(18) AC 150/5340-4, as amended, Installation Details for Runway Centerline Touchdown Zone Lighting Systems.

(19) AC 150/5340-19, as amended, Taxiway Centerline Lighting System.

(20) AC 150/5340-24, as amended, Runway and Taxiway Edge Lighting System.

(21) AC 150/5345-28, as amended, Precision Approach Path Indicator (PAPI) Systems.

(22) International Air Transport Association document, “Flight Simulator Design and Performance Data Requirements,” as amended.

(23) AC 25-7, as amended, Flight Test Guide for Certification of Transport Category Airplanes.

(24) AC 23-8, as amended, Flight Test Guide for Certification of Part 23 Airplanes.

(25) International Civil Aviation Organization (ICAO) Manual of Criteria for the Qualification of Flight Simulators, as amended.

(26) Airplane Flight Simulator Evaluation Handbook, Volume I, as amended and Volume II, as amended, The Royal Aeronautical Society, London, UK.

(27) FAA Publication FAA-S-8081 series (Practical Test Standards for Airline Transport Pilot Certificate, Type Ratings, Commercial Pilot, and Instrument Ratings).

(28) The FAA Aeronautical Information Manual (AIM). An electronic version of the AIM is on the Internet at <http://www.faa.gov/atpubs>.

(29) Aeronautical Radio, Inc. (ARINC) document number 436, titled *Guidelines For Electronic Qualification Test Guide* (as amended).

(30) Aeronautical Radio, Inc. (ARINC) document 610, *Guidance for Design and Integration of Aircraft Avionics Equipment in Simulators* (as amended).

End Information

2. Applicability (§§ 60.1 and 60.2)

Begin Information

No additional regulatory or informational material applies to § 60.1, Applicability, or to § 60.2, Applicability of sponsor rules to persons who are not sponsors and who are engaged in certain unauthorized activities.

End Information**3. Definitions (§ 60.3)****Begin Information**

See Appendix F of this part for a list of definitions and abbreviations from part 1 and part 60, including the appropriate appendices of part 60.

End Information**4. Qualification Performance Standards (§ 60.4)****Begin Information**

No additional regulatory or informational material applies to § 60.4, Qualification Performance Standards.

End Information**5. Quality Management System (§ 60.5)****Begin Information**

See Appendix E of this part for additional regulatory and informational material regarding Quality Management Systems.

End Information**6. Sponsor Qualification Requirements (§ 60.7)****Begin Information**

a. The intent of the language in § 60.7(b) is to have a specific FFS, identified by the sponsor, used at least once in an FAA-approved flight training program for the airplane simulated during the 12-month period described. The identification of the specific FFS may change from one 12-month period to the next 12-month period as long as the sponsor sponsors and uses at least one FFS at least once during the prescribed period. No minimum number of hours or minimum FFS periods are required.

b. The following examples describe acceptable operational practices:

(1) Example One.

(a) A sponsor is sponsoring a single, specific FFS for its own use, in its own facility or elsewhere—this single FFS forms the basis for the sponsorship. The sponsor uses that FFS at least once in each 12-month period in the sponsor's FAA-approved flight training program for the airplane simulated. This 12-month period is established according to the following schedule:

(i) If the FFS was qualified prior to May 30, 2008, the 12-month period begins on the date of the first continuing qualification evaluation conducted in accordance with § 60.19 after May 30, 2008, and continues for each subsequent 12-month period;

(ii) A device qualified on or after May 30, 2008, will be required to undergo an initial or upgrade evaluation in accordance with § 60.15. Once the initial or upgrade

evaluation is complete, the first continuing qualification evaluation will be conducted within 6 months. The 12-month continuing qualification evaluation cycle begins on that date and continues for each subsequent 12-month period.

(b) There is no minimum number of hours of FFS use required.

(c) The identification of the specific FFS may change from one 12-month period to the next 12-month period as long as the sponsor sponsors and uses at least one FFS at least once during the prescribed period.

(2) Example Two.

(a) A sponsor sponsors an additional number of FFSs, in its facility or elsewhere. Each additionally sponsored FFS must be—

(i) Used by the sponsor in the sponsor's FAA-approved flight training program for the airplane simulated (as described in § 60.7(d)(1));

OR

(ii) Used by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the airplane simulated (as described in § 60.7(d)(1)). This 12-month period is established in the same manner as in example one;

OR

(iii) Provided a statement each year from a qualified pilot (after having flown the airplane, not the subject FFS or another FFS, during the preceding 12-month period), stating that the subject FFS's performance and handling qualities represent the airplane (as described in § 60.7(d)(2)). This statement is provided at least once in each 12-month period established in the same manner as in example one.

(b) No minimum number of hours of FFS use is required.

(3) Example Three.

(a) A sponsor in New York (in this example, a Part 142 certificate holder) establishes "satellite" training centers in Chicago and Moscow.

(b) The satellite function means that the Chicago and Moscow centers must operate under the New York center's certificate (in accordance with all of the New York center's practices, procedures, and policies; e.g., instructor and/or technician training/checking requirements, record keeping, QMS program).

(c) All of the FFSs in the Chicago and Moscow centers could be dry-leased (i.e., the certificate holder does not have and use FAA-approved flight training programs for the FFSs in the Chicago and Moscow centers) because—

(i) Each FFS in the Chicago center and each FFS in the Moscow center is used at least once each 12-month period by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the airplane (as described in § 60.7(d)(1));

OR

(ii) A statement is obtained from a qualified pilot (having flown the airplane, not the subject FFS or another FFS, during the preceding 12-month period) stating that the performance and handling qualities of each FFS in the Chicago and Moscow centers represents the airplane (as described in § 60.7(d)(2)).

End Information**7. Additional Responsibilities of the Sponsor (§ 60.9)****Begin Information**

The phrase "as soon as practicable" in § 60.9(a) means without unnecessarily disrupting or delaying beyond a reasonable time the training, evaluation, or experience being conducted in the FFS.

End Information**8. FFS Use (§ 60.11)****Begin Information**

No additional regulatory or informational material applies to § 60.11, Simulator Use.

End Information**9. FFS Objective Data Requirements (§ 60.13)****Begin QPS Requirements**

a. Flight test data used to validate FFS performance and handling qualities must have been gathered in accordance with a flight test program containing the following:

(1) A flight test plan consisting of:

(a) The maneuvers and procedures required for aircraft certification and simulation programming and validation.

(b) For each maneuver or procedure—
(i) The procedures and control input the flight test pilot and/or engineer used.

(ii) The atmospheric and environmental conditions.

(iii) The initial flight conditions.

(iv) The airplane configuration, including weight and center of gravity.

(v) The data to be gathered.

(vi) All other information necessary to recreate the flight test conditions in the FFS.

(2) Appropriately qualified flight test personnel.

(3) An understanding of the accuracy of the data to be gathered using appropriate alternative data sources, procedures, and instrumentation that is traceable to a recognized standard as described in Attachment 2, Table A2E of this appendix.

(4) Appropriate and sufficient data acquisition equipment or system(s), including appropriate data reduction and analysis methods and techniques, as would be acceptable to the FAA's Aircraft Certification Service.

b. The data, regardless of source, must be presented as follows:

(1) In a format that supports the FFS validation process.

(2) In a manner that is clearly readable and annotated correctly and completely.

(3) With resolution sufficient to determine compliance with the tolerances set forth in Attachment 2, Table A2A of this appendix.

(4) With any necessary instructions or other details provided, such as yaw damper or throttle position.

(5) Without alteration, adjustments, or bias. Data may be corrected to address known data calibration errors provided that an explanation of the methods used to correct the errors appears in the QTG. The corrected data may be re-scaled, digitized, or otherwise manipulated to fit the desired presentation.

c. After completion of any additional flight test, a flight test report must be submitted in support of the validation data. The report must contain sufficient data and rationale to support qualification of the FFS at the level requested.

d. As required by § 60.13(f), the sponsor must notify the NSPM when it becomes aware that an addition to, an amendment to, or a revision of data that may relate to FFS performance or handling characteristics is available. The data referred to in this paragraph is data used to validate the performance, handling qualities, or other characteristics of the aircraft, including data related to any relevant changes occurring after the type certificate was issued. The sponsor must—

(1) Within 10 calendar days, notify the NSPM of the existence of this data; and

(2) Within 45 calendar days, notify the NSPM of—

(a) The schedule to incorporate this data into the FFS; or

(b) The reason for not incorporating this data into the FFS.

e. In those cases where the objective test results authorize a “snapshot test” or a “series of snapshot tests” results in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the “snapshot.” The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snapshot.

End QPS Requirements

Begin Information

f. The FFS sponsor is encouraged to maintain a liaison with the manufacturer of the aircraft being simulated (or with the holder of the aircraft type certificate for the aircraft being simulated if the manufacturer is no longer in business), and, if appropriate, with the person having supplied the aircraft data package for the FFS in order to facilitate the notification required by § 60.13(f).

g. It is the intent of the NSPM that for new aircraft entering service, at a point well in advance of preparation of the Qualification Test Guide (QTG), the sponsor should submit to the NSPM for approval, a descriptive document (see Table A2C, Sample Validation Data Roadmap for Airplanes) containing the plan for acquiring the validation data, including data sources. This document should clearly identify sources of data for all required tests, a description of the validity of these data for a specific engine type and thrust rating configuration, and the revision levels of all avionics affecting the performance or flying qualities of the aircraft. Additionally, this document should provide other information, such as the rationale or explanation for cases where data or data parameters are missing, instances where

engineering simulation data are used or where flight test methods require further explanations. It should also provide a brief narrative describing the cause and effect of any deviation from data requirements. The aircraft manufacturer may provide this document.

h. There is no requirement for any flight test data supplier to submit a flight test plan or program prior to gathering flight test data. However, the NSPM notes that inexperienced data gatherers often provide data that is irrelevant, improperly marked, or lacking adequate justification for selection. Other problems include inadequate information regarding initial conditions or test maneuvers. The NSPM has been forced to refuse these data submissions as validation data for an FFS evaluation. It is for this reason that the NSPM recommends that any data supplier not previously experienced in this area review the data necessary for programming and for validating the performance of the FFS, and discuss the flight test plan anticipated for acquiring such data with the NSPM well in advance of commencing the flight tests.

i. The NSPM will consider, on a case-by-case basis, whether to approve supplemental validation data derived from flight data recording systems, such as a Quick Access Recorder or Flight Data Recorder.

End Information

10. Special Equipment and Personnel Requirements for Qualification of the FFSs (§ 60.14)

Begin Information

a. In the event that the NSPM determines that special equipment or specifically qualified persons will be required to conduct an evaluation, the NSPM will make every attempt to notify the sponsor at least one (1) week, but in no case less than 72 hours, in advance of the evaluation. Examples of special equipment include spot photometers, flight control measurement devices, and sound analyzers. Examples of specially qualified personnel include individuals specifically qualified to install or use any special equipment when its use is required.

b. Examples of a special evaluation include an evaluation conducted after an FFS is moved, at the request of the TPAA, or as a result of comments received from users of the FFS that raise questions about the continued qualification or use of the FFS.

End Information

11. Initial (and Upgrade) Qualification Requirements (§ 60.15)

Begin QPS Requirements

a. In order to be qualified at a particular qualification level, the FFS must:

(1) Meet the general requirements listed in Attachment 1 of this appendix;

(2) Meet the objective testing requirements listed in Attachment 2 of this appendix; and

(3) Satisfactorily accomplish the subjective tests listed in Attachment 3 of this appendix.

b. The request described in § 60.15(a) must include all of the following:

(1) A statement that the FFS meets all of the applicable provisions of this part and all applicable provisions of the QPS.

(2) A confirmation that the sponsor will forward to the NSPM the statement described in § 60.15(b) in such time as to be received no later than 5 business days prior to the scheduled evaluation and may be forwarded to the NSPM via traditional or electronic means.

(3) A QTG, acceptable to the NSPM, that includes all of the following:

(a) Objective data obtained from traditional aircraft testing or another approved source.

(b) Correlating objective test results obtained from the performance of the FFS as prescribed in the appropriate QPS.

(c) The result of FFS subjective tests prescribed in the appropriate QPS.

(d) A description of the equipment necessary to perform the evaluation for initial qualification and the continuing qualification evaluations.

c. The QTG described in paragraph (a)(3) of this section, must provide the documented proof of compliance with the simulator objective tests in Attachment 2, Table A2A of this appendix.

d. The QTG is prepared and submitted by the sponsor, or the sponsor's agent on behalf of the sponsor, to the NSPM for review and approval, and must include, for each objective test:

(1) Parameters, tolerances, and flight conditions;

(2) Pertinent and complete instructions for the conduct of automatic and manual tests;

(3) A means of comparing the FFS test results to the objective data;

(4) Any other information as necessary, to assist in the evaluation of the test results;

(5) Other information appropriate to the qualification level of the FFS.

e. The QTG described in paragraphs (a)(3) and (b) of this section, must include the following:

(1) A QTG cover page with sponsor and FAA approval signature blocks (see Attachment 4, Figure A4C, of this appendix for a sample QTG cover page).

(2) A continuing qualification evaluation requirements page. This page will be used by the NSPM to establish and record the frequency with which continuing qualification evaluations must be conducted and any subsequent changes that may be determined by the NSPM in accordance with § 60.19. See Attachment 4, Figure A4G, of this appendix for a sample Continuing Qualification Evaluation Requirements page.

(3) An FFS information page that provides the information listed in this paragraph (see Attachment 4, Figure A4B, of this appendix for a sample FFS information page). For convertible FFSs, the sponsor must submit a separate page for each configuration of the FFS.

(a) The sponsor's FFS identification number or code.

(b) The airplane model and series being simulated.

(c) The aerodynamic data revision number or reference.

(d) The source of the basic aerodynamic model and the aerodynamic coefficient data used to modify the basic model.

(e) The engine model(s) and its data revision number or reference.

(f) The flight control data revision number or reference.

(g) The flight management system identification and revision level.

(h) The FFS model and manufacturer.

(i) The date of FFS manufacture.

(j) The FFS computer identification.

(k) The visual system model and manufacturer, including display type.

(l) The motion system type and manufacturer, including degrees of freedom.

(4) A Table of Contents.

(5) A log of revisions and a list of effective pages.

(6) A list of all relevant data references.

(7) A glossary of terms and symbols used (including sign conventions and units).

(8) Statements of Compliance and Capability (SOCs) with certain requirements.

(9) Recording procedures or equipment required to accomplish the objective tests.

(10) The following information for each objective test designated in Attachment 2, Table A2A, of this appendix as applicable to the qualification level sought:

(a) Name of the test.

(b) Objective of the test.

(c) Initial conditions.

(d) Manual test procedures.

(e) Automatic test procedures (if applicable).

(f) Method for evaluating FFS objective test results.

(g) List of all relevant parameters driven or constrained during the automatically conducted test(s).

(h) List of all relevant parameters driven or constrained during the manually conducted test(s).

(i) Tolerances for relevant parameters.

(j) Source of Validation Data (document and page number).

(k) Copy of the Validation Data (if located in a separate binder, a cross reference for the identification and page number for pertinent data location must be provided).

(l) Simulator Objective Test Results as obtained by the sponsor. Each test result must reflect the date completed and must be clearly labeled as a product of the device being tested.

f. A convertible FFS is addressed as a separate FFS for each model and series airplane to which it will be converted and for the FAA qualification level sought. If a sponsor seeks qualification for two or more models of an airplane type using a convertible FFS, the sponsor must submit a QTG for each airplane model, or a QTG for the first airplane model and a supplement to that QTG for each additional airplane model. The NSPM will conduct evaluations for each airplane model.

g. Form and manner of presentation of objective test results in the QTG:

(1) The sponsor's FFS test results must be recorded in a manner acceptable to the NSPM, that allows easy comparison of the FFS test results to the validation data (e.g., use of a multi-channel recorder, line printer, cross plotting, overlays, transparencies).

(2) FFS results must be labeled using terminology common to airplane parameters as opposed to computer software identifications.

(3) Validation data documents included in a QTG may be photographically reduced only if such reduction will not alter the graphic scaling or cause difficulties in scale interpretation or resolution.

(4) Scaling on graphical presentations must provide the resolution necessary to evaluate the parameters shown in Attachment 2, Table A2A of this appendix.

(5) Tests involving time histories, data sheets (or transparencies thereof) and FFS test results must be clearly marked with appropriate reference points to ensure an accurate comparison between the FFS and the airplane with respect to time. Time histories recorded via a line printer are to be clearly identified for cross plotting on the airplane data. Over-plots must not obscure the reference data.

h. The sponsor may elect to complete the QTG objective and subjective tests at the manufacturer's facility or at the sponsor's training facility. If the tests are conducted at the manufacturer's facility, the sponsor must repeat at least one-third of the tests at the sponsor's training facility in order to substantiate FFS performance. The QTG must be clearly annotated to indicate when and where each test was accomplished. Tests conducted at the manufacturer's facility and at the sponsor's training facility must be conducted after the FFS is assembled with systems and sub-systems functional and operating in an interactive manner. The test results must be submitted to the NSPM.

i. The sponsor must maintain a copy of the MQTG at the FFS location.

j. All FFSs for which the initial qualification is conducted after May 30, 2014, must have an electronic MQTG (eMQTG) including all objective data obtained from airplane testing, or another approved source (reformatted or digitized), together with correlating objective test results obtained from the performance of the FFS (reformatted or digitized) as prescribed in this appendix. The eMQTG must also contain the general FFS performance or demonstration results (reformatted or digitized) prescribed in this appendix, and a description of the equipment necessary to perform the initial qualification evaluation and the continuing qualification evaluations. The eMQTG must include the original validation data used to validate FFS performance and handling qualities in either the original digitized format from the data supplier or an electronic scan of the original time-history plots that were provided by the data supplier. A copy of the eMQTG must be provided to the NSPM.

k. All other FFSs not covered in subparagraph "j" must have an electronic copy of the MQTG by May 30, 2014. An electronic copy of the MQTG must be provided to the NSPM. This may be provided by an electronic scan presented in a Portable Document File (PDF), or similar format acceptable to the NSPM.

l. During the initial (or upgrade) qualification evaluation conducted by the NSPM, the sponsor must also provide a

person who is a user of the device (e.g., a qualified pilot or instructor pilot with flight time experience in that aircraft) and knowledgeable about the operation of the aircraft and the operation of the FFS.

End QPS Requirements

Begin Information

m. Only those FFSs that are sponsored by a certificate holder as defined in Appendix F of this part will be evaluated by the NSPM. However, other FFS evaluations may be conducted on a case-by-case basis as the Administrator deems appropriate, but only in accordance with applicable agreements.

n. The NSPM will conduct an evaluation for each configuration, and each FFS must be evaluated as completely as possible. To ensure a thorough and uniform evaluation, each FFS is subjected to the general simulator requirements in Attachment 1 of this appendix, the objective tests listed in Attachment 2 of this appendix, and the subjective tests listed in Attachment 3 of this appendix. The evaluations described herein will include, but not necessarily be limited to the following:

(1) Airplane responses, including longitudinal and lateral-directional control responses (see Attachment 2 of this appendix);

(2) Performance in authorized portions of the simulated airplane's operating envelope, to include tasks evaluated by the NSPM in the areas of surface operations, takeoff, climb, cruise, descent, approach, and landing as well as abnormal and emergency operations (see Attachment 2 of this appendix);

(3) Control checks (see Attachment 1 and Attachment 2 of this appendix);

(4) Flight deck configuration (see Attachment 1 of this appendix);

(5) Pilot, flight engineer, and instructor station functions checks (see Attachment 1 and Attachment 3 of this appendix);

(6) Airplane systems and sub-systems (as appropriate) as compared to the airplane simulated (see Attachment 1 and Attachment 3 of this appendix);

(7) FFS systems and sub-systems, including force cueing (motion), visual, and aural (sound) systems, as appropriate (see Attachment 1 and Attachment 2 of this appendix); and

(8) Certain additional requirements, depending upon the qualification level sought, including equipment or circumstances that may become hazardous to the occupants. The sponsor may be subject to Occupational Safety and Health Administration requirements.

o. The NSPM administers the objective and subjective tests, which includes an examination of functions. The tests include a qualitative assessment of the FFS by an NSP pilot. The NSP evaluation team leader may assign other qualified personnel to assist in accomplishing the functions examination and/or the objective and subjective tests performed during an evaluation when required.

(1) Objective tests provide a basis for measuring and evaluating FFS performance and determining compliance with the requirements of this part.

(2) Subjective tests provide a basis for:

(a) Evaluating the capability of the FFS to perform over a typical utilization period;

(b) Determining that the FFS satisfactorily simulates each required task;

(c) Verifying correct operation of the FFS controls, instruments, and systems; and

(d) Demonstrating compliance with the requirements of this part.

p. The tolerances for the test parameters listed in Attachment 2 of this appendix reflect the range of tolerances acceptable to the NSPM for FFS validation and are not to be confused with design tolerances specified for FFS manufacture. In making decisions regarding tests and test results, the NSPM relies on the use of operational and engineering judgment in the application of data (including consideration of the way in which the flight test was flown and the way the data was gathered and applied), data presentations, and the applicable tolerances for each test.

q. In addition to the scheduled continuing qualification evaluation, each FFS is subject to evaluations conducted by the NSPM at any time without prior notification to the sponsor. Such evaluations would be accomplished in a normal manner (i.e., requiring exclusive use of the FFS for the conduct of objective and subjective tests and an examination of functions) if the FFS is not being used for flight crewmember training, testing, or checking. However, if the FFS were being used, the evaluation would be conducted in a non-exclusive manner. This non-exclusive evaluation will be conducted by the FFS evaluator accompanying the check airman, instructor, Aircrew Program Designee (APD), or FAA inspector aboard the FFS along with the student(s) and observing the operation of the FFS during the training, testing, or checking activities.

r. Problems with objective test results are handled as follows:

(1) If a problem with an objective test result is detected by the NSP evaluation team during an evaluation, the test may be repeated or the QTG may be amended.

(2) If it is determined that the results of an objective test do not support the level requested but do support a lower level, the NSPM may qualify the FFS at that lower level. For example, if a Level D evaluation is requested and the FFS fails to meet sound test tolerances, it could be qualified at Level C.

s. After an FFS is successfully evaluated, the NSPM issues a Statement of Qualification (SOQ) to the sponsor. The NSPM recommends the FFS to the TPAA, who will approve the FFS for use in a flight training program. The SOQ will be issued at the satisfactory conclusion of the initial or continuing qualification evaluation and will list the tasks for which the FFS is qualified, referencing the tasks described in Table A1B in Attachment 1 of this appendix. However, it is the sponsor's responsibility to obtain TPAA approval prior to using the FFS in an FAA-approved flight training program.

t. Under normal circumstances, the NSPM establishes a date for the initial or upgrade evaluation within ten (10) working days after determining that a complete QTG is acceptable. Unusual circumstances may

warrant establishing an evaluation date before this determination is made. A sponsor may schedule an evaluation date as early as 6 months in advance. However, there may be a delay of 45 days or more in rescheduling and completing the evaluation if the sponsor is unable to meet the scheduled date. See Attachment 4 of this appendix, Figure A4A, Sample Request for Initial, Upgrade, or Reinstatement Evaluation.

u. The numbering system used for objective test results in the QTG should closely follow the numbering system set out in Attachment 2 of this appendix, FFS Objective Tests, Table A2A.

v. Contact the NSPM or visit the NSPM Web site for additional information regarding the preferred qualifications of pilots used to meet the requirements of § 60.15(d).

w. Examples of the exclusions for which the FFS might not have been subjectively tested by the sponsor or the NSPM and for which qualification might not be sought or granted, as described in § 60.15(g)(6), include windshear training and circling approaches.

End Information

12. Additional Qualifications for a Currently Qualified FFS (§ 60.16)

Begin Information

No additional regulatory or informational material applies to § 60.16, Additional Qualifications for a Currently Qualified FFS.

End Information

13. Previously Qualified FFSs (§ 60.17)

Begin QPS Requirements

a. In instances where a sponsor plans to remove an FFS from active status for a period of less than two years, the following procedures apply:

(1) The NSPM must be notified in writing and the notification must include an estimate of the period that the FFS will be inactive;

(2) Continuing Qualification evaluations will not be scheduled during the inactive period;

(3) The NSPM will remove the FFS from the list of qualified FSTDs on a mutually established date not later than the date on which the first missed continuing qualification evaluation would have been scheduled;

(4) Before the FFS is restored to qualified status, it must be evaluated by the NSPM. The evaluation content and the time required to accomplish the evaluation is based on the number of continuing qualification evaluations and sponsor-conducted quarterly inspections missed during the period of inactivity.

(5) The sponsor must notify the NSPM of any changes to the original scheduled time out of service;

b. Simulators qualified prior to May 30, 2008, are not required to meet the general simulation requirements, the objective test requirements or the subjective test requirements of attachments 1, 2, and 3 of

this appendix as long as the simulator continues to meet the test requirements contained in the MQTG developed under the original qualification basis.

c. After May 30, 2009, each visual scene or airport model beyond the minimum required for the FFS qualification level that is installed in and available for use in a qualified FFS must meet the requirements described in attachment 3 of this appendix.

d. Simulators qualified prior to May 30, 2008, may be updated. If an evaluation is deemed appropriate or necessary by the NSPM after such an update, the evaluation will not require an evaluation to standards beyond those against which the simulator was originally qualified.

End QPS Requirements

Begin Information

e. Other certificate holders or persons desiring to use an FFS may contract with FFS sponsors to use FFSs previously qualified at a particular level for an airplane type and approved for use within an FAA-approved flight training program. Such FFSs are not required to undergo an additional qualification process, except as described in § 60.16.

f. Each FFS user must obtain approval from the appropriate TPAA to use any FFS in an FAA-approved flight training program.

g. The intent of the requirement listed in § 60.17(b), for each FFS to have a SOQ within 6 years, is to have the availability of that statement (including the configuration list and the limitations to authorizations) to provide a complete picture of the FFS inventory regulated by the FAA. The issuance of the statement will not require any additional evaluation or require any adjustment to the evaluation basis for the FFS.

h. Downgrading of an FFS is a permanent change in qualification level and will necessitate the issuance of a revised SOQ to reflect the revised qualification level, as appropriate. If a temporary restriction is placed on an FFS because of a missing, malfunctioning, or inoperative component or on-going repairs, the restriction is not a permanent change in qualification level. Instead, the restriction is temporary and is removed when the reason for the restriction has been resolved.

i. The NSPM will determine the evaluation criteria for an FFS that has been removed from active status. The criteria will be based on the number of continuing qualification evaluations and quarterly inspections missed during the period of inactivity. For example, if the FFS were out of service for a 1 year period, it would be necessary to complete the entire QTG, since all of the quarterly evaluations would have been missed. The NSPM will also consider how the FFS was stored, whether parts were removed from the FFS and whether the FFS was disassembled.

j. The FFS will normally be requalified using the FAA-approved MQTG and the criteria that was in effect prior to its removal from qualification. However, inactive periods of 2 years or more will require requalification under the standards in effect and current at the time of requalification.

End Information**14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements (§ 60.19)****Begin QPS Requirements**

a. The sponsor must conduct a minimum of four evenly spaced inspections throughout the year. The objective test sequence and content of each inspection must be developed by the sponsor and must be acceptable to the NSPM.

b. The description of the functional preflight check must be contained in the sponsor's QMS.

c. Record "functional preflight" in the FFS discrepancy log book or other acceptable location, including any item found to be missing, malfunctioning, or inoperative.

d. During the continuing qualification evaluation conducted by the NSPM, the sponsor must also provide a person knowledgeable about the operation of the aircraft and the operation of the FFS.

e. The NSPM will conduct continuing qualification evaluations every 12 months unless:

(1) The NSPM becomes aware of discrepancies or performance problems with the device that warrants more frequent evaluations; or

(2) The sponsor implements a QMS that justifies less frequent evaluations. However, in no case shall the frequency of a continuing qualification evaluation exceed 36 months.

End QPS Requirements**Begin Information**

f. The sponsor's test sequence and the content of each quarterly inspection required in § 60.19(a)(1) should include a balance and a mix from the objective test requirement areas listed as follows:

- (1) Performance.
- (2) Handling qualities.
- (3) Motion system (where appropriate).
- (4) Visual system (where appropriate).
- (5) Sound system (where appropriate).
- (6) Other FFS systems.

g. If the NSP evaluator plans to accomplish specific tests during a normal continuing qualification evaluation that requires the use of special equipment or technicians, the sponsor will be notified as far in advance of the evaluation as practical; but not less than 72 hours. Examples of such tests include latencies, control dynamics, sounds and vibrations, motion, and/or some visual system tests.

h. The continuing qualification evaluations, described in § 60.19(b), will normally require 4 hours of FFS time. However, flexibility is necessary to address abnormal situations or situations involving aircraft with additional levels of complexity (e.g., computer controlled aircraft). The sponsor should anticipate that some tests may require additional time. The continuing qualification evaluations will consist of the following:

(1) Review of the results of the quarterly inspections conducted by the sponsor since

the last scheduled continuing qualification evaluation.

(2) A selection of approximately 8 to 15 objective tests from the MQTG that provide an adequate opportunity to evaluate the performance of the FFS. The tests chosen will be performed either automatically or manually and should be able to be conducted within approximately one-third ($\frac{1}{3}$) of the allotted FFS time.

(3) A subjective evaluation of the FFS to perform a representative sampling of the tasks set out in attachment 3 of this appendix. This portion of the evaluation should take approximately two-thirds ($\frac{2}{3}$) of the allotted FFS time.

(4) An examination of the functions of the FFS may include the motion system, visual system, sound system, instructor operating station, and the normal functions and simulated malfunctions of the airplane systems. This examination is normally accomplished simultaneously with the subjective evaluation requirements.

End Information**15. Logging FFS Discrepancies (§ 60.20)****Begin Information**

No additional regulatory or informational material applies to § 60.20. Logging FFS Discrepancies.

End Information**16. Interim Qualification of FFSs for New Airplane Types or Models (§ 60.21)****Begin Information**

No additional regulatory or informational material applies to § 60.21, Interim Qualification of FFSs for New Airplane Types or Models.

End Information**17. Modifications to FFSs (§ 60.23)****Begin QPS Requirements**

a. The notification described in § 60.23(c)(2) must include a complete description of the planned modification, with a description of the operational and engineering effect the proposed modification will have on the operation of the FFS and the results that are expected with the modification incorporated.

b. Prior to using the modified FFS:

(1) All the applicable objective tests completed with the modification incorporated, including any necessary updates to the MQTG (e.g., accomplishment of FSTD Directives) must be acceptable to the NSPM; and

(2) The sponsor must provide the NSPM with a statement signed by the MR that the factors listed in § 60.15(b) are addressed by the appropriate personnel as described in that section.

End QPS Requirements**Begin Information**

FSTD Directives are considered modifications of an FFS. See Attachment 4 of this appendix for a sample index of effective FSTD Directives. See Attachment 6 of this appendix for a list of all effective FSTD Directives applicable to Airplane FFSs.

End Information**18. Operation with Missing, Malfunctioning, or Inoperative Components (§ 60.25)****Begin Information**

a. The sponsor's responsibility with respect to § 60.25(a) is satisfied when the sponsor fairly and accurately advises the user of the current status of an FFS, including any missing, malfunctioning, or inoperative (MMI) component(s).

b. It is the responsibility of the instructor, check airman, or representative of the administrator conducting training, testing, or checking to exercise reasonable and prudent judgment to determine if any MMI component is necessary for the satisfactory completion of a specific maneuver, procedure, or task.

c. If the 29th or 30th day of the 30-day period described in § 60.25(b) is on a Saturday, a Sunday, or a holiday, the FAA will extend the deadline until the next business day.

d. In accordance with the authorization described in § 60.25(b), the sponsor may develop a discrepancy prioritizing system to accomplish repairs based on the level of impact on the capability of the FFS. Repairs having a larger impact on FFS capability to provide the required training, evaluation, or flight experience will have a higher priority for repair or replacement.

End Information**19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27)****Begin Information**

If the sponsor provides a plan for how the FFS will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FFS is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing required for requalification.

End Information**20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29)****Begin Information**

If the sponsor provides a plan for how the FFS will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical

systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FFS is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing required for requalification.

End Information

21. Recordkeeping and Reporting (§ 60.31)

Begin QPS Requirements

a. FFS modifications can include hardware or software changes. For FFS modifications involving software programming changes, the record required by § 60.31(a)(2) must consist of the name of the aircraft system software, aerodynamic model, or engine model change, the date of the change, a summary of the change, and the reason for the change.

b. If a coded form for record keeping is used, it must provide for the preservation and retrieval of information with appropriate security or controls to prevent the inappropriate alteration of such records after the fact.

End QPS Requirements

22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33)

Begin Information

No additional regulatory or informational material applies to § 60.33, Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements.

23. Specific FFS Compliance Requirements (§ 60.35)

No additional regulatory or informational material applies to § 60.35, Specific FFS Compliance Requirements.

24. [Reserved]

25. FFS Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37)

No additional regulatory or informational material applies to § 60.37, FFS Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA).

End Information

Attachment 1 to Appendix A to Part 60—General Simulator Requirements

Begin QPS Requirements

1. Requirements

a. Certain requirements included in this appendix must be supported with an SOC as defined in Appendix F, which may include objective and subjective tests. The requirements for SOC's are indicated in the "General Simulator Requirements" column in Table A1A of this appendix.

b. Table A1A describes the requirements for the indicated level of FFS. Many devices include operational systems or functions that exceed the requirements outlined in this section. However, all systems will be tested and evaluated in accordance with this appendix to ensure proper operation.

End QPS Requirements

Begin Information

2. Discussion

a. This attachment describes the general simulator requirements for qualifying an airplane FFS. The sponsor should also consult the objective tests in Attachment 2 of this appendix and the examination of functions and subjective tests listed in Attachment 3 of this appendix to determine the complete requirements for a specific level simulator.

b. The material contained in this attachment is divided into the following categories:

- (1) General flight deck configuration.
- (2) Simulator programming.
- (3) Equipment operation.
- (4) Equipment and facilities for instructor/evaluator functions.
- (5) Motion system.
- (6) Visual system.
- (7) Sound system.

c. Table A1A provides the standards for the General Simulator Requirements.

d. Table A1B provides the tasks that the sponsor will examine to determine whether the FFS satisfactorily meets the requirements for flight crew training, testing, and experience, and provides the tasks for which the simulator may be qualified.

e. Table A1C provides the functions that an instructor/check airman must be able to control in the simulator.

f. It is not required that all of the tasks that appear on the List of Qualified Tasks (part of the SOQ) be accomplished during the initial or continuing qualification evaluation.

End Information

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
1. General Flight deck Configuration.						
1.a.	The simulator must have a flight deck that is a replica of the airplane simulated with controls, equipment, observable flight deck indicators, circuit breakers, and bulkheads properly located, functionally accurate and replicating the airplane. The direction of movement of controls and switches must be identical to the airplane. Pilot seats must allow the occupant to achieve the design "eye position" established for the airplane being simulated. Equipment for the operation of the flight deck windows must be included, but the actual windows need not be operable. Additional equipment such as fire axes, extinguishers, and spare light bulbs must be available in the FFS but may be relocated to a suitable location as near as practical to the original position. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette.	X	X	X	X	For simulator purposes, the flight deck consists of all that space forward of a cross section of the flight deck at the most extreme aft setting of the pilots' seats, including additional required crewmember duty stations and those required bulkheads aft of the pilot seats. For clarification, bulkheads containing only items such as landing gear pin storage compartments, fire axes and extinguishers, spare light bulbs, and aircraft document pouches are not considered essential and may be omitted.

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
1.b.	Those circuit breakers that affect procedures or result in observable flight deck indications must be properly located and functionally accurate.	X	X	X	X	
2. Programming.						
2.a.	A flight dynamics model that accounts for various combinations of drag and thrust normally encountered in flight must correspond to actual flight conditions, including the effect of change in airplane attitude, thrust, drag, altitude, temperature, gross weight, moments of inertia, center of gravity location, and configuration. An SOC is required	X	X	X	X	
2.b.	The simulator must have the computer capacity, accuracy, resolution, and dynamic response needed to meet the qualification level sought. An SOC is required.	X	X	X	X	
2.c.	Surface operations must be represented to the extent that allows turns within the confines of the runway and adequate controls on the landing and roll-out from a crosswind approach to a landing.	X				
2.d.	Ground handling and aerodynamic programming must include the following:					
2.d.1. ...	Ground effect		X	X	X	Ground effect includes modeling that accounts for roundout, flare, touchdown, lift, drag, pitching moment, trim, and power while in ground effect.
2.d.2. ...	Ground reaction		X	X	X	Ground reaction includes modeling that accounts for strut deflections, tire friction, and side forces. This is the reaction of the airplane upon contact with the runway during landing, and may differ with changes in factors such as gross weight, airspeed, or rate of descent on touchdown.
2.d.3. ...	Ground handling characteristics, including aerodynamic and ground reaction modeling including steering inputs, operations with crosswind, braking, thrust reversing, deceleration, and turning radius.		X	X	X	
2.e.	If the aircraft being simulated is one of the aircraft listed in § 121.358, Low-altitude windshear system equipment requirements, the simulator must employ windshear models that provide training for recognition of windshear phenomena and the execution of recovery procedures. Models must be available to the instructor/evaluator for the following critical phases of flight: (1) Prior to takeoff rotation. (2) At liftoff. (3) During initial climb. (4) On final approach, below 500 ft AGL.			X	X	If desired, Level A and B simulators may qualify for windshear training by meeting these standards; see Attachment 5 of this appendix. Windshear models may consist of independent variable winds in multiple simultaneous components. The FAA Windshear Training Aid presents one acceptable means of compliance with simulator wind model requirements.

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
	The QTG must reference the FAA Windshear Training Aid or present alternate airplane related data, including the implementation method(s) used. If the alternate method is selected, wind models from the Royal Aerospace Establishment (RAE), the Joint Airport Weather Studies (JAWS) Project and other recognized sources may be implemented, but must be supported and properly referenced in the QTG. Only those simulators meeting these requirements may be used to satisfy the training requirements of part 121 pertaining to a certificate holder's approved low-altitude windshear flight training program as described in § 121.409.					
2.f.	The simulator must provide for manual and automatic testing of simulator hardware and software programming to determine compliance with simulator objective tests as prescribed in Attachment 2 of this appendix. An SOC is required.			X	X	Automatic "flagging" of out-of-tolerance situations is encouraged.
2.g.	Relative responses of the motion system, visual system, and flight deck instruments, measured by latency tests or transport delay tests. Motion onset should occur before the start of the visual scene change (the start of the scan of the first video field containing different information) but must occur before the end of the scan of that video field. Instrument response may not occur prior to motion onset. Test results must be within the following limits:					The intent is to verify that the simulator provides instrument, motion, and visual cues that are, within the stated time delays, like the airplane responses. For airplane response, acceleration in the appropriate, corresponding rotational axis is preferred.
2.g.1. ...	300 milliseconds of the airplane response	X	X			
2.g.2. ...	150 milliseconds of the airplane response			X	X	
2.h.	The simulator must accurately reproduce the following runway conditions: (1) Dry. (2) Wet. (3) Icy. (4) Patchy Wet. (5) Patchy Icy. (6) Wet on Rubber Residue in Touchdown Zone. An SOC is required.			X	X	
2.i.	The simulator must simulate: (1) brake and tire failure dynamics, including antiskid failure. (2) decreased brake efficiency due to high brake temperatures, if applicable. An SOC is required.			X	X	Simulator pitch, side loading, and directional control characteristics should be representative of the airplane.
2.j.	The simulator must replicate the effects of airframe and engine icing.			X	X	
2.k.	The aerodynamic modeling in the simulator must include: (1) Low-altitude level-flight ground effect; (2) Mach effect at high altitude; (3) Normal and reverse dynamic thrust effect on control surfaces; (4) Aeroelastic representations; and (5) Nonlinearities due to sideslip.				X	See Attachment 2 of this appendix, paragraph 5, for further information on ground effect.

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
	An SOC is required and must include references to computations of aeroelastic representations and of nonlinearities due to side-slip.					
2.I.	The simulator must have aerodynamic and ground reaction modeling for the effects of reverse thrust on directional control, if applicable. An SOC is required.		X	X	X	
3. Equipment Operation.						
3.a.	All relevant instrument indications involved in the simulation of the airplane must automatically respond to control movement or external disturbances to the simulated airplane; e.g., turbulence or windshear. Numerical values must be presented in the appropriate units.	X	X	X	X	
3.b.	Communications, navigation, caution, and warning equipment must be installed and operate within the tolerances applicable for the airplane.	X	X	X	X	See Attachment 3 of this appendix for further information regarding long-range navigation equipment.
3.c.	Simulated airplane systems must operate as the airplane systems operate under normal, abnormal, and emergency operating conditions on the ground and in flight.	X	X	X	X	
3.d.	The simulator must provide pilot controls with control forces and control travel that correspond to the simulated airplane. The simulator must also react in the same manner as in the airplane under the same flight conditions.	X	X	X	X	
3.e.	Simulator control feel dynamics must replicate the airplane. This must be determined by comparing a recording of the control feel dynamics of the simulator to airplane measurements. For initial and upgrade qualification evaluations, the control dynamic characteristics must be measured and recorded directly from the flight deck controls, and must be accomplished in takeoff, cruise, and landing flight conditions and configurations.			X	X	
4. Instructor or Evaluator Facilities.						
4.a.	In addition to the flight crewmember stations, the simulator must have at least two suitable seats for the instructor/check airman and FAA inspector. These seats must provide adequate vision to the pilot's panel and forward windows. All seats other than flight crew seats need not represent those found in the airplane, but must be adequately secured to the floor and equipped with similar positive restraint devices.	X	X	X	X	The NSPM will consider alternatives to this standard for additional seats based on unique flight deck configurations.
4.b.	The simulator must have controls that enable the instructor/evaluator to control all required system variables and insert all abnormal or emergency conditions into the simulated airplane systems as described in the sponsor's FAA-approved training program; or as described in the relevant operating manual as appropriate.	X	X	X	X	

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
4.c.	The simulator must have instructor controls for all environmental effects expected to be available at the IOS; e.g., clouds, visibility, icing, precipitation, temperature, storm cells, and wind speed and direction.	X	X	X	X	
4.d.	The simulator must provide the instructor or evaluator the ability to present ground and air hazards.			X	X	For example, another airplane crossing the active runway or converging airborne traffic.
5. Motion System.						
5.a.	The simulator must have motion (force) cues perceptible to the pilot that are representative of the motion in an airplane.	X	X	X	X	For example, touchdown cues should be a function of the rate of descent (RoD) of the simulated airplane.
5.b.	The simulator must have a motion (force cueing) system with a minimum of three degrees of freedom (at least pitch, roll, and heave). An SOC is required.	X	X			
5.c.	The simulator must have a motion (force cueing) system that produces cues at least equivalent to those of a six-degrees-of-freedom, synergistic platform motion system (i.e., pitch, roll, yaw, heave, sway, and surge). An SOC is required.			X	X	
5.d.	The simulator must provide for the recording of the motion system response time. An SOC is required.	X	X	X	X	
5.e.	The simulator must provide motion effects programming to include:		X	X	X	
	(1) Thrust effect with brakes set. (2) Runway rumble, oleo deflections, effects of ground speed, uneven runway, centerline lights, and taxiway characteristics. (3) Buffets on the ground due to spoiler/speedbrake extension and thrust reversal. (4) Bumps associated with the landing gear. (5) O="x'l") Buffet during extension and retraction of landing gear.. (6) Buffet in the air due to flap and spoiler/speedbrake extension. (7) Approach-to-Stall buffet. (8) Representative touchdown cues for main and nose gear. (9) Nosewheel scuffing, if applicable. (10) Mach and maneuver buffet.					
5.f.	The simulator must provide characteristic motion vibrations that result from operation of the airplane if the vibration marks an event or airplane state that can be sensed in the flight deck.				X	The simulator should be programmed and instrumented in such a manner that the characteristic buffet modes can be measured and compared to airplane data.
6. Visual System.						
6.a.	The simulator must have a visual system providing an out-of-the-flight deck view.	X	X	X	X	

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
6.b.	The simulator must provide a continuous collimated field-of-view of at least 45° horizontally and 30° vertically per pilot seat or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. Both pilot seat visual systems must be operable simultaneously. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC is required and must explain the system geometry measurements including system linearity and field-of-view.	X	X			Additional field-of-view capability may be added at the sponsor's discretion provided the minimum fields of view are retained.
6.c.	(Reserved).					
6.d.	The simulator must provide a continuous collimated visual field-of-view of at least 176° horizontally and 36° vertically or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC is required and must explain the system geometry measurements including system linearity and field-of-view.			X	X	The horizontal field-of-view is traditionally described as a 180° field-of-view. However, the field-of-view is technically no less than 176°. Additional field-of-view capability may be added at the sponsor's discretion provided the minimum fields-of-view are retained.
6.e.	The visual system must be free from optical discontinuities and artifacts that create non-realistic cues.	X	X	X	X	Non-realistic cues might include image "swimming" and image "roll-off," that may lead a pilot to make incorrect assessments of speed, acceleration, or situational awareness.
6.f.	The simulator must have operational landing lights for night scenes. Where used, dusk (or twilight) scenes require operational landing lights.	X	X	X	X	
6.g.	The simulator must have instructor controls for the following: (1) Visibility in statute miles (km) and runway visual range (RVR) in ft. (m). (2) Airport selection. (3) Airport lighting.	X	X	X	X	
6.h.	The simulator must provide visual system compatibility with dynamic response programming.	X	X	X	X	
6.i.	The simulator must show that the segment of the ground visible from the simulator flight deck is the same as from the airplane flight deck (within established tolerances) when at the correct airspeed, in the landing configuration, at the appropriate height above the touchdown zone, and with appropriate visibility.	X	X	X	X	This will show the modeling accuracy of RVR, glideslope, and localizer for a given weight, configuration, and speed within the airplane's operational envelope for a normal approach and landing.
6.j.	The simulator must provide visual cues necessary to assess sink rates (provide depth perception) during takeoffs and landings, to include: (1) Surface on runways, taxiways, and ramps. (2) Terrain features.		X	X	X	

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
6.k.	The simulator must provide for accurate portrayal of the visual environment relating to the simulator attitude.	X	X	X	X	Visual attitude vs. simulator attitude is a comparison of pitch and roll of the horizon as displayed in the visual scene compared to the display on the attitude indicator.
6.l.	The simulator must provide for quick confirmation of visual system color, RVR, focus, and intensity. An SOC is required.			X	X	
6.m.	The simulator must be capable of producing at least 10 levels of occulting.			X	X	
6.n.	Night Visual Scenes. When used in training, testing, or checking activities, the simulator must provide night visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by airplane landing lights.	X	X	X	X	
6.o.	Dusk (or Twilight) Visual Scenes. When used in training, testing, or checking activities, the simulator must provide dusk (or twilight) visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Dusk (or twilight) scenes, as a minimum, must provide full color presentations of reduced ambient intensity, sufficient surfaces with appropriate textural cues that include self-illuminated objects such as road networks, ramp lighting and airport signage, to conduct a visual approach, landing and airport movement (taxi). Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by airplane landing lights. If provided, directional horizon lighting must have correct orientation and be consistent with surface shading effects. Total night or dusk (twilight) scene content must be comparable in detail to that produced by 10,000 visible textured surfaces and 15,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. An SOC is required.			X	X	

TABLE A1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

QPS requirements		Simulator levels				Information
Entry No.	General simulator requirements	A	B	C	D	Notes
6.p.	Daylight Visual Scenes. The simulator must provide daylight visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Any ambient lighting must not “washout” the displayed visual scene. Total daylight scene content must be comparable in detail to that produced by 10,000 visible textured surfaces and 6,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. The visual display must be free of apparent and distracting quantization and other distracting visual effects while the simulator is in motion. An SOC is required.			X	X	
6.q.	The simulator must provide operational visual scenes that portray physical relationships known to cause landing illusions to pilots.			X	X	For example: short runways, landing approaches over water, uphill or downhill runways, rising terrain on the approach path, unique topographic features.
6.r.	The simulator must provide special weather representations of light, medium, and heavy precipitation near a thunderstorm on takeoff and during approach and landing. Representations need only be presented at and below an altitude of 2,000 ft. (610 m) above the airport surface and within 10 miles (16 km) of the airport.			X	X	
6.s.	The simulator must present visual scenes of wet and snow-covered runways, including runway lighting reflections for wet conditions, partially obscured lights for snow conditions, or suitable alternative effects.			X	X	
6.t.	The simulator must present realistic color and directionality of all airport lighting.			X	X	
7. Sound System.						
7.a.	The simulator must provide flight deck sounds that result from pilot actions that correspond to those that occur in the airplane.	X	X	X	X	
7.b.	The volume control must have an indication of sound level setting which meets all qualification requirements..	X	X	X	X	
7.c.	The simulator must accurately simulate the sound of precipitation, windshield wipers, and other significant airplane noises perceptible to the pilot during normal and abnormal operations, and include the sound of a crash (when the simulator is landed in an unusual attitude or in excess of the structural gear limitations); normal engine and thrust reversal sounds; and the sounds of flap, gear, and spoiler extension and retraction. An SOC is required.			X	X	
7.d.	The simulator must provide realistic amplitude and frequency of flight deck noises and sounds. Simulator performance must be recorded, compared to amplitude and frequency of the same sounds recorded in the airplane, and be made a part of the QTG.				X	

TABLE A1B.—TABLE OF TASKS VS. SIMULATOR LEVEL

QPS requirements						Information
Entry No.	Subjective requirements In order to be qualified at the simulator qualification level indicated, the simulator must be able to perform at least the tasks associated with that level of qualification.	Simulator levels				Notes
		A	B	C	D	
1. Preflight Procedures						
1.a.	Preflight Inspection (flight deck only)	X	X	X	X	
1.b.	Engine Start	X	X	X	X	
1.c.	Taxiing		R	X	X	
1.d.	Pre-takeoff Checks	X	X	X	X	
2. Takeoff and Departure Phase						
2.a.	Normal and Crosswind Takeoff		R	X	X	
2.b.	Instrument Takeoff	X	X	X	X	
2.c.	Engine Failure During Takeoff	A	X	X	X	
2.d.	Rejected Takeoff	X	X	X	X	
2.e.	Departure Procedure	X	X	X	X	
3. Inflight Maneuvers						
3.a.	Steep Turns	X	X	X	X	
3.b.	Approaches to Stalls	X	X	X	X	
3.c.	Engine Failure—Multiengine Airplane	X	X	X	X	
3.d.	Engine Failure—Single-Engine Airplane	X	X	X	X	
3.e.	Specific Flight Characteristics incorporated into the user's FAA approved flight training program.	A	A	A	A	
3.f.	Recovery From Unusual Attitudes	X	X	X	X	Within the normal flight envelope supported by applicable simulation validation data.
4. Instrument Procedures						
4.a.	Standard Terminal Arrival/Flight Management System Arrivals Procedures	X	X	X	X	
4.b.	Holding	X	X	X	X	
4.c.	Precision Instrument.					
4.c.1.	All Engines Operating	X	X	X	X	e.g., Autopilot, Manual (Flt. Dir. As- sisted), Manual (Raw Data).
4.c.2.	One Engine Inoperative	X	X	X	X	e.g., Manual (Flt. Dir. Assisted), Manual (Raw Data).
4.d.	Non-Precision Instrument Approach	X	X	X	X	e.g., NDB, VOR, VOR/DME, VOR/ TAC, RNAV, LOC, LOC/BC, ADF, and SDF.
4.e.	Circling Approach	X	X	X	X	Specific authorization required.
4.f.	Missed Approach.					
4.f.1.	Normal	X	X	X	X	
4.f.2.	One Engine Inoperative	X	X	X	X	
5. Landings and Approaches to Landings						
5.a.	Normal and Crosswind Approaches and Landings		R	X	X	

TABLE A1B.—TABLE OF TASKS VS. SIMULATOR LEVEL—Continued

QPS requirements						Information
Entry No.	Subjective requirements In order to be qualified at the simulator qualification level indicated, the simulator must be able to perform at least the tasks associated with that level of qualification.	Simulator levels				Notes
		A	B	C	D	
5.b.	Landing From a Precision/Non-Precision Approach		R	X	X	
5.c.	Approach and Landing with (Simulated) Engine Failure—Multiengine Airplane.	....	R	X	X	
5.d.	Landing From Circling Approach		R	X	X	
5.e.	Rejected Landing	X	X	X	X	
5.f.	Landing From a No Flap or a Nonstandard Flap Configuration Approach ...		R	X	X	

6. Normal and Abnormal Procedures

6.a.	Engine (including shutdown and restart)	X	X	X	X	
6.b.	Fuel System	X	X	X	X	
6.c.	Electrical System	X	X	X	X	
6.d.	Hydraulic System	X	X	X	X	
6.e.	Environmental and Pressurization Systems	X	X	X	X	
6.f.	Fire Detection and Extinguisher Systems	X	X	X	X	
6.g.	Navigation and Avionics Systems	X	X	X	X	
6.h.	Automatic Flight Control System, Electronic Flight Instrument System, and Related Subsystems.	X	X	X	X	
6.i.	Flight Control Systems	X	X	X	X	
6.j.	Anti-ice and Deice Systems	X	X	X	X	
6.k.	Aircraft and Personal Emergency Equipment	X	X	X	X	

7. Emergency Procedures

7.a.	Emergency Descent (Max. Rate)	X	X	X	X	
7.b.	Inflight Fire and Smoke Removal	X	X	X	X	
7.c.	Rapid Decompression	X	X	X	X	
7.d.	Emergency Evacuation	X	X	X	X	

8. Postflight Procedures

8.a.	After-Landing Procedures	X	X	X	X	
8.b.	Parking and Securing	X	X	X	X	

“A”—indicates that the system, task, or procedure may be examined if the appropriate aircraft system or control is simulated in the FSTD and is working properly.

“R”—indicates that the simulator may be qualified for this task for continuing qualification training.

“X”—indicates that the simulator must be able to perform this task for this level of qualification.

TABLE A1C.—TABLE OF SIMULATOR SYSTEM TASKS

QPS requirements					Information	
Entry No.	Subjective requirements In order to be qualified at the simulator qualification level indicated, the simulator must be able to perform at least the tasks associated with that level of qualification.	Simulator levels				Notes
		A	B	C	D	

1. Instructor Operating Station (IOS), as appropriate

1.a.	Power switch(es)	X	X	X	X	

TABLE A1C.—TABLE OF SIMULATOR SYSTEM TASKS—Continued

QPS requirements					Information	
Entry No.	Subjective requirements In order to be qualified at the simulator qualification level indicated, the simulator must be able to perform at least the tasks associated with that level of qualification.	Simulator levels				Notes
		A	B	C	D	
1.b.	Airplane conditions	X	X	X	X	e.g., GW, CG, Fuel loading and Systems.
1.c.	Airports/Runways	X	X	X	X	e.g., Selection, Surface, Presets, Lighting controls.
1.d.	Environmental controls	X	X	X	X	e.g., Clouds, Visibility, RVR, Temp, Wind, Ice, Snow, Rain, and Windshear.
1.e.	Airplane system malfunctions (Insertion/deletion)	X	X	X	X	
1.f.	Locks, Freezes, and Repositioning	X	X	X	X	
2. Sound Controls						
2.a.	On/off/adjustment	X	X	X	X	
3. Motion/Control Loading System						
3.a.	On/off/emergency stop	X	X	X	X	
4. Observer Seats/Stations						
4.a.	Position/Adjustment/Positive restraint system	X	X	X	X	

Attachment 2 to Appendix A to Part 60—FFS Objective Tests

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Begin Information

1. Introduction

a. For the purposes of this attachment, the flight conditions specified in the Flight Conditions Column of Table A2A of this appendix, are defined as follows:

- (1) Ground—on ground, independent of airplane configuration;
- (2) Take-off—gear down with flaps/slats in any certified takeoff position;
- (3) First segment climb—gear down with flaps/slats in any certified takeoff position (normally not above 50 ft AGL);
- (4) Second segment climb—gear up with flaps/slats in any certified takeoff position (normally between 50 ft and 400 ft AGL);
- (5) Clean—flaps/slats retracted and gear up;

(6) Cruise—clean configuration at cruise altitude and airspeed;

(7) Approach—gear up or down with flaps/slats at any normal approach position as recommended by the airplane manufacturer; and

(8) Landing—gear down with flaps/slats in any certified landing position.

b. The format for numbering the objective tests in Appendix A, Attachment 2, Table A2A, and the objective tests in Appendix B, Attachment 2, Table B2A, is identical. However, each test required for FFSs is not necessarily required for FTDs. Also, each test required for FTDs is not necessarily required for FFSs. Therefore, when a test number (or series of numbers) is not required, the term “Reserved” is used in the table at that location. Following this numbering format provides a degree of commonality between the two tables and substantially reduces the potential for confusion when referring to objective test numbers for either FFSs or FTDs.

c. The reader is encouraged to review the Airplane Flight Simulator Evaluation Handbook, Volumes I and II, published by the Royal Aeronautical Society, London, UK, and AC 25–7, as amended, Flight Test Guide for Certification of Transport Category Airplanes, and AC 23–8, as amended, Flight Test Guide for Certification of Part 23 Airplanes, for references and examples regarding flight testing requirements and techniques.

d. If relevant winds are present in the objective data, the wind vector should be clearly noted as part of the data presentation, expressed in conventional terminology, and related to the runway being used for the test.

End Information

Begin QPS Requirements

2. Test Requirements

a. The ground and flight tests required for qualification are listed in Table A2A, FFS Objective Tests. Computer generated simulator test results must be provided for each test except where an alternative test is specifically authorized by the NSPM. If a flight condition or operating condition is required for the test but does not apply to the airplane being simulated or to the qualification level sought, it may be disregarded (e.g., an engine out missed approach for a single-engine airplane or a maneuver using reverse thrust for an airplane without reverse thrust capability). Each test result is compared against the validation data described in § 60.13 and in this appendix. Although use of a driver program designed to automatically accomplish the tests is encouraged for all simulators and required for Level C and Level D simulators, it must be possible to conduct each test manually while recording all appropriate parameters. The results must be produced on an appropriate recording device acceptable to the NSPM and must include simulator number, date, time, conditions, tolerances, and appropriate dependent variables portrayed in comparison to the validation data. Time histories are required unless otherwise indicated in Table A2A. All results must be labeled using the tolerances and units given.

b. Table A2A in this attachment sets out the test results required, including the parameters, tolerances, and flight conditions for simulator validation. Tolerances are provided for the listed tests because mathematical modeling and acquisition and development of reference data are often inexact. All tolerances listed in the following tables are applied to simulator performance. When two tolerance values are given for a parameter, the less restrictive may be used unless otherwise indicated. In those cases where a tolerance is expressed only as a percentage, the tolerance percentage applies to the maximum value of that parameter within its normal operating range as measured from the neutral or zero position unless otherwise indicated.

c. Certain tests included in this attachment must be supported with an SOC. In Table A2A, requirements for SOC's are indicated in the "Test Details" column.

d. When operational or engineering judgment is used in making assessments for flight test data applications for simulator validity, such judgment must not be limited to a single parameter. For example, data that exhibit rapid variations of the measured parameters may require interpolations or a "best fit" data selection. All relevant parameters related to a given maneuver or flight condition must be provided to allow overall interpretation. When it is difficult or impossible to match simulator to airplane data throughout a time history, differences must be justified by providing a comparison

of other related variables for the condition being assessed.

e. It is not acceptable to program the FFS so that the mathematical modeling is correct only at the validation test points. Unless otherwise noted, simulator tests must represent airplane performance and handling qualities at operating weights and centers of gravity (CG) typical of normal operation. If a test is supported by airplane data at one extreme weight or CG, another test supported by airplane data at mid-conditions or as close as possible to the other extreme must be included. Certain tests that are relevant only at one extreme CG or weight condition need not be repeated at the other extreme. Tests of handling qualities must include validation of augmentation devices.

f. When comparing the parameters listed to those of the airplane, sufficient data must also be provided to verify the correct flight condition and airplane configuration changes. For example, to show that control force is within the parameters for a static stability test, data to show the correct airspeed, power, thrust or torque, airplane configuration, altitude, and other appropriate datum identification parameters must also be given. If comparing short period dynamics, normal acceleration may be used to establish a match to the airplane, but airspeed, altitude, control input, airplane configuration, and other appropriate data must also be given. If comparing landing gear change dynamics, pitch, airspeed, and altitude may be used to establish a match to the airplane, but landing gear position must also be provided. All airspeed values must be properly annotated (e.g., indicated versus calibrated). In addition, the same variables must be used for comparison (e.g., compare inches to inches rather than inches to centimeters).

g. The QTG provided by the sponsor must clearly describe how the simulator will be set up and operated for each test. Each simulator subsystem may be tested independently, but overall integrated testing of the simulator must be accomplished to assure that the total simulator system meets the prescribed standards. A manual test procedure with explicit and detailed steps for completing each test must also be provided.

h. For previously qualified simulators, the tests and tolerances of this attachment may be used in subsequent continuing qualification evaluations for any given test if the sponsor has submitted a proposed MQTG revision to the NSPM and has received NSPM approval.

i. Simulators are evaluated and qualified with an engine model simulating the airplane data supplier's flight test engine. For qualification of alternative engine models (either variations of the flight test engines or other manufacturer's engines) additional tests with the alternative engine models may be required. This attachment contains guidelines for alternative engines.

j. For testing Computer Controlled Aircraft (CCA) simulators, or other highly augmented airplane simulators, flight test data is required for the Normal (N) and/or Non-normal (NN) control states, as indicated in

this attachment. Where test results are independent of control state, Normal or Non-normal control data may be used. All tests in Table A2A require test results in the Normal control state unless specifically noted otherwise in the Test Details section following the CCA designation. The NSPM will determine what tests are appropriate for airplane simulation data. When making this determination, the NSPM may require other levels of control state degradation for specific airplane tests. Where Non-normal control states are required, test data must be provided for one or more Non-normal control states, and must include the least augmented state. Where applicable, flight test data must record Normal and Non-normal states for:

(1) Pilot controller deflections or electronically generated inputs, including location of input; and

(2) Flight control surface positions unless test results are not affected by, or are independent of, surface positions.

k. Tests of handling qualities must include validation of augmentation devices. FFSs for highly augmented airplanes will be validated both in the unaugmented configuration (or failure state with the maximum permitted degradation in handling qualities) and the augmented configuration. Where various levels of handling qualities result from failure states, validation of the effect of the failure is necessary. Requirements for testing will be mutually agreed to between the sponsor and the NSPM on a case-by-case basis.

l. Some tests will not be required for airplanes using airplane hardware in the simulator flight deck (e.g., "side stick controller"). These exceptions are noted in Section 2 "Handling Qualities" in Table A2A of this attachment. However, in these cases, the sponsor must provide a statement that the airplane hardware meets the appropriate manufacturer's specifications and the sponsor must have supporting information to that fact available for NSPM review.

m. For objective test purposes, see Appendix F of this part for the definitions of "Near maximum," "Light," and "Medium" gross weight.

End QPS Requirements

Begin Information

n. In those cases where the objective test results authorize a "snapshot test" or a "series of snapshot tests" results in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the "snapshot." The steady state condition should exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

o. For references on basic operating weight, see AC 120-27, "Aircraft Weight and Balance;" and FAA-H-8083-1, "Aircraft Weight and Balance Handbook."

End Information

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS

QPS Requirements									Information
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
1. Performance.									
1.a.	Taxi.								
1.a.1.	Minimum Radius Turn	±3 ft (0.9m) or 20% of airplane turn radius.	Ground	Record both Main and Nose gear turning radius. This test is to be accomplished without the use of brakes and only minimum thrust, except for airplanes requiring asymmetric thrust or braking to turn.		X	X	X	
1.a.2	Rate of Turn vs. Nosewheel Steering Angle (NWA).	±10% or ±2°/sec. turn rate.	Ground	Record a minimum of two speeds, greater than minimum turning radius speed, with a spread of at least 5 knots ground-speed, in normal taxi speed conditions.		X	X	X	
1.b.	Takeoff.			All commonly used takeoff flap settings are to be demonstrated at least once in the tests for minimum unstick (1.b.3.), normal takeoff (1.b.4.), critical engine failure on takeoff (1.b.5.), or crosswind takeoff (1.b.6.).					
1.b.1.	Ground Acceleration Time and Distance.	±5% time and distance or ±5% time and ±200 ft (61 m) of distance.	Takeoff	Record acceleration time and distance for a minimum of 80% of the time from brake release to V _R . Preliminary aircraft certification data may be used.	X	X	X	X	May be combined with normal takeoff (1.b.4.) or rejected takeoff (1.b.7.). Plotted data should be shown using appropriate scales for each portion of the maneuver.
1.b.2.	Minimum Control Speed – ground (V _{mcg}) using aerodynamic controls only (per applicable airworthiness standard) or alternative low speed engine inoperative test to demonstrate ground control characteristics.	±25% of maximum airplane lateral deviation or ±5 ft (1.5 m). Additionally, for those simulators of airplanes with reversible flight control systems: Rudder pedal force; ±10% or ±5 lb (2.2 daN).	Takeoff	Engine failure speed must be within ±1 knot of airplane engine failure speed. Engine thrust decay must be that resulting from the mathematical model for the engine variant applicable to the FFS under test. If the modeled engine is not the same as the airplane manufacturer's flight test engine, a further test may be run with the same initial conditions using the thrust from the flight test data as the driving parameter.	X	X	X	X	If a V _{mcg} test is not available an acceptable alternative is a flight test snap engine deceleration to idle at a speed between V ₁ and V ₁ – 10 knots, followed by control of heading using aerodynamic control only. Recovery should be achieved with the main gear on the ground. To ensure only aerodynamic control is used, nosewheel steering should be disabled (i.e., castored) or the nosewheel held slightly off the ground.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
1.b.3.	Minimum Unstick Speed (V_{mu}) or equivalent test to demonstrate early rotation takeoff characteristics.	± 3 kts airspeed $\pm 1.5^\circ$ pitch angle.	Takeoff	Record main landing gear strut compression or equivalent air/ground signal. Record from 10 kt before start of rotation until at least 5 seconds after the occurrence of main gear lift-off.	X	X	X	X	V_{mu} is defined as the minimum speed at which the last main landing gear leaves the ground. Main landing gear strut compression or equivalent air/ground signal should be recorded. If a V_{mu} test is not available, alternative acceptable flight tests are a constant high-altitude take-off run through main gear lift-off or an early rotation take-off.
1.b.4.	Normal Takeoff	± 3 kts airspeed $\pm 1.5^\circ$ pitch angle $\pm 1.5^\circ$ angle of attack ± 20 ft (6 m) height. Additionally, for those simulators of airplanes with reversible flight control systems: Stick/Column Force; $\pm 10\%$ or ± 5 lb (2.2 daN).	Takeoff	Record takeoff profile from brake release to at least 200 ft (61 m) above ground level (AGL). If the airplane has more than one certificated takeoff configurations, a different configuration must be used for each weight. Data are required for a takeoff weight at near maximum takeoff weight with a mid-center of gravity and for a light takeoff weight with an aft center of gravity, as defined in Appendix F of this part.	X	X	X	X	This test may be used for ground acceleration time and distance (1.b.1.). Plotted data should be shown using appropriate scales for each portion of the maneuver.
1.b.5.	Critical Engine Failure on Takeoff.	± 3 kts airspeed $\pm 1.5^\circ$ pitch angle, $\pm 1.5^\circ$ angle of attack, ± 20 ft (6 m) height, $\pm 3^\circ$ heading angle, $\pm 2^\circ$ bank angle, $\pm 2^\circ$ sideslip angle. Additionally, for those simulators of airplanes with reversible flight control systems: Stick/Column Force; $\pm 10\%$ or ± 5 lb (2.2 daN)); Wheel Force; $\pm 10\%$ or ± 3 lb (1.3 daN); and Rudder Pedal Force; $\pm 10\%$ or ± 5 lb (2.2 daN).	Takeoff	Record takeoff profile at near maximum takeoff weight from prior to engine failure to at least 200 ft (61 m) AGL. Engine failure speed must be within ± 3 kts of airplane data.	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
1.b.6.	Crosswind Takeoff	±3 kts airspeed, ±1.5° pitch angle, ±1.5° angle of attack, ±20 ft (6 m) height, ±2° bank angle, ±2° sideslip angle; ±3° heading angle. Correct trend at groundspeeds below 40 kts. for rudder/ pedal and heading. Additionally, for those simulators of airplanes with reversible flight control systems: ±10% or ±5 lb (2.2 daN) stick/ column force, ±10% or ±3 lb (1.3 daN) wheel force, ±10% or ±5 lb (2.2 daN) rudder pedal force.	Takeoff	Record takeoff profile from brake release to at least 200 ft (61 m) AGL. Requires test data, including information on wind profile for a crosswind (expressed as direct head-wind and direct cross-wind components) of at least 60% of the maximum wind measured at 33 ft (10 m) above the runway.	X	X	X	X	In those situations where a maximum crosswind or a maximum demonstrated crosswind is not known, contact the NSPM.
1.b.7.	Rejected Takeoff	±5% time or ±1.5 sec ±7.5% distance or ±250 ft (±76 m).	Takeoff	Record time and distance from brake release to full stop. Speed for initiation of the reject must be at least 80% of V ₁ speed. The airplane must be at or near the maximum takeoff gross weight. Use maximum braking effort, auto or manual.	X	X	X	X	Autobreaks will be used where applicable.
1.b.8.	Dynamic Engine Failure After Takeoff.	±20% or ±2°/sec body angular rates.	Takeoff	Engine failure speed must be within ±3 Kts of airplane data. Record Hands Off from 5 secs. before to at least 5 secs. after engine failure or 30° Bank, whichever occurs first. Engine failure may be a snap deceleration to idle. CCA: Test in Normal and Non-normal control state.			X	X	For safety considerations, airplane flight test may be performed out of ground effect at a safe altitude, but with correct airplane configuration and airspeed.
1.c.	Climb.								
1.c.1.	Normal Climb, all engines operating.	±3 kts airspeed, ±5% or ±100 FPM (0.5 m/ Sec.) climb rate.	Clean	Flight test data is preferred, however, airplane performance manual data is an acceptable alternative. Record at nominal climb speed and mid-initial climb altitude. Flight simulator performance must be recorded over an interval of at least 1,000 ft. (300 m).	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
1.c.2.	One engine Inoperative	±3 kts airspeed, ±5% or ±100 FPM (0.5 m/ Sec.) climb rate, but not less than the climb gradient requirements of 14 CFR part 23 or part 25, as appropriate.	For part 23 airplanes, in accordance with part 23. For part 25 airplanes, Second Segment Climb.	Flight test data is preferred, however, airplane performance manual data is an acceptable alternative. Test at weight, altitude, or temperature limiting conditions. Record at nominal climb speed. Flight simulator performance must be recorded over an interval of at least 1,000 ft. (300 m).	X	X	X	X	
1.c.3.	One Engine Inoperative En route Climb.	±10% time, ±10% distance, ±10% fuel used.	Clean	Record results for at least a 5000 ft (1550 m) climb segment. Flight test data or airplane performance manual data may be used.			X	X	
1.c.4.	One Engine Inoperative Approach Climb (if operations in icing conditions are authorized).	±3 kts airspeed, ±5% or ±100 FPM (0.5 m/ Sec.) climb rate, but not less than the climb gradient requirements of 14 CFR parts 23 or 25 climb gradient, as appropriate.	Approach	Record results at near maximum gross landing weight as defined in Appendix F of this part. Flight test data or airplane performance manual data may be used. Flight simulator performance must be recorded over an interval of at least 1,000 ft. (300 m).	X	X	X	X	The airplane should be configured with all anti-ice and de-ice systems operating normally, with the gear up and go-around flaps set. All icing accountability considerations should be applied in accordance with the aircraft certification or authorization for an approach in icing conditions.
1.d.	Cruise/Descent.								
1.d.1.	Level flight acceleration.	±5% Time	Cruise	Record results for a minimum of 50 kts speed increase using maximum continuous thrust rating or equivalent.	X	X	X	X	
1.d.2.	Level flight deceleration.	±5% Time	Cruise	Record results for a minimum of 50 kts. speed decrease using idle power.	X	X	X	X	
1.d.3.	Cruise performance	±0.05 EPR or ±5% of N ₁ , or ±5% of Torque, ±5% of fuel flow.	Cruise	May be a single snapshot showing instantaneous fuel flow or a minimum of 2 consecutive snapshots with a spread of at least 3 minutes in steady flight.			X	X	
1.d.4.	Idle descent	±3 kt airspeed, ±5% or ±200 ft/min (1.0m/ sec) descent rate.	Clean	Record a stabilized, idle power descent at normal descent speed at mid-altitude. Flight simulator performance must be recorded over an interval of at least 1,000 ft. (300 m).	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements									Information
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
1.d.5.	Emergency descent	±5 kt airspeed, ±5% or ±300 ft/min (1.5m/s) descent rate.	N/A	Performance must be recorded over an interval of at least 3,000 ft (900 m).	X	X	X	X	The stabilized descent should be conducted with speed brakes extended, if applicable, at mid-altitude and near V_{mo} speed or in accordance with emergency descent procedures.
1.e.	Stopping.								
1.e.1.	Stopping time and distance, using manual application of wheel brakes and no reverse thrust on a dry runway.	±5% of time. For distance up to 4000 ft (1220 m): ±200 ft (61 m) or ±10%, whichever is smaller. For distance greater than 4000 ft (1220 m): ±5% of distance.	Landing	Record time and distance for at least 80% of the total time from touch down to full stop. Data is required for weights at medium and near maximum landing weights. Data for brake system pressure and position of ground spoilers (including method of deployment, if used) must be provided. Engineering data may be used for the medium gross weight condition.	X	X	X	X	
1.e.2.	Stopping time and distance, using reverse thrust and no wheel brakes on a dry runway.	±5% time and the smaller of ±10% or ±200 ft (61 m) of distance.	Landing	Record time and distance for at least 80% of the total time from initiation of reverse thrust to the minimum operating speed with full reverse thrust. Data is required for medium and near maximum landing gross weights. Data on the position of ground spoilers, (including method of deployment, if used) must be provided. Engineering data may be used for the medium gross weight condition.	X	X	X	X	
1.e.3.	Stopping distance, using wheel brakes and no reverse thrust on a wet runway.	±10% of distance or ±200 ft (61 m).	Landing	Either flight test data or manufacturer's performance manual data must be used where available. Engineering data based on dry runway flight test stopping distance modified by the effects of contaminated runway braking coefficients are an acceptable alternative.			X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
1.e.4.	Stopping distance, using wheel brakes and no reverse thrust on an icy runway.	±10% of distance or ±200 ft (61 m).	Landing	Either flight test or manufacturer's performance manual data must be used, where available. Engineering data based on dry runway flight test stopping distance modified by the effects of contaminated runway braking coefficients are an acceptable alternative.			X	X	
1.f.	Engines.								
1.f.1.	Acceleration	(±10% T _i) and (±10% T _i , or ±0.25 sec.).	Approach or landing ...	Record engine power (N ₁ , N ₂ , EPR, Torque) from flight idle to go-around power for a rapid (slam) throttle movement.	X	X	X	X	See Appendix F of this part for definitions of T _i and T _t .
1.f.2.	Deceleration	(±10% T _i) and (±10% T _i , or ±0.25 sec.).	Ground	Record engine power (N ₁ , N ₂ , EPR, Torque) from Max T/O power to 90% decay of Max T/O power for a rapid (slam) throttle movement.	X	X	X	X	See Appendix F of this part for definitions of T _i and T _t .
2. Handling Qualities.									
	For simulators requiring Static or Dynamic tests at the controls (i.e., column, wheel, rudder pedal), special test fixtures will not be required during initial or upgrade evaluations if the sponsor's QTG/MQTG shows both test fixture results <i>and</i> the results of an alternative approach, such as computer plots produced concurrently, that provide satisfactory agreement. Repeat of the alternative method during the initial or upgrade evaluation satisfies this test requirement. For initial and upgrade evaluations, the control dynamic characteristics must be measured at and recorded directly from the flight deck controls, and must be accomplished in takeoff, cruise, and landing flight conditions and configurations. Testing of position versus force is not applicable if forces are generated solely by use of airplane hardware in the FFS.								Contact the NSPM for clarification of any issue regarding airplanes with reversible controls.
2.a.	Static Control Tests.								
2.a.1.a.	Pitch Controller Position vs. Force and Surface Position Calibration.	±2 lb (0.9 daN) break-out, ±10% or ±5 lb (2.2 daN) force, ±2° elevator.	Ground	Record results for an uninterrupted control sweep to the stops.	X	X	X	X	Test results should be validated (where possible) with in-flight data from tests such as longitudinal static stability or stalls. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures.
2.a.1.b.	(Reserved)								
2.a.2.a.	Roll Controller Position vs. Force and Surface Position Calibration.	±2 lb (0.9 daN) break-out, ±10% or ±3 lb (1.3 daN) force, ±2° aileron, ±3° spoiler angle.	Ground	Record results for an uninterrupted control sweep to the stops.	X	X	X	X	Test results should be validated with in-flight data from tests such as engine out trims, or steady state sideslips. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures.
2.a.2.b.	(Reserved)								

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements									Information
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.a.3.a.	Rudder Pedal Position vs. Force and Surface Position Calibration.	±5 lb (2.2 daN) break-out, ±10% or ±5 lb (2.2 daN) force, ±2° rudder angle.	Ground	Record results for an uninterrupted control sweep to the stops.	X	X	X	X	Test results should be validated with in-flight data from tests such as engine out trims, or steady state sideslips. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures.
2.a.3.b.	(Reserved)								
2.a.4.	Nosewheel Steering Controller Force and Position Calibration.	±2 lb (0.9 daN) break-out, ±10% or ±3 lb (1.3 daN) force, ±2° nosewheel angle.	Ground	Record results of an uninterrupted control sweep to the stops.	X	X	X	X	
2.a.5.	Rudder Pedal Steering Calibration.	±2° nosewheel angle ..	Ground	Record results of an uninterrupted control sweep to the stops.	X	X	X	X	
2.a.6.	Pitch Trim Indicator vs. Surface Position Calibration.	±0.5° of computed trim surface angle.	Ground		X	X	X	X	The purpose of the test is to compare FFS against design data or equivalent.
2.a.7.	Pitch Trim Rate	±10% trim rate (°/sec)	Ground and approach	The trim rate must be checked using the pilot primary trim (ground) and using the autopilot or pilot primary trim in flight at go-around flight conditions.	X	X	X	X	
2.a.8.	Alignment of Flight Deck Throttle Lever vs. Selected Engine Parameter.	±5° of throttle lever angle, or ±3% N1, or ±0.3 EPR, or ±3% maximum rated manifold pressure, or ±3% torque. For propeller-driven airplanes where the propeller control levers do not have angular travel, a tolerance of ±0.8 inch (±2 cm.) applies.	Ground	Requires simultaneous recording for all engines. The tolerances apply against airplane data and between engines. In the case of propeller powered airplanes, if a propeller lever is present, it must also be checked. For airplanes with throttle “detents,” all detents must be presented. May be a series of snapshot test results.	X	X	X	X	
2.a.9.	Brake Pedal Position vs. Force and Brake System Pressure Calibration.	±5 lb (2.2 daN) or 10% force, ±150 psi (1.0 MPa) or ±10% brake system pressure.	Ground	Hydraulic system pressure must be related to pedal position through a ground static test.	X	X	X	X	FFS computer output results may be used to show compliance.
2.b.	Dynamic Control Tests.								
	Tests 2.b.1., 2.b.2., and 2.b.3. are not applicable if dynamic response is generated solely by use of airplane hardware in the FFS. Power setting is that required for level flight unless otherwise specified.				....	....	....	....	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.b.1.	Pitch Control	For underdamped systems: $\pm 10\%$ of time from 90% of initial displacement ($0.9 A_d$) to first zero crossing and $\pm 10 (n+1)\%$ of period thereafter. $\pm 10\%$ amplitude of first overshoot applied to all overshoots greater than 5% of initial displacement ($.05 A_d$). ± 1 overshoot (first significant overshoot must be matched). For overdamped systems: $\pm 10\%$ of time from 90% of initial displacement ($0.9 A_d$) to 10% of initial displacement ($0.1 A_d$). For the alternate method see paragraph 4 of this attachment. The slow sweep is the equivalent to the static test 2.a.1. For the moderate and rapid sweeps: ± 2 lb (0.9 daN) or $\pm 10\%$ dynamic increment above the static force.	Takeoff, Cruise, and Landing.	Data must show normal control displacement in both directions. Tolerances apply against the absolute values of each period (considered independently). Normal control displacement for this test is 25% to 50% of full throw or 25% to 50% of the maximum allowable pitch controller deflection for flight conditions limited by the maneuvering load envelope.			X	X	“n” is the sequential period of a full cycle of oscillation. Refer to paragraph 4 of this attachment for more information. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures.
2.b.2.	Roll Control	For underdamped systems: $\pm 10\%$ of time from 90% of initial displacement ($0.9 A_d$) to first zero crossing, and $\pm 10 (n+1)\%$ of period thereafter. $\pm 10\%$ amplitude of first overshoot, applied to all overshoots greater than 5% of initial displacement ($.05 A_d$), ± 1 overshoot (first significant overshoot must be matched). For overdamped systems: $\pm 10\%$ of time from 90% of initial displacement ($0.9 A_d$) to 10% of initial displacement ($0.1A_d$). For the alternate method see paragraph 4 of this attachment. The slow sweep is the equivalent to the static test 2.a.2. For the moderate and rapid sweeps: ± 2 lb (0.9 daN) or $\pm 10\%$ dynamic increment above the static force.	Takeoff, Cruise, and Landing.	Data must show normal control displacement in both directions. Tolerance applies against the absolute values of each period (considered independently). Normal control displacement for this test is 25% to 50% of the maximum allowable roll controller deflection for flight conditions limited by the maneuvering load envelope.			X	X	“n” is the sequential period of a full cycle of oscillation. Refer to paragraph 4 of this attachment for more information. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.b.3.	Yaw Control	For underdamped systems: ±10% of time from 90% of initial displacement (0.9 A _d) to first zero crossing, and ±10 (n+1)% of period thereafter. ±10% amplitude of first overshoot applied to all overshoots greater than 5% of initial displacement (.05 A _d). ±1 overshoot (first significant overshoot must be matched). For overdamped systems: ±10% of time from 90% of initial displacement (0.9 A _d) to 10% of initial displacement (0.1 A _d). For the alternate method (see paragraph 4 of this attachment). The slow sweep is the equivalent to the static test 2.a.3. For the moderate and rapid sweeps: ±2 lb (0.9 daN) or ±10% dynamic increment above the static force.	Takeoff, Cruise, and Landing.	Data must show normal control displacement in both directions. Tolerance applies against the absolute values of each period (considered independently). Normal control displacement for this test is 25% to 50% of the maximum allowable yaw controller deflection for flight conditions limited by the maneuvering load envelope.			X	X	“n” is the sequential period of a full cycle of oscillation. Refer to paragraph 4 of this attachment for more information. Static and dynamic flight control tests should be accomplished at the same feel or impact pressures.
2.b.4.	Small Control Inputs—Pitch.	±0.15°/sec body pitch rate or ±20% of peak body pitch rate applied throughout the time history.	Approach or landing ...	Control inputs must be typical of minor corrections made while established on an ILS approach course, using from 0.5°/sec to 2°/sec pitch rate. The test must be in both directions, showing time history data from 5 seconds before until at least 5 seconds after initiation of control input. CCA: Test in normal and non-normal control states.			X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.b.5.	Small Control Inputs—Roll.	±0.15°/sec body roll rate or ±20% of peak body roll rate applied throughout the time history.	Approach or landing ...	Control inputs must be typical of minor corrections made while established on an ILS approach course, using from 0.5°/sec to 2°/sec roll rate. The test may be run in only one direction; however, for airplanes that exhibit non-symmetrical behavior, the test must include both directions. Time history data must be recorded from 5 seconds before until at least 5 seconds after initiation of control input. CCA: Test in normal and non-normal control states.			X	X	
2.b.6.	Small Control Inputs—Yaw.	±0.15°/sec body yaw rate or ±20% of peak body yaw rate applied throughout the time history.	Approach or landing ...	Control inputs must be typical of minor corrections made while established on an ILS approach course, using from 0.5°/sec to 2°/sec yaw rate. The test may be run in only one direction; however, for airplanes that exhibit non-symmetrical behavior, the test must include both directions. Time history data must be recorded from 5 seconds before until at least 5 seconds after initiation of control input. CCA: Test in normal and non-normal control states.			X	X	
2.c.	Longitudinal Control Tests.								
	Power setting is that required for level flight unless otherwise specified.								
2.c.1.	Power Change Dynamics.	±3 kt airspeed, ±100 ft (30 m) altitude, ±20% or ±1.5° pitch angle.	Approach	Power is changed from the thrust setting required for approach or level flight to maximum continuous thrust or go-around power setting. Record the uncontrolled free response from at least 5 seconds before the power change is initiated to 15 seconds after the power change is completed. CCA: Test in normal and non-normal control states.	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.c.2.	Flap/Slat Change Dynamics.	±3 kt airspeed, ±100 ft (30 m) altitude, ±20% or ±1.5° pitch angle.	Takeoff through initial flap retraction, and approach to landing.	Record the uncontrolled free response from at least 5 seconds before the configuration change is initiated to 15 seconds after the configuration change is completed. CCA: Test in normal and non-normal control states.	X	X	X	X	
2.c.3.	Spoiler/Speedbrake Change Dynamics.	±3 kt airspeed, ±100 ft (30 m) altitude, ±20% or ±1.5° pitch angle.	Cruise	Record the uncontrolled free response from at least 5 seconds before the configuration change is initiated to 15 seconds after the configuration change is completed. Record results for both extension and retraction. CCA: Test in normal and non-normal control states.	X	X	X	X	
2.c.4.	Gear Change Dynamics.	±3 kt airspeed, ±100 ft (30 m) altitude, ±20% or ±1.5° pitch angle.	Takeoff (retraction), and Approach (extension).	Record the time history of uncontrolled free response for a time increment from at least 5 seconds before the configuration change is initiated to 15 seconds after the configuration change is completed. CCA: Test in normal and non-normal control states.	X	X	X	X	
2.c.5.	Longitudinal Trim	±0.5° trim surface angle, ±1° elevator, ±1° pitch angle, ±5% net thrust or equivalent.	Cruise, Approach, and Landing.	Record steady-state condition with wings level and thrust set for level flight. May be a series of snapshot tests. CCA: Test in normal or non-normal control states.	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.c.6.	Longitudinal Maneu- vering Stability (Stick Force/g).	±5 lb (±2.2 daN) or ±10% pitch controller force. Alternative method: ±1° or ±10% change of ele- vator.	Cruise, Approach, and Landing.	Continuous time his- tory data or a series of snapshot tests may be used. Record results up to 30° of bank for ap- proach and landing configurations. Record results for up to 45° of bank for the cruise configura- tion. The force toler- ance is not applica- ble if forces are gen- erated solely by the use of airplane hard- ware in the FFS. The alternative method applies to airplanes that do not exhibit “stick-force- per-g” characteristics. CCA: Test in normal and non-normal con- trol states.	X	X	X	X	
2.c.7.	Longitudinal Static Sta- bility.	±5 lb (±2.2 daN) or ±10% pitch controller force. Alternative method: ±1° or ±10% change of ele- vator.	Approach	Record results for at least 2 speeds above and 2 speeds below trim speed. May be a series of snapshot test re- sults. The force tol- erance is not appli- cable if forces are generated solely by the use of airplane hardware in the FFS. The alternative method applies to airplanes that do not exhibit speed sta- bility characteristics. CCA: Test in normal or non-normal control states.	X	X	X	X	
2.c.8.	Stall Characteristics	±3 kt airspeed for initial buffet, stall warning, and stall speeds. ±2° bank for speeds greater than stick shaker or initial buf- fet. Additionally, for those simulators with reversible flight con- trol systems: ±10% or ±5 lb (2.2 daN) Stick/Column force (prior to “g break” only).	Second Segment Climb, and Approach or Landing.	The stall maneuver must be entered with thrust at or near idle power and wings level (1g). Record the stall warning sig- nal and initial buffet, if applicable. Time history data must be recorded for full stall and initiation of re- covery. The stall warning signal must occur in the proper relation to buffet/ stall. FFSs of air- planes exhibiting a sudden pitch attitude change or “g break” must demonstrate this characteristic. CCA: Test in normal and non-normal con- trol states.	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.c.9.	Phugoid Dynamics	±10% period, ±10% of time to ½ or double amplitude or ±0.2 of damping ratio.	Cruise	The test must include whichever is less of the following: Three full cycles (six overshoots after the input is completed), or the number of cycles sufficient to determine time to ½ or double amplitude. CCA: Test in Non-normal control states	X	X	X	X	
2.c.10.	Short Period Dynamics..	±1.5° pitch angle or ±2°/sec pitch rate, ±0.10g acceleration.	Cruise	CCA: Test in Normal and Non-normal control states.	X	X	X	X	
2.c.11.	(Reserved)								
2.d.	Lateral Directional Tests.								
	Power setting is that required for level flight unless otherwise specified.								
2.d.1.	Minimum Control Speed, Air (V_{mca} or V_{mcl}), per Applicable Airworthiness Standard or Low Speed Engine Inoperative Handling Characteristics in the Air.	±3 kt airspeed.	Takeoff or Landing (whichever is most critical in the airplane).	Takeoff thrust must be used on the operating engine(s). A time history or a series of snapshot tests may be used. CCA: Test in Normal or Non-normal control state.	X	X	X	X	Low Speed Engine Inoperative Handling may be governed by a performance or control limit that prevents demonstration of V_{mca} or V_{mcl} in the conventional manner.
2.d.2.	Roll Response (Rate).	±10% or ±2°/sec roll rate. Additionally, for those simulators of airplanes with reversible flight control systems: ±10% or ±3 lb (1.3 daN) wheel force.	Cruise, and Approach or Landing.	Record results for normal roll controller deflection (about one-third of maximum roll controller travel). May be combined with step input of flight deck roll controller test (2.d.3.).	X	X	X	X	
2.d.3.	Roll Response to Flight Deck Roll Controller Step Input.	±10% or ±2° bank angle.	Approach or Landing ..	Record from initiation of roll through 10 seconds after control is returned to neutral and released. May be combined with roll response (rate) test (2.d.2). CCA: Test in Normal and Non-normal control states	X	X	X	X	With wings level, apply a step roll control input using approximately one-third of the roll controller travel. When reaching approximately 20° to 30° of bank, abruptly return the roll controller to neutral and allow approximately 10 seconds of airplane free response.
2.d.4.	Spiral Stability	Correct trend and ±2° or ±10% bank angle in 20 seconds. Alternate test requires correct trend and ±2° aileron.	Cruise, and Approach or Landing.	Record results for both directions. Airplane data averaged from multiple tests may be used. As an alternate test, demonstrate the lateral control required to maintain a steady turn with a bank angle of 28° to 32°. CCA: Test in Non-normal control state	X	X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.d.5.	Engine Inoperative Trim.	±1° rudder angle or ±1° tab angle or equivalent pedal, ±2° sideslip angle.	Second Segment Climb, and Approach or Landing.	May be a series of snapshot tests.	X	X	X	X	The test should be performed in a manner similar to that for which a pilot is trained to trim an engine failure condition. Second segment climb test should be at takeoff thrust. Approach or landing test should be at thrust for level flight.
2.d.6.	Rudder Response	±2°/sec or ±10% yaw rate.	Approach or Landing ..	Record results for stability augmentation system ON and OFF. A rudder step input of 20%–30% rudder pedal throw is used. CCA: Test in Normal and Non-normal control states	X	X	X	X	
2.d.7.	Dutch Roll, (Yaw Damper OFF).	±0.5 sec or ±10% of period, ±10% of time to ½ or double amplitude or ±0.02 of damping ratio. ±20% or ±1 sec of time difference between peaks of bank and sideslip.	Cruise, and Approach or Landing.	Record results for at least 6 complete cycles with stability augmentation OFF. CCA: Test in Non-normal control state.		X	X	X	
2.d.8.	Steady State Sideslip	For given rudder position ±2° bank angle, ±1° sideslip angle, ±10% or ±2° aileron, ±10% or ±5° spoiler or equivalent roll, controller position or force. Additionally, for those simulators of airplanes with reversible flight control systems: ±10% or ±3 lb (1.3 daN) wheel force ±10% or ±5 lb (2.2 daN) rudder pedal force.	Approach or Landing ..	Use at least two rudder positions, one of which must be near maximum allowable rudder. Propeller driven airplanes must test in each direction. May be a series of snapshot test results.	X	X	X	X	
2.e.	Landings.								
2.e.1.	Normal Landing	±3 kt airspeed, ±1.5° pitch angle, ±1.5° angle of attack, ±10% or ±10 ft (3 m) height. Additionally, for those simulators of airplanes with reversible flight control systems: ±10% or ±5 lbs (±2.2 daN) stick/column force.	Landing	Record results from a minimum of 200 ft (61 m) AGL to nosewheel touchdown. CCA: Test in Normal and Non-normal control states.		X	X	X	Tests should be conducted with two normal landing flap settings (if applicable). One should be at or near maximum certificated landing weight. The other should be at light or medium landing weight.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.e.2.	Minimum Flap Landing	±3 kt airspeed, ±1.5° pitch angle, ±1.5° angle of attack, ±10% or ±10 ft (3 m) height. Additionally, for those simulators of airplanes with reversible flight control systems: ±10% or ±5 lbs (2.2 daN) stick/ column force.	Minimum Certified Landing Flap Configuration.	Record results from a minimum of 200 ft (61 m) AGL to nosewheel touch-down with airplane at near Maximum Landing Weight.			X	X	
2.e.3.	Crosswind Landing	±3 kt airspeed, ±1.5° pitch angle, ±1.5° angle of attack, ±10% or ±10 ft (3 m) height ±2° bank angle, ±2° sideslip angle ±3° heading angle. Additionally, for those simulators of airplanes with reversible flight control systems: ±10% or ±3 lb (1.3 daN) wheel force ±10% or ±5 lb (2.2 daN) rudder pedal force.	Landing	Record results from a minimum of 200 ft (61 m) AGL, through nosewheel touch-down, to 50% decrease in main landing gear touchdown speed. Test data must include information on wind profile, for a crosswind (expressed as direct head-wind and direct cross-wind components) of 60% of the maximum wind measured at 33 ft (10 m) above the runway.		X	X	X	In those situations where a maximum crosswind or a maximum demonstrated crosswind is not known, contact the NSPM.
2.e.4.	One Engine Inoperative Landing.	±3 kt airspeed, ±1.5° pitch angle, ±1.5° angle of attack, ±10% height or ±10 ft (3 m); ±2° bank angle, ±2° sideslip angle, ±3° heading.	Landing	Record results from a minimum of 200 ft (61 m) AGL, through nosewheel touch-down, to 50% decrease in main landing gear touchdown speed or less.		X	X	X	
2.e.5.	Autopilot landing (if applicable).	±5 ft (1.5 m) flare height, ±0.5 sec T _r , or ±10%T _r , ±140 ft/min (0.7 m/sec) rate of descent at touch-down. ±10 ft (3 m) lateral deviation during rollout.	Landing	If autopilot provides rollout guidance, record lateral deviation from touch-down to a 50% decrease in main landing gear touchdown speed or less. Time of autopilot flare mode engage and main gear touch-down must be noted.		X	X	X	See Appendix F of this part for definition of T _r .
2.e.6.	All engines operating, autopilot, go around.	±3 kt airspeed, ±1.5° pitch angle, ±1.5° angle of attack.		Normal, all-engines-operating, go around with the autopilot engaged (if applicable) at medium landing weight. CCA: Test in normal or non-normal control states.		X	X	X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.e.7.	One engine inoperative go around.	±3 kt airspeed, ±1.5° pitch angle, ±1.5° angle of attack, ±2° bank angle, ±2° slideslip angle.		The one engine inoperative go around is required at near maximum certificated landing weight with the critical engine inoperative using manual controls. If applicable, an additional engine inoperative go around test must be accomplished with the autopilot engaged. CCA: Non-autopilot test in Non-normal control state.		X	X	X	
2.e.8.	Directional control (rudder effectiveness) with symmetric reverse thrust.	±2°/sec yaw rate. ±5 kts airspeed.	Landing	Record results starting from a speed approximating touch-down speed to the minimum thrust reverser operation speed. With full reverse thrust, apply yaw control in both directions until reaching minimum thrust reverser operation speed.		X	X	X	
2.e.9.	Directional control (rudder effectiveness) with asymmetric reverse thrust.	±5 kt airspeed. ±3° heading angle.	Landing	Maintain heading with yaw control with full reverse thrust on the operating engine(s). Record results starting from a speed approximating touch-down speed to a speed at which control of yaw cannot be maintained or until reaching minimum thrust reverser operation speed, whichever is higher. The tolerance applies to the low speed end of the data recording.		X	X	X	
2.f.	Ground Effect.								
	Test to demonstrate Ground Effect.	±1° elevator ±0.5° stabilizer angle, ±5% net thrust or equivalent, ±1° angle of attack, ±10% height or ±5 ft (1.5 m), ±3 kt airspeed, ±1° pitch angle.	Landing	The Ground Effect model must be validated by the test selected and a rationale must be provided for selecting the particular test.		X	X	X	See paragraph on Ground Effect in this attachment for additional information.
2.g.	Windshear.								
	Four tests, two takeoff and two landing, with one of each conducted in still air and the other with windshear active to demonstrate windshear models.	See Attachment 5 of this appendix.	Takeoff and Landing ...	Requires windshear models that provide training in the specific skills needed to recognize windshear phenomena and to execute recovery procedures. See Attachment 5 of this appendix for tests, tolerances, and procedures.			X	X	See Attachment 5 of this appendix for information related to Level A and B simulators.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
2.h.	Flight Maneuver and Envelope Protection Functions.								
	The requirements of tests h(1) through (6) of this attachment are applicable to computer controlled aircraft only. Time history results are required for simulator response to control inputs during entry into envelope protection limits including both normal and degraded control states if the function is different. Set thrust as required to reach the envelope protection function.								
2.h.1.	Overspeed	±5 kt airspeed	Cruise			X	X	X	
2.h.2.	Minimum Speed	±3 kt airspeed	Takeoff, Cruise, and Approach or Landing.			X	X	X	
2.h.3.	Load Factor	±0.1 g normal load factor.	Takeoff, Cruise			X	X	X	
2.h.4.	Pitch Angle	±1.5° pitch angle	Cruise, Approach			X	X	X	
2.h.5.	Bank Angle	±2° or ±10% bank angle.	Approach			X	X	X	
2.h.6.	Angle of Attack	±1.5° angle of attack ...	Second Segment Climb, and Approach or Landing.			X	X	X	
3. Motion System.									
3.a.	Frequency response.								
		Based on Simulator Capability.	N/A	Required as part of the MQTG. The test must demonstrate frequency response of the motion system.	X	X	X	X	
3.b.	Leg balance.								
		Based on Simulator Capability.	N/A	Required as part of the MQTG. The test must demonstrate motion system leg balance as specified by the applicant for flight simulator qualification.	X	X	X	X	
3.c.	Turn-around check.								
		Based on Simulator Capability.	N/A	Required as part of the MQTG. The test must demonstrate a smooth turn-around (shift to opposite direction of movement) of the motion system as specified by the applicant for flight simulator qualification.	X	X	X	X	
3.d.	Motion system repeatability.								
		With the same input signal, the test results must be repeatable to within ±0.05 g actual platform linear acceleration.	Accomplished in both the “ground” mode and in the “flight” mode of the motion system operation.	Required as part of the MQTG. The assessment procedures must be designed to ensure that the motion system hardware and software (in normal flight simulator operating mode) continue to perform as originally qualified.	X	X	X	X	This test ensures that motion system hardware and software (in normal flight simulator operating mode) continue to perform as originally qualified. Performance changes from the original baseline can be readily identified with this information.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements									Information
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
3.e.	Motion cueing performance signature. Required as part of MQTG. For the following set of maneuvers record the relevant motion variables.								These tests should be run with the motion buffet mode disabled. See paragraph 6.d., of this attachment, Motion cueing performance signature.
3.e.1.	Takeoff rotation (V_R to V_2).	As specified by the sponsor for flight simulator qualification.	Ground	Pitch attitude due to initial climb must dominate over cab tilt due to longitudinal acceleration.	X	X	X	X	Associated with test 1.b.4.
3.e.2.	Engine failure between V_I and V_R .	As specified by the sponsor for flight simulator qualification.	Ground		X	X	X	X	Associated with test 1.b.5.
3.e.3.	Pitch change during go-around.	As specified by the sponsor for flight simulator qualification.	Flight			X	X	X	Associated with test 2.e.6.
3.e.4.	Configuration changes	As specified by the sponsor for flight simulator qualification.	Flight		X	X	X	X	Associated with tests 2.c.2. and 2.c.4.
3.e.5.	Power change dynamics.	As specified by the sponsor for flight simulator qualification.	Flight		X	X	X	X	Associated with test 2.c.1.
3.e.6.	Landing flare	As specified by the sponsor for flight simulator qualification.	Flight			X	X	X	Associated with test 2.e.1.
3.e.7.	Touchdown bump	As specified by the sponsor for flight simulator qualification.	Ground				X	X	Associated with test 2.e.1.
3.f.	Characteristic motion vibrations. The recorded test results for characteristic buffets must allow the comparison of relative amplitude versus frequency.								
3.f.1.	Thrust effect with brakes set.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ± 2 Hz.	Ground	The test must be conducted within 5% of the maximum possible thrust with brakes set.				X	
3.f.2.	Buffet with landing gear extended.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ± 2 Hz.	Flight	The test must be conducted at a nominal, mid-range airspeed; i.e., sufficiently below landing gear limiting airspeed to avoid inadvertently exceeding this limitation.				X	

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
3.f.3.	Buffet with flaps extended.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ±2 Hz.	Flight	The test must be conducted at a nominal, mid-range airspeed; i.e., sufficiently below flap extension limiting airspeed to avoid inadvertently exceeding this limitation.				X	
3.f.4.	Buffet with speedbrakes deployed.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ±2 Hz.	Flight					X	
3.f.5.	Buffet at approach-to-stall.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ±2 Hz.	Flight	The test must be conducted for approach to stall. Post stall characteristics are not required.				X	
3.f.6.	Buffet at high air-speeds or high Mach.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ±2 Hz.	Flight					X	The test may be conducted during either a high speed maneuver (e.g., “wind-up” turn) or at high Mach.
3.f.7.	In-flight vibrations for propeller driven airplanes.	Simulator test results must exhibit the overall appearance and trends of the airplane data, with at least three (3) of the predominant frequency “spikes” being present within ±2 Hz.	Flight (clean configuration).					X	
4. Visual System.									
4.a.	Visual System Response Time: (Choose either test 4.a.1. or 4.a.2. to satisfy test 4.a., Visual System Response Time Test. This test also suffices for motion system response timing and flight deck instrument response timing. Motion onset should occur before the start of the visual scene change (the start of the scan of the first video field containing different information) but must occur before the end of the scan of that video field. Instrument response may not occur prior to motion onset.								See additional information in this attachment; also see Table A1A, entry 2.g.
4.a.1.	Latency..								
		300 ms (or less) after airplane response.	Take-off, cruise, and approach or landing.	One test is required in each axis (pitch, roll and yaw) for each of the three conditions (take-off, cruise, and approach or landing).	X	X			The visual scene or test pattern used during the response testing should be representative of the system capacities required to meet the daylight, twilight (dusk/dawn) and/or night visual capability as appropriate.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
		150 ms (or less) after airplane response.	Take-off, cruise, and approach or landing.	One test is required in each axis (pitch, roll and yaw) for each of the three conditions (take-off, cruise, and approach or landing)..			X	X	
4.a.2.	Transport Delay.								
		300 ms (or less) after controller movement.	N/A	A separate test is required in each axis (pitch, roll, and yaw).	X	X			If Transport Delay is the chosen method to demonstrate relative responses, the sponsor and the NSPM will use the latency values to ensure proper simulator response when reviewing those existing tests where latency can be identified (e.g., short period, roll response, rudder response)
		150 ms (or less) after controller movement.	N/A	A separate test is required in each axis (pitch, roll, and yaw).			X	X	
4.b.	Field-of-view.								
4.b.1.	Continuous collimated visual field-of-view.	Continuous collimated field-of-view providing at least 45° horizontal and 30° vertical field-of-view for each pilot seat. Both pilot seat visual systems must be operable simultaneously.	N/A	Required as part of MQTG but not required as part of continuing evaluations.	X	X			A vertical field-of-view of 30° may be insufficient to meet visual ground segment requirements.
4.b.2.	(Reserved)								
4.b.3.	Continuous, collimated, field-of-view.	Continuous field-of-view of at least 176° horizontally and 36° vertically.	N/A	An SOC is required and must explain the geometry of the installation. Horizontal field-of-view must be at least 176° (including not less than 88° either side of the center line of the design eye point). Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained. Vertical field-of-view must be at least 36° from each pilot's eye point. Required as part of MQTG but not required as part of continuing qualification evaluations.			X	X	The horizontal field-of-view is traditionally described as a 180° field-of-view. However, the field-of-view is technically no less than 176°. Field-of-view should be measured using a visual test pattern filling the entire visual scene (all channels) with a matrix of black and white 5° squares. The installed alignment should be addressed in the SOC.
4.c.	System geometry.								

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information		
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes	
Entry No.	Title				A	B	C	D		
		5° even angular spacing within ±1° as measured from either pilot eye point and within 1.5° for adjacent squares.	N/A	The angular spacing of any chosen 5° square and the relative spacing of adjacent squares must be within the stated tolerances.	X	X	X	X	The purpose of this test is to evaluate local linearity of the displayed image at either pilot eye point. System geometry should be measured using a visual test pattern filling the entire visual scene (all channels) with a matrix of black and white 5° squares with light points at the intersections.	
4.d.	Surface contrast ratio.									
		Not less than 5:1.	N/A	The ratio is calculated by dividing the brightness level of the center, bright square (providing at least 2 foot-lamberts or 7 cd/m²) by the brightness level of any adjacent dark square. This requirement is applicable to any level of simulator equipped with a daylight visual system.				X	X	Measurements should be made using a 1° spot photometer and a raster drawn test pattern filling the entire visual scene (all channels) with a test pattern of black and white squares, 5° per square, with a white square in the center of each channel. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.
4.e.	Highlight brightness.									
		Not less than six (6) foot-lamberts (20 cd/m²).	N/A	Measure the brightness of a white square while superimposing a highlight on that white square. The use of calligraphic capabilities to enhance the raster brightness is acceptable; however, measuring lightpoints is not acceptable. This requirement is applicable to any level of simulator equipped with a daylight visual system.				X	X	Measurements should be made using a 1° spot photometer and a raster drawn test pattern filling the entire visual scene (all channels) with a test pattern of black and white squares, 5° per square, with a white square in the center of each channel.
4.f.	Surface resolution									

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
		Not greater than two (2) arc minutes.	N/A	An SOC is required and must include the relevant calculations and an explanation of those calculations. This requirement is applicable to any level of simulator equipped with a day-light visual system.			X	X	When the eye is positioned on a 3° glide slope at the slant range distances indicated with white runway markings on a black runway surface, the eye will subtend two (2) arc minutes: (1) A slant range of 6,876 ft with stripes 150 ft long and 16 ft wide, spaced 4 ft apart. (2) For Configuration A; a slant range of 5,157 feet with stripes 150 ft long and 12 ft wide, spaced 3 ft apart. (3) For Configuration B; a slant range of 9,884 feet, with stripes 150 ft long and 5.75 ft wide, spaced 5.75 ft apart.
4.g.	Light point size.								
		Not greater than five (5) arc-minutes.	N/A	An SOC is required and must include the relevant calculations and an explanation of those calculations. This requirement is applicable to any level of simulator equipped with a day-light visual system.			X	X	Light point size should be measured using a test pattern consisting of a centrally located single row of light points reduced in length until modulation is just discernible in each visual channel. A row of 48 lights will form a 4° angle or less.
4.h.	Light point contrast ratio.								
4.h.1	For Level A and B simulators.	Not less than 10:1	N/A	An SOC is required and must include the relevant calculations.	X	X			A 1° spot photometer is used to measure a square of at least 1° filled with light points (where light point modulation is just discernible) and compare the results to the measured adjacent background. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.
4.h.2.	For Level C and D simulators.	Not less than 25:1	N/A	An SOC is required and must include the relevant calculations.			X	X	A 1° spot photometer is used to measure a square of at least 1° filled with light points (where light point modulation is just discernible) and compare the results to the measured adjacent background. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements								Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes
Entry No.	Title				A	B	C	D	
4.i.	Visual ground segment								
		The visible segment in the simulator must be ±20% of the segment computed to be visible from the airplane flight deck. This tolerance may be applied at the far end of the displayed segment. However, lights and ground objects computed to be visible from the airplane flight deck at the near end of the visible segment must be visible in the simulator.	Landing configuration, with the aircraft trimmed for the appropriate airspeed, where the MLG are at 100 ft (30 m) above the plane of the touchdown zone, while on the electronic glide slope with an RVR value set at 1,200 ft (350 m).	The QTG must contain appropriate calculations and a drawing showing the pertinent data used to establish the airplane location and the segment of the ground that is visible considering design eyepoint, the airplane attitude, flight deck cut-off angle, and a visibility of 1200 ft (350 m) RVR. Simulator performance must be measured against the QTG calculations. The data submitted must include at least the following:. (1) Static airplane dimensions as follows: (i) Horizontal and vertical distance from main landing gear (MLG) to glideslope reception antenna. (ii) Horizontal and vertical distance from MLG to pilot's eyepoint. (iii) Static flight deck cutoff angle. (2) Approach data as follows: (i) Identification of runway. (ii) Horizontal distance from runway threshold to glideslope intercept with runway. (iii) Glideslope angle. (iv) Airplane pitch angle on approach. (3) Airplane data for manual testing: (i) Gross weight. (ii) Airplane configuration. (iii) Approach airspeed. If non-homogenous fog is used to obscure visibility, the vertical variation in horizontal visibility must be described and be included in the slant range visibility calculation used in the computations.	X	X	X	X	Pre-position for this test is encouraged but may be achieved via manual or auto-pilot control to the desired position.
5. Sound System.									

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements									Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes	
Entry No.	Title				A	B	C	D		
The sponsor will not be required to repeat the airplane tests (i.e., tests 5.a.1. through 5.a.8. (or 5.b.1. through 5.b.9.) and 5.c., as appropriate) during continuing qualification evaluations if frequency response and background noise test results are within tolerance when compared to the initial qualification evaluation results, and the sponsor shows that no software changes have occurred that will affect the airplane test results. If the frequency response test method is chosen and fails, the sponsor may elect to fix the frequency response problem and repeat the test or the sponsor may elect to repeat the airplane tests. If the airplane tests are repeated during continuing qualification evaluations, the results may be compared against initial qualification evaluation results or airplane master data. All tests in this section must be presented using an unweighted 1/3-octave band format from band 17 to 42 (50 Hz to 16 kHz). A minimum 20 second average must be taken at the location corresponding to the airplane data set. The airplane and flight simulator results must be produced using comparable data analysis techniques..										
5.a.	Turbo-jet airplanes.									
5.a.1.	Ready for engine start	±5 dB per 1/3 octave band.	Ground	Normal conditions prior to engine start with the Auxiliary Power Unit operating, if appropriate.				X		
5.a.2.	All engines at idle.	±5 dB per 1/3 octave band.	Ground	Normal condition prior to takeoff.				X		
5.a.3.	All engines at maximum allowable thrust with brakes set.	±5 dB per 1/3 octave band.	Ground	Normal condition prior to takeoff.				X		
5.a.4.	Climb	±5 dB per 1/3 octave band.	En-route climb	Medium altitude				X		
5.a.5.	Cruise	±5 dB per 1/3 octave band.	Cruise	Normal cruise configuration.				X		
5.a.6.	Speedbrake / spoilers extended (as appropriate).	±5 dB per 1/3 octave band.	Cruise	Normal and constant speedbrake deflection for descent at a constant airspeed and power setting.				X		
5.a.7.	Initial approach	±5 dB per 1/3 octave band.	Approach	Constant airspeed, gear up, flaps and slats, as appropriate.				X		
5.a.8.	Final approach	±5 dB per 1/3 octave band.	Landing	Constant airspeed, gear down, full flaps.				X		
5.b.	Propeller airplanes.									
5.b.1.	Ready for engine start	±5 dB per 1/3 octave band.	Ground	Normal conditions prior to engine start with the Auxiliary Power Unit operating, if appropriate.				X		
5.b.2.	All propellers feathered	±5 dB per 1/3 octave band.	Ground	Normal condition prior to takeoff.				X		
5.b.3.	Ground idle or equivalent.	±5 dB per 1/3 octave band.	Ground	Normal condition prior to takeoff.				X		
5.b.4.	Flight idle or equivalent	±5 dB per 1/3 octave band.	Ground	Normal condition prior to takeoff.				X		
5.b.5.	All engines at maximum allowable power with brakes set.	±5 dB per 1/3 octave band.	Ground	Normal condition prior to takeoff.				X		
5.b.6.	Climb	±5 dB per 1/3 octave band.	En-route climb	Medium altitude				X		
5.b.7.	Cruise	±5 dB per 1/3 octave band.	Cruise	Normal cruise configuration.				X		

TABLE A2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS Requirements									Information	
Test		Tolerance	Flight conditions	Test details	Simulator level				Notes	
Entry No.	Title				A	B	C	D		
5.b.8.	Initial approach	±5 dB per 1/3 octave band.	Approach	Constant airspeed, gear up, flaps extended as appropriate, RPM as per operating manual.				X		
5.b.9.	Final Approach	±5 dB per 1/3 octave band.	Landing	Constant airspeed, gear down, full flaps, RPM as per operating manual.				X		
5.c.	Special cases.									
		±5 dB per 1/3 octave band.	As appropriate					X	These special cases are identified as particularly significant during critical phases of flight and ground operations for a specific airplane type or model.	
5.d.	Background noise.									
		±3 dB per 1/3 octave band.		Results of the background noise at initial qualification must be included in the MQTG. Measurements must be made with the simulation running, the sound muted and a “dead” flight deck.				X	The sound in the simulator will be evaluated to ensure that the background noise does not interfere with training, testing, or checking.	
5.e.	Frequency response.									
		±5 dB on three (3) consecutive bands when compared to initial evaluation; and ±2 dB when comparing the average of the absolute differences between initial and continuing qualification evaluation.		Applicable only to Continuing Qualification Evaluations. If frequency response plots are provided for each channel at the initial qualification evaluation, these plots may be repeated at the continuing qualification evaluation with the following tolerances applied: (a) The continuing qualification 1/3 octave band amplitudes must not exceed ±5 dB for three consecutive bands when compared to initial results. (b) The average of the sum of the absolute differences between initial and continuing qualification results must not exceed 2 dB (refer to Table A2B in this attachment).				X	Measurements are compared to those taken during initial qualification evaluation.	

Begin Information**3. General**

a. If relevant winds are present in the objective data, the wind vector should be

clearly noted as part of the data presentation, expressed in conventional terminology, and related to the runway being used for test near the ground.

b. The reader is encouraged to review the Airplane Flight Simulator Evaluation Handbook, Volumes I and II, published by

the Royal Aeronautical Society, London, UK, and AC 25–7, as amended, Flight Test Guide for Certification of Transport Category Airplanes, and AC 23–8, as amended, Flight Test Guide for Certification of Part 23 Airplanes, for references and examples

regarding flight testing requirements and techniques.

4. Control Dynamics

a. General. The characteristics of an airplane flight control system have a major effect on handling qualities. A significant consideration in pilot acceptability of an airplane is the "feel" provided through the flight controls. Considerable effort is expended on airplane feel system design so that pilots will be comfortable and will consider the airplane desirable to fly. In order for an FFS to be representative, it should "feel" like the airplane being simulated. Compliance with this requirement is determined by comparing a recording of the control feel dynamics of the FFS to actual airplane measurements in the takeoff, cruise and landing configurations.

(1) Recordings such as free response to an impulse or step function are classically used to estimate the dynamic properties of electromechanical systems. In any case, it is only possible to estimate the dynamic properties as a result of being able to estimate true inputs and responses. Therefore, it is imperative that the best possible data be collected since close matching of the FFS control loading system to the airplane system is essential. The required dynamic control tests are described in Table A2A of this attachment.

(2) For initial and upgrade evaluations, the QPS requires that control dynamics characteristics be measured and recorded directly from the flight controls (Handling Qualities—Table A2A). This procedure is usually accomplished by measuring the free response of the controls using a step or impulse input to excite the system. The procedure should be accomplished in the takeoff, cruise and landing flight conditions and configurations.

(3) For airplanes with irreversible control systems, measurements may be obtained on the ground if proper pitot-static inputs are provided to represent airspeeds typical of those encountered in flight. Likewise, it may be shown that for some airplanes, takeoff, cruise, and landing configurations have like effects. Thus, one may suffice for another. In either case, engineering validation or airplane manufacturer rationale should be submitted as justification for ground tests or for eliminating a configuration. For FFSs requiring static and dynamic tests at the controls, special test fixtures will not be required during initial and upgrade evaluations if the QTG shows both test fixture results and the results of an alternate approach (e.g., computer plots that were produced concurrently and show satisfactory agreement). Repeat of the alternate method during the initial evaluation satisfies this test requirement.

b. Control Dynamics Evaluation. The dynamic properties of control systems are often stated in terms of frequency, damping and a number of other classical measurements. In order to establish a consistent means of validating test results for FFS control loading, criteria are needed that will clearly define the measurement interpretation and the applied tolerances. Criteria are needed for underdamped,

critically damped and overdamped systems. In the case of an underdamped system with very light damping, the system may be quantified in terms of frequency and damping. In critically damped or overdamped systems, the frequency and damping are not readily measured from a response time history. Therefore, the following suggested measurements may be used:

(1) For Level C and D simulators. Tests to verify that control feel dynamics represent the airplane should show that the dynamic damping cycles (free response of the controls) match those of the airplane within specified tolerances. The NSPM recognizes that several different testing methods may be used to verify the control feel dynamic response. The NSPM will consider the merits of testing methods based on reliability and consistency. One acceptable method of evaluating the response and the tolerance to be applied is described below for the underdamped and critically damped cases. A sponsor using this method to comply with the QPS requirements should perform the tests as follows:

(a) Underdamped response. Two measurements are required for the period, the time to first zero crossing (in case a rate limit is present) and the subsequent frequency of oscillation. It is necessary to measure cycles on an individual basis in case there are non-uniform periods in the response. Each period will be independently compared to the respective period of the airplane control system and, consequently, will enjoy the full tolerance specified for that period. The damping tolerance will be applied to overshoots on an individual basis. Care should be taken when applying the tolerance to small overshoots since the significance of such overshoots becomes questionable. Only those overshoots larger than 5 per cent of the total initial displacement should be considered. The residual band, labeled $T(A_d)$ on Figure A2A is ± 5 percent of the initial displacement amplitude A_d from the steady state value of the oscillation. Only oscillations outside the residual band are considered significant. When comparing FFS data to airplane data, the process should begin by overlaying or aligning the FFS and airplane steady state values and then comparing amplitudes of oscillation peaks, the time of the first zero crossing and individual periods of oscillation. The FFS should show the same number of significant overshoots to within one when compared against the airplane data. The procedure for evaluating the response is illustrated in Figure A2A.

(b) Critically damped and overdamped response. Due to the nature of critically damped and overdamped responses (no overshoots), the time to reach 90 percent of the steady state (neutral point) value should be the same as the airplane within ± 10 percent. Figure A2B illustrates the procedure.

(c) Special considerations. Control systems that exhibit characteristics other than classical overdamped or underdamped responses should meet specified tolerances. In addition, special consideration should be given to ensure that significant trends are maintained.

(2) Tolerances.

(a) The following table summarizes the tolerances, T , for underdamped systems, and "n" is the sequential period of a full cycle of oscillation. See Figure A2A of this attachment for an illustration of the referenced measurements.

$T(P_0)$	$\pm 10\%$ of P_0 .
$T(P_1)$	$\pm 20\%$ of P_1 .
$T(P_2)$	$\pm 30\%$ of P_2 .
$T(P_n)$	$\pm 10(n+1)\%$ of P_n .
$T(A_n)$	$\pm 10\%$ of A_1 .
$T(A_d)$	$\pm 5\%$ of A_d = residual band.

Significant overshoots, First overshoot and ± 1 subsequent overshoots.

(b) The following tolerance applies to critically damped and overdamped systems only. See Figure A2B for an illustration of the reference measurements:

$T(P_0)$	$\pm 10\%$ of P_0

End Information

Begin QPS Requirement

c. Alternative method for control dynamics evaluation.

(1) An alternative means for validating control dynamics for aircraft with hydraulically powered flight controls and artificial feel systems is by the measurement of control force and rate of movement. For each axis of pitch, roll, and yaw, the control must be forced to its maximum extreme position for the following distinct rates. These tests are conducted under normal flight and ground conditions.

(a) Static test—Slowly move the control so that a full sweep is achieved within 95 to 105 seconds. A full sweep is defined as movement of the controller from neutral to the stop, usually aft or right stop, then to the opposite stop, then to the neutral position.

(b) Slow dynamic test—Achieve a full sweep within 8–12 seconds.

(c) Fast dynamic test—Achieve a full sweep within 3–5 seconds.

Note: Dynamic sweeps may be limited to forces not exceeding 100 lbs. (44.5 daN).

(d) Tolerances

(i) Static test; see Table A2A, FFS Objective Tests, Entries 2.a.1., 2.a.2., and 2.a.3.

(ii) Dynamic test— ± 2 lbs (0.9 daN) or $\pm 10\%$ on dynamic increment above static test.

End QPS Requirement

Begin Information

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d. The FAA is open to alternative means such as the one described above. The alternatives should be justified and appropriate to the application. For example, the method described here may not apply to all manufacturers' systems and certainly not to aircraft with reversible control systems. Each case is considered on its own merit on an ad hoc basis. If the FAA finds that alternative methods do not result in satisfactory performance, more

conventionally accepted methods will have
to be used.

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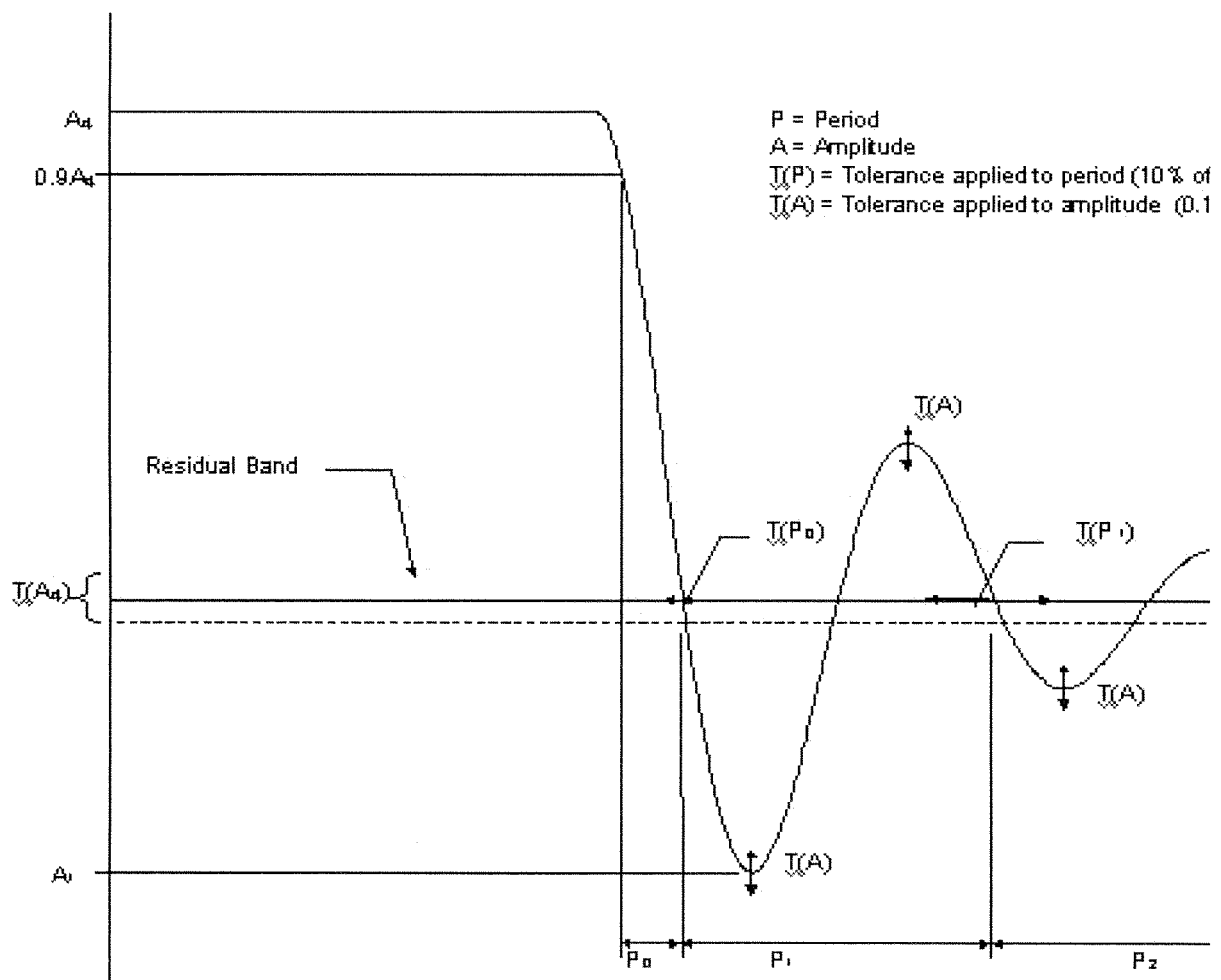


Figure A2A
Underdamped Step Response

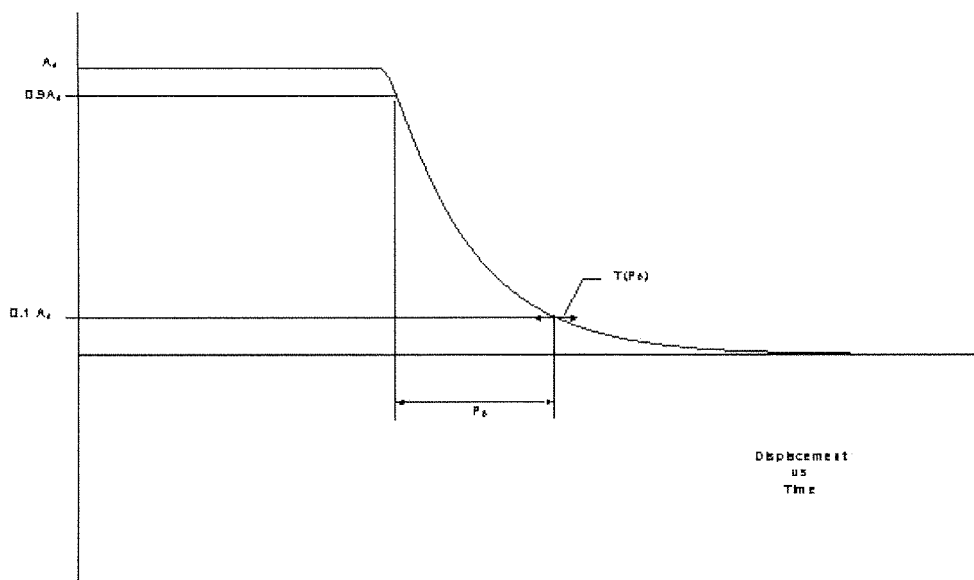


Figure A2B
Critically and Overdamped Step Response

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5. Ground Effect

a. For an FFS to be used for take-off and landing (not applicable to Level A simulators in that the landing maneuver may not be credited in a Level A simulator) it should reproduce the aerodynamic changes that occur in ground effect. The parameters chosen for FFS validation should indicate these changes.

(1) A dedicated test should be provided that will validate the aerodynamic ground effect characteristics.

(2) The organization performing the flight tests may select appropriate test methods and procedures to validate ground effect. However, the flight tests should be performed with enough duration near the ground to sufficiently validate the ground-effect model.

b. The NSPM will consider the merits of testing methods based on reliability and consistency. Acceptable methods of validating ground effect are described below. If other methods are proposed, rationale should be provided to conclude that the tests performed validate the ground-effect model. A sponsor using the methods described below to comply with the QPS requirements should perform the tests as follows:

(1) Level fly-bys. The level fly-bys should be conducted at a minimum of three altitudes within the ground effect, including one at no more than 10% of the wingspan above the ground, one each at approximately 30% and 50% of the wingspan where height refers to main gear tire above the ground. In addition, one level-flight trim condition should be conducted out of ground effect (e.g., at 150% of wingspan).

(2) Shallow approach landing. The shallow approach landing should be performed at a glide slope of approximately one degree with negligible pilot activity until flare.

c. The lateral-directional characteristics are also altered by ground effect. For example, because of changes in lift, roll damping is affected. The change in roll damping will affect other dynamic modes usually evaluated for FFS validation. In fact, Dutch roll dynamics, spiral stability, and roll-rate for a given lateral control input are altered by ground effect. Steady heading sideslips will also be affected. These effects should be accounted for in the FFS modeling. Several tests such as crosswind landing, one engine inoperative landing, and engine failure on take-off serve to validate lateral-directional ground effect since portions of these tests are accomplished as the aircraft is descending through heights above the runway at which ground effect is an important factor.

6. Motion System

a. General.

(1) Pilots use continuous information signals to regulate the state of the airplane. In concert with the instruments and outside-world visual information, whole-body motion feedback is essential in assisting the pilot to control the airplane dynamics, particularly in the presence of external disturbances. The motion system should meet basic objective performance criteria, and should be subjectively tuned at the pilot's seat position to represent the linear and angular accelerations of the airplane during a prescribed minimum set of maneuvers and conditions. The response of

the motion cueing system should also be repeatable.

(2) The Motion System tests in Section 3 of Table A2A are intended to qualify the FFS motion cueing system from a mechanical performance standpoint. Additionally, the list of motion effects provides a representative sample of dynamic conditions that should be present in the flight simulator. An additional list of representative, training-critical maneuvers, selected from Section 1 (Performance tests), and Section 2 (Handling Qualities tests), in Table A2A, that should be recorded during initial qualification (but without tolerance) to indicate the flight simulator motion cueing performance signature have been identified (reference Section 3.e). These tests are intended to help improve the overall standard of FFS motion cueing.

b. Motion System Checks. The intent of test 3a, Frequency Response, test 3b, Leg Balance, and test 3c, Turn-Around Check, as described in the Table of Objective Tests, is to demonstrate the performance of the motion system hardware, and to check the integrity of the motion set-up with regard to calibration and wear. These tests are independent of the motion cueing software and should be considered robotic tests.

c. Motion System Repeatability. The intent of this test is to ensure that the motion system software and motion system hardware have not degraded or changed over time. This diagnostic test should be completed during continuing qualification checks in lieu of the robotic tests. This will allow an improved ability to determine changes in the software or determine degradation in the hardware.

The following information delineates the methodology that should be used for this test.

(1) Input: The inputs should be such that rotational accelerations, rotational rates, and linear accelerations are inserted before the transfer from airplane center of gravity to pilot reference point with a minimum amplitude of 5 deg/sec/sec, 10 deg/sec and 0.3 g, respectively, to provide adequate analysis of the output.

(2) Recommended output:

(a) Actual platform linear accelerations; the output will comprise accelerations due to both the linear and rotational motion acceleration;

(b) Motion actuators position.

(d) Motion Cueing Performance Signature.

(1) Background. The intent of this test is to provide quantitative time history records of motion system response to a selected set of automated QTG maneuvers during initial qualification. This is not intended to be a comparison of the motion platform accelerations against the flight test recorded accelerations (i.e., not to be compared against airplane cueing). If there is a modification to the initially qualified motion software or motion hardware (e.g., motion washout filter, simulator payload change greater than 10%) then a new baseline may need to be established.

(2) Test Selection. The conditions identified in Section 3.e. in Table A2A are those maneuvers where motion cueing is the most discernible. They are general tests applicable to all types of airplanes and should be completed for motion cueing performance signature at any time acceptable to the NSPM prior to or during the initial qualification evaluation, and the results included in the MQTG.

(3) Priority. Motion system should be designed with the intent of placing greater importance on those maneuvers that directly influence pilot perception and control of the airplane motions. For the maneuvers identified in section 3.e. in Table A2A, the flight simulator motion cueing system should have a high tilt co-ordination gain, high rotational gain, and high correlation with respect to the airplane simulation model.

(4) Data Recording. The minimum list of parameters provided should allow for the determination of the flight simulator's motion cueing performance signature for the initial qualification evaluation. The following parameters are recommended as being acceptable to perform such a function:

(a) Flight model acceleration and rotational rate commands at the pilot reference point;

(b) Motion actuators position;

(c) Actual platform position;

(d) Actual platform acceleration at pilot reference point.

e. Motion Vibrations.

(1) Presentation of results. The characteristic motion vibrations may be used to verify that the flight simulator can reproduce the frequency content of the airplane when flown in specific conditions. The test results should be presented as a Power Spectral Density (PSD) plot with frequencies on the horizontal axis and amplitude on the vertical axis. The airplane data and flight simulator data should be presented in the same format with the same

scaling. The algorithms used for generating the flight simulator data should be the same as those used for the airplane data. If they are not the same then the algorithms used for the flight simulator data should be proven to be sufficiently comparable. As a minimum, the results along the dominant axes should be presented and a rationale for not presenting the other axes should be provided.

(2) Interpretation of results. The overall trend of the PSD plot should be considered while focusing on the dominant frequencies. Less emphasis should be placed on the differences at the high frequency and low amplitude portions of the PSD plot. During the analysis, certain structural components of the flight simulator have resonant frequencies that are filtered and may not appear in the PSD plot. If filtering is required, the notch filter bandwidth should be limited to 1 Hz to ensure that the buffet feel is not adversely affected. In addition, a rationale should be provided to explain that the characteristic motion vibration is not being adversely affected by the filtering. The amplitude should match airplane data as described below. However, if the PSD plot was altered for subjective reasons, a rationale should be provided to justify the change. If the plot is on a logarithmic scale, it may be difficult to interpret the amplitude of the buffet in terms of acceleration. For example, a 1×10^{-3} g-rms²/Hz would describe a heavy buffet and may be seen in the deep stall regime. Alternatively, a 1×10^{-6} g-rms²/Hz buffet is almost not perceivable; but may represent a flap buffet at low speed. The previous two examples differ in magnitude by 1000. On a PSD plot this represents three decades (one decade is a change in order of magnitude of 10; and two decades is a change in order of magnitude of 100).

Note: In the example, "g-rms² is the mathematical expression for "g's root mean squared."

7. Sound System

a. General. The total sound environment in the airplane is very complex, and changes with atmospheric conditions, airplane configuration, airspeed, altitude, and power settings. Flight deck sounds are an important component of the flight deck operational environment and provide valuable information to the flight crew. These aural cues can either assist the crew (as an indication of an abnormal situation), or hinder the crew (as a distraction or nuisance). For effective training, the flight simulator should provide flight deck sounds that are perceptible to the pilot during normal and abnormal operations, and comparable to those of the airplane. The flight simulator operator should carefully evaluate background noises in the location where the device will be installed. To demonstrate compliance with the sound requirements, the objective or validation tests in this attachment were selected to provide a representative sample of normal static conditions typically experienced by a pilot.

b. Alternate propulsion. For FFS with multiple propulsion configurations, any condition listed in Table A2A of this attachment should be presented for

evaluation as part of the QTG if identified by the airplane manufacturer or other data supplier as significantly different due to a change in propulsion system (engine or propeller).

c. Data and Data Collection System.

(1) Information provided to the flight simulator manufacturer should be presented in the format suggested by the International Air Transport Association (IATA) "Flight Simulator Design and Performance Data Requirements," as amended. This information should contain calibration and frequency response data.

(2) The system used to perform the tests listed in Table A2A should comply with the following standards:

(a) The specifications for octave, half octave, and third octave band filter sets may be found in American National Standards Institute (ANSI) S1.11-1986;

(b) Measurement microphones should be type WS2 or better, as described in International Electrotechnical Commission (IEC) 1094-4-1995.

(3) Headsets. If headsets are used during normal operation of the airplane they should also be used during the flight simulator evaluation.

(4) Playback equipment. Playback equipment and recordings of the QTG conditions should be provided during initial evaluations.

(5) Background noise.

(a) Background noise is the noise in the flight simulator that is not associated with the airplane, but is caused by the flight simulator's cooling and hydraulic systems and extraneous noise from other locations in the building. Background noise can seriously impact the correct simulation of airplane sounds and should be kept below the airplane sounds. In some cases, the sound level of the simulation can be increased to compensate for the background noise. However, this approach is limited by the specified tolerances and by the subjective acceptability of the sound environment to the evaluation pilot.

(b) The acceptability of the background noise levels is dependent upon the normal sound levels in the airplane being represented. Background noise levels that fall below the lines defined by the following points, may be acceptable:

(i) 70 dB @ 50 Hz;

(ii) 55 dB @ 1000 Hz;

(iii) 30 dB @ 16 kHz

(Note: These limits are for unweighted 1/3 octave band sound levels. Meeting these limits for background noise does not ensure an acceptable flight simulator. Airplane sounds that fall below this limit require careful review and may require lower limits on background noise.)

(6) Validation testing. Deficiencies in airplane recordings should be considered when applying the specified tolerances to ensure that the simulation is representative of the airplane. Examples of typical deficiencies are:

(a) Variation of data between tail numbers;

(b) Frequency response of microphones;

(c) Repeatability of the measurements.

TABLE A2B.—EXAMPLE OF CONTINUING QUALIFICATION FREQUENCY RESPONSE TEST TOLERANCE

Band center frequency	Initial results (dBSPL)	Continuing qualification results (dBSPL)	Absolute difference
50	75.0	73.8	1.2
63	75.9	75.6	0.3
80	77.1	76.5	0.6
100	78.0	78.3	0.3
125	81.9	81.3	0.6
160	79.8	80.1	0.3
200	83.1	84.9	1.8
250	78.6	78.9	0.3
315	79.5	78.3	1.2
400	80.1	79.5	0.6
500	80.7	79.8	0.9
630	81.9	80.4	1.5
800	73.2	74.1	0.9
1000	79.2	80.1	0.9
1250	80.7	82.8	2.1
1600	81.6	78.6	3.0
2000	76.2	74.4	1.8
2500	79.5	80.7	1.2
3150	80.1	77.1	3.0
4000	78.9	78.6	0.3
5000	80.1	77.1	3.0
6300	80.7	80.4	0.3
8000	84.3	85.5	1.2
10000	81.3	79.8	1.5
12500	80.7	80.1	0.6
16000	71.1	71.1	0.0
Average .....	.....	.....	1.1

8. Additional Information About Flight Simulator Qualification for New or Derivative Airplanes

a. Typically, an airplane manufacturer's approved final data for performance, handling qualities, systems or avionics is not available until well after a new or derivative airplane has entered service. However, flight crew training and certification often begins several months prior to the entry of the first airplane into service. Consequently, it may be necessary to use preliminary data provided by the airplane manufacturer for interim qualification of flight simulators.

b. In these cases, the NSPM may accept certain partially validated preliminary airplane and systems data, and early release ("red label") avionics data in order to permit the necessary program schedule for training, certification, and service introduction.

c. Simulator sponsors seeking qualification based on preliminary data should consult the NSPM to make special arrangements for using preliminary data for flight simulator qualification. The sponsor should also consult the airplane and flight simulator manufacturers to develop a data plan and flight simulator qualification plan.

d. The procedure to be followed to gain NSPM acceptance of preliminary data will vary from case to case and between airplane manufacturers. Each airplane manufacturer's new airplane development and test program is designed to suit the needs of the particular project and may not contain the same events or sequence of events as another manufacturer's program, or even the same manufacturer's program for a different

airplane. Therefore, there cannot be a prescribed invariable procedure for acceptance of preliminary data, but instead there should be a statement describing the final sequence of events, data sources, and validation procedures agreed by the simulator sponsor, the airplane manufacturer, the flight simulator manufacturer, and the NSPM.

Note: A description of airplane manufacturer-provided data needed for flight simulator modeling and validation is to be found in the IATA Document "Flight Simulator Design and Performance Data Requirements," as amended.

e. The preliminary data should be the manufacturer's best representation of the airplane, with assurance that the final data will not significantly deviate from the preliminary estimates. Data derived from these predictive or preliminary techniques should be validated against available sources including, at least, the following:

(1) Manufacturer's engineering report. The report should explain the predictive method used and illustrate past success of the method on similar projects. For example, the manufacturer could show the application of the method to an earlier airplane model or predict the characteristics of an earlier model and compare the results to final data for that model.

(2) Early flight test results. This data is often derived from airplane certification tests, and should be used to maximum advantage for early flight simulator validation. Certain critical tests that would normally be done early in the airplane

certification program should be included to validate essential pilot training and certification maneuvers. These include cases where a pilot is expected to cope with an airplane failure mode or an engine failure. Flight test data that will be available early in the flight test program will depend on the airplane manufacturer's flight test program design and may not be the same in each case. The flight test program of the airplane manufacturer should include provisions for generation of very early flight test results for flight simulator validation.

f. The use of preliminary data is not indefinite. The airplane manufacturer's final data should be available within 12 months after the airplane's first entry into service or as agreed by the NSPM, the simulator sponsor, and the airplane manufacturer. When applying for interim qualification using preliminary data, the simulator sponsor and the NSPM should agree on the update program. This includes specifying that the final data update will be installed in the flight simulator within a period of 12 months following the final data release, unless special conditions exist and a different schedule is acceptable. The flight simulator performance and handling validation would then be based on data derived from flight tests or from other approved sources. Initial airplane systems data should be updated after engineering tests. Final airplane systems data should also be used for flight simulator programming and validation.

g. Flight simulator avionics should stay essentially in step with airplane avionics (hardware and software) updates. The permitted time lapse between airplane and

flight simulator updates should be minimal. It may depend on the magnitude of the update and whether the QTG and pilot training and certification are affected. Differences in airplane and flight simulator avionics versions and the resulting effects on flight simulator qualification should be agreed between the simulator sponsor and the NSPM. Consultation with the flight simulator manufacturer is desirable throughout the qualification process.

h. The following describes an example of the design data and sources that might be used in the development of an interim qualification plan.

(1) The plan should consist of the development of a QTG based upon a mix of flight test and engineering simulation data. For data collected from specific airplane flight tests or other flights, the required design model or data changes necessary to support an acceptable Proof of Match (POM) should be generated by the airplane manufacturer.

(2) For proper validation of the two sets of data, the airplane manufacturer should compare their simulation model responses against the flight test data, when driven by the same control inputs and subjected to the same atmospheric conditions as recorded in the flight test. The model responses should result from a simulation where the following systems are run in an integrated fashion and are consistent with the design data released to the flight simulator manufacturer:

- (a) Propulsion;
- (b) Aerodynamics;
- (c) Mass properties;
- (d) Flight controls;
- (e) Stability augmentation; and
- (f) Brakes/landing gear.

i. A qualified test pilot should be used to assess handling qualities and performance evaluations for the qualification of flight simulators of new airplane types.

End Information

Begin QPS Requirement

9. Engineering Simulator—Validation Data

a. When a fully validated simulation (i.e., validated with flight test results) is modified due to changes to the simulated airplane configuration, the airplane manufacturer or other acceptable data supplier must coordinate with the NSPM if they propose to supply validation data from an “audited” engineering simulator/simulation to selectively supplement flight test data. The NSPM must be provided an opportunity to audit the engineering simulation or the engineering simulator used to generate the validation data. Validation data from an audited engineering simulation may be used for changes that are incremental in nature. Manufacturers or other data suppliers must be able to demonstrate that the predicted changes in aircraft performance are based on acceptable aeronautical principles with proven success history and valid outcomes. This must include comparisons of predicted and flight test validated data.

b. Airplane manufacturers or other acceptable data suppliers seeking to use an engineering simulator for simulation

validation data as an alternative to flight-test derived validation data, must contact the NSPM and provide the following:

(1) A description of the proposed aircraft changes, a description of the proposed simulation model changes, and the use of an integral configuration management process, including a description of the actual simulation model modifications that includes a step-by-step description leading from the original model(s) to the current model(s).

(2) A schedule for review by the NSPM of the proposed plan and the subsequent validation data to establish acceptability of the proposal.

(3) Validation data from an audited engineering simulator/simulation to supplement specific segments of the flight test data.

c. To be qualified to supply engineering simulator validation data, for aerodynamic, engine, flight control, or ground handling models, an airplane manufacturer or other acceptable data supplier must:

- (1) Be able to verify their ability able to:
 - (a) Develop and implement high fidelity simulation models; and
 - (b) Predict the handling and performance characteristics of an airplane with sufficient accuracy to avoid additional flight test activities for those handling and performance characteristics.
- (2) Have an engineering simulator that:
 - (a) Is a physical entity, complete with a flight deck representative of the simulated class of airplane;
 - (b) Has controls sufficient for manual flight;
 - (c) Has models that run in an integrated manner;
 - (d) Has fully flight-test validated simulation models as the original or baseline simulation models;
 - (e) Has an out-of-the-flight deck visual system;
 - (f) Has actual avionics boxes interchangeable with the equivalent software simulations to support validation of released software;
 - (g) Uses the same models as released to the training community (which are also used to produce stand-alone proof-of-match and checkout documents);
 - (h) Is used to support airplane development and certification; and
 - (i) Has been found to be a high fidelity representation of the airplane by the manufacturer's pilots (or other acceptable data supplier), certificate holders, and the NSPM.
- (3) Use the engineering simulator/simulation to produce a representative set of integrated proof-of-match cases.
- (4) Use a configuration control system covering hardware and software for the operating components of the engineering simulator/simulation.
- (5) Demonstrate that the predicted effects of the change(s) are within the provisions of sub-paragraph “a” of this section, and confirm that additional flight test data are not required.

d. Additional Requirements for Validation Data

(1) When used to provide validation data, an engineering simulator must meet the

simulator standards currently applicable to training simulators except for the data package.

(2) The data package used must be:

- (a) Comprised of the engineering predictions derived from the airplane design, development, or certification process;
- (b) Based on acceptable aeronautical principles with proven success history and valid outcomes for aerodynamics, engine operations, avionics operations, flight control applications, or ground handling;
- (c) Verified with existing flight-test data; and
- (d) Applicable to the configuration of a production airplane, as opposed to a flight-test airplane.

(3) Where engineering simulator data are used as part of a QTG, an essential match must exist between the training simulator and the validation data.

(4) Training flight simulator(s) using these baseline and modified simulation models must be qualified to at least internationally recognized standards, such as contained in the ICAO Document 9625, the “Manual of Criteria for the Qualification of Flight Simulators.”

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(2) The data package used must be:

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- (b) Based on acceptable aeronautical principles with proven success history and valid outcomes for aerodynamics, engine operations, avionics operations, flight control applications, or ground handling;
- (c) Verified with existing flight-test data; and
- (d) Applicable to the configuration of a production airplane, as opposed to a flight-test airplane.

(3) Where engineering simulator data are used as part of a QTG, an essential match must exist between the training simulator and the validation data.

(4) Training flight simulator(s) using these baseline and modified simulation models must be qualified to at least internationally recognized standards, such as contained in the ICAO Document 9625, the “Manual of Criteria for the Qualification of Flight Simulators.”

End QPS Requirement

10. [Reserved]

11. Validation Test Tolerances

Begin Information

a. Non-Flight-Test Tolerances

(1) If engineering simulator data or other non-flight-test data are used as an allowable form of reference validation data for the objective tests listed in Table A2A of this attachment, the data provider must supply a well-documented mathematical model and testing procedure that enables a replication of the engineering simulation results within 20% of the corresponding flight test tolerances.

b. Background

(1) The tolerances listed in Table A2A of this attachment are designed to measure the quality of the match using flight-test data as a reference.

(2) Good engineering judgment should be applied to all tolerances in any test. A test is failed when the results clearly fall outside of the prescribed tolerance(s).

(3) Engineering simulator data are acceptable because the same simulation models used to produce the reference data are also used to test the flight training simulator (i.e., the two sets of results should be “essentially” similar).

(4) The results from the two sources may differ for the following reasons:

- (a) Hardware (avionics units and flight controls);
- (b) Iteration rates;
- (c) Execution order;
- (d) Integration methods;
- (e) Processor architecture;
- (f) Digital drift, including:
- (i) Interpolation methods;
- (ii) Data handling differences; and
- (iii) Auto-test trim tolerances.

(5) The tolerance limit between the reference data and the flight simulator results

is generally 20% of the corresponding “flight-test” tolerances. However, there may be cases where the simulator models used are of higher fidelity, or the manner in which they are cascaded in the integrated testing loop have the effect of a higher fidelity, than those supplied by the data provider. Under these circumstances, it is possible that an error greater than 20% may be generated. An error greater than 20% may be acceptable if simulator sponsor can provide an adequate explanation.

(6) Guidelines are needed for the application of tolerances to engineering-simulator-generated validation data because:

(a) Flight-test data are often not available due to technical reasons;

(b) Alternative technical solutions are being advanced; and

(c) High costs.

12. Validation Data Roadmap

a. Airplane manufacturers or other data suppliers should supply a validation data roadmap (VDR) document as part of the data package. A VDR document contains guidance material from the airplane validation data supplier recommending the best possible

sources of data to be used as validation data in the QTG. A VDR is of special value when requesting interim qualification, qualification of simulators for airplanes certificated prior to 1992, and qualification of alternate engine or avionics fits. A sponsor seeking to have a device qualified in accordance with the standards contained in this QPS appendix should submit a VDR to the NSPM as early as possible in the planning stages. The NSPM is the final authority to approve the data to be used as validation material for the QTG. The NSPM and the Joint Aviation Authorities’ Synthetic Training Devices Advisory Board have committed to maintain a list of agreed VDRs.

b. The VDR should identify (in matrix format) sources of data for all required tests. It should also provide guidance regarding the validity of these data for a specific engine type, thrust rating configuration, and the revision levels of all avionics affecting airplane handling qualities and performance. The VDR should include rationale or explanation in cases where data or parameters are missing, engineering simulation data are to be used, flight test methods require explanation, or there is any

deviation from data requirements.

Additionally, the document should refer to other appropriate sources of validation data (e.g., sound and vibration data documents).

c. The Sample Validation Data Roadmap (VDR) for airplanes, shown in Table A2C, depicts a generic roadmap matrix identifying sources of validation data for an abbreviated list of tests. This document is merely a sample and does not provide actual data. A complete matrix should address all test conditions and provide actual data and data sources.

d. Two examples of rationale pages are presented in Appendix F of the IATA “Flight Simulator Design and Performance Data Requirements.” These illustrate the type of airplane and avionics configuration information and descriptive engineering rationale used to describe data anomalies or provide an acceptable basis for using alternative data for QTG validation requirements.

End Information

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Table A2C - Sample Validation Data Roadmap for Airplanes

ICAO or IATA #	Test Description	Validation Source	Validation Document						Comments
<i>Notes:</i> 1. Only one page is shown; and some test conditions were deleted for brevity. 2. Relevant regulatory material should be consulted and all applicable tests addressed. 3. Validation source, document and comments provided herein are for reference only and do not constitute approval for use. 4. CCA mode must be described for each test condition. 5. If more than one aircraft type (e.g., derivative and baseline) are used as validation data more columns may be necessary.	CCA Mode	Aircraft Flight Test Data	Aerodynamics POM Doc. #xxx123, Rev. A	Flight Controls POM Doc. #xxx456, NEW	Ground Handling POM Doc. #xxx789, Rev. B	Propulsion POM Doc. #321, Rev. C	Integrated POM Doc. #xxx654, Rev. A	Appendix to this VDR Doc. #xxx987, NEW	<i>Legend:</i> D71 = Engine Type (Thrust Rating of 71.5K) D73 = Engine Type (Thrust Rating of 73K) Bold upper case = primary validation source. Lower case, within parentheses = alternative validation source. R = Rationale included in the data package Appendix.
1.a.1.	Minimum Radius Turn.	X			D71				
1.a.2.	Rate of Turn vs. Nosewheel Angle (2 speeds).	X			D71				
1.b.1.	Ground Acceleration Time and Distance.	X			(d73)		D73		Primary data contained in IPOM.
1.b.2.	Minimum Control Speed, Ground (V _{mcg}).	(x)	X					D73	See engineering rationale for test data in VDR.
1.b.3.	Minimum Unstick Speed (V _{mu}).	X	X		D71				Primary data contained in IPOM.
1.b.4.	Normal Takeoff.	X	X		(d73)		D73		Alternative engine thrust rating flight test data in VDR.
1.b.5.	Critical Engine Failure on Takeoff.	X	X		(d71)			D73	Alternative engine thrust rating flight test data in VDR.
1.b.6.	Crosswind Takeoff.	X	X		(d71)			D73	Alternative engine thrust rating flight test data in VDR.
1.b.7.	Rejected Takeoff.	X	X		D71			R	Test procedure anomaly; see rationale.
1.b.8.	Dynamic Engine Failure After Takeoff.	X	X					D73	No flight test data available; see rationale.
1.c.1.	Normal Climb - All Engines.	X	X		(d71)		D71		Primary data contained in IPOM.
1.c.2.	Climb - Engine-out, Second Segment.	X	X		(d71)			D73	Alternative engine thrust rating flight test data in VDR.
1.c.3.	Climb - Engine-out, Enroute.	X	X		(d71)			D73	AFM data available (73K).
1.c.4.	Engine-out, Approach Climb.	X	X		D71				
1.c.5.a.	Level Flight Acceleration.	(x)	X		(d73)			D73	Eng sim data w/ modified EEC accel rate in VDR.
1.c.5.b.	Level Flight Deceleration.	(x)	X		(d73)			D73	Eng sim data w/ modified EEC accel rate in VDR.
1.d.1.	Cruise Performance.	X	X		D71				
1.e.1.a.	Stopping Time & Distance (Wheel brakes / Light weight).		X		D71			(d73)	No flight test data available; see rationale.
1.e.1.b.	Stopping Time & Distance (Wheel brakes / Med. weight).	X	X		D71			(d73)	
1.e.1.c.	Stopping Time & Distance (Wheel brakes / Heavy weight).	X	X		D71			(d73)	
1.e.2.a.	Stopping Time & Distance (Reverse thrust / Light weight).	X	X		D71			(d73)	
1.e.2.b.	Stopping Time & Distance (Reverse thrust / Med. Weight).		X		(d71)			D73	No flight test data available; see rationale.

Begin Information**13. Acceptance Guidelines for Alternative Engines Data.****a. Background**

(1) For a new airplane type, the majority of flight validation data are collected on the first airplane configuration with a "baseline" engine type. These data are then used to validate all flight simulators representing that airplane type.

(2) Additional flight test validation data may be needed for flight simulators representing an airplane with engines of a different type than the baseline, or for engines with thrust rating that is different from previously validated configurations.

(3) When a flight simulator with alternate engines is to be qualified, the QTG should contain tests against flight test validation data for selected cases where engine differences are expected to be significant.

b. Approval Guidelines For Validating Alternate Engine Applications

(1) The following guidelines apply to flight simulators representing airplanes with alternate engine applications or with more than one engine type or thrust rating.

(2) Validation tests can be segmented into two groups, those that are dependent on engine type or thrust rating and those that are not.

(3) For tests that are independent of engine type or thrust rating, the QTG can be based on validation data from any engine application. Tests in this category should be designated as independent of engine type or thrust rating.

(4) For tests that are affected by engine type, the QTG should contain selected engine-specific flight test data sufficient to validate that particular airplane-engine

configuration. These effects may be due to engine dynamic characteristics, thrust levels or engine-related airplane configuration changes. This category is primarily characterized by variations between different engine manufacturers' products, but also includes differences due to significant engine design changes from a previously flight-validated configuration within a single engine type. See Table A2D, Alternate Engine Validation Flight Tests in this section for a list of acceptable tests.

(5) Alternate engine validation data should be based on flight test data, except as noted in sub-paragraphs 13.c.(1) and (2), or where other data are specifically allowed (e.g., engineering simulator/simulation data). If certification of the flight characteristics of the airplane with a new thrust rating (regardless of percentage change) does require certification flight testing with a comprehensive stability and control flight instrumentation package, then the conditions described in Table A2D in this section should be obtained from flight testing and presented in the QTG. Flight test data, other than throttle calibration data, are not required if the new thrust rating is certified on the airplane without need for a comprehensive stability and control flight instrumentation package.

(6) As a supplement to the engine-specific flight tests listed in Table A2D and baseline engine-independent tests, additional engine-specific engineering validation data should be provided in the QTG, as appropriate, to facilitate running the entire QTG with the alternate engine configuration. The sponsor and the NSPM should agree in advance on the specific validation tests to be supported by engineering simulation data.

(7) A matrix or VDR should be provided with the QTG indicating the appropriate validation data source for each test.

(8) The flight test conditions in Table A2D are appropriate and should be sufficient to validate implementation of alternate engines in a flight simulator.

End Information**Begin QPS Requirement****c. Test Requirements**

(1) The QTG must contain selected engine-specific flight test data sufficient to validate the alternative thrust level when:

(a) the engine type is the same, but the thrust rating exceeds that of a previously flight-test validated configuration by five percent (5%) or more; or

(b) the engine type is the same, but the thrust rating is less than the lowest previously flight-test validated rating by fifteen percent (15%) or more. See Table A2D for a list of acceptable tests.

(2) Flight test data is not required if the thrust increase is greater than 5%, but flight tests have confirmed that the thrust increase does not change the airplane's flight characteristics.

(3) Throttle calibration data (i.e., commanded power setting parameter versus throttle position) must be provided to validate all alternate engine types and engine thrust ratings that are higher or lower than a previously validated engine. Data from a test airplane or engineering test bench with the correct engine controller (both hardware and software) are required.

End QPS Requirement**Begin QPS Requirement****TABLE A2D.—ALTERNATIVE ENGINE VALIDATION FLIGHT TESTS**

Entry No.	Test description	Alternative engine type	Alternative thrust rating ²
1.b.1., 1.b.4.	Normal take-off/ground acceleration time and distance	X	X
1.b.2.	V _{mca} , if performed for airplane certification	X	X
1.b.5.	Engine-out take-off	X	
1.b.8.	Dynamic engine failure after take-off.		
1.b.7.	Rejected take-off if performed for airplane certification	X	
1.d.1.	Cruise performance	X	
1.f.1., 1.f.2.	Engine acceleration and deceleration	X	X
2.a.7.	Throttle calibration ¹	X	X
2.c.1.	Power change dynamics (acceleration)	X	X
2.d.1.	V _{mca} if performed for airplane certification	X	X
2.d.5.	Engine inoperative trim	X	X
2.e.1.	Normal landing	X	

¹ Must be provided for all changes in engine type or thrust rating; see paragraph 13.c.(3).

² See paragraphs 13.c.(1) through 13.c.(3), for a definition of applicable thrust ratings.

End QPS Requirement

Begin Information

14. Acceptance Guidelines for Alternative Avionics (Flight-Related Computers and Controllers)

a. Background

(1) For a new airplane type, the majority of flight validation data are collected on the first airplane configuration with a "baseline" flight-related avionics ship-set; (see subparagraph b.(2) of this section). These data are then used to validate all flight simulators representing that airplane type.

(2) Additional validation data may be required for flight simulators representing an airplane with avionics of a different hardware design than the baseline, or a different software revision than previously validated configurations.

(3) When a flight simulator with additional or alternate avionics configurations is to be qualified, the QTG should contain tests against validation data for selected cases where avionics differences are expected to be significant.

b. Approval Guidelines for Validating Alternate Avionics

(1) The following guidelines apply to flight simulators representing airplanes with a revised avionics configuration, or more than one avionics configuration.

(2) The baseline validation data should be based on flight test data, except where other data are specifically allowed (e.g., engineering flight simulator data).

(3) The airplane avionics can be segmented into two groups, systems or components whose functional behavior contributes to the aircraft response presented in the QTG results, and systems that do not. The following avionics are examples of contributory systems for which hardware design changes or software revisions may lead to significant differences in the aircraft response relative to the baseline avionics configuration: Flight control computers and controllers for engines, autopilot, braking system, nosewheel steering system, and high lift system. Related avionics such as stall warning and augmentation systems should also be considered.

(4) The acceptability of validation data used in the QTG for an alternative avionics fit should be determined as follows:

(a) For changes to an avionics system or component that do not affect QTG validation test response, the QTG test can be based on validation data from the previously validated avionics configuration.

(b) For an avionics change to a contributory system, where a specific test is not affected by the change (e.g., the avionics change is a Built In Test Equipment (BITE) update or a modification in a different flight phase), the QTG test can be based on validation data from the previously-validated avionics configuration. The QTG should include authoritative justification (e.g., from the airplane manufacturer or system supplier) that this avionics change does not affect the test.

(c) For an avionics change to a contributory system, the QTG may be based on validation

data from the previously-validated avionics configuration if no new functionality is added and the impact of the avionics change on the airplane response is small and based on acceptable aeronautical principles with proven success history and valid outcomes. This should be supplemented with avionics-specific validation data from the airplane manufacturer's engineering simulation, generated with the revised avionics configuration. The QTG should also include an explanation of the nature of the change and its effect on the airplane response.

(d) For an avionics change to a contributory system that significantly affects some tests in the QTG or where new functionality is added, the QTG should be based on validation data from the previously validated avionics configuration and supplemental avionics-specific flight test data sufficient to validate the alternate avionics revision. Additional flight test validation data may not be needed if the avionics changes were certified without the need for testing with a comprehensive flight instrumentation package. The airplane manufacturer should coordinate flight simulator data requirements, in advance with the NSPM.

(5) A matrix or "roadmap" should be provided with the QTG indicating the appropriate validation data source for each test. The roadmap should include identification of the revision state of those contributory avionics systems that could affect specific test responses if changed.

15. Transport Delay Testing

a. This paragraph explains how to determine the introduced transport delay through the flight simulator system so that it does not exceed a specific time delay. The transport delay should be measured from control inputs through the interface, through each of the host computer modules and back through the interface to motion, flight instrument, and visual systems. The transport delay should not exceed the maximum allowable interval.

b. Four specific examples of transport delay are:

(1) Simulation of classic non-computer controlled aircraft;

(2) Simulation of computer controlled aircraft using real airplane black boxes;

(3) Simulation of computer controlled aircraft using software emulation of airplane boxes;

(4) Simulation using software avionics or re-hosted instruments.

c. Figure A2C illustrates the total transport delay for a non-computer-controlled airplane or the classic transport delay test. Since there are no airplane-induced delays for this case, the total transport delay is equivalent to the introduced delay.

d. Figure A2D illustrates the transport delay testing method using the real airplane controller system.

e. To obtain the induced transport delay for the motion, instrument and visual signal, the delay induced by the airplane controller should be subtracted from the total transport delay. This difference represents the introduced delay and should not exceed the standards prescribed in Table A1A.

f. Introduced transport delay is measured from the flight deck control input to the reaction of the instruments and motion and visual systems (See Figure A2C).

g. The control input may also be introduced after the airplane controller system and the introduced transport delay measured directly from the control input to the reaction of the instruments, and simulator motion and visual systems (See Figure A2D).

h. Figure A2E illustrates the transport delay testing method used on a flight simulator that uses a software emulated airplane controller system.

i. It is not possible to measure the introduced transport delay using the simulated airplane controller system architecture for the pitch, roll and yaw axes. Therefore, the signal should be measured directly from the pilot controller. The flight simulator manufacturer should measure the total transport delay and subtract the inherent delay of the actual airplane components because the real airplane controller system has an inherent delay provided by the airplane manufacturer. The flight simulator manufacturer should ensure that the introduced delay does not exceed the standards prescribed in Table A1A.

j. Special measurements for instrument signals for flight simulators using a real airplane instrument display system instead of a simulated or re-hosted display. For flight instrument systems, the total transport delay should be measured and the inherent delay of the actual airplane components subtracted to ensure that the introduced delay does not exceed the standards prescribed in Table A1A.

(1) Figure A2FA illustrates the transport delay procedure without airplane display simulation. The introduced delay consists of the delay between the control movement and the instrument change on the data bus.

(2) Figure A2FB illustrates the modified testing method required to measure introduced delay due to software avionics or re-hosted instruments. The total simulated instrument transport delay is measured and the airplane delay should be subtracted from this total. This difference represents the introduced delay and should not exceed the standards prescribed in Table A1A. The inherent delay of the airplane between the data bus and the displays is indicated in figure A2FA. The display manufacturer should provide this delay time.

k. Recorded signals. The signals recorded to conduct the transport delay calculations should be explained on a schematic block diagram. The flight simulator manufacturer should also provide an explanation of why each signal was selected and how they relate to the above descriptions.

l. Interpretation of results. Flight simulator results vary over time from test to test due to "sampling uncertainty." All flight simulators run at a specific rate where all modules are executed sequentially in the host computer. The flight controls input can occur at any time in the iteration, but these data will not be processed before the start of the new iteration. For example, a flight simulator running at 60 Hz may have a difference of as much as 16.67 msec between

test results. This does not mean that the test has failed. Instead, the difference is attributed to variations in input processing. In some conditions, the host simulator and the visual system do not run at the same iteration rate, so the output of the host

computer to the visual system will not always be synchronized.

m. The transport delay test should account for both daylight and night modes of operation of the visual system. In both cases, the tolerances prescribed in Table A1A must

be met and the motion response should occur before the end of the first video scan containing new information.

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Figure A2C

Transport Delay for simulation of classic non-computer controlled aircraft.

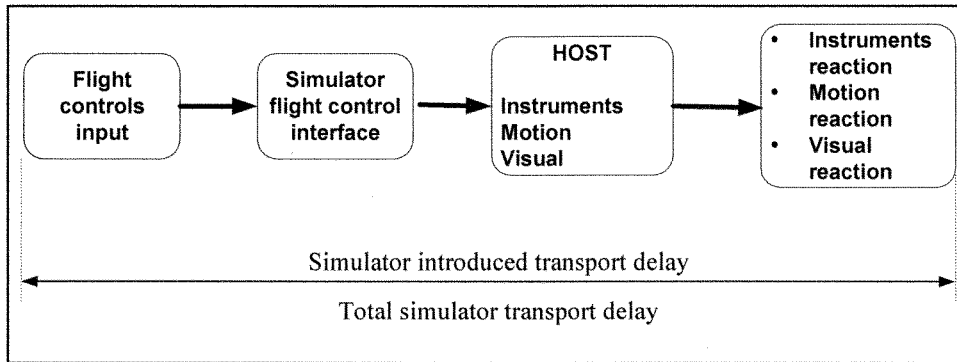


Figure A2D

Transport Delay for simulation of computer controlled aircraft using real airplane black boxes

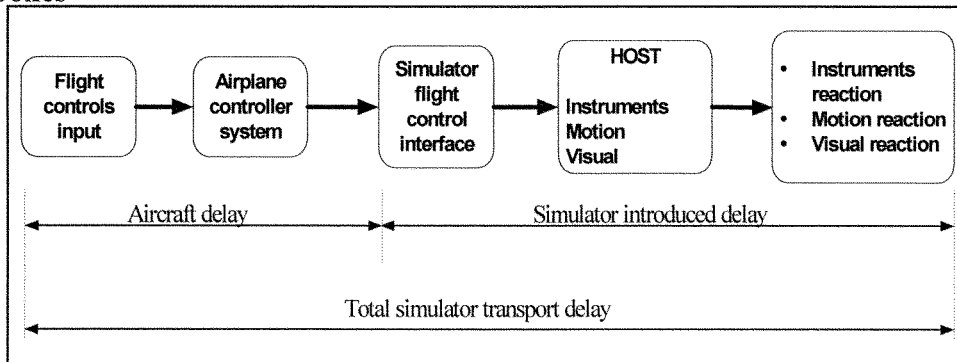


Figure A2E

Transport Delay for simulation of computer controlled aircraft using software emulation of airplane boxes

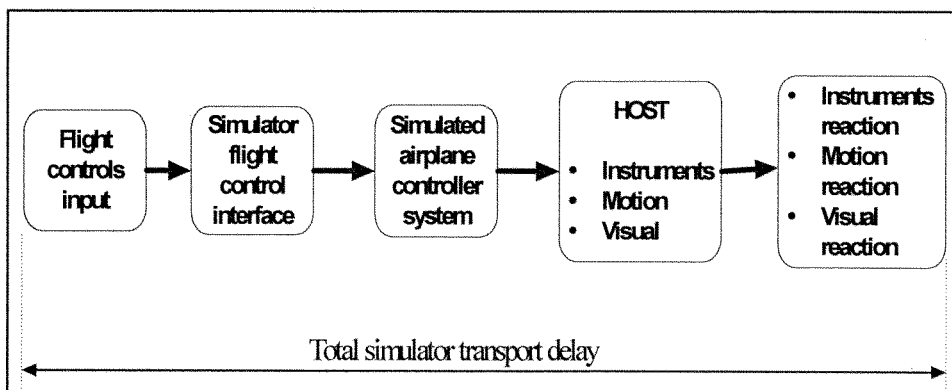
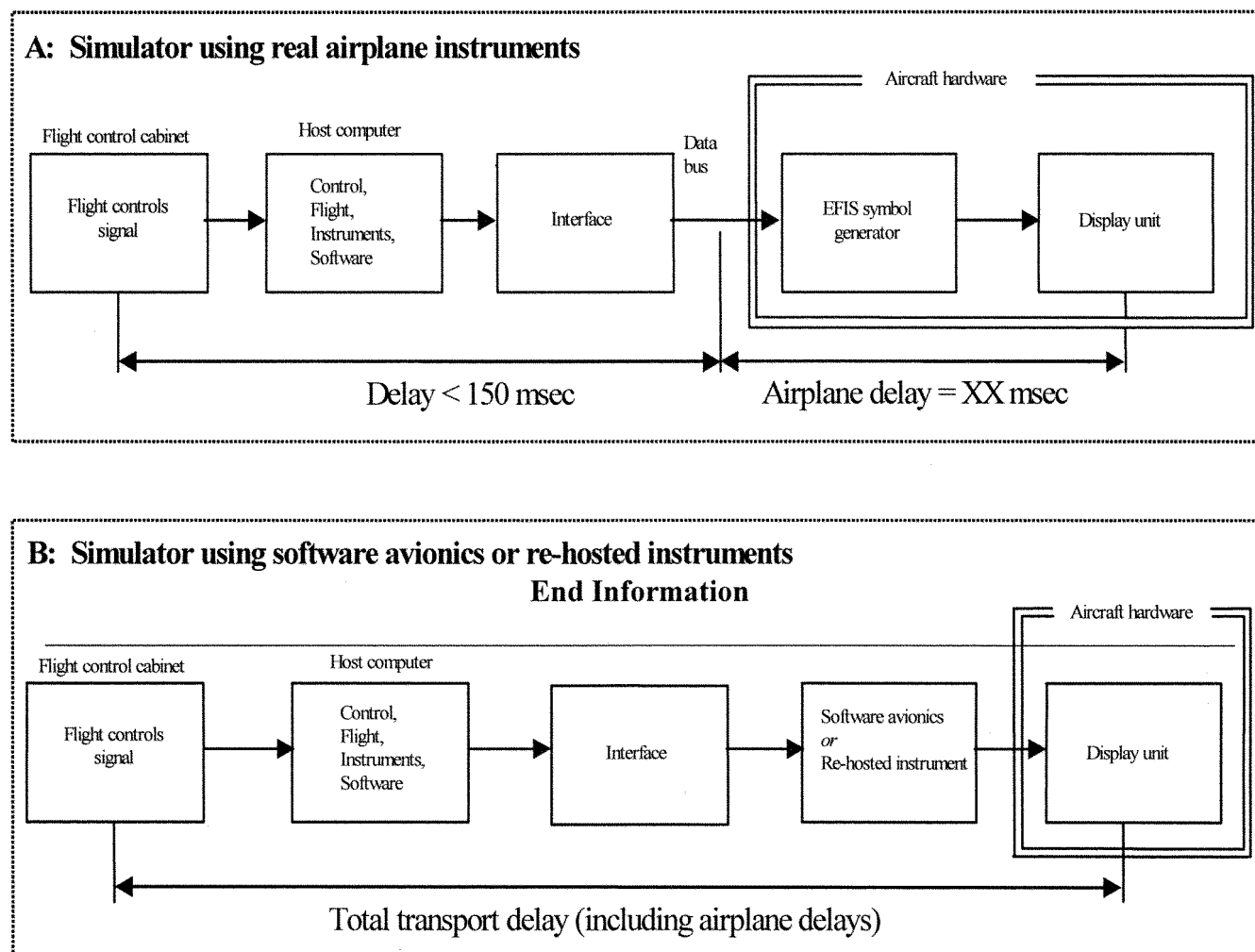


Figure A2FA and A2FB**Transport delay for simulation of airplanes using real or re-hosted instrument drivers**

BILLING CODE 4910-13-C.

Begin Information**16. Continuing Qualification Evaluations—Validation Test Data Presentation****a. Background**

(1) The MQTG is created during the initial evaluation of a flight simulator. This is the master document, as amended, to which flight simulator continuing qualification evaluation test results are compared.

(2) The currently accepted method of presenting continuing qualification evaluation test results is to provide flight simulator results over-plotted with reference data. Test results are carefully reviewed to determine if the test is within the specified tolerances. This can be a time consuming process, particularly when reference data exhibits rapid variations or an apparent anomaly requiring engineering judgment in the application of the tolerances. In these cases, the solution is to compare the results to the MQTG. The continuing qualification

results are compared to the results in the MQTG for acceptance. The flight simulator operator and the NSPM should look for any change in the flight simulator performance since initial qualification.

b. Continuing Qualification Evaluation Test Results Presentation

(1) Flight simulator operators are encouraged to over-plot continuing qualification validation test results with MQTG flight simulator results recorded during the initial evaluation and as amended. Any change in a validation test will be readily apparent. In addition to plotting continuing qualification validation test and MQTG results, operators may elect to plot reference data as well.

(2) There are no suggested tolerances between flight simulator continuing qualification and MQTG validation test results. Investigation of any discrepancy between the MQTG and continuing qualification flight simulator performance is left to the discretion of the flight simulator operator and the NSPM.

(3) Differences between the two sets of results, other than variations attributable to repeatability issues that cannot be explained, should be investigated.

(4) The flight simulator should retain the ability to over-plot both automatic and manual validation test results with reference data.

End Information**Begin QPS Requirements****17. Alternative Data Sources, Procedures, and Instrumentation: Level A and Level B Simulators Only**

a. Sponsors are not required to use the alternative data sources, procedures, and instrumentation. However, a sponsor may choose to use one or more of the alternative sources, procedures, and instrumentation described in Table A2E.

End QPS Requirements

Begin Information

b. It has become standard practice for experienced simulator manufacturers to use modeling techniques to establish data bases for new simulator configurations while awaiting the availability of actual flight test data. The data generated from the aerodynamic modeling techniques is then compared to the flight test data when it becomes available. The results of such comparisons have become increasingly consistent, indicating that these techniques, applied with the appropriate experience, are dependable and accurate for the development of aerodynamic models for use in Level A and Level B simulators.

c. Based on this history of successful comparisons, the NSPM has concluded that those who are experienced in the development of aerodynamic models may use modeling techniques to alter the method for acquiring flight test data for Level A or Level B simulators.

d. The information in Table A2E (Alternative Data Sources, Procedures, and Instrumentation) is presented to describe an acceptable alternative to data sources for simulator modeling and validation and an acceptable alternative to the procedures and instrumentation traditionally used to gather such modeling and validation data.

(1) Alternative data sources that may be used for part or all of a data requirement are the Airplane Maintenance Manual, the Airplane Flight Manual (AFM), Airplane Design Data, the Type Inspection Report

(TIR), Certification Data or acceptable supplemental flight test data.

(2) The sponsor should coordinate with the NSPM prior to using alternative data sources in a flight test or data gathering effort.

e. The NSPM position regarding the use of these alternative data sources, procedures, and instrumentation is based on the following presumptions:

(1) Data gathered through the alternative means does not require angle of attack (AOA) measurements or control surface position measurements for any flight test. However, AOA can be sufficiently derived if the flight test program ensures the collection of acceptable level, unaccelerated, trimmed flight data. All of the simulator time history tests that begin in level, unaccelerated, and trimmed flight, including the three basic trim tests and “fly-by” trims, can be a successful validation of angle of attack by comparison with flight test pitch angle. (Note: Due to the criticality of angle of attack in the development of the ground effects model, particularly critical for normal landings and landings involving cross-control input applicable to Level B simulators, stable “fly-by” trim data will be the acceptable norm for normal and cross-control input landing objective data for these applications.)

(2) The use of a rigorously defined and fully mature simulation controls system model that includes accurate gearing and cable stretch characteristics (where applicable), determined from actual aircraft measurements. Such a model does not require control surface position

measurements in the flight test objective data in these limited applications.

f. The sponsor is urged to contact the NSPM for clarification of any issue regarding airplanes with reversible control systems. Table A2E is not applicable to Computer Controlled Aircraft FFSSs.

g. Utilization of these alternate data sources, procedures, and instrumentation (Table A2E) does not relieve the sponsor from compliance with the balance of the information contained in this document relative to Level A or Level B FFSSs.

h. The term “inertial measurement system” is used in the following table to include the use of a functional global positioning system (GPS).

i. Synchronized video for the use of alternative data sources, procedures, and instrumentation should have:

(1) Sufficient resolution to allow magnification of the display to make appropriate measurement and comparisons; and

(2) Sufficient size and incremental marking to allow similar measurement and comparison. The detail provided by the video should provide sufficient clarity and accuracy to measure the necessary parameter(s) to at least 1/2 of the tolerance authorized for the specific test being conducted and allow an integration of the parameter(s) in question to obtain a rate of change.

End Information**TABLE A2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION**

QPS REQUIREMENTS				Information
The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.				
Table of objective tests	Sim level		Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title	A	B		
1.a.1. Performance. Taxi. Minimum Radius turn.	X	X	TIR, AFM, or Design data may be used	
1.a.2. Performance. Taxi Rate of Turn vs. Nosewheel Steering Angle.		X	Data may be acquired by using a constant tiller position, measured with a protractor or full rudder pedal application for steady state turn, and synchronized video of heading indicator. If less than full rudder pedal is used, pedal position must be recorded.	A single procedure may not be adequate for all airplane steering systems, therefore appropriate measurement procedures must be devised and proposed for NSPM concurrence.
1.b.1. Performance. Takeoff. Ground Acceleration Time and Distance.	X	X	Preliminary certification data may be used. Data may be acquired by using a stop watch, calibrated airspeed, and runway markers during a takeoff with power set before brake release. Power settings may be hand recorded. If an inertial measurement system is installed, speed and distance may be derived from acceleration measurements.	
1.b.2. Performance. Takeoff. Minimum Control Speed—ground (V_{mcg}) using aerodynamic controls only (per applicable airworthiness standard) or low speed, engine inoperative ground control characteristics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	Rapid throttle reductions at speeds near V_{mcg} may be used while recording appropriate parameters. The nosewheel must be free to caster, or equivalently freed of sideforce generation.

TABLE A2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.				Information
Table of objective tests	Sim level		Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title	A	B		
1.b.3. Performance. Takeoff. Minimum Unstick Speed (V_{mu}) or equivalent test to demonstrate early rotation takeoff characteristics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and the force/position measurements of flight deck controls.	
1.b.4. Performance. Takeoff. Normal Takeoff.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. AOA can be calculated from pitch attitude and flight path.	
1.b.5. Performance. Takeoff. Critical Engine Failure during Takeoff.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	Record airplane dynamic response to engine failure and control inputs required to correct flight path.
1.b.6. Performance. Takeoff. Crosswind Takeoff.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	The “1:7 law” to 100 feet (30 meters) is an acceptable wind profile.
1.b.7. Performance. Takeoff. Rejected Takeoff.	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments, thrust lever position, engine parameters, and distance (e.g., runway markers). A stop watch is required..	
1.c. 1. Performance. Climb. Normal Climb all engines operating..	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments and engine power throughout the climb range.	
1.c.2. Performance. Climb. One engine Inoperative Climb.	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments and engine power throughout the climb range.	
1.c.4. Performance. Climb. One Engine Inoperative Approach Climb (if operations in icing conditions are authorized).	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments and engine power throughout the climb range.	
1.d.1. Cruise/Descent. Level flight acceleration..	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments, thrust lever position, engine parameters, and elapsed time.	
1.d.2. Cruise/Descent. Level flight deceleration..	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments, thrust lever position, engine parameters, and elapsed time.	
1.d.4. Cruise/Descent. Idle descent ..	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments, thrust lever position, engine parameters, and elapsed time.	
1.d.5. Cruise/Descent. Emergency Descent.	X	X	Data may be acquired with a synchronized video of calibrated airplane instruments, thrust lever position, engine parameters, and elapsed time.	
1.e.1. Performance. Stopping. Deceleration time and distance, using manual application of wheel brakes and no reverse thrust on a dry runway.	X	X	Data may be acquired during landing tests using a stop watch, runway markers, and a synchronized video of calibrated airplane instruments, thrust lever position and the pertinent parameters of engine power.	

TABLE A2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.				Information
Table of objective tests	Sim level		Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title	A	B		
1.e.2. Performance. Ground. Deceleration Time and Distance, using reverse thrust and no wheel brakes.	X	X	Data may be acquired during landing tests using a stop watch, runway markers, and a synchronized video of calibrated airplane instruments, thrust lever position and pertinent parameters of engine power.	
1.f.1. Performance. Engines. Acceleration.	X	X	Data may be acquired with a synchronized video recording of engine instruments and throttle position.	
1.f.2. Performance. Engines. Deceleration.	X	X	Data may be acquired with a synchronized video recording of engine instruments and throttle position.	
2.a.1.a. Handling Qualities. Static Control Checks. Pitch Controller Position vs. Force and Surface Position Calibration.	X	X	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant column positions (encompassing significant column position data points), acceptable to the NSPM, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same column position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.2.a. Handling Qualities. Static Control Checks. Roll Controller Position vs. Force and Surface Position Calibration.	X	X	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant wheel positions (encompassing significant wheel position data points), acceptable to the NSPM, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same wheel position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.3.a. Handling Qualities. Static Control Checks. Rudder Pedal Position vs. Force and Surface Position Calibration.	X	X	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant rudder pedal positions (encompassing significant rudder pedal position data points), acceptable to the NSPM, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same rudder pedal position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.4. Handling Qualities. Static Control Checks. Nosewheel Steering Controller Force and Position.	X	X	Breakout data may be acquired with a hand held force gauge. The remainder of the force to the stops may be calculated if the force gauge and a protractor are used to measure force after breakout for at least 25% of the total displacement capability.	
2.a.5. Handling Qualities. Static Control Checks. Rudder Pedal Steering Calibration.	X	X	Data may be acquired through the use of force pads on the rudder pedals and a pedal position measurement device, together with design data for nosewheel position.	
2.a.6. Handling Qualities. Static Control Checks. Pitch Trim Indicator vs. Surface Position Calibration.	X	X	Data may be acquired through calculations	
2.a.7. Handling qualities. Static control tests. Pitch trim rate.	X	X	Data may be acquired by using a synchronized video of pitch trim indication and elapsed time through range of trim indication.	

TABLE A2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.				Information
Table of objective tests	Sim level		Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title	A	B		
2.a.8. Handling Qualities. Static Control tests. Alignment of Flight deck Throttle Lever Angle vs. Selected engine parameter.	X	X	Data may be acquired through the use of a temporary throttle quadrant scale to document throttle position. Use a synchronized video to record steady state instrument readings or hand-record steady state engine performance readings.	
2.a.9. Handling qualities. Static control tests. Brake pedal position vs. force and brake system pressure calibration.	X	X	Use of design or predicted data is acceptable. Data may be acquired by measuring deflection at "zero" and "maximum" and calculating deflections between the extremes using the airplane design data curve.	
2.c.1. Handling qualities. Longitudinal control tests. Power change dynamics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and throttle position.	
2.c.2. Handling qualities. Longitudinal control tests. Flap/slat change dynamics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and flap/slat position.	
2.c.3. Handling qualities. Longitudinal control tests. Spoiler/speedbrake change dynamics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and spoiler/speedbrake position.	
2.c.4. Handling qualities. Longitudinal control tests. Gear change dynamics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and gear position.	
2.c.5. Handling qualities. Longitudinal control tests. Longitudinal trim.	X	X	Data may be acquired through use of an inertial measurement system and a synchronized video of flight deck controls position (previously calibrated to show related surface position) and the engine instrument readings.	
2.c.6. Handling qualities. Longitudinal control tests. Longitudinal maneuvering stability (stick force/g).	X	X	Data may be acquired through the use of an inertial measurement system and a synchronized video of calibrated airplane instruments; a temporary, high resolution bank angle scale affixed to the attitude indicator; and a wheel and column force measurement indication.	
2.c.7. Handling qualities. Longitudinal control tests. Longitudinal static stability.	X	X	Data may be acquired through the use of a synchronized video of airplane flight instruments and a hand held force gauge.	
2.c.8. Handling qualities. Longitudinal control tests. Stall characteristics.	X	X	Data may be acquired through a synchronized video recording of a stop watch and calibrated airplane airspeed indicator. Hand-record the flight conditions and airplane configuration.	Airspeeds may be cross checked with those in the TIR and AFM.
2.c.9. Handling qualities. Longitudinal control tests. Phugoid dynamics.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	
2.c.10. Handling qualities. Longitudinal control tests. Short period dynamics.		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	

TABLE A2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.				Information
Table of objective tests	Sim level		Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title	A	B		
2.d.1. Handling qualities. Lateral directional tests. Minimum control speed, air (V_{mca} or V_{mci}), per applicable airworthiness standard or Low speed engine inoperative handling characteristics in the air.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	
2.d.2. Handling qualities. Lateral directional tests. Roll response (rate).	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck lateral controls.	May be combined with step input of flight deck roll controller test, 2.d.3.
2.d.3. Handling qualities. Lateral directional tests. Roll response to flight deck roll controller step input.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck lateral controls.	
2.d.4. Handling qualities. Lateral directional tests. Spiral stability.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments; force/position measurements of flight deck controls; and a stop watch.	
2.d.5. Handling qualities. Lateral directional tests. Engine inoperative trim.	X	X	Data may be hand recorded in-flight using high resolution scales affixed to trim controls that have been calibrated on the ground using protractors on the control/trim surfaces with winds less than 5 kts. OR Data may be acquired during second segment climb (with proper pilot control input for an engine-out condition) by using a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	Trimming during second segment climb is not a certification task and should not be conducted until a safe altitude is reached.
2.d.6. Handling qualities. Lateral directional tests. Rudder response.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of rudder pedals.	
2.d.7. Handling qualities. Lateral directional tests. Dutch roll, (yaw damper OFF).	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	
2.d.8. Handling qualities. Lateral directional tests. Steady state sideslip.	X	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. Ground track and wind corrected heading may be used for sideslip angle.	
2.e.1. Handling qualities. Landings. Normal landing.		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	
2.e.3. Handling qualities. Landings. Crosswind landing.		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.	

TABLE A2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

QPS REQUIREMENTS The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix A are not used.			Information
Table of objective tests	Sim level		Notes
Test entry number and title	A	B	
2.e.4. Handling qualities. Landings. One engine inoperative landing.		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and the force/position measurements of flight deck controls. Normal and lateral accelerations may be recorded in lieu of AOA and sideslip.
2.e.5. Handling qualities. Landings. Autopilot landing (if applicable).		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. Normal and lateral accelerations may be recorded in lieu of AOA and sideslip.
2.e.6. Handling qualities. Landings. All engines operating, autopilot, go around.		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. Normal and lateral accelerations may be recorded in lieu of AOA and sideslip.
2.e.7. Handling qualities. Landings. One engine inoperative go around.		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. Normal and lateral accelerations may be recorded in lieu of AOA and sideslip.
2.e.8. Handling qualities. Landings. Directional control (rudder effectiveness with symmetric thrust).		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. Normal and lateral accelerations may be recorded in lieu of AOA and sideslip.
2.e.9. Handling qualities. Landings. Directional control (rudder effectiveness with asymmetric reverse thrust).		X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls. Normal and lateral accelerations may be recorded in lieu of AOA and sideslip.
2.f. Handling qualities. Ground effect. Test to demonstrate ground effect.		X	Data may be acquired by using calibrated airplane instruments, an inertial measurement system, and a synchronized video of calibrated airplane instruments and force/position measurements of flight deck controls.

End Information**Attachment 3 to Appendix A to Part 60—
Simulator Subjective Evaluation****Begin QPS Requirements****1. Requirements**

a. Except for special use airport models, described as Class III, all airport models required by this part must be representations of real-world, operational airports or representations of fictional airports and must meet the requirements set out in Tables A3B or A3C of this attachment, as appropriate.

b. If fictional airports are used, the sponsor must ensure that navigational aids and all appropriate maps, charts, and other navigational reference material for the fictional airports (and surrounding areas as necessary) are compatible, complete, and accurate with respect to the visual presentation of the airport model of this fictional airport. An SOC must be submitted that addresses navigation aid installation and performance and other criteria (including obstruction clearance protection) for all instrument approaches to the fictional airports that are available in the simulator. The SOC must reference and account for information in the terminal instrument procedures manual and the construction and

availability of the required maps, charts, and other navigational material. This material must be clearly marked “for training purposes only.”

c. When the simulator is being used by an instructor or evaluator for purposes of training, checking, or testing under this chapter, only airport models classified as Class I, Class II, or Class III may be used by the instructor or evaluator. Detailed descriptions/definitions of these classifications are found in Appendix F of this part.

d. When a person sponsors an FFS maintained by a person other than a U.S. certificate holder, the sponsor is accountable for that FFS originally meeting, and

continuing to meet, the criteria under which it was originally qualified and the appropriate Part 60 criteria, including the airport models that may be used by instructors or evaluators for purposes of training, checking, or testing under this chapter.

e. Neither Class II nor Class III airport visual models are required to appear on the SOQ, and the method used for keeping instructors and evaluators apprised of the airport models that meet Class II or Class III requirements on any given simulator is at the option of the sponsor, but the method used must be available for review by the TPAA.

f. When an airport model represents a real world airport and a permanent change is made to that real world airport (e.g., a new runway, an extended taxiway, a new lighting system, a runway closure) without a written extension grant from the NSPM (described in paragraph 1.g. of this section), an update to that airport model must be made in accordance with the following time limits:

(1) For a new airport runway, a runway extension, a new airport taxiway, a taxiway extension, or a runway/taxiway closure—within 90 days of the opening for use of the new airport runway, runway extension, new airport taxiway, or taxiway extension; or within 90 days of the closure of the runway or taxiway.

(2) For a new or modified approach light system—within 45 days of the activation of the new or modified approach light system.

(3) For other facility or structural changes on the airport (e.g., new terminal, relocation of Air Traffic Control Tower)—within 180 days of the opening of the new or changed facility or structure.

g. If a sponsor desires an extension to the time limit for an update to a visual scene or airport model or has an objection to what must be updated in the specific airport model requirement, the sponsor must provide a written extension request to the NSPM stating the reason for the update delay and a proposed completion date, or explain why the update is not necessary (i.e., why the identified airport change will not have an impact on flight training, testing, or checking). A copy of this request or objection must also be sent to the POI/TCPM. The NSPM will send the official response to the sponsor and a copy to the POI/TCPM. If there is an objection, after consultation with the appropriate POI/TCPM regarding the training, testing, or checking impact, the NSPM will send the official response to the sponsor and a copy to the POI/TCPM.

End QPS Requirements

Begin Information

2. Discussion

a. The subjective tests provide a basis for evaluating the capability of the simulator to perform over a typical utilization period; determining that the simulator accurately simulates each required maneuver, procedure, or task; and verifying correct operation of the simulator controls, instruments, and systems. The items listed in the following Tables are for simulator evaluation purposes only. They may not be

used to limit or exceed the authorizations for use of a given level of simulator, as described on the SOQ, or as approved by the TPAA.

b. The tests in Table A3A, Operations Tasks, in this attachment, address pilot functions, including maneuvers and procedures (called flight tasks), and are divided by flight phases. The performance of these tasks by the NSPM includes an operational examination of the visual system and special effects. There are flight tasks included to address some features of advanced technology airplanes and innovative training programs. For example, “high angle-of-attack maneuvering” is included to provide a required alternative to “approach to stalls” for airplanes employing flight envelope protection functions.

c. The tests in Table A3A, Operations Tasks, and Table A3G, Instructor Operating Station of this attachment, address the overall function and control of the simulator including the various simulated environmental conditions; simulated airplane system operations (normal, abnormal, and emergency); visual system displays; and special effects necessary to meet flight crew training, evaluation, or flight experience requirements.

d. All simulated airplane systems functions will be assessed for normal and, where appropriate, alternate operations. Normal, abnormal, and emergency operations associated with a flight phase will be assessed during the evaluation of flight tasks or events within that flight phase. Simulated airplane systems are listed separately under “Any Flight Phase” to ensure appropriate attention to systems checks. Operational navigation systems (including inertial navigation systems, global positioning systems, or other long-range systems) and the associated electronic display systems will be evaluated if installed. The NSP pilot will include in his report to the TPAA, the effect of the system operation and any system limitation.

e. Simulators demonstrating a satisfactory circling approach will be qualified for the circling approach maneuver and may be approved for such use by the TPAA in the sponsor's FAA-approved flight training program. To be considered satisfactory, the circling approach will be flown at maximum gross weight for landing, with minimum visibility for the airplane approach category, and must allow proper alignment with a landing runway at least 90° different from the instrument approach course while allowing the pilot to keep an identifiable portion of the airport in sight throughout the maneuver (reference—14 CFR 91.175(e)).

f. At the request of the TPAA, the NSPM may assess a device to determine if it is capable of simulating certain training activities in a sponsor's training program, such as a portion of a Line Oriented Flight Training (LOFT) scenario. Unless directly related to a requirement for the qualification level, the results of such an evaluation would not affect the qualification level of the simulator. However, if the NSPM determines that the simulator does not accurately simulate that training activity, the simulator would not be approved for that training activity.

g. The FAA intends to allow the use of Class III airport models when the sponsor provides the TPAA (or other regulatory authority) an appropriate analysis of the skills, knowledge, and abilities (SKAs) necessary for competent performance of the tasks in which this particular media element is used. The analysis should describe the ability of the FFS/visual media to provide an adequate environment in which the required SKAs are satisfactorily performed and learned. The analysis should also include the specific media element, such as the airport model. Additional sources of information on the conduct of task and capability analysis may be found on the FAA's Advanced Qualification Program (AQP) Web site at: http://www.faa.gov/education_research/training/aqp/.

h. The TPAA may accept Class III airport models without individual observation provided the sponsor provides the TPAA with an acceptable description of the process for determining the acceptability of a specific airport model, outlines the conditions under which such an airport model may be used, and adequately describes what restrictions will be applied to each resulting airport or landing area model. Examples of situations that may warrant Class III model designation by the TPAA include the following:

(a) Training, testing, or checking on very low visibility operations, including SMGCS operations.

(b) Instrument operations training (including instrument takeoff, departure, arrival, approach, and missed approach training, testing, or checking) using—

(i) A specific model that has been geographically “moved” to a different location and aligned with an instrument procedure for another airport.

(ii) A model that does not match changes made at the real-world airport (or landing area for helicopters) being modeled.

(iii) A model generated with an “off-board” or an “on-board” model development tool (by providing proper latitude/longitude reference; correct runway or landing area orientation, length, width, marking, and lighting information; and appropriate adjacent taxiway location) to generate a facsimile of a real world airport or landing area.

i. Previously qualified simulators with certain early generation Computer Generated Image (CGI) visual systems, are limited by the capability of the Image Generator or the display system used. These systems are:

(1) Early CGI visual systems that are excepted from the requirement of including runway numbers as a part of the specific runway marking requirements are:

(a) Link NVS and DNVs.

(b) Novoview 2500 and 6000.

(c) FlightSafety VITAL series up to, and including, VITAL III, but not beyond.

(d) Redifusion SP1, SP1T, and SP2.

(2) Early CGI visual systems are excepted from the requirement of including runway numbers unless the runways are used for LOFT training sessions. These LOFT airport models require runway numbers but only for the specific runway end (one direction) used in the LOFT session. The systems required to display runway numbers only for LOFT scenes are:

(a) FlightSafety VITAL IV.
 (b) Redifusion SP3 and SP3T.
 (c) Link-Miles Image II.
 (3) The following list of previously qualified CGI and display systems are incapable of generating blue lights. These

systems are not required to have accurate taxi-way edge lighting:
 (a) Redifusion SP1.
 (b) FlightSafety Vital IV.
 (c) Link-Miles Image II and Image IIT
 (d) XKD displays (even though the XKD image generator is capable of generating blue

colored lights, the display cannot accommodate that color).

End Information

TABLE A3A.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements					
Entry No.	Operations tasks	Simulator level			
		A	B	C	D
Tasks in this table are subject to evaluation if appropriate for the airplane simulated as indicated in the SOQ Configuration List or the level of simulator qualification involved. Items not installed or not functional on the simulator and, therefore, not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.					
1.	Preparation For Flight Preflight. Accomplish a functions check of all switches, indicators, systems, and equipment at all crewmembers' and instructors' stations and determine that the flight deck design and functions are identical to that of the airplane simulated.	X	X	X	X
2.	Surface Operations (Pre-Take-Off)				
2.a.	Engine Start				
2.a.1.	Normal start	X	X	X	X
2.a.2.	Alternate start procedures	X	X	X	X
2.a.3.	Abnormal starts and shutdowns (e.g., hot/hung start, tail pipe fire)	X	X	X	X
2.b.	Pushback/Powerback	...	X	X	X
2.c.	Taxi				
2.c.1.	Thrust response	X	X	X	X
2.c.2.	Power lever friction	X	X	X	X
2.c.3.	Ground handling	X	X	X	X
2.c.4.	Nosewheel scuffing			X	X
2.c.5.	Brake operation (normal and alternate/emergency)	X	X	X	X
2.c.6.	Brake fade (if applicable)	X	X	X	X
3.	Take-off.				
3.a.	Normal.				
3.a.1.	Airplane/engine parameter relationships	X	X	X	X
3.a.2.	Acceleration characteristics (motion)	X	X	X	X
3.a.3.	Nosewheel and rudder steering	X	X	X	X
3.a.4.	Crosswind (maximum demonstrated)	X	X	X	X
3.a.5.	Special performance (e.g., reduced V ₁ , max de-rate, short field operations)	X	X	X	X
3.a.6.	Low visibility take-off	X	X	X	X
3.a.7.	Landing gear, wing flap leading edge device operation	X	X	X	X
3.a.8.	Contaminated runway operation	...	...	X	X
3.b.	Abnormal/emergency				
3.b.1.	Rejected Take-off	X	X	X	X
3.b.2.	Rejected special performance (e.g., reduced V ₁ , max de-rate, short field operations)	X	X	X	X

TABLE A3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	Operations tasks	Simulator level			
		A	B	C	D
3.b.3.	Takeoff with a propulsion system malfunction (allowing an analysis of causes, symptoms, recognition, and the effects on aircraft performance and handling) at the following points: .. (i) Prior to V ₁ decision speed (ii) Between V ₁ and Vr (rotation speed) (iii) Between Vr and 500 feet above ground level	X	X	X	X
3.b.4.	With wind shear	X	X	X	X
3.b.5.	Flight control system failures, reconfiguration modes, manual reversion and associated handling	X	X	X	X
3.b.6.	Rejected takeoff with brake fade .....	....	....	X	X
3.b.7.	Rejected, contaminated runway .....	....	....	X	X
4.	Climb.				
4.a.	Normal	X	X	X	X
4.b.	One or more engines inoperative	X	X	X	X
5.	Cruise				
5.a.	Performance characteristics (speed vs. power)	X	X	X	X
5.b.	High altitude handling	X	X	X	X
5.c.	High Mach number handling (Mach tuck, Mach buffet) and recovery (trim change)	X	X	X	X
5.d.	Overspeed warning (in excess of V _{mo} or M _{mo})	X	X	X	X
5.e.	High IAS handling	X	X	X	X
6.	Maneuvers				
6.a.	High angle of attack, approach to stalls, stall warning, buffet, and g-break (take-off, cruise, approach, and landing configuration).	X	X	X	X
6.b.	Flight envelope protection (high angle of attack, bank limit, overspeed, etc.)	X	X	X	X
6.c.	Turns with/without speedbrake/spoilers deployed	X	X	X	X
6.d.	Normal and steep turns	X	X	X	X
6.e.	In flight engine shutdown and restart (assisted and windmill)	X	X	X	X
6.f.	Maneuvering with one or more engines inoperative, as appropriate	X	X	X	X
6.g.	Specific flight characteristics (e.g., direct lift control)	X	X	X	X
6.h.	Flight control system failures, reconfiguration modes, manual reversion and associated handling	X	X	X	X
7.	Descent.				
7.a.	Normal	X	X	X	X
7.b.	Maximum rate (clean and with speedbrake, etc.)	X	X	X	X
7.c.	With autopilot	X	X	X	X
7.d.	Flight control system failures, reconfiguration modes, manual reversion and associated handling	X	X	X	X
8.	Instrument Approaches and Landing. Those instrument approach and landing tests relevant to the simulated airplane type are selected from the following list. Some tests are made with limiting wind velocities, under wind shear conditions, and with relevant system failures, including the failure of the Flight Director. If Standard Operating Procedures allow use of autopilot for non-precision approaches, evaluation of the autopilot will be included. Level A simulators are not authorized to credit the landing maneuver				
8.a.	Precision.				

TABLE A3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	Operations tasks	Simulator level			
		A	B	C	D
8.a.1.	PAR	X	X	X	X
8.a.2.	CAT I/GBAS (ILS/MLS) published approaches	X	X	X	X
	(i) Manual approach with/without flight director including landing	X	X	X	X
	(ii) Autopilot/autothrottle coupled approach and manual landing	X	X	X	X
	(iii) Manual approach to DH and go-around all engines	X	X	X	X
	(iv) Manual one engine out approach to DH and go-around	X	X	X	X
	(v) Manual approach controlled with and without flight director to 30 m (100 ft) below CAT I minima ...	X	X	X	X
	A. With cross-wind (maximum demonstrated)	X	X	X	X
	B. With windshear	X	X	X	X
	(vi) Autopilot/autothrottle coupled approach, one engine out to DH and go-around	X	X	X	X
	(vii) Approach and landing with minimum/standby electrical power	X	X	X	X
8.a.3.	CAT II/GBAS (ILS/MLS) published approaches	X	X	X	X
	(i) Autopilot/autothrottle coupled approach to DH and landing	X	X	X	X
	(ii) Autopilot/autothrottle coupled approach to DH and go-around	X	X	X	X
	(iii) Autocoupled approach to DH and manual go-around	X	X	X	X
	(iv) Category II published approach (autocoupled, autothrottle)	X	X	X	X
8.a.4.	CAT III/GBAS (ILS/MLS) published approaches	X	X	X	X
	(i) Autopilot/autothrottle coupled approach to land and rollout	X	X	X	X
	(ii) Autopilot/autothrottle coupled approach to DH/Alert Height and go-around	X	X	X	X
	(iii) Autopilot/autothrottle coupled approach to land and rollout with one engine out	X	X	X	X
	(iv) Autopilot/autothrottle coupled approach to DH/Alert Height and go-around with one engine out	X	X	X	X
	(v) Autopilot/autothrottle coupled approach (to land or to go around)	X	X	X	X
	A. With generator failure	X	X	X	X
	B. With 10 knot tail wind	X	X	X	X
	C. With 10 knot crosswind	X	X	X	X
8.b.	Non-precision				
8.b.1.	NDB	X	X	X	X
8.b.2.	VOR, VOR/DME, VOR/TAC	X	X	X	X
8.b.3.	RNAV (GNSS/GPS)	X	X	X	X
8.b.4.	ILS LLZ (LOC), LLZ (LOC)/BC	X	X	X	X
8.b.5.	ILS offset localizer	X	X	X	X
8.b.6.	Direction finding facility (ADF/SDF)	X	X	X	X
8.b.7.	Airport surveillance radar (ASR)	X	X	X	X
9.	Visual Approaches (Visual Segment) and Landings. Flight simulators with visual systems, which permit completing a special approach procedure in accordance with applicable regulations, may be approved for that particular approach procedure				
9.a.	Maneuvering, normal approach and landing, all engines operating with and without visual approach aid guidance.	X	X	X	X
9.b.	Approach and landing with one or more engines inoperative	X	X	X	X
9.c.	Operation of landing gear, flap/slats and speedbrakes (normal and abnormal)	X	X	X	X
9.d.	Approach and landing with crosswind (max. demonstrated)	X	X	X	X
9.e.	Approach to land with wind shear on approach	X	X	X	X
9.f.	Approach and landing with flight control system failures, reconfiguration modes, manual reversion and associated handling (most significant degradation which is probable).	X	X	X	X
9.g.	Approach and landing with trim malfunctions	X	X	X	X
9.g.1.	Longitudinal trim malfunction	X	X	X	X

TABLE A3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	Operations tasks	Simulator level			
		A	B	C	D
9.g.2.	Lateral-directional trim malfunction	X	X	X	X
9.h.	Approach and landing with standby (minimum) electrical/hydraulic power	X	X	X	X
9.i.	Approach and landing from circling conditions (circling approach)	X	X	X	X
9.j.	Approach and landing from visual traffic pattern	X	X	X	X
9.k.	Approach and landing from non-precision approach	X	X	X	X
9.l.	Approach and landing from precision approach	X	X	X	X
9.m.	Approach procedures with vertical guidance (APV), e.g., SBAS	X	X	X	X
10.	Missed Approach				
10.a.	All engines	X	X	X	X
10.b.	One or more engine(s) out	X	X	X	X
10.c.	With flight control system failures, reconfiguration modes, manual reversion and associated handling	X	X	X	X
11.	Surface Operations (Landing roll and taxi).				
11.a.	Spoiler operation	X	X	X	X
11.b.	Reverse thrust operation	X	X	X	X
11.c.	Directional control and ground handling, both with and without reverse thrust .....	....	X	X	X
11.d.	Reduction of rudder effectiveness with increased reverse thrust (rear pod-mounted engines) .....	....	X	X	X
11.e.	Brake and anti-skid operation with dry, patchy wet, wet on rubber residue, and patchy icy conditions ..	....	....	X	X
11.f.	Brake operation, to include auto-braking system where applicable	X	X	X	X
12.	Any Flight Phase.				
12.a.	Airplane and engine systems operation.				
12.a.1.	Air conditioning and pressurization (ECS)	X	X	X	X
12.a.2.	De-icing/anti-icing	X	X	X	X
12.a.3.	Auxiliary power unit (APU)	X	X	X	X
12.a.4.	Communications	X	X	X	X
12.a.5.	Electrical	X	X	X	X
12.a.6.	Fire and smoke detection and suppression	X	X	X	X
12.a.7.	Flight controls (primary and secondary)	X	X	X	X
12.a.8.	Fuel and oil, hydraulic and pneumatic	X	X	X	X
12.a.9.	Landing gear	X	X	X	X
12.a.10.	Oxygen	X	X	X	X
12.a.11.	Engine	X	X	X	X
12.a.12.	Airborne radar	X	X	X	X
12.a.13.	Autopilot and Flight Director	X	X	X	X
12.a.14.	Collision avoidance systems. (e.g., (E)GPWS, TCAS)	X	X	X	X
12.a.15.	Flight control computers including stability and control augmentation	X	X	X	X

TABLE A3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	Operations tasks	Simulator level			
		A	B	C	D
12.a.16.	Flight display systems	X	X	X	X
12.a.17.	Flight management computers	X	X	X	X
12.a.18.	Head-up guidance, head-up displays	X	X	X	X
12.a.19.	Navigation systems	X	X	X	X
12.a.20.	Stall warning/avoidance	X	X	X	X
12.a.21.	Wind shear avoidance equipment	X	X	X	X
12.a.22.	Automatic landing aids.	X	X	X	X
12.b.	Airborne procedures				
12.b.1.	Holding	X	X	X	X
12.b.2.	Air hazard avoidance (traffic, weather)	...	...	X	X
12.b.3.	Wind shear	...	...	X	X
12.b.4.	Effects of airframe ice	...	...	X	X
12.c.	Engine shutdown and parking				
12.c.1.	Engine and systems operation	X	X	X	X
12.c.2.	Parking brake operation	X	X	X	X

TABLE A3B.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements					
Entry No.	For qualification at the stated level—Class I airport models	Simulator level			
		A	B	C	D

This table specifies the minimum airport model content and functionality to qualify a simulator at the indicated level. This table applies only to the airport models required for simulator qualification; i.e., one airport model for Level A and Level B simulators; three airport models for Level C and Level D simulators.

Begin QPS Requirements				
1.	Functional test content requirements for Level A and Level B simulators. The following is the minimum airport model content requirement to satisfy visual capability tests, and provides suitable visual cues to allow completion of all functions and subjective tests described in this attachment for simulators at Levels A and B.			
1.a.	A minimum of one (1) representative airport model. This model identification must be acceptable to the sponsor's TPAA, selectable from the IOS, and listed on the SOQ.	X	X	
1.b.	The fidelity of the airport model must be sufficient for the aircrew to visually identify the airport; determine the position of the simulated airplane within a night visual scene; successfully accomplish take-offs, approaches, and landings; and maneuver around the airport on the ground as necessary.	X	X	
1.c.	Runways:	X	X	
1.c.1.	Visible runway number	X	X	
1.c.2.	Runway threshold elevations and locations must be modeled to provide sufficient correlation with airplane systems (e.g., altimeter).	X	X	
1.c.3.	Runway surface and markings	X	X	
1.c.4.	Lighting for the runway in use including runway edge and centerline	X	X	
1.c.5.	Lighting, visual approach aid and approach lighting of appropriate colors	X	X	

TABLE A3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	For qualification at the stated level—Class I airport models	Simulator level			
		A	B	C	D
1.c.6.	Representative taxiway lights	X	X		
2.	Functional test content requirements for Level C and Level D simulators. The following is the minimum airport model content requirement to satisfy visual capability tests, and provide suitable visual cues to allow completion of all functions and subjective tests described in this attachment for simulators at Levels C and D. Not all of the elements described in this section must be found in a single airport model. However, all of the elements described in this section must be found throughout a combination of the three (3) airport models described in entry 2.a.				
2.a.	A minimum of three (3) representative airport models. The model identifications must be acceptable to the sponsor's TPAA, selectable from the IOS, and listed on the SOQ.			X	X
2.a.1.	Night and Twilight (Dusk) scenes required			X	X
2.a.2.	Daylight scenes required				X
2.b.	Two parallel runways and one crossing runway, displayed simultaneously; at least two of the runways must be able to be lighted fully and simultaneously. Note: This requirement may be demonstrated at either a fictional airport or a real-world airport. However, if a fictional airport is used, this airport must be listed on the SOQ.			X	X
2.c.	Runway threshold elevations and locations must be modeled to provide sufficient correlation with airplane systems (e.g., HGS, GPS, altimeter); slopes in runways, taxiways, and ramp areas must not cause distracting or unrealistic effects, including pilot eye-point height variation.			X	X
2.d.	Representative airport buildings, structures and lighting			X	X
2.e.	At least one useable gate, at the appropriate height (required only for those airplanes that typically operate from terminal gates).			X	X
2.f.	Representative moving and static gate clutter (e.g., other airplane, power carts, tugs, fuel trucks, and additional gates).			X	X
2.g.	Representative gate/apron markings (e.g., hazard markings, lead-in lines, gate numbering) and lighting			X	X
2.h.	Representative runway markings, lighting, and signage, including a windsock that gives appropriate wind cues.			X	X
2.i.	Representative taxiway markings, lighting, and signage necessary for position identification, and to taxi from parking to a designated runway and return to parking.			X	X
2.j.	A low visibility taxi route (e.g., Surface Movement Guidance Control System, follow-me truck, daylight taxi lights) must also be demonstrated.				X
2.k.	Representative moving and static ground traffic (e.g., vehicular and airplane), including the capability to present ground hazards (e.g., another airplane crossing the active runway).			X	X
2.l.	Representative moving airborne traffic, including the capability to present air hazards (e.g., airborne traffic on a possible collision course).			X	X
2.m.	Representative depiction of terrain and obstacles as well as significant and identifiable natural and cultural features, within 25 NM of the reference airport.			X	X
2.n.	Appropriate approach lighting systems and airfield lighting for a VFR circuit and landing, non-precision approaches and landings, and Category I, II and III precision approaches and landings.			X	X
2.o.	Representative gate docking aids or a marshaller			X	X
2.p.	Portrayal of physical relationships known to cause landing illusions (e.g., short runways, landing approaches over water, uphill or downhill runways, rising terrain on the approach path). This requirement may be met by a SOC and a demonstration of two landing illusions. The illusions are not required to be beyond the normal operational capabilities of the airplane being simulated. The demonstrated illusions must be available to the instructor or check airman at the IOS for training, testing, checking, or experience activities.				X
2.q.	Portrayal of runway surface contaminants, including runway lighting reflections when wet and partially obscured lights when snow is present, or suitable alternative effects.				X

TABLE A3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	For qualification at the stated level—Class I airport models	Simulator level			
		A	B	C	D
3.	Airport model management. The following is the minimum airport model management requirements for simulators at Levels A, B, C, and D.				
3.a.	Runway and approach lighting must fade into view in accordance with the environmental conditions set in the simulator, and the distance from the object.	X	X	X	X
3.b.	The direction of strobe lights, approach lights, runway edge lights, visual landing aids, runway centerline lights, threshold lights, and touchdown zone lights must be replicated.	X	X	X	X
4.	Visual feature recognition. The following is the minimum distances at which runway features must be visible for simulators at Levels A, B, C, and D. Distances are measured from runway threshold to an airplane aligned with the runway on an extended 3° glide-slope in simulated meteorological conditions that recreate the minimum distances for visibility. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing.				
4.a.	Runway definition, strobe lights, approach lights, and runway edge white lights from 5 sm (8 km) of the runway threshold.	X	X	X	X
4.b.	Visual Approach Aid lights (VASI or PAPI) from 5 sm (8 km) of the runway threshold			X	X
4.c.	Visual Approach Aid lights (VASI or PAPI) from 3 sm (5 km) of the runway threshold	X	X		
4.d.	Runway centerline lights and taxiway definition from 3 sm (5 km)	X	X	X	X
4.e.	Threshold lights and touchdown zone lights from 2 sm (3 km)	X	X	X	X
4.f.	Runway markings within range of landing lights for night scenes as required by the surface resolution test on day scenes.	X	X	X	X
4.g.	For circling approaches, the runway of intended landing and associated lighting must fade into view in a non-distracting manner.	X	X	X	X
5.	Airport model content. The following sets out the minimum requirements for what must be provided in an airport model and also identifies the other aspects of the airport environment that must correspond with that model for simulators at Levels A, B, C, and D. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing. If all runways in an airport model used to meet the requirements of this attachment are not designated as “in use,” then the “in use” runways must be listed on the SOQ (e.g., KORD, Rwy 9R, 14L, 22R). Models of airports with more than one runway must have all significant runways not “in-use” visually depicted for airport and runway recognition purposes. The use of white or off white light strings that identify the runway threshold, edges, and ends for twilight and night scenes are acceptable for this requirement. Rectangular surface depictions are acceptable for daylight scenes. A visual system’s capabilities must be balanced between providing airport models with an accurate representation of the airport and a realistic representation of the surrounding environment. Airport model detail must be developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material; however, this does not require that such models contain details that are beyond the design capability of the currently qualified visual system. Only one “primary” taxi route from parking to the runway end will be required for each “in-use” runway.				
5.a.	The surface and markings for each “in-use” runway must include the following:				
5.a.1.	Threshold markings	X	X	X	X
5.a.2.	Runway numbers	X	X	X	X
5.a.3.	Touchdown zone markings	X	X	X	X
5.a.4.	Fixed distance markings	X	X	X	X
5.a.5.	Edge markings	X	X	X	X
5.a.6.	Centerline stripes	X	X	X	X
5.b.	Each runway designated as an “in-use” runway must include the following:				
5.b.1.	The lighting for each “in-use” runway must include the following:				
	(i) Threshold lights	X	X	X	X
	(ii) Edge lights	X	X	X	X
	(iii) End lights	X	X	X	X

TABLE A3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	For qualification at the stated level—Class I airport models	Simulator level			
		A	B	C	D
	(iv) Centerline lights, if appropriate	X	X	X	X
	(v) Touchdown zone lights, if appropriate	X	X	X	X
	(vi) Leadoff lights, if appropriate	X	X	X	X
	(vii) Appropriate visual landing aid(s) for that runway	X	X	X	X
	(viii) Appropriate approach lighting system for that runway	X	X	X	X
5.b.2.	The taxiway surface and markings associated with each “in-use” runway must include the following:				
	(i) Edge	X	X	X	X
	(ii) Centerline	X	X	X	X
	(iii) Runway hold lines	X	X	X	X
	(iv) ILS critical area marking	X	X	X	X
5.b.3.	The taxiway lighting associated with each “in-use” runway must include the following:				
	(i) Edge	X	X	X	X
	(ii) Centerline, if appropriate	X	X	X	X
	(iii) Runway hold and ILS critical area lights	X	X	X	X
	(iv) Edge lights of correct color			X	X
5.b.4.	Airport signage associated with each “in-use” runway must include the following:				
	(i) Distance remaining signs, if appropriate	X	X	X	X
	(ii) Signs at intersecting runways and taxiways	X	X	X	X
	(iii) Signs described in entries 2.h. and 2.i. of this table	X	X	X	X
5.b.5.	Required airport model correlation with other aspects of the airport environment simulation:				
	(i) The airport model must be properly aligned with the navigational aids that are associated with operations at the runway “in-use”.	X	X	X	X
	(ii) The simulation of runway contaminants must be correlated with the displayed runway surface and lighting where applicable.				X
6.	Correlation with airplane and associated equipment. The following are the minimum correlation comparisons that must be made for simulators at Levels A, B, C, and D.				
6.a.	Visual system compatibility with aerodynamic programming	X	X	X	X
6.b.	Visual cues to assess sink rate and depth perception during landings		X	X	X
6.c.	Accurate portrayal of environment relating to flight simulator attitudes	X	X	X	X
6.d.	The airport model and the generated visual scene must correlate with integrated airplane systems (e.g., terrain, traffic and weather avoidance systems and Head-up Guidance System (HGS)).			X	X
6.e.	Representative visual effects for each visible, own-ship, airplane external light(s)—taxi and landing light lobes (including independent operation, if appropriate).	X	X	X	X
6.f.	The effect of rain removal devices			X	X
7.	Scene quality. The following are the minimum scene quality tests that must be conducted for simulators at Levels A, B, C, and D.				
7.a.	Surfaces and textural cues must be free from apparent and distracting quantization (aliasing)			X	X
7.b.	System capable of portraying full color realistic textural cues			X	X

TABLE A3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	For qualification at the stated level—Class I airport models	Simulator level			
		A	B	C	D
7.c.	The system light points must be free from distracting jitter, smearing or streaking	X	X	X	X
7.d.	Demonstration of occulting through each channel of the system in an operational scene	X	X		
7.e.	Demonstration of a minimum of ten levels of occulting through each channel of the system in an operational scene.			X	X
7.f.	System capable of providing focus effects that simulate rain			X	X
7.g.	System capable of providing focus effects that simulate light point perspective growth			X	X
7.h.	System capable of six discrete light step controls (0–5)	X	X	X	X
8.	Environmental effects. The following are the minimum environmental effects that must be available as indicated.				
8.a.	The displayed scene corresponding to the appropriate surface contaminants and include runway lighting reflections for wet, partially obscured lights for snow, or alternative effects.			X	X
8.a.1.	Special weather representations which include:				
	(i) The sound, motion and visual effects of light, medium and heavy precipitation near a thunderstorm on take-off, approach, and landings at and below an altitude of 2,000 ft (600 m) above the airport surface and within a radius of 10 sm (16 km) from the airport.			X	X
	(ii) One airport with a snow scene to include terrain snow and snow-covered taxiways and runways			X	X
8.b.	In-cloud effects such as variable cloud density, speed cues and ambient changes			X	X
8.c.	The effect of multiple cloud layers representing few, scattered, broken and overcast conditions giving partial or complete obstruction of the ground scene.			X	X
8.d.	Visibility and RVR measured in terms of distance. Visibility/RVR checked at 2,000 ft (600 m) above the airport and at two heights below 2000 ft with at least 500 ft of separation between the measurements. The measurements must be taken within a radius of 10 sm (16 km) from the airport.	X	X	X	X
8.e.	Patchy fog giving the effect of variable RVR			X	X
8.f.	Effects of fog on airport lighting such as halos and defocus			X	X
8.g.	Effect of own-ship lighting in reduced visibility, such as reflected glare, including landing lights, strobes, and beacons.			X	X
8.h.	Wind cues to provide the effect of blowing snow or sand across a dry runway or taxiway selectable from the instructor station.			X	X
9.	Instructor control of the following: The following are the minimum instructor controls that must be available in simulators at Levels A, B, C, and D.				
9.a.	Environmental effects, e.g., cloud base, cloud effects, cloud density, visibility in statute miles/kilometers and RVR in feet/meters.	X	X	X	X
9.b.	Airport selection	X	X	X	X
9.c.	Airport lighting, including variable intensity	X	X	X	X
9.d.	Dynamic effects including ground and flight traffic			X	X

TABLE A3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	For qualification at the stated level—Class I airport models	Simulator level			
		A	B	C	D
End QPS Requirement					
Begin Information					
10.	An example of being able to “combine two airport models to achieve two “in-use” runways: One runway designated as the “in use” runway in the first model of the airport, and the second runway designated as the “in use” runway in the second model of the same airport. For example, the clearance is for the ILS approach to Runway 27, Circle to Land on Runway 18 right. Two airport visual models might be used: the first with Runway 27 designated as the “in use” runway for the approach to runway 27, and the second with Runway 18 Right designated as the “in use” runway. When the pilot breaks off the ILS approach to runway 27, the instructor may change to the second airport visual model in which runway 18 Right is designated as the “in use” runway, and the pilot would make a visual approach and landing. This process is acceptable to the FAA as long as the temporary interruption due to the visual model change is not distracting to the pilot, does not cause changes in navigational radio frequencies, and does not cause undue instructor/evaluator time.				
11.	Sponsors are not required to provide every detail of a runway, but the detail that is provided should be correct within the capabilities of the system.				
End Information					

TABLE A3C.—FUNCTIONS AND SUBJECTIVE TESTS

QPS requirements					
Entry No.	Additional airport models beyond minimum required for qualification—Class II airport models	Simulator level			
		A	B	C	D
This table specifies the minimum airport model content and functionality necessary to add airport models to a simulator’s model library, beyond those necessary for qualification at the stated level, without the necessity of further involvement of the NSPM or TPAA.					
Begin QPS Requirements					
1.	Airport model management. The following is the minimum airport model management requirements for simulators at Levels A, B, C, and D.				
1.a.	The direction of strobe lights, approach lights, runway edge lights, visual landing aids, runway centerline lights, threshold lights, and touchdown zone lights on the “in-use” runway must be replicated.	X	X	X	X
2.	Visual feature recognition. The following are the minimum distances at which runway features must be visible for simulators at Levels A, B, C, and D. Distances are measured from runway threshold to an airplane aligned with the runway on an extended 3° glide-slope in simulated meteorological conditions that recreate the minimum distances for visibility. For circling approaches, all requirements of this section apply to the runway used for the initial approach and to the runway of intended landing.				
2.a.	Runway definition, strobe lights, approach lights, and runway edge white lights from 5 sm (8 km) from the runway threshold.	X	X	X	X
2.b.	Visual Approach Aid lights (VASI or PAPI) from 5 sm (8 km) from the runway threshold			X	X
2.c.	Visual Approach Aid lights (VASI or PAPI) from 3 sm (5 km) from the runway threshold	X	X		
2.d.	Runway centerline lights and taxiway definition from 3 sm (5 km) from the runway threshold	X	X	X	X
2.e.	Threshold lights and touchdown zone lights from 2 sm (3 km) from the runway threshold	X	X	X	X
2.f.	Runway markings within range of landing lights for night scenes and as required by the surface resolution requirements on day scenes.	X	X	X	X
2.g.	For circling approaches, the runway of intended landing and associated lighting must fade into view in a non-distracting manner.	X	X	X	X

This table specifies the minimum airport model content and functionality necessary to add airport models to a simulator's model library, beyond those necessary for qualification at the stated level, without the necessity of further involvement of the NSPM or TPAA.

TABLE A3C.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements					
Entry No.	Additional airport models beyond minimum required for qualification—Class II airport models	Simulator level			
		A	B	C	D
3.	Airport model content The following prescribes the minimum requirements for what must be provided in an airport model and identifies other aspects of the airport environment that must correspond with that model for simulators at Levels A, B, C, and D. The detail must be developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material; however, this does not require that airport models contain details that are beyond the designed capability of the currently qualified visual system. For circling approaches, all requirements of this section apply to the runway used for the initial approach and to the runway of intended landing. Only one “primary” taxi route from parking to the runway end will be required for each “in-use” runway.				
3.a.	The surface and markings for each “in-use” runway:				
3.a.1. ...	Threshold markings	X	X	X	X
3.a.2. ...	Runway numbers	X	X	X	X
3.a.3. ...	Touchdown zone markings	X	X	X	X
3.a.4. ...	Fixed distance markings	X	X	X	X
3.a.5. ...	Edge markings	X	X	X	X
3.a.6. ...	Centerline stripes	X	X	X	X
3.b.	The lighting for each “in-use” runway				
3.b.1. ...	Threshold lights	X	X	X	X
3.b.2. ...	Edge lights	X	X	X	X
3.b.3. ...	End lights	X	X	X	X
3.b.4. ...	Centerline lights	X	X	X	X
3.b.5. ...	Touchdown zone lights, if appropriate	X	X	X	X
3.b.6. ...	Leadoff lights, if appropriate	X	X	X	X
3.b.7. ...	Appropriate visual landing aid(s) for that runway	X	X	X	X
3.b.8. ...	Appropriate approach lighting system for that runway	X	X	X	X
3.c.	The taxiway surface and markings associated with each “in-use” runway:				
3.c.1.	Edge	X	X	X	X
3.c.2.	Centerline	X	X	X	X
3.c.3.	Runway hold lines	X	X	X	X
3.c.4.	ILS critical area markings	X	X	X	X
3.d.	The taxiway lighting associated with each “in-use” runway:				
3.d.1. ...	Edge			X	X
3.d.2. ...	Centerline	X	X	X	X
3.d.3. ...	Runway hold and ILS critical area lights	X	X	X	X
4.	Required model correlation with other aspects of the airport environment simulation The following are the minimum model correlation tests that must be conducted for simulators at Levels A, B, C, and D.				
4.a.	The airport model must be properly aligned with the navigational aids that are associated with operations at the “in-use” runway.	X	X	X	X
4.b.	Slopes in runways, taxiways, and ramp areas, if depicted in the visual scene, must not cause distracting or unrealistic effects.	X	X	X	X
5.	Correlation with airplane and associated equipment. The following are the minimum correlation comparisons that must be made for simulators at Levels A, B, C, and D.				

TABLE A3C.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements					
Entry No.	Additional airport models beyond minimum required for qualification—Class II airport models	Simulator level			
		A	B	C	D
5.a. ...	Visual system compatibility with aerodynamic programming	X	X	X	X
5.b. ...	Accurate portrayal of environment relating to flight simulator attitudes	X	X	X	X
5.c. ...	Visual cues to assess sink rate and depth perception during landings		X	X	X
5.d. ...	Visual effects for each visible, own-ship, airplane external light(s)		X	X	X
6.	Scene quality. The following are the minimum scene quality tests that must be conducted for simulators at Levels A, B, C, and D.				
6.a. ...	Surfaces and textural cues must be free of apparent and distracting quantization (aliasing)			X	X
6.b.	Correct color and realistic textural cues			X	X
6.c.	Light points free from distracting jitter, smearing or streaking	X	X	X	X
7.	Instructor controls of the following:The following are the minimum instructor controls that must be available in simulators at Levels A, B, C, and D.				
7.a. ...	Environmental effects, e.g., cloud base (if used), cloud effects, cloud density, visibility in statute miles/kilometers and RVR in feet/meters.	X	X	X	X
7.b. ...	Airport selection	X	X	X	X
7.c. ...	Airport lighting including variable intensity	X	X	X	X
7.d. ...	Dynamic effects including ground and flight traffic			X	X
End QPS Requirements					
Begin Information					
8.	Sponsors are not required to provide every detail of a runway, but the detail that is provided must be correct within the capabilities of the system.	X	X	X	X
End Information					

TABLE A3D.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements						Information
Entry no.	Motion system effects	Simulator level				Notes
		A	B	C	D	
This table specifies motion effects that are required to indicate when a flight crewmember must be able to recognize an event or situation. Where applicable, flight simulator pitch, side loading and directional control characteristics must be representative of the airplane.						
1.	Runway rumble, oleo deflection, ground speed, uneven runway, runway and taxiway centerline light characteristics: Procedure: After the airplane has been pre-set to the takeoff position and then released, taxi at various speeds with a smooth runway and note the general characteristics of the simulated runway rumble effects of oleo deflections. Repeat the maneuver with a runway roughness of 50%, then with maximum roughness. Note the associated motion vibrations affected by ground speed and runway roughness.	X	X	X	X	Different gross weights can also be selected, which may also affect the associated vibrations depending on airplane type. The associated motion effects for the above tests should also include an assessment of the effects of rolling over centerline lights, surface discontinuities of uneven runways, and various taxiway characteristics.
2.	Buffets on the ground due to spoiler/speedbrake extension and reverse thrust: Procedure: Perform a normal landing and use ground spoilers and reverse thrust—either individually or in combination—to decelerate the simulated airplane. Do not use wheel braking so that only the buffet due to the ground spoilers and thrust reversers is felt.	X	X	X	X	

This table specifies motion effects that are required to indicate when a flight crewmember must be able to recognize an event or situation. Where applicable, flight simulator pitch, side loading and directional control characteristics must be representative of the airplane.

TABLE A3D.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements						Information
Entry no.	Motion system effects	Simulator level				Notes
		A	B	C	D	
3.	Bumps associated with the landing gear: Procedure: Perform a normal take-off paying special attention to the bumps that could be perceptible due to maximum oleo extension after lift-off. When the landing gear is extended or retracted, motion bumps can be felt when the gear locks into position.	X	X	X	X	
4.	Buffet during extension and retraction of landing gear: Procedure: Operate the landing gear. Check that the motion cues of the buffet experienced represent the actual airplane.	X	X	X	X	
5.	Buffet in the air due to flap and spoiler/speedbrake extension and approach to stall buffet: Procedure: Perform an approach and extend the flaps and slats with airspeeds deliberately in excess of the normal approach speeds. In cruise configuration, verify the buffets associated with the spoiler/speedbrake extension. The above effects can also be verified with different combinations of spoiler/speedbrake, flap, and landing gear settings to assess the interaction effects.	X	X	X	X	
6.	Approach to stall buffet: Procedure: Conduct an approach-to-stall with engines at idle and a deceleration of 1 knot/second. Check that the motion cues of the buffet, including the level of buffet increase with decreasing speed, are representative of the actual airplane.	X	X	X	X	
7.	Touchdown cues for main and nose gear: Procedure: Conduct several normal approaches with various rates of descent. Check that the motion cues for the touchdown bumps for each descent rate are representative of the actual airplane.	X	X	X	X	
8.	Nosewheel scuffing: Procedure: Taxi at various ground speeds and manipulate the nosewheel steering to cause yaw rates to develop that cause the nosewheel to vibrate against the ground ("scuffing"). Evaluate the speed/nosewheel combination needed to produce scuffing and check that the resultant vibrations are representative of the actual airplane.	X	X	X	X	
9.	Thrust effect with brakes set: Procedure: Set the brakes on at the take-off point and increase the engine power until buffet is experienced. Evaluate its characteristics. Confirm that the buffet increases appropriately with increasing engine thrust.	X	X	X	X	This effect is most discernible with wing-mounted engines.
10.	Mach and maneuver buffet: Procedure: With the simulated airplane trimmed in 1 g flight while at high altitude, increase the engine power so that the Mach number exceeds the documented value at which Mach buffet is experienced. Check that the buffet begins at the same Mach number as it does in the airplane (for the same configuration) and that buffet levels are representative of the actual airplane. For certain airplanes, maneuver buffet can also be verified for the same effects. Maneuver buffet can occur during turning flight at conditions greater than 1 g, particularly at higher altitudes.		X	X	X	

TABLE A3D.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements						Information
Entry no.	Motion system effects	Simulator level				Notes
		A	B	C	D	
11.	Tire failure dynamics: Procedure: Simulate a single tire failure and a multiple tire failure.			X	X	The pilot may notice some yawing with a multiple tire failure selected on the same side. This should require the use of the rudder to maintain control of the airplane. Dependent on airplane type, a single tire failure may not be noticed by the pilot and should not have any special motion effect. Sound or vibration may be associated with the actual tire losing pressure.
12.	Engine malfunction and engine damage: Procedure: The characteristics of an engine malfunction as stipulated in the malfunction definition document for the particular flight simulator must describe the special motion effects felt by the pilot. Note the associated engine instruments varying according to the nature of the malfunction and note the replication of the effects of the airframe vibration.		X	X	X	
13.	Tail strikes and engine pod strikes: Procedure: Tail-strikes can be checked by over-rotation of the airplane at a speed below V_r while performing a takeoff. The effects can also be verified during a landing. Excessive banking of the airplane during its take-off/landing roll can cause a pod strike.		X	X	X	The motion effect should be felt as a noticeable bump. If the tail strike affects the airplane angular rates, the cueing provided by the motion system should have an associated effect.

TABLE A3E.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements						
Entry No.	Sound system	Simulator level				
		A	B	C	D	
The following checks are performed during a normal flight profile with motion system ON.						
1.	Precipitation			X	X	
2.	Rain removal equipment.			X	X	
3.	Significant airplane noises perceptible to the pilot during normal operations			X	X	
4.	Abnormal operations for which there are associated sound cues including, engine malfunctions, landing gear/tire malfunctions, tail and engine pod strike and pressurization malfunction.			X	X	
5.	Sound of a crash when the flight simulator is landed in excess of limitations .....	....	....	X	X	

TABLE A3F.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements					
Entry No.	Special effects	Simulator level			
		A	B	C	D
This table specifies the minimum special effects necessary for the specified simulator level.					
1.	Braking Dynamics: Representations of the dynamics of brake failure (flight simulator pitch, side-loading, and directional control characteristics representative of the airplane), including antiskid and decreased brake efficiency due to high brake temperatures (based on airplane related data), sufficient to enable pilot identification of the problem and implementation of appropriate procedures.			X	X
2.	Effects of Airframe and Engine Icing: Required only for those airplanes authorized for operations in known icing conditions.			X	X

TABLE A3F.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements					
Entry No.	Special effects	Simulator level			
		A	B	C	D
	Procedure: With the simulator airborne, in a clean configuration, nominal altitude and cruise airspeed, autopilot on and auto-throttles off, engine and airfoil anti-ice/de-ice systems deactivated; activate icing conditions at a rate that allows monitoring of simulator and systems response. Icing recognition will include an increase in gross weight, airspeed decay, change in simulator pitch attitude, change in engine performance indications (other than due to airspeed changes), and change in data from pitot/static system. Activate heating, anti-ice, or de-ice systems independently. Recognition will include proper effects of these systems, eventually returning the simulated airplane to normal flight.				

TABLE A3G.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements					
Entry No.	Special effects	Simulator level			
		A	B	C	D
Functions in this table are subject to evaluation only if appropriate for the airplane and/or the system is installed on the specific simulator.					
1.	Simulator Power Switch(es)	X	X	X	X
2.	Airplane conditions				
2.a.	Gross weight, center of gravity, fuel loading and allocation	X	X	X	X
2.b.	Airplane systems status	X	X	X	X
2.c.	Ground crew functions (e.g., ext. power, push back)	X	X	X	X
3.	Airports				
3.a.	Number and selection	X	X	X	X
3.b.	Runway selection	X	X	X	X
3.c.	Runway surface condition (e.g., rough, smooth, icy, wet) .....	....	....	X	X
3.d.	Preset positions (e.g., ramp, gate, #1 for takeoff, takeoff position, over FAF)	X	X	X	X
3.e.	Lighting controls	X	X	X	X
4.	Environmental controls				
4.a.	Visibility (statute miles (kilometers))	X	X	X	X
4.b.	Runway visual range (in feet (meters))	X	X	X	X
4.c.	Temperature	X	X	X	X
4.d.	Climate conditions (e.g., ice, snow, rain)	X	X	X	X
4.e.	Wind speed and direction	X	X	X	X
4.f.	Windshear .....	....	....	X	X
4.g.	Clouds (base and tops)	X	X	X	X
5.	Airplane system malfunctions (Inserting and deleting malfunctions into the simulator)	X	X	X	X
6.	Locks, Freezes, and Repositioning				
6.a.	Problem (all) freeze/release	X	X	X	X
6.b.	Position (geographic) freeze/release	X	X	X	X
6.c.	Repositioning (locations, freezes, and releases)	X	X	X	X
6.d.	Ground speed control	X	X	X	X

TABLE A3G.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

Entry No.	Special effects	QPS Requirements			
		Simulator level			
		A	B	C	D
7.	Remote IOS	X	X	X	X
8.	Sound Controls. On/off/adjustment	X	X	X	X
9.	Motion/Control Loading System				
9.a.	On/off/emergency stop	X	X	X	X
10.	Observer Seats/Stations. Position/Adjustment/Positive restraint system	X	X	X	X

Begin Information**1. Introduction**

a. The following is an example test schedule for an Initial/Upgrade evaluation that covers the majority of the requirements set out in the Functions and Subjective test requirements. It is not intended that the schedule be followed line by line, rather, the example should be used as a guide for preparing a schedule that is tailored to the airplane, sponsor, and training task.

b. Functions and subjective tests should be planned. This information has been organized as a reference document with the considerations, methods, and evaluation notes for each individual aspect of the simulator task presented as an individual item. In this way the evaluator can design his or her own test plan, using the appropriate sections to provide guidance on method and evaluation criteria. Two aspects should be present in any test plan structure:

(1) An evaluation of the simulator to determine that it replicates the aircraft and performs reliably for an uninterrupted period equivalent to the length of a typical training session.

(2) The simulator should be capable of operating reliably after the use of training device functions such as repositions or malfunctions.

c. A detailed understanding of the training task will naturally lead to a list of objectives that the simulator should meet. This list will form the basis of the test plan. Additionally, once the test plan has been formulated, the initial conditions and the evaluation criteria should be established. The evaluator should consider all factors that may have an influence on the characteristics observed during particular training tasks in order to make the test plan successful.

2. Events**a. Initial Conditions**

- (1) Airport.
- (2) QNH.
- (3) Temperature.
- (4) Wind/Crosswind.
- (5) Zero Fuel Weight /Fuel/Gross Weight /Center of Gravity.

b. Initial Checks

- (1) Documentation of Simulator.

- (a) Simulator Acceptance Test Manuals.
- (b) Simulator Approval Test Guide.
- (c) Technical Logbook Open Item List.
- (d) Daily Functional Pre-flight Check.
- (2) Documentation of User/Carrier Flight Logs.
 - (a) Simulator Operating/Instructor Manual.
 - (b) Difference List (Aircraft/Simulator).
 - (c) Flight Crew Operating Manuals.
 - (d) Performance Data for Different Fields.
 - (e) Crew Training Manual.
 - (f) Normal/Abnormal/Emergency Checklists.
 - (3) Simulator External Checks.
 - (a) Appearance and Cleanliness.
 - (b) Stairway/Access Bridge.
 - (c) Emergency Rope Ladders.
 - (d) "Motion On"/"Flight in Progress"
 - Lights.
 - (4) Simulator Internal Checks.
 - (a) Cleaning/Disinfecting Towels (for cleaning oxygen masks).
 - (b) Flight deck Layout (compare with difference list).
 - (5) Equipment.
 - (a) Quick Donning Oxygen Masks.
 - (b) Head Sets.
 - (c) Smoke Goggles.
 - (d) Sun Visors.
 - (e) Escape Rope.
 - (f) Chart Holders.
 - (g) Flashlights.
 - (h) Fire Extinguisher (inspection date).
 - (i) Crash Axe.
 - (j) Gear Pins.

c. Power Supply and APU Start Checks

- (1) Batteries and Static Inverter.
- (2) APU Start with Battery.
- (3) APU Shutdown using Fire Handle.
- (4) External Power Connection.
- (5) APU Start with External Power.
- (6) Abnormal APU Start/Operation.

d. Flight deck Checks

- (1) Flight deck Preparation Checks.
- (2) FMC Programming.
- (3) Communications and Navigational Aids Checks.

e. Engine Start

- (1) Before Start Checks.
- (2) Battery start with Ground Air Supply Unit.
- (3) Engine Crossbleed Start.
- (4) Normal Engine Start.
- (5) Abnormal Engine Starts.

- (6) Engine Idle Readings.
- (7) After Start Checks.

f. Taxi Checks

- (1) Pushback/Powerback.
- (2) Taxi Checks.
- (3) Ground Handling Check:
 - (a) Power required to initiate ground roll.
 - (b) Thrust response.
 - (c) Nosewheel and Pedal Steering.
 - (d) Nosewheel Scuffing.
 - (e) Perform 180 degree turns.
 - (f) Brakes Response and Differential Braking using Normal, Alternate and Emergency.

- (g) Brake Systems.
- (h) Eye height and fore/aft position.
- (4) Runway Roughness.

g. Visual Scene—Ground Assessment.

Select 3 different airport models and perform the following checks with Day, Dusk and Night selected, as appropriate:

- (1) Visual Controls.
 - (a) Daylight, Dusk, Night Scene Controls.
 - (b) Flight deck "Daylight" ambient lighting.
 - (c) Environment Light Controls.
 - (d) Runway Light Controls.
 - (e) Taxiway Light Controls.
 - (2) Airport Model Content.
 - (a) Ramp area for buildings, gates, airbridges, maintenance ground equipment, parked aircraft.
 - (b) Daylight shadows, night time light pools.
 - (c) Taxiways for correct markings, taxiway/runway, marker boards, CAT I and II/III hold points, taxiway shape/grass areas, taxiway light (positions and colors).
 - (d) Runways for correct markings, lead-off lights, boards, runway slope, runway light positions, and colors, directionality of runway lights.
 - (e) Airport environment for correct terrain and significant features.
 - (f) Visual scene quantization (aliasing), color, and occulting levels.
 - (3) Ground Traffic Selection.
 - (4) Environment Effects.
 - (a) Low cloud scene.
 - (i) Rain:
 - (A) Runway surface scene.
 - (B) Windshield wiper—operation and sound.
 - (ii) Hail:
 - (A) Runway surface scene.
 - (B) Windshield wiper—operation and sound.

(b) Lightning/thunder.
 (c) Snow/ice runway surface scene.
 (d) Fog.
h. Takeoff. Select one or several of the following test cases:
 (1) T/O Configuration Warnings.
 (2) Engine Takeoff Readings.
 (3) Rejected Takeoff (Dry/Wet/Icy Runway) and check the following:
 (a) Autobrake function.
 (b) Anti-skid operation.
 (c) Motion/visual effects during deceleration.
 (d) Record stopping distance (use runway plot or runway lights remaining).
 Continue taxiing along the runway while applying brakes and check the following:
 (e) Center line lights alternating red/white for 2000 feet/600 meters.
 (f) Center line lights all red for 1000 feet/300 meters.
 (g) Runway end, red stop bars.
 (h) Braking fade effect.
 (i) Brake temperature indications.
 (4) Engine Failure between V1 and V2.
 (5) Normal Takeoff:
 (a) During ground roll check the following:
 (i) Runway rumble.
 (ii) Acceleration cues.
 (iii) Groundspeed effects.
 (iv) Engine sounds.
 (v) Nosewheel and rudder pedal steering.
 (b) During and after rotation, check the following:
 (i) Rotation characteristics.
 (ii) Column force during rotation.
 (iii) Gear uplock sounds/bumps.
 (iv) Effect of slat/flap retraction during climbout.
 (6) Crosswind Takeoff (check the following):
 (a) Tendency to turn into or out of the wind.
 (b) Tendency to lift upwind wing as airspeed increases.
 (7) Windshear during Takeoff (check the following):
 (a) Controllable during windshear encounter.
 (b) Performance adequate when using correct techniques.
 (c) Windshear Indications satisfactory.
 (d) Motion cues satisfactory (particularly turbulence).
 (8) Normal Takeoff with Control Malfunction.
 (9) Low Visibility T/O (check the following):
 (a) Visual cues.
 (b) Flying by reference to instruments.
 (c) SID Guidance on LNAV.
i. Climb Performance. Select one or several of the following test cases:
 (1) Normal Climb—Climb while maintaining recommended speed profile and note fuel, distance and time.
 (2) Single Engine Climb—Trim aircraft in a zero wheel climb at V2.
Note: Up to 5° bank towards the operating engine(s) is permissible. Climb for 3 minutes and note fuel, distance, and time. Increase speed toward en route climb speed and retract flaps. Climb for 3 minutes and note fuel, distance, and time.
j. Systems Operation During Climb.
 Check normal operation and malfunctions as appropriate for the following systems:

(1) Air conditioning/Pressurization/Ventilation.
 (2) Autoflight.
 (3) Communications.
 (4) Electrical.
 (5) Fuel.
 (6) Icing Systems.
 (7) Indicating and Recording Systems.
 (8) Navigation/FMS.
 (9) Pneumatics.
k. Cruise Checks. Select one or several of the following test cases:
 (1) Cruise Performance.
 (2) High Speed/High Altitude Handling (check the following):
 (a) Overspeed warning.
 (b) High Speed buffet.
 (c) Aircraft control satisfactory.
 (d) Envelope limiting functions on Computer Controlled Aircraft.
 Reduce airspeed to below level flight buffet onset speed, start a turn, and check the following:
 (e) High Speed buffet increases with G loading.
 Reduce throttles to idle and start descent, deploy the speedbrake, and check the following:
 (f) Speedbrake indications.
 (g) Symmetrical deployment.
 (h) Airframe buffet.
 (i) Aircraft response hands off.
 (3) Yaw Damper Operation. Switch off yaw dampers and autopilot. Initiate a Dutch roll and check the following:
 (a) Aircraft dynamics.
 (b) Simulator motion effects.
 Switch on yaw dampers, re-initiate a Dutch roll and check the following:
 (c) Damped aircraft dynamics.
 (4) APU Operation.
 (5) Engine Gravity Feed.
 (6) Engine Shutdown and Driftdown
 Check: FMC operation Aircraft performance.
 (7) Engine Relight.
l. Descent. Select one of the following test cases:
 (1) Normal Descent. Descend while maintaining recommended speed profile and note fuel, distance and time.
 (2) Cabin Depressurization/Emergency Descent.
m. Medium Altitude Checks. Select one or several of the following test cases:
 (1) High Angle of Attack/Stall. Trim the aircraft at 1.4 Vs, establish 1 kt/sec² deceleration rate, and check the following—
 (a) System displays/operation satisfactory.
 (b) Handling characteristics satisfactory.
 (c) Stall and Stick shaker speed.
 (d) Buffet characteristics and onset speed.
 (e) Envelope limiting functions on Computer Controlled Aircraft.
 Recover to straight and level flight and check the following:
 (f) Handling characteristics satisfactory.
 (2) Turning Flight. Roll aircraft to left, establish a 30° to 45° bank angle, and check the following:
 (a) Stick force required, satisfactory.
 (b) Wheel requirement to maintain bank angle.
 (c) Slip ball response, satisfactory.
 (d) Time to turn 180°.
 Roll aircraft from 45° bank one way to 45° bank the opposite direction while

maintaining altitude and airspeed—check the following:
 (e) Controllability during maneuver.
 (3) Degraded flight controls.
 (4) Holding Procedure (check the following):
 (a) FMC operation.
 (b) Autopilot auto thrust performance.
 (5) Storm Selection (check the following):
 (a) Weather radar controls.
 (b) Weather radar operation.
 (c) Visual scene corresponds with WXR pattern.
 (Fly through storm center, and check the following):
 (d) Aircraft enters cloud.
 (e) Aircraft encounters representative turbulence.
 (f) Rain/hail sound effects evident.
As aircraft leaves storm area, check the following:
 (g) Storm effects disappear.
 (6) TCAS (check the following):
 (a) Traffic appears on visual display.
 (b) Traffic appears on TCAS display(s).
As conflicting traffic approaches, take relevant avoiding action, and check the following:
 (c) Visual and TCAS system displays.
n. Approach and Landing. Select one or several of the following test cases while monitoring flight control and hydraulic systems for normal operation and with malfunctions selected:
 (1) Flaps/Gear Normal Operation. Check the following:
 (a) Time for extension/retraction.
 (b) Buffet characteristics.
 (2) Normal Visual Approach and Landing. Fly a normal visual approach and landing—check the following:
 (a) Aircraft handling.
 (b) Spoiler operation.
 (c) Reverse thrust operation.
 (d) Directional control on the ground.
 (e) Touchdown cues for main and nosewheel.
 (f) Visual cues.
 (g) Motion cues.
 (h) Sound cues.
 (i) Brake and anti-skid operation.
 (3) Flaps/Gear Abnormal Operation or with hydraulic malfunctions.
 (4) Abnormal Wing Flaps/Slats Landing.
 (5) Manual Landing with Control Malfunction.
 (a) Aircraft handling.
 (b) Radio aids and instruments.
 (c) Airport model content and cues.
 (d) Motion cues.
 (e) Sound cues.
 (6) Non-precision Approach—All Engines Operating.
 (a) Aircraft handling.
 (b) Radio Aids and instruments.
 (c) Airport model content and cues.
 (d) Motion cues.
 (e) Sound cues.
 (7) Circling Approach.
 (a) Aircraft handling.
 (c) Radio Aids and instruments.
 (d) Airport model content and cues.
 (e) Motion cues.
 (f) Sound cues.
 (8) Non-precision Approach—One Engine Inoperative.

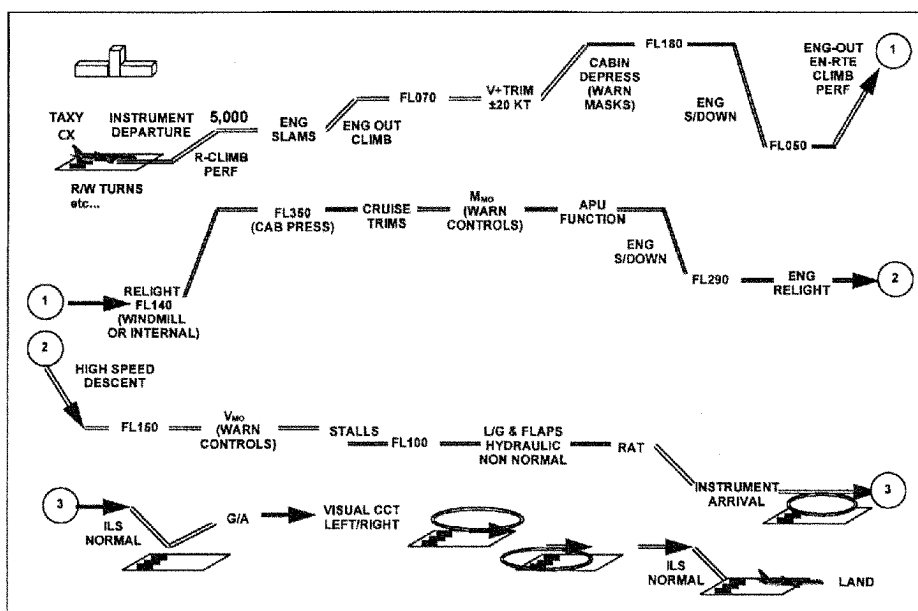
(a) Aircraft handling.
 (b) Radio Aids and instruments.
 (c) Airport model content and cues.
 (d) Motion cues.
 (e) Sound cues.
 (9) One Engine Inoperative Go-around.
 (a) Aircraft handling.
 (b) Radio Aids and instruments.
 (c) Airport model content and cues.
 (d) Motion cues.
 (e) Sound cues.
 (10) CAT I Approach and Landing with raw-data ILS.
 (a) Aircraft handling.
 (b) Radio Aids and instruments.
 (c) Airport model content and cues.
 (d) Motion cues.
 (e) Sound cues.
 (11) CAT I Approach and Landing with Limiting Crosswind.
 (a) Aircraft handling.
 (b) Radio Aids and instruments.
 (c) Airport model content and cues.
 (d) Motion cues.
 (e) Sound cues.
 (12) CAT I Approach with Windshear.
 Check the following:
 (a) Controllable during windshear encounter.
 (b) Performance adequate when using correct techniques.
 (c) Windshear indications/warnings.
 (d) Motion cues (particularly turbulence).
 (13) CAT II Approach and Automatic Go-Around.
 (14) CAT III Approach and Landing—System Malfunctions.
 (15) CAT III Approach and Landing—1 Engine Inoperative.
 (16) GPWS evaluation.
o. Visual Scene—In-Flight Assessment.
 Select three (3) different visual models and perform the following checks with “day,” “dusk,” and “night” (as appropriate) selected. Reposition the aircraft at or below 2000 feet within 10 nm of the airfield. Fly the aircraft around the airport environment and assess control of the visual system and evaluate the Airport model content as described below:

(1) Visual Controls.
 (a) Daylight, Dusk, Night Scene Controls.
 (b) Environment Light Controls.
 (c) Runway Light Controls.
 (d) Taxiway Light Controls.
 (e) Approach Light Controls.
 (2) Airport model Content.
 (a) Airport environment for correct terrain and significant features.
 (b) Runways for correct markings, runway slope, directionality of runway lights.
 (c) Visual scene for quantization (aliasing), color, and occulting.
 Reposition the aircraft to a long, final approach for an “ILS runway.” Select flight freeze when the aircraft is 5-statute miles (sm)/8-kilometers (km) out and on the glide slope. Check the following:
 (3) Airport model content.
 (a) Airfield features.
 (b) Approach lights.
 (c) Runway definition.
 (d) Runway definition.
 (e) Runway edge lights and VASI lights.
 (f) Strobe lights.
 Release flight freeze. Continue flying the approach with NP engaged. Select flight freeze when aircraft is 3 sm/5 km out and on the glide slope. Check the following:
 (4) Airport model Content.
 (a) Runway centerline light.
 (b) Taxiway definition and lights.
 Release flight freeze and continue flying the approach with A/P engaged. Select flight freeze when aircraft is 2 sm/3 km out and on the glide slope. Check the following:
 (5) Airport model content.
 (a) Runway threshold lights.
 (b) Touchdown zone lights.
 At 200 ft radio altitude and still on glide slope, select Flight Freeze. Check the following:
 (6) Airport model content.
 (a) Runway markings.
 Set the weather to Category I conditions and check the following:
 (7) Airport model content.
 (a) Visual ground segment.
 Set the weather to Category II conditions, release Flight Freeze, re-select Flight Freeze

at 100 feet radio altitude, and check the following:
 (8) Airport model content.
 (a) Visual ground segment.
 Select night/dusk (twilight) conditions and check the following:
 (9) Airport model content.
 (a) Runway markings visible within landing light lobes.
 Set the weather to Category III conditions, release Flight Freeze, re-select Flight Freeze at 50 feet radio altitude and check the following:
 (10) Airport model content.
 (a) Visual ground segment.
 Set WX to a typical “missed approach” weather condition, release Flight Freeze, re-select Flight Freeze at 15 feet radio altitude, and check the following:
 (11) Airport model content.
 (a) Visual ground segment.
 When on the ground, stop the aircraft. Set 0 feet RVR, ensure strobe/beacon lights are switched on and check the following:
 (12) Airport model content.
 (a) Visual effect of strobe and beacon.
 Reposition to final approach, set weather to “Clear,” continue approach for an automatic landing, and check the following:
 (13) Airport model content.
 (a) Visual cues during flare to assess sink rate.
 (b) Visual cues during flare to assess Depth perception.
 (c) Flight deck height above ground.
 After Landing Operations.
 (1) After Landing Checks.
 (2) Taxi back to gate. Check the following:
 (a) Visual model satisfactory.
 (b) Parking brake operation satisfactory.
 (3) Shutdown Checks.
 q. Crash Function.
 (1) Gear-up Crash.
 (2) Excessive rate of descent Crash.
 (3) Excessive bank angle Crash.

BILLING CODE 4910-13-P

Typical Subjective Continuing Qualification Evaluation Profile (2 hours)



End Information

Attachment 4 to Appendix A to Part 60--

SAMPLE DOCUMENTS

Table of Contents

Title of Sample

Figure A4A	Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation.
Figure A4B	Attachment: FFS Information Form
Figure A4C	Sample Letter of Compliance
Figure A4D	Sample Qualification Test Guide Cover Page
Figure A4E	Sample Statement of Qualification - Certificate
Figure A4F	Sample Statement of Qualification - Configuration List
Figure A4G	Sample Statement of Qualification - List of Qualified Tasks
Figure A4H	Sample Continuing Qualification Evaluation Requirements Page
Figure A4I	Sample MQTG Index of Effective FFS Directives

**Attachment 4 to Appendix A to Part 60—
Figure A4A – Sample Letter , Request for Initial, Upgrade, or Reinstatement
Evaluation
INFORMATION**

Date _____

Edward D. Cook, Ph.D.
Manager, National Simulator Program
Federal Aviation Administration
100 Hartsfield Centre Parkway, Suite 400
Atlanta, GA 30354

Dear Dr. Cook:

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FFS Manufacturer), (Aircraft Type/Level) Full Flight Simulator (FFS), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FFS will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FFS will be sponsored as follows: (Select One)

- ☐ The FFS will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.
- ☐ The FFS will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

- ☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "1/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.
- ☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

1. Sponsor's Letter of Request (*Company Compliance Letter*).
2. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
3. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FFS Information Form
cc: POI/TCPM

**Attachment 4 to Appendix A to Part 60—
Figure A4B – Sample Letter , Request for Initial, Upgrade, or Reinstatement
Evaluation
Attachment: FSTD Information Form
INFORMATION**

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name: _____		FSTD Location: _____	
Address: _____		Physical Address: _____	
City: _____		City: _____	
State: _____		State: _____	
Country: _____		Country: _____	
ZIP: _____		ZIP: _____	
Manager _____			
Sponsor ID No: (Four Letter FAA Designator) _____		Nearest Airport: (Airport Designator) _____	
Type of Evaluation Requested: ☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series: _____			
Initial Qualification: (If Applicable)		Date: _____ Level _____ MM/DD/YYYY	
		Manufacturer's Identification or Serial Number _____	
Upgrade Qualification: (If Applicable)		Date: _____ Level _____ MM/DD/YYYY	
		☐ eMQTG	
Qualification Basis: _____		☐ A ☐ B ☐ Interim C ☐ C ☐ D ☐ 6 ☐ 7 ☐ Provisional Status	
Other Technical Information:			
FAA FSTD ID No: (If Applicable) _____		FSTD Manufacturer: _____	
Convertible FSTD: ☐ Yes:		Date of Manufacture: _____ MM/DD/YYYY	
Related FAA ID No. (If Applicable) _____		Sponsor FSTD ID No: _____	
Engine model(s) and data revision: _____		Source of aerodynamic model: _____	
FMS identification and revision level: _____		Source of aerodynamic coefficient data: _____	
Visual system manufacturer/model: _____		Aerodynamic data revision number: _____	
Flight control data revision: _____		Visual system display: _____	
Motion system manufacturer/type: _____		FSTD computer(s) identification: _____	
National Aviation Authority (NAA): (If Applicable) _____			
NAA FSTD ID No: _____		Last NAA Evaluation Date: _____	
NAA Qualification Level: _____			
NAA Qualification Basis: _____			
Visual System Manufacturer and Type: _____			
		FSTD Seats Available: _____	
		Motion System Manufacturer and Type: _____	

**Attachment 4 to Appendix A to Part 60—
Figure A4B – Sample Letter , Request for Initial, Upgrade, or Reinstatement
Evaluation**

**Attachment: FSTD Information Form
INFORMATION**

Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: ____ ☐ WX Radar ☐ Other: ____	Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: ____
Airport Models:	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator
Circle to Land:	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway
Visual Ground Segment	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway

Section 2. Supplementary Information

FAA Training Program Approval Authority:		☐ POI ☐ TCPM ☐ Other: _____	
Name:	_____	Office:	_____
Tel:	_____	Fax:	_____
Email:	_____		
FSTD Scheduling Person:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____
FSTD Technical Contact:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training /Checks:(142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating -Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____
Proficiency Checks (135/121/142)	☐	_____

**Attachment 4 to Appendix A to Part 60—
Figure A4B – Sample Letter , Request for Initial, Upgrade, or Reinstatement
Evaluation
Attachment: FSTD Information Form
INFORMATION**

CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____
CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

**Attachment 4 to Appendix A to Part 60—
Figure A4C – Sample Letter of Compliance
INFORMATION**

(Date)

Mr. (Name of Training Program Approval Authority):

(Name of FAA FSDO)

(Address)

(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FFS for Level () qualification. The (FFS Manufacturer Name) FFS with (Visual System Manufacturer Name/Model) system is fully defined on the FFS Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FFS and certify that it meets all applicable requirements of FAR parts 121, 125, or 135, and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FFS and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FFS and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,

(Sponsor Representative)

cc:

FAA, National Simulator Program

**Attachment 4 to Appendix A to Part 60—
Figure A4D – Sample Qualification Test Guide Cover Page
INFORMATION**

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC AIRPLANE MODEL)

for example
Stratos BA797-320A

(Type of Simulator)

(Simulator Identification Including Manufacturer, Serial Number, Visual System Used)

(Simulator Level)

(Qualification Performance Standard Used)

(Simulator Location)

FAA Initial Evaluation

Date: _____

(Sponsor) Date: _____

Manager, National
Simulator Program, FAA Date: _____

Attachment 4 to Appendix A to Part 60—
Figure A4E – Sample Statement of Qualification - Certificate
INFORMATION

Federal Aviation Administration
National Simulator Program



Certificate of Qualification

This is to certify that representatives of the National Simulator Program
Completed an evaluation of the

Go-Fast Airlines
Farnsworth Z-100 Full Flight Simulator
FAA Identification Number 999

And pursuant to 14 CFR Part 60 found it to meet its original qualification basis, AC 120-40B (MM/DD/YY)

**The Master Qualification Test Guide and the attached
Configuration List and Restrictions List
Provide the Qualification Basis for this device to operate at
Level D**

Until April 30, 2010

Unless sooner rescinded or extended by the National Simulator Program Manager

March 15, 2009

(date)

B. Williamson

(for the NSPM)

**Attachment 4 to Appendix A to Part 60—
Figure A4F – Sample Statement of Qualification; Configuration List
INFORMATION**

**STATEMENT OF QUALIFICATION
CONFIGURATION LIST**

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name:	_____	FSTD Location:	_____
Address:	_____	Physical Address:	_____
City:	_____	City:	_____
State:	_____	State:	_____
Country:	_____	Country:	_____
ZIP:	_____	ZIP:	_____
Manager	_____		
Sponsor ID No: (Four Letter FAA Designator)	_____	Nearest Airport: (Airport Designator)	_____
Type of Evaluation Requested: _____ ☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series:	_____		
Initial Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	Manufacturer's Identification or Serial Number	_____
Upgrade Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	☐ eMQTG	
Qualification Basis: _____	☐ A	☐ B	☐ Interim C
	☐ 6	☐ 7	☐ Provisional Status
Other Technical Information:			
FAA FSTD ID No: (If Applicable)	_____	FSTD Manufacturer:	_____
Convertible FSTD:	☐ Yes:	Date of Manufacture:	_____
			MM/DD/YYYY
Related FAA ID No. (If Applicable)	_____	Sponsor FSTD ID No:	_____
Engine model(s) and data revision: _____	Source of aerodynamic model: _____		
FMS identification and revision level: _____	Source of aerodynamic coefficient data: _____		
Visual system manufacturer/model: _____	Aerodynamic data revision number: _____		
Flight control data revision: _____	Visual system display: _____		
Motion system manufacturer/type: _____	FSTD computer(s) identification: _____		
National Aviation Authority (NAA):			
NAA FSTD ID No:	_____	Last NAA Evaluation Date:	_____
NAA Qualification Level:	_____		
NAA Qualification Basis:	_____		

**Attachment 4 to Appendix A to Part 60—
Figure A4F – Sample Statement of Qualification; Configuration List
INFORMATION**

Visual System Manufacturer and Type: _____		FSTD Seats Available: _____	Motion System Manufacturer and Type: _____	
Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: _____ ☐ WX Radar ☐ Other: _____		Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: _____
Airport Models:				
	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator	
Circle to Land:				
	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway	
Visual Ground Segment				
	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway	

Section 2. Supplementary Information

FAA Training Program Approval Authority: _____		☐ POI ☐ TCPM ☐ Other: _____	
Name: _____	Office: _____		
Tel: _____	Fax: _____		
Email: _____			
FSTD Scheduling Person:			
Name: _____			
Address 1: _____	Address 2: _____		
City: _____	State: _____		
ZIP: _____	Email: _____		
Tel: _____	Fax: _____		
FSTD Technical Contact:			
Name: _____			
Address 1: _____	Address 2: _____		
City: _____	State: _____		
ZIP: _____	Email: _____		
Tel: _____	Fax: _____		

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training / Checks: (142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating - Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____

**Attachment 4 to Appendix A to Part 60—
Figure A4F – Sample Statement of Qualification; Configuration List
INFORMATION**

Proficiency Checks (135/121/142)	☐	_____
CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____
CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

**Attachment 4 to Appendix A to Part 60—
Figure A4G – Sample Statement of Qualification – List of Qualified Tasks
INFORMATION**

**STATEMENT of QUALIFICATION
List of Qualified Tasks**

Go Fast Airline Training -- Farnsworth Z-100 -- Level D -- FAA ID# 999

**The FFS is qualified to perform all of the Maneuvers, Procedures, Tasks, and Functions
Listed in Appendix A, Attachment 1, Table A1B, Minimum FFS Requirements
In Effect on [mm/dd/yyyy] except for the following listed Tasks or Functions.**

Qualified for all tasks in Table A1B, for which the sponsor has requested qualification, except for the following:

- 3.e(1)(i) NDB approach
- 3.f. Recovery from Unusual Attitudes
- 4.3. Circling Approach

Additional tasks for which this FFS is qualified (i.e., in addition to the list in Table A1B)

- 1. Enhanced Visual System
- 2. Windshear Training IAW Section 121.409(d).

The airport visual models evaluated for qualification at this level are:

- 1. Atlanta Hartsfield International Airport (KATL)
- 2. Miami International Airport (KMIA)
- 3. Dallas/Ft. Worth Regional Airport (KDFW)

**Attachment 4 to Appendix A to Part 60—
Figure A4H – Sample Continuing Qualification Evaluation Requirements Page
INFORMATION**

Continuing Qualification Evaluation Requirements <i>Completed at conclusion of Initial Evaluation</i>	
Continuing qualification Evaluations to be conducted each __ (fill in) __ months Allotting _____ hours of FTD time. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: __ (month) __ and __ (month) __ and __ (month) __ (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning):	
Continuing qualification Evaluations are to be conducted each __ (fill in) __ months. Allotting _____ hours. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: __ (month) __ and __ (month) __ and __ (month) __ (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning):	
Continuing qualification Evaluations are to be conducted each __ (fill in) __ months. Allotting _____ hours. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: __ (month) __ and __ (month) __ and __ (month) __ (enter or strike out, as appropriate) _____ Date

(Repeat as Necessary)

**Attachment 4 to Appendix A to Part 60—
Figure A4I – Sample MQTG Index of Effective FFS Directives
INFORMATION**

[illegible]

Continue as Necessary....

BILLING CODE 4910-13-C

Attachment 5 to Appendix A to Part 60— Simulator Qualification Requirements for Windshear Training Program Use

Begin QPS Requirements

1. Applicability

This attachment applies to all simulators, regardless of qualification level, that are used to satisfy the training requirements of an FAA-approved low-altitude windshear flight training program, or any FAA-approved training program that addresses windshear encounters.

2. Statement of Compliance and Capability (SOC)

a. The sponsor must submit an SOC confirming that the aerodynamic model is based on flight test data supplied by the airplane manufacturer or other approved data provider. The SOC must also confirm that any change to environmental wind parameters, including variances in those parameters for windshear conditions, once inserted for computation, result in the correct simulated performance. This statement must also include examples of environmental wind parameters currently evaluated in the simulator (such as crosswind takeoffs, crosswind approaches, and crosswind landings).

b. For simulators without windshear warning, caution, or guidance hardware in the original equipment, the SOC must also

state that the simulation of the added hardware and/or software, including associated flight deck displays and annunciations, replicates the system(s) installed in the airplane. The statement must be accompanied by a block diagram depicting the input and output signal flow, and comparing the signal flow to the equipment installed in the airplane.

3. Models

The windshear models installed in the simulator software used for the qualification evaluation must do the following:

a. Provide cues necessary for recognizing windshear onset and potential performance degradation requiring a pilot to initiate recovery procedures. The cues must include all of the following, as appropriate for the portion of the flight envelope:

(1) Rapid airspeed change of at least ± 15 knots (kts).

(2) Stagnation of airspeed during the takeoff roll.

(3) Rapid vertical speed change of at least ± 500 feet per minute (fpm).

(4) Rapid pitch change of at least $\pm 5^\circ$.

b. Be adjustable in intensity (or other parameter to achieve an intensity effect) to at least two (2) levels so that upon encountering the windshear the pilot may identify its presence and apply the recommended procedures for escape from such a windshear.

(1) If the intensity is lesser, the performance capability of the simulated

airplane in the windshear permits the pilot to maintain a satisfactory flightpath; and

(2) If the intensity is greater, the performance capability of the simulated airplane in the windshear does not permit the pilot to maintain a satisfactory flightpath (crash). Note: The means used to accomplish the “non survivable” scenario of paragraph 3.b.(2) of this attachment, that involve operational elements of the simulated airplane, must reflect the dispatch limitations of the airplane.

c. Be available for use in the FAA-approved windshear flight training program.

4. Demonstrations

a. The sponsor must identify one survivable takeoff windshear training model and one survivable approach windshear training model. The wind components of the survivable models must be presented in graphical format so that all components of the windshear are shown, including initiation point, variance in magnitude, and time or distance correlations. The simulator must be operated at the same gross weight, airplane configuration, and initial airspeed during the takeoff demonstration (through calm air and through the first selected survivable windshear), and at the same gross weight, airplane configuration, and initial airspeed during the approach demonstration (through calm air and through the second selected survivable windshear).

b. In each of these four situations, at an “initiation point” (i.e., where windshear onset is or should be recognized), the

recommended procedures for windshear recovery are applied and the results are recorded as specified in paragraph 5 of this attachment.

c. These recordings are made without inserting programmed random turbulence. Turbulence that results from the windshear model is to be expected, and no attempt may be made to neutralize turbulence from this source.

d. The definition of the models and the results of the demonstrations of all four(4) cases described in paragraph 4.a of this attachment, must be made a part of the MQTG.

5. Recording Parameters

a. In each of the four MQTG cases, an electronic recording (time history) must be made of the following parameters:

- (1) Indicated or calibrated airspeed.
- (2) Indicated vertical speed.
- (3) Pitch attitude.
- (4) Indicated or radio altitude.
- (5) Angle of attack.
- (6) Elevator position.
- (7) Engine data (thrust, N1, or throttle position).
- (8) Wind magnitudes (simple windshear model assumed).

b. These recordings must be initiated at least 10 seconds prior to the initiation point, and continued until recovery is complete or ground contact is made.

6. Equipment Installation and Operation

All windshear warning, caution, or guidance hardware installed in the simulator must operate as it operates in the airplane. For example, if a rapidly changing wind speed and/or direction would have caused a windshear warning in the airplane, the simulator must respond equivalently without instructor/evaluator intervention.

7. Qualification Test Guide

a. All QTG material must be forwarded to the NSPM.

b. A simulator windshear evaluation will be scheduled in accordance with normal procedures. Continuing qualification evaluation schedules will be used to the maximum extent possible.

c. During the on-site evaluation, the evaluator will ask the operator to run the performance tests and record the results. The results of these on-site tests will be compared to those results previously approved and placed in the QTG or MQTG, as appropriate.

d. QTGs for new (or MQTGs for upgraded) simulators must contain or reference the information described in paragraphs 2, 3, 4, and 5 of this attachment.

End QPS Requirements

Begin Information

8. Subjective Evaluation

The NSPM will fly the simulator in at least two of the available windshear scenarios to subjectively evaluate simulator performance as it encounters the programmed windshear conditions.

a. One scenario will include parameters that enable the pilot to maintain a satisfactory flightpath.

b. One scenario will include parameters that will not enable the pilot to maintain a satisfactory flightpath (crash).

c. Other scenarios may be examined at the NSPM's discretion.

9. Qualification Basis

The addition of windshear programming to a simulator in order to comply with the qualification for required windshear training does not change the original qualification basis of the simulator.

10. Demonstration Repeatability

For the purposes of demonstration repeatability, it is recommended that the simulator be flown by means of the simulator's autodriven function (for those simulators that have autodriven capability) during the demonstrations.

End Information

Attachment 6 to Appendix A to Part 60—FSTD Directives Applicable to Airplane Flight Simulators

Flight Simulation Training Device (FSTD) Directive

FSTD Directive 1. Applicable to all Full Flight Simulators (FFS), regardless of the original qualification basis and qualification date (original or upgrade), having Class II or Class III airport models available.

Agency: Federal Aviation Administration (FAA), DOT.

Action: This is a retroactive requirement to have all Class II or Class III airport models meet current requirements.

Summary: Notwithstanding the authorization listed in paragraph 13b in Appendices A and C of this part, this FSTD Directive requires each certificate holder to ensure that by May 30, 2009, except for the airport model(s) used to qualify the simulator at the designated level, each airport model used by the certificate holder's instructors or evaluators for training, checking, or testing under this chapter in an FFS, meets the definition of a Class II or Class III airport model as defined in 14CFR part 60. The completion of this requirement will not require a report, and the method used for keeping instructors and evaluators apprised of the airport models that meet Class II or Class III requirements on any given simulator is at the option of the certificate holder whose employees are using the FFS, but the method used must be available for review by the TPAA for that certificate holder.

Dates: FSTD Directive 1 becomes effective on May 30, 2008.

For Further Information Contact: Ed Cook, Senior Advisor to the Division Manager, Air Transportation Division, AFS-200, 800 Independence Ave, SW., Washington, DC 20591; telephone: (404) 832-4701; fax: (404) 761-8906.

Specific Requirements:

1. Part 60 requires that each FSTD be:
 - a. Sponsored by a person holding or applying for an FAA operating certificate under Part 119, Part 141, or Part 142, or holding or applying for an FAA-approved

training program under Part 63, Appendix C, for flight engineers, and

b. Evaluated and issued an SOQ for a specific FSTD level.

2. FFSs also require the installation of a visual system that is capable of providing an out-of-the-flight-deck view of airport models. However, historically these airport models were not routinely evaluated or required to meet any standardized criteria. This has led to qualified simulators containing airport models being used to meet FAA-approved training, testing, or checking requirements with potentially incorrect or inappropriate visual references.

3. To prevent this from occurring in the future, by May 30, 2009, except for the airport model(s) used to qualify the simulator at the designated level, each certificate holder must assure that each airport model used for training, testing, or checking under this chapter in a qualified FFS meets the definition of a Class II or Class III airport model as defined in Appendix F of this part.

4. These references describe the requirements for visual scene management and the minimum distances from which runway or landing area features must be visible for all levels of simulator. The airport model must provide, for each "in-use runway" or "in-use landing area," runway or landing area surface and markings, runway or landing area lighting, taxiway surface and markings, and taxiway lighting. Additional requirements include correlation of the v airport models with other aspects of the airport environment, correlation of the aircraft and associated equipment, scene quality assessment features, and the control of these models the instructor must be able to exercise.

5. For circling approaches, all requirements of this section apply to the runway used for the initial approach and to the runway of intended landing.

6. The details in these models must be developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material. However, this FSTD DIRECTIVE 1 does not require that airport models contain details that are beyond the initially designed capability of the visual system, as currently qualified. The recognized limitations to visual systems are as follows:

a. Visual systems not required to have runway numbers as a part of the specific runway marking requirements are:

- (1) Link NVS and DNVS.
- (2) Novoview 2500 and 6000.
- (3) FlightSafety VITAL series up to, and including, VITAL III, but not beyond.
- (4) Redifusion SP1, SP1T, and SP2.

b. Visual systems required to display runway numbers only for LOFT scenes are:

- (1) FlightSafety VITAL IV.
- (2) Redifusion SP3 and SP3T.
- (3) Link-Miles Image II.

c. Visual systems not required to have accurate taxiway edge lighting are:

- (1) Redifusion SP1.
- (2) FlightSafety Vital IV.
- (3) Link-Miles Image II and Image IIT
- (4) XKD displays (even though the XKD image generator is capable of generating blue

colored lights, the display cannot accommodate that color).

7. A copy of this Directive must be filed in the MQTG in the designated FSTD Directive Section, and its inclusion must be annotated on the Index of Effective FSTD Directives chart. See Attachment 4, Appendices A through D for a sample MQTG Index of Effective FSTD Directives chart.

Appendix B to Part 60—Qualification Performance Standards for Airplane Flight Training Devices

Begin Information

This appendix establishes the standards for Airplane FTD evaluation and qualification at Level 4, Level 5, or Level 6. The Flight Standards Service, NSPM, is responsible for the development, application, and implementation of the standards contained within this appendix. The procedures and criteria specified in this appendix will be used by the NSPM, or a person or persons assigned by the NSPM when conducting airplane FTD evaluations.

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1. Introduction
 2. Applicability (§§ 60.1 and 60.2).
 3. Definitions (§ 60.3).
 4. Qualification Performance Standards (§ 60.4).
 5. Quality Management System (§ 60.5).
 6. Sponsor Qualification Requirements (§ 60.7).
 7. Additional Responsibilities of the Sponsor (§ 60.9).
 8. FTD Use (§ 60.11).
 9. FTD Objective Data Requirements (§ 60.13).
 10. Special Equipment and Personnel Requirements for Qualification of the FTD (§ 60.14).
 11. Initial (and Upgrade) Qualification Requirements (§ 60.15).
 12. Additional Qualifications for Currently Qualified FTDs (§ 60.16).
 13. Previously Qualified FTDs (§ 60.17).
 14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements (§ 60.19).
 15. Logging FTD Discrepancies (§ 60.20).
 16. Interim Qualification of FTDs for New Airplane Types or Models (§ 60.21).
 17. Modifications to FTDs (§ 60.23).
 18. Operations with Missing, Malfunctioning, or Inoperative Components (§ 60.25).
 19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27).
 20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29).
 21. Record Keeping and Reporting (§ 60.31).
 22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33).
 23. [Reserved]
 24. Levels of FTD.
 25. FTD Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37).
- Attachment 1 to Appendix B to Part 60—General FTD Requirements.

Attachment 2 to Appendix B to Part 60—Flight Training Device (FTD) Objective Tests.

Attachment 3 to Appendix B to Part 60—Flight Training Device (FTD) Subjective Evaluation.

Attachment 4 to Appendix B to Part 60—Sample Documents.

End Information

1. Introduction

Begin Information

a. This appendix contains background information as well as regulatory and informative material as described later in this section. To assist the reader in determining what areas are required and what areas are permissive, the text in this appendix is divided into two sections: “QPS Requirements” and “Information.” The QPS Requirements sections contain details regarding compliance with the part 60 rule language. These details are regulatory, but are found only in this appendix. The Information sections contain material that is advisory in nature, and designed to give the user general information about the regulation.

b. Questions regarding the contents of this publication should be sent to the U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, National Simulator Program Staff, AFS-205, 100 Hartsfield Centre Parkway, Suite 400, Atlanta, Georgia, 30354. Telephone contact numbers for the NSP are: phone, 404-832-4700; fax, 404-761-8906. The general e-mail address for the NSP office is: 9-aso-avr-sim-team@faa.gov. The NSP Internet Web Site address is: http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/nsp/. On this Web Site you will find an NSP personnel list with telephone and e-mail contact information for each NSP staff member, a list of qualified flight simulation devices, ACs, a description of the qualification process, NSP policy, and an NSP “In-Works” section. Also linked from this site are additional information sources, handbook bulletins, frequently asked questions, a listing and text of the Federal Aviation Regulations, Flight Standards Inspector’s handbooks, and other FAA links.

c. The NSPM encourages the use of electronic media for all communication, including any record, report, request, test, or statement required by this appendix. The electronic media used must have adequate security provisions and be acceptable to the NSPM. The NSPM recommends inquiries on system compatibility, and minimum system requirements are also included on the NSP Web site.

d. Related Reading References.

- (1) 14 CFR part 60.
- (2) 14 CFR part 61.
- (3) 14 CFR part 63.
- (4) 14 CFR part 119.
- (5) 14 CFR part 121.
- (6) 14 CFR part 125.
- (7) 14 CFR part 135.
- (8) 14 CFR part 141.
- (9) 14 CFR part 142.

(10) AC 120-28, as amended, Criteria for Approval of Category III Landing Weather Minima.

(11) AC 120-29, as amended, Criteria for Approving Category I and Category II Landing Minima for part 121 operators.

(12) AC 120-35, as amended, Line Operational Simulations: Line-Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation.

(13) AC 120-41, as amended, Criteria for Operational Approval of Airborne Wind Shear Alerting and Flight Guidance Systems.

(14) AC 120-45, as amended, Airplane Flight Training Device Qualification.

(14) AC 120-57, as amended, Surface Movement Guidance and Control System (SMGCS).

(15) AC 150/5300-13, as amended, Airport Design.

(16) AC 150/5340-1, as amended, Standards for Airport Markings.

(17) AC 150/5340-4, as amended, Installation Details for Runway Centerline Touchdown Zone Lighting Systems.

(18) AC 150/5340-19, as amended, Taxiway Centerline Lighting System.

(19) AC 150/5340-24, as amended, Runway and Taxiway Edge Lighting System.

(20) AC 150/5345-28, as amended, Precision Approach Path Indicator (PAPI) Systems.

(21) International Air Transport Association document, “Flight Simulator Design and Performance Data Requirements,” as amended.

(22) AC 25-7, as amended, Flight Test Guide for Certification of Transport Category Airplanes.

(23) AC 23-8A, as amended, Flight Test Guide for Certification of Part 23 Airplanes.

(24) International Civil Aviation Organization (ICAO) Manual of Criteria for the Qualification of Flight Simulators, as amended.

(25) Airplane Flight Simulator Evaluation Handbook, Volume I, as amended and Volume II, as amended, The Royal Aeronautical Society, London, UK.

(26) FAA Publication FAA-S-8081 series (Practical Test Standards for Airline Transport Pilot Certificate, Type Ratings, Commercial Pilot, and Instrument Ratings).

(27) The FAA Aeronautical Information Manual (AIM). An electronic version of the AIM is on the Internet at <http://www.faa.gov/atpubs>.

(28) Aeronautical Radio, Inc. (ARINC) document number 436, titled *Guidelines For Electronic Qualification Test Guide* (as amended).

(29) Aeronautical Radio, Inc. (ARINC) document 610, *Guidance for Design and Integration of Aircraft Avionics Equipment in Simulators* (as amended).

End Information

2. Applicability (§§ 60.1 and 60.2)

Begin Information

No additional regulatory or informational material applies to § 60.1, Applicability, or to § 60.2, Applicability of sponsor rules to person who are not sponsors and who are engaged in certain unauthorized activities.

3. Definitions (§ 60.3)

See Appendix F of this part for a list of definitions and abbreviations from part 1, part 60, and the QPS appendices of part 60.

4. Qualification Performance Standards (§ 60.4)

No additional regulatory or informational material applies to § 60.4, Qualification Performance Standards.

5. Quality Management System (§ 60.5)

Additional regulatory material and informational material regarding Quality Management Systems for FTDs may be found in Appendix E of this part.

End Information**6. Sponsor Qualification Requirements. (§ 60.7).****Begin Information**

a. The intent of the language in § 60.7(b) is to have a specific FTD, identified by the sponsor, used at least once in an FAA-approved flight training program for the airplane simulated during the 12-month period described. The identification of the specific FTD may change from one 12-month period to the next 12-month period as long as that sponsor sponsors and uses at least one FTD at least once during the prescribed period. There is no minimum number of hours or minimum FTD periods required.

b. The following examples describe acceptable operational practices:

(1) Example One.

(a) A sponsor is sponsoring a single, specific FTD for its own use, in its own facility or elsewhere— this single FTD forms the basis for the sponsorship. The sponsor uses that FTD at least once in each 12-month period in that sponsor's FAA-approved flight training program for the airplane simulated. This 12-month period is established according to the following schedule:

(i) If the FTD was qualified prior to May 30, 2008, the 12-month period begins on the date of the first continuing qualification evaluation conducted in accordance with § 60.19 after May 30, 2008, and continues for each subsequent 12-month period;

(ii) A device qualified on or after May 30, 2008, will be required to undergo an initial or upgrade evaluation in accordance with § 60.15. Once the initial or upgrade evaluation is complete, the first continuing qualification evaluation will be conducted within 6 months. The 12 month continuing qualification evaluation cycle begins on that date and continues for each subsequent 12-month period.

(b) There is no minimum number of hours of FTD use required.

(c) The identification of the specific FTD may change from one 12-month period to the next 12-month period as long as that sponsor sponsors and uses at least one FTD at least once during the prescribed period.

(2) Example Two.

(a) A sponsor sponsors an additional number of FTDs, in its facility or elsewhere. Each additionally sponsored FTD must be—

(i) Used by the sponsor in the sponsor's FAA-approved flight training program for the airplane simulated (as described in § 60.7(d)(1)); or

(ii) Used by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the airplane simulated (as described in § 60.7(d)(1)). This 12-month period is established in the same manner as in example one; or

(iii) Provided a statement each year from a qualified pilot, (after having flown the airplane, not the subject FTD or another FTD, during the preceding 12-month period) stating that the subject FTD's performance and handling qualities represent the airplane (as described in § 60.7(d)(2)). This statement is provided at least once in each 12-month period established in the same manner as in example one.

(b) There is no minimum number of hours of FTD use required.

(3) Example Three.

(a) A sponsor in New York (in this example, a Part 142 certificate holder) establishes "satellite" training centers in Chicago and Moscow.

(b) The satellite function means that the Chicago and Moscow centers must operate under the New York center's certificate (in accordance with all of the New York center's practices, procedures, and policies; e.g., instructor and/or technician training/checking requirements, record keeping, QMS program).

(c) All of the FTDs in the Chicago and Moscow centers could be dry-leased (i.e., the certificate holder does not have and use FAA-approved flight training programs for the FTDs in the Chicago and Moscow centers) because—

(i) Each FTD in the Chicago center and each FTD in the Moscow center is used at least once each 12-month period by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the airplane (as described in § 60.7(d)(1)); or

(ii) A statement is obtained from a qualified pilot (having flown the airplane, not the subject FTD or another FTD during the preceding 12-month period) stating that the performance and handling qualities of each FTD in the Chicago and Moscow centers represents the airplane (as described in § 60.7(d)(2)).

End Information**7. Additional Responsibilities of the Sponsor (§ 60.9)****Begin Information**

The phrase "as soon as practicable" in § 60.9(a) means without unnecessarily disrupting or delaying beyond a reasonable time the training, evaluation, or experience being conducted in the FTD.

8. FTD Use (§ 60.11)

No additional regulatory or informational material applies to § 60.11, FTD use.

End Information**9. FTD Objective Data Requirements (§ 60.13)****Begin QPS Requirements**

a. Flight test data used to validate FTD performance and handling qualities must have been gathered in accordance with a flight test plan containing the following:

(1) A flight test plan consisting of:

(a) The maneuvers and procedures required for aircraft certification and simulation programming and validation.

(b) For each maneuver or procedure—

(i) The procedures and control input the flight test pilot and/or engineer used.

(ii) The atmospheric and environmental conditions.

(iii) The initial flight conditions.

(iv) The airplane configuration, including weight and center of gravity.

(v) The data to be gathered.

(vi) All other information necessary to recreate the flight test conditions in the FTD.

(2) Appropriately qualified flight test personnel.

(3) An understanding of the accuracy of the data to be gathered using appropriate alternative data sources, procedures, and instrumentation that is traceable to a recognized standard as described in Attachment 2, Table B2F of this appendix.

(4) Appropriate and sufficient data acquisition equipment or system(s), including appropriate data reduction and analysis methods and techniques, acceptable to the FAA's Aircraft Certification Service.

b. The data, regardless of source, must be presented:

(1) In a format that supports the FTD validation process;

(2) In a manner that is clearly readable and annotated correctly and completely;

(3) With resolution sufficient to determine compliance with the tolerances set forth in Attachment 2, Table B2A, Appendix B;

(4) With any necessary guidance information provided; and

(5) Without alteration, adjustments, or bias. Data may be corrected to address known data calibration errors provided that an explanation of the methods used to correct the errors appears in the QTG. The corrected data may be re-scaled, digitized, or otherwise manipulated to fit the desired presentation.

c. After completion of any additional flight test, a flight test report must be submitted in support of the validation data. The report must contain sufficient data and rationale to support qualification of the FTD at the level requested.

d. As required by § 60.13(f), the sponsor must notify the NSPM when it becomes aware that an addition to or a revision of the flight related data or airplane systems related data is available if this data is used to program and operate a qualified FTD. The data referred to in this sub-section are those data that are used to validate the performance, handling qualities, or other characteristics of the aircraft, including data related to any relevant changes occurring after the type certification is issued. The sponsor must—

(1) Within 10 calendar days, notify the NSPM of the existence of this data; and

(2) Within 45 calendar days, notify the NSPM of—

(i) The schedule to incorporate this data into the FTD; or

(ii) The reason for not incorporating this data into the FTD.

e. In those cases where the objective test results authorize a “snapshot test” or a “series of snapshot test results” in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the “snapshot.” The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

End QPS Requirements

Begin Information

f. The FTD sponsor is encouraged to maintain a liaison with the manufacturer of the aircraft being simulated (or with the holder of the aircraft type certificate for the aircraft being simulated if the manufacturer is no longer in business), and if appropriate, with the person having supplied the aircraft data package for the FTD in order to facilitate the notification described in this paragraph.

g. It is the intent of the NSPM that for new aircraft entering service, at a point well in advance of preparation of the QTG, the sponsor should submit to the NSPM for approval, a descriptive document (see Appendix A, Table A2C, Sample Validation Data Roadmap for Airplanes) containing the plan for acquiring the validation data, including data sources. This document should clearly identify sources of data for all required tests, a description of the validity of these data for a specific engine type and thrust rating configuration, and the revision levels of all avionics affecting the performance or flying qualities of the aircraft. Additionally, this document should provide other information such as the rationale or explanation for cases where data or data parameters are missing, instances where engineering simulation data are used, or where flight test methods require further explanations. It should also provide a brief narrative describing the cause and effect of any deviation from data requirements. The aircraft manufacturer may provide this document.

h. There is no requirement for any flight test data supplier to submit a flight test plan or program prior to gathering flight test data. However, the NSPM notes that inexperienced data gatherers often provide data that is irrelevant, improperly marked, or lacking adequate justification for selection. Other problems include inadequate information regarding initial conditions or test maneuvers. The NSPM has been forced to refuse these data submissions as validation data for an FTD evaluation. It is for this reason that the NSPM recommends that any data supplier not previously experienced in this area review the data necessary for programming and for validating the performance of the FTD and discuss the flight test plan anticipated for acquiring such

data with the NSPM well in advance of commencing the flight tests.

i. The NSPM will consider, on a case-by-case basis, whether to approve supplemental validation data derived from flight data recording systems such as a Quick Access Recorder or Flight Data Recorder.

End Information

10. Special Equipment and Personnel Requirements for Qualification of the FTD (§ 60.14).

Begin Information

a. In the event that the NSPM determines that special equipment or specifically qualified persons will be required to conduct an evaluation, the NSPM will make every attempt to notify the sponsor at least one (1) week, but in no case less than 72 hours, in advance of the evaluation. Examples of special equipment include flight control measurement devices, accelerometers, or oscilloscopes. Examples of specially qualified personnel include individuals specifically qualified to install or use any special equipment when its use is required.

b. Examples of a special evaluation include an evaluation conducted after: An FTD is moved; at the request of the TPAA; or as a result of comments received from users of the FTD that raise questions about the continued qualification or use of the FTD.

End Information

11. Initial (and Upgrade) Qualification Requirements (§ 60.15).

Begin QPS Requirement

a. In order to be qualified at a particular qualification level, the FTD must:

(1) Meet the general requirements listed in Attachment 1 of this appendix;

(2) Meet the objective testing requirements listed in Attachment 2 of this appendix (Level 4 FTDs do not require objective tests); and

(3) Satisfactorily accomplish the subjective tests listed in Attachment 3 of this appendix.

b. The request described in § 60.15(a) must include all of the following:

(1) A statement that the FTD meets all of the applicable provisions of this part and all applicable provisions of the QPS.

(2) A confirmation that the sponsor will forward to the NSPM the statement described in § 60.15(b) in such time as to be received no later than 5 business days prior to the scheduled evaluation and may be forwarded to the NSPM via traditional or electronic means.

(3) Except for a Level 4 FTD, a QTG, acceptable to the NSPM, that includes all of the following:

(a) Objective data obtained from aircraft testing or another approved source.

(b) Correlating objective test results obtained from the performance of the FTD as prescribed in the appropriate QPS.

(c) The result of FTD subjective tests prescribed in the appropriate QPS.

(d) A description of the equipment necessary to perform the evaluation for initial qualification and the continuing qualification evaluations.

c. The QTG described in paragraph a(3) of this section, must provide the documented proof of compliance with the FTD objective tests in Attachment 2, Table B2A of this appendix.

d. The QTG is prepared and submitted by the sponsor, or the sponsor's agent on behalf of the sponsor, to the NSPM for review and approval, and must include, for each objective test:

(1) Parameters, tolerances, and flight conditions;

(2) Pertinent and complete instructions for conducting automatic and manual tests;

(3) A means of comparing the FTD test results to the objective data;

(4) Any other information as necessary to assist in the evaluation of the test results;

(5) Other information appropriate to the qualification level of the FTD.

e. The QTG described in paragraphs (a)(3) and (b) of this section, must include the following:

(1) A QTG cover page with sponsor and FAA approval signature blocks (see Attachment 4, Figure B4C, of this appendix, for a sample QTG cover page).

(2) A continuing qualification evaluation requirements page. This page will be used by the NSPM to establish and record the frequency with which continuing qualification evaluations must be conducted and any subsequent changes that may be determined by the NSPM in accordance with § 60.19. See Attachment 4, Figure B4G, of this appendix, for a sample Continuing Qualification Evaluation Requirements page.

(3) An FTD information page that provides the information listed in this paragraph, if applicable (see Attachment 4, Figure B4B, of this appendix, for a sample FTD information page). For convertible FTDs, the sponsor must submit a separate page for each configuration of the FTD.

(a) The sponsor's FTD identification number or code.

(b) The airplane model and series being simulated.

(c) The aerodynamic data revision number or reference.

(d) The source of the basic aerodynamic model and the aerodynamic coefficient data used to modify the basic model.

(e) The engine model(s) and its data revision number or reference.

(f) The flight control data revision number or reference.

(g) The flight management system identification and revision level.

(h) The FTD model and manufacturer.

(i) The date of FTD manufacture.

(j) The FTD computer identification.

(k) The visual system model and manufacturer, including display type.

(l) The motion system type and manufacturer, including degrees of freedom.

(4) A Table of Contents.

(5) A log of revisions and a list of effective pages.

(6) List of all relevant data references.

(7) A glossary of terms and symbols used (including sign conventions and units).

(8) Statements of compliance and capability (SOCs) with certain requirements.

(9) Recording procedures or equipment required to accomplish the objective tests.

(10) The following information for each objective test designated in Attachment 2 of this appendix, as applicable to the qualification level sought:

(a) Name of the test.

(b) Objective of the test.

(c) Initial conditions.

(d) Manual test procedures.

(e) Automatic test procedures (if applicable).

(f) Method for evaluating FTD objective test results.

(g) List of all relevant parameters driven or constrained during the automatic test(s).

(h) List of all relevant parameters driven or constrained during the manual test(s).

(i) Tolerances for relevant parameters.

(j) Source of Validation Data (document and page number).

(k) Copy of the Validation Data (if located in a separate binder, a cross reference for the identification and page number for pertinent data location must be provided).

(l) FTD Objective Test Results as obtained by the sponsor. Each test result must reflect the date completed and must be clearly labeled as a product of the device being tested.

f. A convertible FTD is addressed as a separate FTD for each model and series airplane to which it will be converted and for the FAA qualification level sought. The NSPM will conduct an evaluation for each configuration. If a sponsor seeks qualification for two or more models of an airplane type using a convertible FTD, the sponsor must provide a QTG for each airplane model, or a QTG for the first airplane model and a supplement to that QTG for each additional airplane model. The NSPM will conduct evaluations for each airplane model.

g. The form and manner of presentation of objective test results in the QTG must include the following:

(1) The sponsor's FTD test results must be recorded in a manner acceptable to the NSPM, that allows easy comparison of the FTD test results to the validation data (e.g., use of a multi-channel recorder, line printer, cross plotting, overlays, transparencies).

(2) FTD results must be labeled using terminology common to airplane parameters as opposed to computer software identifications.

(3) Validation data documents included in a QTG may be photographically reduced only if such reduction will not alter the graphic scaling or cause difficulties in scale interpretation or resolution.

(4) Scaling on graphical presentations must provide the resolution necessary to evaluate the parameters shown in Attachment 2, Table B2A of this appendix.

(5) Tests involving time histories, data sheets (or transparencies thereof) and FTD test results must be clearly marked with appropriate reference points to ensure an accurate comparison between FTD and airplane with respect to time. Time histories recorded via a line printer are to be clearly identified for cross-plotting on the airplane data. Over-plots may not obscure the reference data.

h. The sponsor may elect to complete the QTG objective and subjective tests at the manufacturer's facility or at the sponsor's training facility. If the tests are conducted at the manufacturer's facility, the sponsor must repeat at least one-third of the tests at the sponsor's training facility in order to substantiate FTD performance. The QTG must be clearly annotated to indicate when and where each test was accomplished. Tests conducted at the manufacturer's facility and at the sponsor's training facility must be conducted after the FTD is assembled with systems and sub-systems functional and operating in an interactive manner. The test results must be submitted to the NSPM.

i. The sponsor must maintain a copy of the MQTG at the FTD location.

j. All FTDs for which the initial qualification is conducted after May 30, 2014, must have an electronic MQTG (eMQTG) including all objective data obtained from airplane testing, or another approved source (reformatted or digitized), together with correlating objective test results obtained from the performance of the FTD (reformatted or digitized) as prescribed in this appendix. The eMQTG must also contain the general FTD performance or demonstration results (reformatted or digitized) prescribed in this appendix, and a description of the equipment necessary to perform the initial qualification evaluation and the continuing qualification evaluations. The eMQTG must include the original validation data used to validate FTD performance and handling qualities in either the original digitized format from the data supplier or an electronic scan of the original time-history plots that were provided by the data supplier. A copy of the eMQTG must be provided to the NSPM.

k. All other FTDs (not covered in subparagraph "j") must have an electronic copy of the MQTG by and after May 30, 2014. An electronic copy of the copy of the MQTG must be provided to the NSPM. This may be provided by an electronic scan presented in a Portable Document File (PDF), or similar format acceptable to the NSPM.

l. During the initial (or upgrade) qualification evaluation conducted by the NSPM, the sponsor must also provide a person knowledgeable about the operation of the aircraft and the operation of the FTD.

End QPS Requirements

Begin Information

m. Only those FTDs that are sponsored by a certificate holder as defined in Appendix F will be evaluated by the NSPM. However, other FTD evaluations may be conducted on a case-by-case basis as the Administrator deems appropriate, but only in accordance with applicable agreements.

n. The NSPM will conduct an evaluation for each configuration, and each FTD must be evaluated as completely as possible. To ensure a thorough and uniform evaluation, each FTD is subjected to the general FTD requirements in Attachment 1 of this appendix, the objective tests listed in Attachment 2 of this appendix, and the subjective tests listed in Attachment 3 of this

appendix. The evaluations described herein will include, but not necessarily be limited to the following:

(1) Airplane responses, including longitudinal and lateral-directional control responses (see Attachment 2 of this appendix);

(2) Performance in authorized portions of the simulated airplane's operating envelope, to include tasks evaluated by the NSPM in the areas of surface operations, takeoff, climb, cruise, descent, approach and landing, as well as abnormal and emergency operations (see Attachment 2 of this appendix);

(3) Control checks (see Attachment 1 and Attachment 2 of this appendix);

(4) Flight deck configuration (see Attachment 1 of this appendix);

(5) Pilot, flight engineer, and instructor station functions checks (see Attachment 1 and Attachment 3 of this appendix);

(6) Airplane systems and sub-systems (as appropriate) as compared to the airplane simulated (see Attachment 1 and Attachment 3 of this appendix);

(7) FTD systems and sub-systems, including force cueing (motion), visual, and aural (sound) systems, as appropriate (see Attachment 1 and Attachment 2 of this appendix); and

(8) Certain additional requirements, depending upon the qualification level sought, including equipment or circumstances that may become hazardous to the occupants. The sponsor may be subject to Occupational Safety and Health Administration requirements.

o. The NSPM administers the objective and subjective tests, which includes an examination of functions. The tests include a qualitative assessment of the FTD by an NSP pilot. The NSP evaluation team leader may assign other qualified personnel to assist in accomplishing the functions examination and/or the objective and subjective tests performed during an evaluation when required.

(1) Objective tests provide a basis for measuring and evaluating FTD performance and determining compliance with the requirements of this part.

(2) Subjective tests provide a basis for:

(a) Evaluating the capability of the FTD to perform over a typical utilization period;

(b) Determining that the FTD satisfactorily simulates each required task;

(c) Verifying correct operation of the FTD controls, instruments, and systems; and

(d) Demonstrating compliance with the requirements of this part.

p. The tolerances for the test parameters listed in Attachment 2 of this appendix reflect the range of tolerances acceptable to the NSPM for FTD validation and are not to be confused with design tolerances specified for FTD manufacture. In making decisions regarding tests and test results, the NSPM relies on the use of operational and engineering judgment in the application of data (including consideration of the way in which the flight test was flown and way the data was gathered and applied), data presentations, and the applicable tolerances for each test.

q. In addition to the scheduled continuing qualification evaluation, each FTD is subject

to evaluations conducted by the NSPM at any time without prior notification to the sponsor. Such evaluations would be accomplished in a normal manner (i.e., requiring exclusive use of the FTD for the conduct of objective and subjective tests and an examination of functions) if the FTD is not being used for flight crewmember training, testing, or checking. However, if the FTD were being used, the evaluation would be conducted in a non-exclusive manner. This non-exclusive evaluation will be conducted by the FTD evaluator accompanying the check airman, instructor, Aircrew Program Designee (APD), or FAA inspector aboard the FTD along with the student(s) and observing the operation of the FTD during the training, testing, or checking activities.

r. Problems with objective test results are handled as follows:

(1) If a problem with an objective test result is detected by the NSP evaluation team during an evaluation, the test may be repeated or the QTG may be amended.

(2) If it is determined that the results of an objective test do not support the qualification level requested but do support a lower level, the NSPM may qualify the FTD at a lower level. For example, if a Level 6 evaluation is requested, but the FTD fails to meet the spiral stability test tolerances, it could be qualified at Level 5.

s. After an FTD is successfully evaluated, the NSPM issues an SOQ to the sponsor, the NSPM recommends the FTD to the TPAA, who will approve the FTD for use in a flight training program. The SOQ will be issued at the satisfactory conclusion of the initial or continuing qualification evaluation and will list the tasks for which the FTD is qualified, referencing the tasks described in Table B1B in Attachment 1 of this appendix. However, it is the sponsor's responsibility to obtain TPAA approval prior to using the FTD in an FAA-approved flight training program.

t. Under normal circumstances, the NSPM establishes a date for the initial or upgrade evaluation within ten (10) working days after determining that a complete QTG is acceptable. Unusual circumstances may warrant establishing an evaluation date before this determination is made. A sponsor may schedule an evaluation date as early as 6 months in advance. However, there may be a delay of 45 days or more in rescheduling and completing the evaluation if the sponsor is unable to meet the scheduled date. See Attachment 4, Figure B4A, Sample Request for Initial, Upgrade, or Reinstatement Evaluation, of this appendix.

u. The numbering system used for objective test results in the QTG should closely follow the numbering system set out in Attachment 2, FTD Objective Tests, Table B2A, of this appendix.

v. Contact the NSPM or visit the NSPM Web site for additional information regarding the preferred qualifications of pilots used to meet the requirements of § 60.15(d).

w. Examples of the exclusions for which the FTD might not have been subjectively tested by the sponsor or the NSPM and for which qualification might not be sought or granted, as described in § 60.15(g)(6), include engine out maneuvers or circling approaches.

12. Additional Qualifications for Currently Qualified FTDs (§ 60.16).

No additional regulatory or informational material applies to § 60.16, Additional Qualifications for a Currently Qualified FTD.

End Information

13. Previously Qualified FTDs (§ 60.17).

Begin QPS Requirements

a. In instances where a sponsor plans to remove an FTD from active status for a period of less than two years, the following procedures apply:

(1) The NSPM must be notified in writing and the notification must include an estimate of the period that the FTD will be inactive;

(2) Continuing Qualification evaluations will not be scheduled during the inactive period;

(3) The NSPM will remove the FTD from the list of qualified FTDs on a mutually established date not later than the date on which the first missed continuing qualification evaluation would have been scheduled;

(4) Before the FTD is restored to qualified status, it must be evaluated by the NSPM. The evaluation content and the time required to accomplish the evaluation is based on the number of continuing qualification evaluations and sponsor-conducted quarterly inspections missed during the period of inactivity.

(5) The sponsor must notify the NSPM of any changes to the original scheduled time out of service;

b. FTDs qualified prior to May 30, 2008, and replacement FTD systems, are not required to meet the general FTD requirements, the objective test requirements, and the subjective test requirements of Attachments 1, 2, and 3 of this appendix as long as the FTD continues to meet the test requirements contained in the MQTG developed under the original qualification basis.

c. [Reserved]

d. FTDs qualified prior to May 30, 2008, may be updated. If an evaluation is deemed appropriate or necessary by the NSPM after such an update, the evaluation will not require an evaluation to standards beyond those against which the FTD was originally qualified.

End QPS Requirements

Begin Information

e. Other certificate holders or persons desiring to use an FTD may contract with FTD sponsors to use FTDs previously qualified at a particular level for an airplane type and approved for use within an FAA-approved flight training program. Such FTDs are not required to undergo an additional qualification process, except as described in § 60.16.

f. Each FTD user must obtain approval from the appropriate TPAA to use any FTD in an FAA-approved flight training program.

g. The intent of the requirement listed in § 60.17(b), for each FTD to have an SOQ

within 6 years, is to have the availability of that statement (including the configuration list and the limitations to authorizations) to provide a complete picture of the FTD inventory regulated by the FAA. The issuance of the statement will not require any additional evaluation or require any adjustment to the evaluation basis for the FTD.

h. Downgrading of an FTD is a permanent change in qualification level and will necessitate the issuance of a revised SOQ to reflect the revised qualification level, as appropriate. If a temporary restriction is placed on an FTD because of a missing, malfunctioning, or inoperative component or on-going repairs, the restriction is not a permanent change in qualification level. Instead, the restriction is temporary and is removed when the reason for the restriction has been resolved.

i. The NSPM will determine the evaluation criteria for an FTD that has been removed from active status for a prolonged period. The criteria will be based on the number of continuing qualification evaluations and quarterly inspections missed during the period of inactivity. For example, if the FTD were out of service for a 1 year period, it would be necessary to complete the entire QTG, since all of the quarterly evaluations would have been missed. The NSPM will also consider how the FTD was stored, whether parts were removed from the FTD and whether the FTD was disassembled.

j. The FTD will normally be requalified using the FAA-approved MQTG and the criteria that was in effect prior to its removal from qualification. However, inactive periods of 2 years or more will require re-qualification under the standards in effect and current at the time of requalification.

End Information

14. Inspection, Continuing Qualification, Evaluation, and Maintenance Requirements (§ 60.19).

Begin QPS Requirement

a. The sponsor must conduct a minimum of four evenly spaced inspections throughout the year. The objective test sequence and content of each inspection in this sequence must be developed by the sponsor and must be acceptable to the NSPM.

b. The description of the functional preflight check must be contained in the sponsor's QMS.

c. Record "functional preflight" in the FTD discrepancy log book or other acceptable location, including any item found to be missing, malfunctioning, or inoperative.

d. During the continuing qualification evaluation conducted by the NSPM, the sponsor must also provide a person knowledgeable about the operation of the aircraft and the operation of the FTD.

End QPS Requirements

Begin Information

e. The sponsor's test sequence and the content of each quarterly inspection required

in § 60.19(a)(1) should include a balance and a mix from the objective test requirement areas listed as follows:

- (1) Performance.
- (2) Handling qualities.
- (3) Motion system (where appropriate).
- (4) Visual system (where appropriate).
- (5) Sound system (where appropriate).
- (6) Other FTD systems.

f. If the NSP evaluator plans to accomplish specific tests during a normal continuing qualification evaluation that requires the use of special equipment or technicians, the sponsor will be notified as far in advance of the evaluation as practical; but not less than 72 hours. Examples of such tests include latencies, control sweeps, or motion or visual system tests.

g. The continuing qualification evaluations described in § 60.19(b) will normally require 4 hours of FTD time. However, flexibility is necessary to address abnormal situations or situations involving aircraft with additional levels of complexity (e.g., computer controlled aircraft). The sponsor should anticipate that some tests may require additional time. The continuing qualification evaluations will consist of the following:

(1) Review of the results of the quarterly inspections conducted by the sponsor since the last scheduled continuing qualification evaluation.

(2) A selection of approximately 8 to 15 objective tests from the MQTG that provide an adequate opportunity to evaluate the performance of the FTD. The tests chosen will be performed either automatically or manually and should be able to be conducted within approximately one-third (1/3) of the allotted FTD time.

(3) A subjective evaluation of the FTD to perform a representative sampling of the tasks set out in attachment 3 of this appendix. This portion of the evaluation should take approximately two-thirds (2/3) of the allotted FTD time.

(4) An examination of the functions of the FTD may include the motion system, visual system, sound system as applicable, instructor operating station, and the normal functions and simulated malfunctions of the airplane systems. This examination is normally accomplished simultaneously with the subjective evaluation requirements.

h. The requirement established in § 60.19(b)(4) regarding the frequency of NSPM-conducted continuing qualification evaluations for each FTD is typically 12 months. However, the establishment and satisfactory implementation of an approved QMS for a sponsor will provide a basis for adjusting the frequency of evaluations to exceed 12-month intervals.

15. Logging FTD Discrepancies (§ 60.20)

No additional regulatory or informational material applies to § 60.20. Logging FTD Discrepancies.

16. Interim Qualification of FTDs for New Airplane Types or Models (§ 60.21)

No additional regulatory or informational material applies to § 60.21. Interim Qualification of FTDs for New Airplane Types or Models.

End Information

17. Modifications to FTDs (§ 60.23)

Begin QPS Requirements

a. The notification described in § 60.23(c)(2) must include a complete description of the planned modification, with a description of the operational and engineering effect the proposed modification will have on the operation of the FTD and the results that are expected with the modification incorporated.

b. Prior to using the modified FTD:

(1) All the applicable objective tests completed with the modification incorporated, including any necessary updates to the MQTG (e.g., accomplishment of FSTD Directives) must be acceptable to the NSPM; and

(2) The sponsor must provide the NSPM with a statement signed by the MR that the factors listed in § 60.15(b) are addressed by the appropriate personnel as described in that section.

End QPS Requirements

Begin Information

c. FSTD Directives are considered modification of an FTD. See Attachment 4 of this appendix for a sample index of effective FSTD Directives.

End Information

18. Operation with Missing, Malfunctioning, or Inoperative Components (§ 60.25)

Begin Information

a. The sponsor's responsibility with respect to § 60.25(a) is satisfied when the sponsor fairly and accurately advises the user of the current status of an FTD, including any missing, malfunctioning, or inoperative (MMI) component(s).

b. It is the responsibility of the instructor, check airman, or representative of the administrator conducting training, testing, or checking to exercise reasonable and prudent judgment to determine if any MMI component is necessary for the satisfactory completion of a specific maneuver, procedure, or task.

c. If the 29th or 30th day of the 30-day period described in 60.25(b) is on a Saturday, a Sunday, or a holiday, the FAA will extend the deadline until the next business day.

d. In accordance with the authorization described in § 60.25(b), the sponsor may develop a discrepancy prioritizing system to accomplish repairs based on the level of impact on the capability of the FTD. Repairs having a larger impact on the FTD's ability to provide the required training, evaluation, or flight experience will have a higher priority for repair or replacement.

End Information

19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27)

Begin Information

If the sponsor provides a plan for how the FTD will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FTD is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing that required for requalification.

End Information

20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29)

Begin Information

If the sponsor provides a plan for how the FTD will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FTD is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing that required for requalification.

End Information

21. Recordkeeping and Reporting (§ 60.31)

Begin QPS Requirements

a. FTD modifications can include hardware or software changes. For FTD modifications involving software programming changes, the record required by § 60.31(a)(2) must consist of the name of the aircraft system software, aerodynamic model, or engine model change, the date of the change, a summary of the change, and the reason for the change.

b. If a coded form for record keeping is used, it must provide for the preservation and retrieval of information with appropriate security or controls to prevent the inappropriate alteration of such records after the fact.

End QPS Requirements

22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33)

Begin Information

No additional regulatory or informational material applies to § 60.33. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements.

End Information

23. [Reserved]**24. Levels of FTD.****Begin Information**

a. The following is a general description of each level of FTD. Detailed standards and tests for the various levels of FTDs are fully defined in Attachments 1 through 3 of this appendix.

(1) Level 4. A device that may have an open airplane-specific flight deck area, or an enclosed airplane-specific flight deck and at least one operating system. Air/ground logic is required (no aerodynamic programming required). All displays may be flat/LCD panel representations or actual representations of displays in the aircraft. All controls, switches, and knobs may be touch sensitive activation (not capable of manual manipulation of the flight controls) or may physically replicate the aircraft in control operation.

(2) Level 5. A device that may have an open airplane-specific flight deck area, or an enclosed airplane-specific flight deck; generic aerodynamic programming; at least one operating system; and control loading that is representative of the simulated airplane only at an approach speed and configuration. All displays may be flat/LCD panel representations or actual representations of displays in the aircraft. Primary and secondary flight controls (e.g., rudder, aileron, elevator, flaps, spoilers/speed brakes, engine controls, landing gear, nosewheel steering, trim, brakes) must be physical controls. All other controls, switches, and knobs may be touch sensitive activation.

(3) Level 6. A device that has an enclosed airplane-specific flight deck; airplane-specific aerodynamic programming; all applicable airplane systems operating; control loading that is representative of the

simulated airplane throughout its ground and flight envelope; and significant sound representation. All displays may be flat/LCD panel representations or actual representations of displays in the aircraft, but all controls, switches, and knobs must physically replicate the aircraft in control operation.

End Information**25. FTD Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37)****Begin Information**

No additional regulatory or informational material applies to § 60.37, FTD Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA).

End Information**Attachment 1 to Appendix B to Part 60—General FTD REQUIREMENTS****Begin QPS Requirements****1. Requirements**

a. Certain requirements included in this appendix must be supported with an SOC as defined in Appendix F, which may include objective and subjective tests. The requirements for SOC are indicated in the “General FTD Requirements” column in Table B1A of this appendix.

b. Table B1A describes the requirements for the indicated level of FTD. Many devices include operational systems or functions that exceed the requirements outlined in this section. In any event, all systems will be tested and evaluated in accordance with this appendix to ensure proper operation.

End QPS Requirements**Begin Information****2. Discussion**

a. This attachment describes the general requirements for qualifying Level 4 through Level 6 FTDs. The sponsor should also consult the objectives tests in Attachment 2 of this appendix and the examination of functions and subjective tests listed in Attachment 3 of this appendix to determine the complete requirements for a specific level FTD.

b. The material contained in this attachment is divided into the following categories:

- (1) General Flight deck Configuration.
- (2) Programming.
- (3) Equipment Operation.
- (4) Equipment and facilities for instructor/evaluator functions.
- (5) Motion System.
- (6) Visual System.
- (7) Sound System.

c. Table B1A provides the standards for the General FTD Requirements.

d. Table B1B provides the tasks that the sponsor will examine to determine whether the FTD satisfactorily meets the requirements for flight crew training, testing, and experience, and provides the tasks for which the simulator may be qualified.

e. Table B1C provides the functions that an instructor/check airman must be able to control in the simulator.

f. It is not required that all of the tasks that appear on the List of Qualified Tasks (part of the SOQ) be accomplished during the initial or continuing qualification evaluation.

End Information**TABLE B1A.—MINIMUM FTD REQUIREMENTS**

QPS Requirements					Information	
Entry No.	General FTD requirements	FTD level			Notes	
		4	5	6		
1. General Flight Deck Configuration						
1.a.	The FTD must have a flight deck that is a replica of the airplane simulated with controls, equipment, observable flight deck indicators, circuit breakers, and bulkheads properly located, functionally accurate and replicating the airplane. The direction of movement of controls and switches must be identical to that in the airplane. Pilot seat(s) must afford the capability for the occupant to be able to achieve the design “eye position.” Equipment for the operation of the flight deck windows must be included, but the actual windows need not be operable. Fire axes, extinguishers, and spare light bulbs must be available in the flight simulator, but may be relocated to a suitable location as near as practical to the original position. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette.			X	For FTD purposes, the flight deck consists of all that space forward of a cross section of the fuselage at the most extreme aft setting of the pilots’ seats including additional, required flight crewmember duty stations and those required bulkheads aft of the pilot seats. For clarification, bulkheads containing only items such as landing gear pin storage compartments, fire axes and extinguishers, spare light bulbs, aircraft documents pouches are not considered essential and may be omitted.	

TABLE B1A.—MINIMUM FTD REQUIREMENTS—Continued

QPS Requirements					Information
Entry No.	General FTD requirements	FTD level			Notes
		4	5	6	
1.b.	The FTD must have equipment (e.g., instruments, panels, systems, circuit breakers, and controls) simulated sufficiently for the authorized training/checking events to be accomplished. The installed equipment must be located in a spatially correct location and may be in a flight deck or an open flight deck area. Additional equipment required for the authorized training/checking events must be available in the FTD, but may be located in a suitable location as near as practical to the spatially correct position. Actuation of equipment must replicate the appropriate function in the airplane. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette.	X	X		
2. Programming					
2.a.	The FTD must provide the proper effect of aerodynamic changes for the combinations of drag and thrust normally encountered in flight. This must include the effect of change in airplane attitude, thrust, drag, altitude, temperature, and configuration. Level 6 additionally requires the effects of changes in gross weight and center of gravity. Level 5 requires only generic aerodynamic programming. An SOC is required.		X	X	
2.b.	The FTD must have the computer (analog or digital) capability (i.e., capacity, accuracy, resolution, and dynamic response) needed to meet the qualification level sought. An SOC is required.	X	X	X	
2.c.	Relative responses of the flight deck instruments must be measured by latency tests, or transport delay tests, and may not exceed 300 milliseconds. The instruments must respond to abrupt input at the pilot's position within the allotted time, but not before the time when the airplane responds under the same conditions. - Latency: The FTD instrument and, if applicable, the motion system and the visual system response must not be prior to that time when the airplane responds and may respond up to 300 milliseconds after that time under the same conditions. - Transport Delay: As an alternative to the Latency requirement, a transport delay objective test may be used to demonstrate that the FTD system does not exceed the specified limit. The sponsor must measure all the delay encountered by a step signal migrating from the pilot's control through all the simulation software modules in the correct order, using a handshaking protocol, finally through the normal output interfaces to the instrument display and, if applicable, the motion system, and the visual system.		X	X	The intent is to verify that the FTD provides instrument cues that are, within the stated time delays, like the airplane responses. For airplane response, acceleration in the appropriate, corresponding rotational axis is preferred. Additional information regarding Latency and Transport Delay testing may be found in Appendix A, Attachment 2, paragraph 15.
3. Equipment Operation					
3.a.	All relevant instrument indications involved in the simulation of the airplane must automatically respond to control movement or external disturbances to the simulated airplane; e.g., turbulence or winds.		X	X	
3.b.	Navigation equipment must be installed and operate within the tolerances applicable for the airplane.		X	X	
	Level 6 must also include communication equipment (inter-phone and air/ground) like that in the airplane and, if appropriate to the operation being conducted, an oxygen mask microphone system.				

TABLE B1A.—MINIMUM FTD REQUIREMENTS—Continued

QPS Requirements					Information
Entry No.	General FTD requirements	FTD level			Notes
		4	5	6	
	Level 5 need have only that navigation equipment necessary to fly an instrument approach.				
3.c.	Installed systems must simulate the applicable airplane system operation, both on the ground and in flight. Installed systems must be operative to the extent that applicable normal, abnormal, and emergency operating procedures included in the sponsor's training programs can be accomplished. Level 6 must simulate all applicable airplane flight, navigation, and systems operation. Level 5 must have at least functional flight and navigational controls, displays, and instrumentation. Level 4 must have at least one airplane system installed and functional.	X	X	X	
3.d.	The lighting environment for panels and instruments must be sufficient for the operation being conducted.	X	X	X	Back-lighted panels and instruments may be installed but are not required.
3.e.	The FTD must provide control forces and control travel that correspond to the airplane being simulated. Control forces must react in the same manner as in the airplane under the same flight conditions.			X	
3.f.	The FTD must provide control forces and control travel of sufficient precision to manually fly an instrument approach.		X		
4. Instructor or Evaluator Facilities					
4.a.	In addition to the flight crewmember stations, suitable seating arrangements for an instructor/check airman and FAA Inspector must be available. These seats must provide adequate view of crewmember's panel(s).	X	X	X	These seats need not be a replica of an aircraft seat and may be as simple as an office chair placed in an appropriate position.
4.b.	The FTD must have instructor controls that permit activation of normal, abnormal, and emergency conditions as appropriate. Once activated, proper system operation must result from system management by the crew and not require input from the instructor controls.	X	X	X	
5. Motion System (not required)					
5.a.	The FTD may have a motion system, if desired, although it is not required. If a motion system is installed and additional training, testing, or checking credits are being sought on the basis of having a motion system, the motion system operation may not be distracting and must be coupled closely to provide integrated sensory cues. The motion system must also respond to abrupt input at the pilot's position within the allotted time, but not before the time when the airplane responds under the same conditions.		X	X	The motion system standards set out in part 60, Appendix A for at least Level A simulators is acceptable.
5.b.	If a motion system is installed, it must be measured by latency tests or transport delay tests and may not exceed 300 milliseconds. Instrument response may not occur prior to motion onset.			X	The motion system standards set out in part 60, Appendix A for at least Level A simulators is acceptable.
6. Visual System					
6.a.	The FTD may have a visual system, if desired, although it is not required. If a visual system is installed, it must meet the following criteria:	X	X	X	
6.a.1. ...	The visual system must respond to abrupt input at the pilot's position. An SOC is required.	....	X	X	

TABLE B1A.—MINIMUM FTD REQUIREMENTS—Continued

QPS Requirements					Information
Entry No.	General FTD requirements	FTD level			Notes
		4	5	6	
6.a.2. ...	The visual system must be at least a single channel, non-collimated display. An SOC is required.	X	X	X	
6.a.3. ...	The visual system must provide at least a field-of-view of 18° vertical / 24° horizontal for the pilot flying. An SOC is required.	X	X	X	
6.a.4. ...	The visual system must provide for a maximum parallax of 10° per pilot. An SOC is required.	X	X	X	
6.a.5. ...	The visual scene content may not be distracting An SOC is required.	X	X	X	
6.a.6. ...	The minimum distance from the pilot's eye position to the surface of a direct view display may not be less than the distance to any front panel instrument. An SOC is required.	X	X	X	
6.a.7. ...	The visual system must provide for a minimum resolution of 5 arc-minutes for both computed and displayed pixel size. An SOC is required.	X	X	X	
6.b.	If a visual system is installed and additional training, testing, or checking credits are being sought on the basis of having a visual system, a visual system meeting the standards set out for at least a Level A FFS (see Appendix A of this part) will be required. A "direct-view," non-collimated visual system (with the other requirements for a Level A visual system met) may be considered satisfactory for those installations where the visual system design "eye point" is appropriately adjusted for each pilot's position such that the parallax error is at or less than 10° simultaneously for each pilot. An SOC is required.			X	Directly projected, non-collimated visual displays may prove to be unacceptable for dual pilot applications.

7. Sound System

7.a.	The FTD must simulate significant flight deck sounds resulting from pilot actions that correspond to those heard in the airplane.			X	

TABLE B1B.—TABLE OF TASKS VS. FTD LEVEL

QPS requirements					Information
Entry No.	Subjective Requirements—In order to be qualified at the FTD qualification level indicated, the FTD must be able to perform at least the tasks associated with that level of qualification. See Notes 1 and 2 at the end of the Table	FTD level			Notes
		4	5	6	
1. Preflight Procedures.					
1.a.	Preflight Inspection (flight deck only)	A	A	X	
1.b.	Engine Start	A	A	X	
1.c.	Pre-takeoff Checks	A	A	X	
2. Takeoff and Departure Phase.					
2.a.	Rejected Takeoff (requires visual system)	...	...	A	
2.b.	Departure Procedure	...	X	X	
3. In-flight Maneuvers.					

TABLE B1B.—TABLE OF TASKS VS. FTD LEVEL—Continued

QPS requirements						Information	
Entry No.	Subjective Requirements—In order to be qualified at the FTD qualification level indicated, the FTD must be able to perform at least the tasks associated with that level of qualification. See Notes 1 and 2 at the end of the Table	FTD level				Notes	
		4	5	6			
3.a.	a. Steep Turns .....	....	X	X			
3.b.	b. Approaches to Stalls .....	....	A	X			
3.c.	c. Engine Failure (procedures only)—Multiengine Airplane	....	A	X			
3.d.	d. Engine Failure (procedures only)—Single-Engine Airplane.	....	A	X			
3.e.	e. Specific Flight Characteristics incorporated into the user's FAA approved flight training program.	A	A	A			
4. Instrument Procedures.							
4.a.	Standard Terminal Arrival/Flight Management System Arrival.	....	A	X			
4.b.	Holding .....	....	A	X			
4.c.	Precision Instrument, all engines operating .....	....	A	X		e.g., Autopilot, Manual (Flt. Dir. Assisted), Manual (Raw Data).	
4.d.	Non-precision Instrument, all engines operating .....	....	A	X		e.g., NDB, VOR, VOR/DME, VOR/TAC, RNAV, LOC, LOC/BC, ADF, and SDF.	
4.e.	Circling Approach (requires visual system) .....	....	....	A			
4.f.	Missed Approach .....	....	A	X			
5. Normal and Abnormal Procedures.							
5.a.	Engine (including shutdown and restart—procedures only)	A	A	X			
5.b.	Fuel System	A	A	X			
5.c.	Electrical System	A	A	X			
5.d.	Hydraulic System	A	A	X			
5.e.	Environmental and Pressurization Systems	A	A	X			
5.f.	Fire Detection and Extinguisher Systems	A	A	X			
5.g.	Navigation and Avionics Systems	A	A	X			
5.h.	Automatic Flight Control System, Electronic Flight Instrument System, and Related Subsystems.	A	A	X			
5.i.	Flight Control Systems	A	A	X			
5.j.	Anti-ice and Deice Systems	A	A	X			
5.k.	Aircraft and Personal Emergency Equipment	A	A	X			
6. Emergency Procedures.							
6.a.	Emergency Descent (maximum rate) .....	....	A	X			
6.b.	Inflight Fire and Smoke Removal .....	....	A	X			
6.c.	Rapid Decompression .....	....	A	X			
6.d.	Emergency Evacuation	A	A	X			
7. Postflight Procedures.							
7.a.	After-Landing Procedures	A	A	X			

TABLE B1B.—TABLE OF TASKS VS. FTD LEVEL—Continued

QPS requirements					Information
Entry No.	Subjective Requirements—In order to be qualified at the FTD qualification level indicated, the FTD must be able to perform at least the tasks associated with that level of qualification. See Notes 1 and 2 at the end of the Table	FTD level			Notes
		4	5	6	
7.b.	Parking and Securing	A	A	X	

Note 1: An “A” in the table indicates that the system, task, or procedure, although not required to be present, may be examined if the appropriate airplane system is simulated in the FTD and is working properly.

Note 2: Items not installed or not functional on the FTD and not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.

TABLE B1C.—TABLE OF FTD SYSTEM TASKS QPS REQUIREMENTS

QPS Requirements					Information
Entry No.	Subjective Requirements In order to be qualified at the FTD qualification level indicated, the FTD must be able to perform at least the tasks associated with that level of qualification.	FTD level			Notes
		4	5	6	

1. Instructor Operating Station (IOS).

1.a.	Power switch(es)	X	X	X	
1.b.	Airplane conditions	A	X	X	e.g., GW, CG, Fuel loading, Systems, Ground Crew.
1.c.	Airports/Runways	X	X	X	e.g., Selection and Presets; Surface and Lighting controls if equipped with a visual system.
1.d.	Environmental controls	X	X	X	e.g., Temp, Wind.
1.e.	Airplane system malfunctions (Insertion/deletion)	A	X	X	
1.f.	Locks, Freezes, and Repositioning	X	X	X	
1.g.	Sound Controls. (On/off/adjustment)	X	X	X	
1.h.	Motion/Control Loading System, as appropriate. On/off/emergency stop.	A	A	A	

2. Observer Seats/Stations.

2.a.	Position/Adjustment/Positive restraint system	X	X	X	

Note 1: An “A” in the table indicates that the system, task, or procedure, although not required to be present, may be examined if the appropriate system is in the FTD and is working properly.

Attachment 2 to Appendix B to Part 60—Flight Training Device (FTD) Objective Tests

Begin Information

1. Discussion

a. For the purposes of this attachment, the flight conditions specified in the Flight Conditions Column of Table B2A, are defined as follows:

- (1) Ground—on ground, independent of airplane configuration;
- (2) Take-off—gear down with flaps/slats in any certified takeoff position;
- (3) First segment climb—gear down with flaps/slats in any certified takeoff position (normally not above 50 ft AGL);
- (4) Second segment climb—gear up with flaps/slats in any certified takeoff position (normally between 50 ft and 400 ft AGL);
- (5) Clean—flaps/slats retracted and gear up;
- (6) Cruise—clean configuration at cruise altitude and airspeed;

(7) Approach—gear up or down with flaps/slats at any normal approach position as recommended by the airplane manufacturer; and

(8) Landing—gear down with flaps/slats in any certified landing position.

b. The format for numbering the objective tests in Appendix A, Attachment 2, Table A2A, and the objective tests in Appendix B, Attachment 2, Table B2A, is identical. However, each test required for FFSs is not necessarily required for FTDs. Also, each test required for FTDs is not necessarily required for FFSs. Therefore, when a test number (or series of numbers) is not required, the term “Reserved” is used in the table at that location. Following this numbering format provides a degree of commonality between the two tables and substantially reduces the potential for confusion when referring to objective test numbers for either FFSs or FTDs.

c. The reader is encouraged to review the Airplane Flight Simulator Evaluation Handbook, Volumes I and II, published by

the Royal Aeronautical Society, London, UK, and FAA AC 25–7, as amended, Flight Test Guide for Certification of Transport Category Airplanes, and AC 23–8, as amended, Flight Test Guide for Certification of Part 23 Airplanes, for references and examples regarding flight testing requirements and techniques.

d. If relevant winds are present in the objective data, the wind vector should be clearly noted as part of the data presentation, expressed in conventional terminology, and related to the runway being used for the test.

e. A Level 4 FTD does not require objective tests and therefore, Level 4 is not addressed in the following table.

End Information

Begin QPS Requirements

2. Test Requirements

a. The ground and flight tests required for qualification are listed in Table B2A Objective Tests. Computer generated FTD test

results must be provided for each test except where an alternate test is specifically authorized by the NSPM. If a flight condition or operating condition is required for the test but does not apply to the airplane being simulated or to the qualification level sought, it may be disregarded (e.g., an engine out missed approach for a single-engine airplane; a maneuver using reverse thrust for an airplane without reverse thrust capability). Each test result is compared against the validation data described in § 60.13, and in Appendix B. The results must be produced on an appropriate recording device acceptable to the NSPM and must include FTD number, date, time, conditions, tolerances, and appropriate dependent variables portrayed in comparison to the validation data. Time histories are required unless otherwise indicated in Table B2A. All results must be labeled using the tolerances and units given.

b. Table B2A in this attachment sets out the test results required, including the parameters, tolerances, and flight conditions for FTD validation. Tolerances are provided for the listed tests because mathematical modeling and acquisition and development of reference data are often inexact. All tolerances listed in the following tables are applied to FTD performance. When two tolerance values are given for a parameter, the less restrictive may be used unless otherwise indicated. In those cases where a tolerance is expressed only as a percentage, the tolerance percentage applies to the maximum value of that parameter within its normal operating range as measured from the neutral or zero position unless otherwise indicated.

c. Certain tests included in this attachment must be supported with a SOC. In Table B2A, requirements for SOC's are indicated in the "Test Details" column.

d. When operational or engineering judgment is used in making assessments for flight test data applications for FTD validity, such judgment may not be limited to a single parameter. For example, data that exhibit rapid variations of the measured parameters may require interpolations or a "best fit" data section. All relevant parameters related to a given maneuver or flight condition must be provided to allow overall interpretation. When it is difficult or impossible to match FTD to airplane data throughout a time history, differences must be justified by providing a comparison of other related variables for the condition being assessed.

e. It is not acceptable to program the FTD so that the mathematical modeling is correct only at the validation test points. Unless noted otherwise, tests must represent airplane performance and handling qualities at operating weights and centers of gravity (CG) typical of normal operation. If a test is supported by aircraft data at one extreme weight or CG, another test supported by aircraft data at mid-conditions or as close as possible to the other extreme is necessary. Certain tests that are relevant only at one

extreme CG or weight condition need not be repeated at the other extreme. The results of the tests for Level 6 are expected to be indicative of the device's performance and handling qualities throughout all of the following:

- (1) The airplane weight and CG envelope;
- (2) The operational envelope; and
- (3) Varying atmospheric ambient and environmental conditions—including the extremes authorized for the respective airplane or set of airplanes.

f. When comparing the parameters listed to those of the airplane, sufficient data must also be provided to verify the correct flight condition and airplane configuration changes. For example, to show that control force is within the parameters for a static stability test, data to show the correct airspeed, power, thrust or torque, airplane configuration, altitude, and other appropriate datum identification parameters must also be given. If comparing short period dynamics, normal acceleration may be used to establish a match to the airplane, but airspeed, altitude, control input, airplane configuration, and other appropriate data must also be given. If comparing landing gear change dynamics, pitch, airspeed, and altitude may be used to establish a match to the airplane, but landing gear position must also be provided. All airspeed values must be properly annotated (e.g., indicated versus calibrated). In addition, the same variables must be used for comparison (e.g., compare inches to inches rather than inches to centimeters).

g. The QTG provided by the sponsor must clearly describe how the FTD will be set up and operated for each test. Each FTD subsystem may be tested independently, but overall integrated testing of the FTD must be accomplished to assure that the total FTD system meets the prescribed standards. A manual test procedure with explicit and detailed steps for completing each test must also be provided.

h. For previously qualified FTDs, the tests and tolerances of this attachment may be used in subsequent continuing qualification evaluations for any given test if the sponsor has submitted a proposed MQTG revision to the NSPM and has received NSPM approval.

i. FTDs are evaluated and qualified with an engine model simulating the airplane data supplier's flight test engine. For qualification of alternative engine models (either variations of the flight test engines or other manufacturer's engines) additional tests with the alternative engine models may be required. This attachment contains guidelines for alternative engines.

j. Testing Computer Controlled Aircraft (CCA) simulators, or other highly augmented airplane simulators, flight test data is required for the Normal (N) and/or Non-normal (NN) control states, as indicated in this attachment. Where test results are independent of control state, Normal or Non-normal control data may be used. All tests in Table B2A require test results in the Normal

control state unless specifically noted otherwise in the Test Details section following the CCA designation. The NSPM will determine what tests are appropriate for airplane simulation data. When making this determination, the NSPM may require other levels of control state degradation for specific airplane tests. Where Non-normal control states are required, test data must be provided for one or more Non-normal control states, and must include the least augmented state. Where applicable, flight test data must record Normal and Non-normal states for:

(1) Pilot controller deflections or electronically generated inputs, including location of input; and

(2) Flight control surface positions unless test results are not affected by, or are independent of, surface positions.

k. Tests of handling qualities must include validation of augmentation devices. FTDs for highly augmented airplanes will be validated both in the unaugmented configuration (or failure state with the maximum permitted degradation in handling qualities) and the augmented configuration. Where various levels of handling qualities result from failure states, validation of the effect of the failure is necessary. Requirements for testing will be mutually agreed to between the sponsor and the NSPM on a case-by-case basis.

l. Some tests will not be required for airplanes using airplane hardware in the FTD flight deck (e.g., "side stick controller"). These exceptions are noted in Section 2 "Handling Qualities" in Table B2A of this attachment. However, in these cases, the sponsor must provide a statement that the airplane hardware meets the appropriate manufacturer's specifications and the sponsor must have supporting information to that fact available for NSPM review.

m. For objective test purposes, see Appendix F of this part for the definitions of "Near maximum," "Light," and "Medium" gross weight.

End QPS Requirements

Begin Information

n. In those cases where the objective test results authorize a "snapshot test" or a "series of snapshot test results" in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the "snapshot." The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

o. Refer to AC 120-27, "Aircraft Weight and Balance"; and FAA-H-8083-1, "Aircraft Weight and Balance Handbook" for more information.

End Information

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS

QPS requirements								
Test		Tolerances	Flight conditions	Test details	FTD level		Information	
Entry No.	Title				5	6	Notes	
1. Performance								
1.a.	(Reserved)							
1.b.	Takeoff							
1.b.1.	Ground Acceleration Time.	±5% time or ±1 sec	Takeoff	Record acceleration time for a minimum of 80% of the segment from brake release to V _R . Preliminary aircraft certification data may be used.		X	This test is required only if RTO training credit is sought.	
1.b.2. through 1.b.6.	(Reserved)							
1.b.7.	Rejected Takeoff	±5% time or ±1.5 sec.	Dry Runway	Record time for at least 80% of the segment from initiation of the Rejected Takeoff to full stop.		X	This test is required only if RTO training credit is sought.	
1.b.8.	(Reserved)							
1.c.	Climb							
1.c.1.	Normal Climb all engines operating.	±3 kt airspeed, ±5% or ±100 ft/min (0.5 m/sec) climb rate.	Clean	Flight test data or airplane performance manual data may be used. Record at nominal climb speed and at nominal altitude. May be a snapshot test result. FTD performance must be recorded over an interval of at least 1,000 ft (300 m).	X	X		
1.c.2. through 1.c.4.	(Reserved)							
1.d.	(Reserved)							
1.e.	(Reserved)							
1.f.	Engines							
1.f.1.	Acceleration	Level 6: ±10% T _i , or ±0.25 sec. Level 5: ±1 sec	Approach or Landing.	Record engine power (N ₁ , N ₂ , EPR, Torque, Manifold Pressure) from idle to maximum takeoff power for a rapid (slam) throttle movement.	X	X	See Appendix F of this part for definitions of T _i and T _r .	
1.f.2.	Deceleration	Level 6: ±10% T _i , or ±0.25 sec. Level 5: ±1 sec	Ground	Record engine power (N ₁ , N ₂ , EPR, Torque, Manifold Pressure) from maximum takeoff power to idle for a rapid (slam) throttle movement.	X	X	See Appendix F of this part for definitions of T _i and T _r .	

2. Handling Qualities

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							
Test		Tolerances	Flight conditions	Test details	FTD level		Information
Entry No.	Title				5	6	Notes
	For FTDs requiring Static tests at the controls (i.e., column, wheel, rudder pedal), special test fixtures will not be required during initial or upgrade evaluations if the sponsor's QTG/MQTG shows both test fixture results and the results of an alternative approach, such as computer plots produced concurrently, that show satisfactory agreement. Repeat of the alternative method during the initial or upgrade evaluation would then satisfy this test requirement.						Testing of position versus force is not applicable if forces are generated solely by use of airplane hardware in the FTD.
2.a.	Static Control Tests						
2.a.1.a. ..	Pitch Controller Position vs. Force and Surface Position Calibration.	±2 lb (0.9 daN) breakout, ±10% or ±5 lb (2.2 daN) force, ±2° elevator.	Ground	Record results for an uninterrupted control sweep to the stops.		X	
2.a.1.b. ..	Pitch Controller Position vs. Force.	±2 lb (0.9 daN) breakout, ±10% or ±5 lb (2.2 daN) force.	As determined by sponsor.	Record results during initial qualification evaluation for an uninterrupted control sweep to the stops. The recorded tolerances apply to subsequent comparisons on continuing qualification evaluations.	X		Applicable only on continuing qualification evaluations. The intent is to design the control feel for Level 5 to be able to manually fly an instrument approach; and not to compare results to flight test or other such data.
2.a.2.a. ..	Roll Controller Position vs. Force and Surface Position Calibration.	±2 lb (0.9 daN) breakout, ±10% or ±3 lb (1.3 daN) force, ±2° aileron, ±3° spoiler angle.	Ground	Record results for an uninterrupted control sweep to the stops.		X	
2.a.2.b. ..	Roll Controller Position vs. Force.	±2 lb (0.9 daN) breakout, ±10% or ±3 lb (1.3 daN) force.	As determined by sponsor.	Record results during initial qualification evaluation for an uninterrupted control sweep to the stops. The recorded tolerances apply to subsequent comparisons on continuing qualification evaluations.	X		Applicable only on continuing qualification evaluations. The intent is to design the control feel for Level 5 to be able to manually fly an instrument approach; and not to compare results to flight test or other such data.
2.a.3.a. ..	Rudder Pedal Position vs. Force and Surface Position Calibration.	±5 lb (2.2 daN) breakout, ±10% or ±5 lb (2.2 daN) force, ±2° rudder angle.	Ground	Record results for an uninterrupted control sweep to the stops.		X	

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							
Test		Tolerances	Flight conditions	Test details	FTD level		Information
Entry No.	Title				5	6	Notes
2.a.3.b. ..	Rudder Pedal Position vs. Force.	±5 lb (2.2 daN) breakout, ±10% or ±5 lb (2.2 daN) force.	As determined by sponsor.	Record results during initial qualification evaluation for an uninterrupted control sweep to the stops. The recorded tolerances apply to subsequent comparisons on continuing qualification evaluations.	X		Applicable only on continuing qualification evaluations. The intent is to design the control feel for Level 5 to be able to manually fly an instrument approach; and not to compare results to flight test or other such data.
2.a.4.	Nosewheel Steering Controller Force.	±2 lb (0.9 daN) breakout, ±10% or ±3 lb (1.3 daN) force.	Ground	Record results of an uninterrupted control sweep to the stops.		X	
2.a.5.	Rudder Pedal Steering Calibration.	±2° nosewheel angle.	Ground	Record results of an uninterrupted control sweep to the stops.		X	
2.a.6.	Pitch Trim Indicator vs. Surface Position Calibration.	±0.5° of computed trim surface angle.	Ground			X	The purpose of the test is to compare the FTD against design data or equivalent.
2.a.7.	(Reserved)						
2.a.8.	Alignment of Flight deck Throttle Lever vs. Selected Engine Parameter.	±5° of throttle lever angle or ±0.8 in (2 cm) for power control without angular travel, or ±3% N1, or ±0.03 EPR, or ±3% maximum rated manifold pressure, or ±3% torque.	Ground	Requires simultaneous recording for all engines. The tolerances apply against airplane data and between engines. In the case of propeller powered airplanes, if a propeller lever is present, it must also be checked. For airplanes with throttle “detents,” all detents must be presented. May be a series of snapshot test results.		X	
2.a.9.	Brake Pedal Position vs. Force.	±5 lb (2.2 daN) or 10% force.	Ground	Two data points are required: Zero and maximum deflection. Computer output results may be used to show compliance.		X	Test not required unless RTO credit is sought.
2.b.	(Reserved)						
2.c.	Longitudinal Control Tests						
Power setting is that required for level flight unless otherwise specified.							
2.c.1.	Power Change Force.	±5 lb (2.2 daN) or, ±20% pitch control force.	Approach	May be a series of snapshot test results. Power change dynamics test as described in test 2.c.1 of Table A2A of this part will be accepted. CCA: Test in Normal and Non-normal control states.	X	X	

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							
Test		Tolerances	Flight conditions	Test details	FTD level		Information
Entry No.	Title				5	6	Notes
2.c.2.	Flap/Slat Change Force.	± 5 lb (2.2 daN) or, $\pm 20\%$ pitch control force.	Takeoff through initial flap retraction, and approach to landing.	May be a series of snapshot test results. Flap/Slat change dynamics test as described in test 2.c.2 of Table A2A of this part will be accepted. CCA: Test in Normal and Non-normal control states.	X	X	
2.c.3.	(Reserved)						
2.c.4.	Gear Change Force	± 5 lb (2.2 daN) or, $\pm 20\%$ pitch control force.	Takeoff (retraction) and Approach (extension).	May be a series of snapshot test results. Gear change dynamics test as described in test 2.c.4 of Table A2A of this part will be accepted. CCA: Test in Normal and Non-normal control states.	X	X	
2.c.5.	Longitudinal Trim	$\pm 0.5^\circ$ trim surface angle $\pm 1^\circ$ elevator $\pm 1^\circ$ pitch angle $\pm 5\%$ net thrust or equivalent.	Cruise, Approach, and Landing.	Record steady-state condition with wings level and thrust set for level flight. May be a series of snapshot tests Level 5 may use equivalent stick and trim controllers in lieu of elevator and trim surface. CCA: Test in Normal and Non-normal control states.	X	X	
2.c.6.	Longitudinal Maneuvering Stability (Stick Force/g).	± 5 lb (± 2.2 daN) or $\pm 10\%$ pitch controller force Alternative method: $\pm 1^\circ$ or $\pm 10\%$ change of elevator.	Cruise, Approach, and Landing.	Continuous time history data or a series of snapshot tests may be used. Record results up to 30° of bank for approach and landing configurations. Record results for up to 45° of bank for the cruise configuration. The force tolerance is not applicable if forces are generated solely by the use of airplane hardware in the FTD. The alternative method applies to airplanes that do not exhibit "stick-force-per-g" characteristics. CCA: Test in Normal and Non-normal control states.		X	

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							
Test		Tolerances	Flight conditions	Test details	FTD level		Information
Entry No.	Title				5	6	Notes
2.c.7.	Longitudinal Static Stability.	±5 lb (±2.2 daN) or ±10% pitch controller force. Alternative method: ±1° or ±10% change of elevator.	Approach	May be a series of snapshot test results. Record results for at least 2 speeds above and 2 speeds below trim speed. The force tolerance is not applicable if forces are generated solely by the use of airplane hardware in the FTD. The alternative method applies to airplanes that do not exhibit speed stability characteristics. Level 5 must exhibit positive static stability, but need not comply with the numerical tolerance. CCA: Test in Normal and Non-normal control states.	X	X	
2.c.8.	Stall Warning (actuation of stall warning device.).	±3 kts. airspeed, ±2° bank for speeds greater than actuation of stall warning device or initial buffet.	Second Segment Climb, and Approach or Landing.	The stall maneuver must be entered with thrust at or near idle power and wings level (1g). Record the stall warning signal and initial buffet if applicable. CCA: Test in Normal and Non-normal control states.	X	X	
2.c.9.a. ..	Phugoid Dynamics ..	±10% period, ±10% of time to ½ or double amplitude or ±0.02 of damping ratio.	Cruise	The test must include whichever is less of the following: Three full cycles (six overshoots after the input is completed), or the number of cycles sufficient to determine time to ½ or double amplitude. CCA: Test in Non-normal control state.	X		
2.c.9.b. ..	Phugoid Dynamics ..	±10% period, Representative damping.	Cruise	The test must include whichever is less of the following: Three full cycles (six overshoots after the input is completed), or the number of cycles sufficient to determine representative damping. CCA: Test in Non-normal control state.	X		
2.c.10. ...	Short Period Dynamics.	±1.5° pitch angle or ±2°/sec pitch rate, ±0.10g acceleration..	Cruise	CCA: Test in Non-normal control state.		X	
2.d.	Lateral Directional Tests						
Power setting is that required for level flight unless otherwise specified.							
2.d.1.	(Reserved)						
2.d.2.	Roll Response (Rate).	±10% or ±2°/sec roll rate.	Cruise, and Approach or Landing.	Record results for normal roll controller deflection (one-third of maximum roll controller travel). May be combined with step input of flight deck roll controller test (see 2.d.3.).	X	X	

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							
Test		Tolerances	Flight conditions	Test details	FTD level		Information
Entry No.	Title				5	6	Notes
2.d.3.	Roll Response to Flight deck Roll Controller Step Input.	$\pm 10\%$ or $\pm 2^\circ$ bank angle.	Approach or Landing.	Record from initiation of roll through 10 seconds after control is returned to neutral and released. May be combined with roll response (rate) test (see 2.d.2.). CCA: Test in Non-normal control state.		X	
2.d.4.a. ..	Spiral Stability	Correct trend and $\pm 3^\circ$ or $\pm 10\%$ bank angle in 30 seconds.	Cruise	Record results for both directions. As an alternate test, demonstrate the lateral control required to maintain a steady turn with a bank angle of 30° . CCA: Test in Non-normal control state.		X	Airplane data averaged from multiple tests in same direction may be used.
2.d.4.b. ..	Spiral Stability	Correct trend	Cruise	CCA: Test in Non-normal control state.	X		Airplane data averaged from multiple tests in same direction may be used.
2.d.5.	(Reserved)						
2.d.6.a. ..	Rudder Response ...	$\pm 2^\circ/\text{sec}$ or $\pm 10\%$ yaw rate.	Approach or Landing.	A rudder step input of 20%–30% rudder pedal throw must be used. Not required if rudder input and response is shown in Dutch Roll test (test 2.d.7.). CCA: Test in Normal and Non-normal control states.		X	
2.d.6.b. ..	Rudder Response ...	Roll rate $\pm 2^\circ/\text{sec}$, bank angle $\pm 3^\circ$.	Approach or Landing.	May be roll response to a given rudder deflection. CCA: Test in Normal and Non-normal control states.	X		May be accomplished as a yaw response test, in which case the procedures and requirements of test 2.d.6.a. will apply.
2.d.7.	Dutch Roll (Yaw Damper OFF).	± 0.5 sec. or $\pm 10\%$ of period, $\pm 10\%$ of time to $\frac{1}{2}$ or double amplitude or ± 0.02 of damping ratio.	Cruise, and Approach or Landing.	Record results for at least 6 complete cycles with stability augmentation OFF, or the number of cycles sufficient to determine time to $\frac{1}{2}$ or double amplitude. CCA: Test in Non-normal control state.			
2.d.8.	Steady State Sideslip.	For given rudder position $\pm 2^\circ$ bank angle, $\pm 1^\circ$ sideslip angle, $\pm 10\%$ or $\pm 2^\circ$ aileron, $\pm 10\%$ or $\pm 5^\circ$ spoiler or equivalent roll, controller position or force.	Approach or Landing.	Use at least two rudder positions, one of which must be near maximum allowable rudder. Propeller driven airplanes must test in each direction. May be a series of snapshot test results. Sideslip angle is matched only for repeatability and only on continuing qualification evaluations.	X	X	

TABLE B2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							
Test		Tolerances	Flight conditions	Test details	FTD level		Information
Entry No.	Title				5	6	Notes
2.e. through 2.h.	(Reserved)						
3.	(Reserved)						
4.	(Reserved)						
5.	(Reserved)						
6.	FTD System Response Time						
6.a.	Latency.						
		300 ms (or less) after airplane response.	Take-off, cruise, and approach or landing.	One test is required in each axis (pitch, roll and yaw) for each of the three conditions (take-off, cruise, and approach or landing).	X	X	
	Transport Delay						
		300 ms (or less) after controller movement.	N/A	A separate test is required in each axis (pitch, roll, and yaw).	X	X	If Transport Delay is the chosen method to demonstrate relative responses, the sponsor and the NSPM will use the latency values to ensure proper simulator response when reviewing those existing tests where latency can be identified (e.g., short period, roll response, rudder response).

Begin Information**3. For additional information on the following topics, please refer to Appendix A, Attachment 2, and the indicated paragraph within that attachment**

- Control Dynamics, paragraph 4.
- Motion System, paragraph 6.
- Sound System, paragraph 7.
- Engineering Simulator Validation Data, paragraph 9.
- Validation Test Tolerances, paragraph 11.
- Validation Data Road Map, paragraph 12.
- Acceptance Guidelines for Alternative Engines Data, paragraph 13.
- Acceptance Guidelines for Alternative Avionics, paragraph 14.
- Transport Delay Testing, paragraph 15.
- Continuing Qualification Evaluation Validation Data Presentation, paragraph 16.

End Information**4. Alternative Objective Data for FTD Level 5****Begin QPS Requirements**

a. This paragraph (including the following tables) is relevant only to FTD Level 5. It is provided because this level is required to simulate the performance and handling characteristics of a set of airplanes with similar characteristics, such as normal airspeed/altitude operating envelope and the same number and type of propulsion systems (engines).

b. Tables B2B through B2E reflect FTD performance standards that are acceptable to the FAA. A sponsor must demonstrate that a device performs within these parameters, as applicable. If a device does not meet the established performance parameters for some or for all of the applicable tests listed in Tables B2B through B2E, the sponsor may use NSP accepted flight test data for comparison purposes for those tests.

c. Sponsors using the data from Tables B2B through B2E must comply with the following:

(1) Submit a complete QTG, including results from all of the objective tests appropriate for the level of qualification sought as set out in Table B2A. The QTG must highlight those results that demonstrate the performance of the FTD is within the allowable performance ranges indicated in Tables B2B through B2E, as appropriate.

(2) The QTG test results must include all relevant information concerning the conditions under which the test was conducted; e.g., gross weight, center of gravity, airspeed, power setting, altitude (climbing, descending, or level), temperature, configuration, and any other parameter that impacts the conduct of the test.

(3) The test results become the validation data against which the initial and all subsequent continuing qualification evaluations are compared. These subsequent evaluations will use the tolerances listed in Table B2A.

(4) Subjective testing of the device must be performed to determine that the device performs and handles like an airplane within the appropriate set of airplanes.

End QPS Requirements

Begin Information

d. The reader is encouraged to consult the Airplane Flight Simulator Evaluation Handbook, Volumes I and II, published by the Royal Aeronautical Society, London, UK, and AC 25-7, Flight Test Guide for Certification of Transport Category Airplanes,

and AC 23-8A, Flight Test Guide for Certification of Part 23 Airplanes, as amended, for references and examples regarding flight testing requirements and techniques.

End Information

TABLE B2B.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, SINGLE ENGINE (RECIPROCATING) AIRPLANE

QPS requirement		
The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable test		Authorized performance range
Entry No.	Title and procedure	
1.	Performance.	
1.c	Climb	
1.c.1.	Normal climb with nominal gross weight, at best rate-of-climb airspeed.	Climb rate = 500–1200 fpm (2.5–6 m/sec).
1.f.	Engines.	
1.f.1.	Acceleration; idle to takeoff power	2–4 Seconds.
1.f.2.	Deceleration; takeoff power to idle	2–4 Seconds.
2.	Handling Qualities	
2.c.	Longitudinal Tests	
2.c.1.	Power change force	
	(a) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Reduce power to flight idle. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Add power to maximum setting. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed..	5–15 lbs (2.2–6.6 daN) of force (Push).
2.c.2.	Flap/slat change force	
	(a) Trim for straight and level flight with flaps fully retracted at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Extend the flaps to 50% of full flap travel. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight with flaps extended to 50% of full flap travel, at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Retract the flaps to zero. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Push).
2.c.4.	Gear change force	
	(a) Trim for straight and level flight with landing gear retracted at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Extend the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Pull).
	OR	

TABLE B2B.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, SINGLE ENGINE (RECIPROCATING) AIRPLANE—Continued

QPS requirement The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable test		Authorized performance range
Entry No.	Title and procedure	
	(b) Trim for straight and level flight with landing gear extended, at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Retract the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Push).
2.c.5.	Longitudinal trim	Must be able to trim longitudinal stick force to “zero” in each of the following configurations: cruise; approach; and landing.
2.c.7.	Longitudinal static stability	Must exhibit positive static stability.
2.c.8.	Stall warning (actuation of stall warning device) with nominal gross weight; wings level; and a deceleration rate of not more than three (3) knots per second.	
	(a) Landing configuration	40–60 knots; $\pm 5^\circ$ of bank.
	(b) Clean configuration	Landing configuration speed + 10–20%.
2.c.9.b.	Phugoid dynamics	Must have a phugoid with a period of 30–60 seconds. May not reach $\frac{1}{2}$ or double amplitude in less than 2 cycles.
2.d.	Lateral Directional Tests.	
2.d.2.	Roll response (rate). Roll rate must be measured through at least 30° of roll. Aileron control must be deflected $\frac{1}{3}$ (33.3 percent) of maximum travel.	Must have a roll rate of 40° – 25° /second.
2.d.4.b.	Spiral stability. Cruise configuration and normal cruise airspeed. Establish a 20° – 30° bank. When stabilized, neutralize the aileron control and release. Must be completed in both directions of turn.	Initial bank angle ($\pm 5^\circ$) after 20 seconds.
2.d.6.b.	Rudder response. Use 25 percent of maximum rudder deflection. (Applicable to approach or landing configuration.).	2° – 6° /second yaw rate.
2.d.7.	Dutch roll, yaw damper off. (Applicable to cruise and approach configurations.).	A period of 2–5 seconds; and $\frac{1}{2}$ –2 cycles.
2.d.8.	Steady state sideslip. Use 50 percent rudder deflection. (Applicable to approach and landing configurations.).	2° – 10° of bank; 4° – 10° of sideslip; and 2° – 10° of aileron.
6.	FTD System Response Time	
6.a.	Latency. Flight deck instrument systems response to an abrupt pilot controller input. One test is required in each axis (pitch, roll, yaw).	300 milliseconds or less.

TABLE B2C.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, MULTI-ENGINE (RECIPROCATING) AIRPLANE

QPS requirement		
The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable test		Authorized performance range
Entry No.	Title and procedure	
1. Performance		
1.c	Climb	
1.c.1.	Normal climb with nominal gross weight, at best rate-of-climb airspeed.	Climb airspeed = 95–115 knots. Climb rate = 500–1500 fpm (2.5–7.5 m/sec)

TABLE B2C.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, MULTI-ENGINE (RECIPROCATING) AIRPLANE—
Continued

QPS requirement The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable test		Authorized performance range
Entry No.	Title and procedure	
1.f.	Engines	
1.f.1.	Acceleration; idle to takeoff power	2–5 Seconds.
1.f.2.	Deceleration; takeoff power to idle	2–5 Seconds.
2. Handling Qualities		
2.c.	Longitudinal Tests.	
2.c.1.	Power change force.	
	(a) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Reduce power to flight idle. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	10–25 lbs (2.2–6.6 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Add power to maximum setting. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Push).
2.c.2.	Flap/slat change force.	
	(a) Trim for straight and level flight with flaps fully retracted at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Extend the flaps to 50% of full flap travel. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight with flaps extended to 50% of full flap travel, at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Retract the flaps to zero. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Push).
2.c.4.	Gear change force.	
	(a) Trim for straight and level flight with landing gear retracted at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Extend the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight with landing gear extended, at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Retract the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Push).
2.c.4.	Longitudinal trim	Must be able to trim longitudinal stick force to “zero” in each of the following configurations: cruise; approach; and landing.
2.c.7.	Longitudinal static stability	Must exhibit positive static stability.
2.c.8.	Stall warning (actuation of stall warning device) with nominal gross weight; wings level; and a deceleration rate of not more than three (3) knots per second. (a) Landing configuration	60–90 knots; $\pm 5^\circ$ of bank.

TABLE B2C.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, MULTI-ENGINE (RECIPROCATING) AIRPLANE—Continued

QPS requirement The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable test		Authorized performance range
Entry No.	Title and procedure	
	(b) Clean configuration	Landing configuration speed + 10–20%.
2.c.9.b.	Phugoid dynamics	Must have a phugoid with a period of 30–60 seconds. May not reach ½ or double amplitude in less than 2 cycles.
2.d.	Lateral Directional Tests	
2.d.2.	Roll response Roll rate must be measured through at least 30° of roll. Aileron control must be deflected ⅓ (33.3 percent) of maximum travel.	Must have a roll rate of 4½–25½/second.
2.d.4.b.	Spiral stability Cruise configuration and normal cruise airspeed. Establish a 20°–30° bank. When stabilized, neutralize the aileron control and release. Must be completed in both directions of turn.	Initial bank angle (± 5°) after 20 seconds.
2.d.6.b.	Rudder response Use 25 percent of maximum rudder deflection. (Applicable to approach landing configuration.)	3°–6°/second yaw rate.
2.d.7.	Dutch roll, yaw damper off. (Applicable to cruise and approach configurations.).	A period of 2–5 seconds; and ½–2 cycles.
2.d.8.	Steady state sideslip Use 50 percent rudder deflection. (Applicable to approach and landing configurations.)	2°–10° of bank; 4–10 degrees of sideslip; and 2°–10° of aileron.
6. FTD System Response Time		
6.a.	Flight deck instrument systems response to an abrupt pilot controller input. One test is required in each axis (pitch, roll, yaw).	300 milliseconds or less.

TABLE B2D.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, SINGLE ENGINE (TURBO-PROPELLER) AIRPLANE

QPS requirement The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable Test		Authorized performance range
Entry No.	Title and procedure	
1. Performance		
1.c.	Climb.	
1.c.1.	Normal climb with nominal gross weight, at best rate-of-climb airspeed.	Climb airspeed = 95–115 knots. Climb rate = 800–1800 fpm (4–9 m/sec).
1.f.	Engines	
1.f.1.	Acceleration; idle to takeoff power	4–8 Seconds.
1.f.2.	Deceleration; takeoff power to idle	3–7 Seconds.
2. Handling Qualities		
2.c.	Longitudinal Tests	
2.c.1.	Power change force	
	(a) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Reduce power to flight idle. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	8 lbs (3.5 daN) of Push force—8 lbs (3.5 daN) of Pull force.

TABLE B2D.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, SINGLE ENGINE (TURBO-PROPELLER) AIRPLANE—Continued

QPS requirement The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable Test		Authorized performance range
Entry No.	Title and procedure	
	OR	
	(b) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Add power to maximum setting. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	12–22 lbs (5.3–9.7 daN) of force (Push).
2.c.2.	Flap/slat change force	
	(a) Trim for straight and level flight with flaps fully retracted at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Extend the flaps to 50% of full flap travel. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight with flaps extended to 50% of full flap travel, at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Retract the flaps to zero. After stabilized, record stick force necessary to maintain original airspeed..	5–15 lbs (2.2–6.6 daN) of force (Push).
2.c.4.	Gear change force.	
	(a) Trim for straight and level flight with landing gear retracted at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Extend the landing gear. After stabilized, record stick force necessary to maintain original airspeed..	2–12 lbs (0.88–5.3 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight with landing gear extended, at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Retract the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Push).
2.b.5.	Longitudinal trim	Must be able to trim longitudinal stick force to “zero” in each of the following configurations: cruise; approach; and landing.
2.c.7.	Longitudinal static stability	Must exhibit positive static stability.
2.c.8.	Stall warning (actuation of stall warning device) with nominal gross weight; wings level; and a deceleration rate of not more than three (3) knots per second.	
	(a) Landing configuration	60–90 knots; $\pm 5^\circ$ of bank.
	(b) Clean configuration.	Landing configuration speed + 10–20%.
2.c.8.b.	Phugoid dynamics	Must have a phugoid with a period of 30–60 seconds. May not reach $\frac{1}{2}$ or double amplitude in less than 2 cycles.
2.d.	Lateral Directional Tests	
2.d.2.	Roll response Roll rate must be measured through at least 30° of roll. Aileron control must be deflected $\frac{1}{3}$ (33.3 percent) of maximum travel.	Must have a roll rate of 4° – 25° /second.
2.d.4.b.	Spiral stability Cruise configuration and normal cruise airspeed. Establish a 20° – 30° bank. When stabilized, neutralize the aileron control and release. Must be completed in both directions of turn.	Initial bank angle ($\pm 5^\circ$) after 20 seconds.

TABLE B2D.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 SMALL, SINGLE ENGINE (TURBO-PROPELLER) AIRPLANE—Continued

QPS requirement The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable Test		Authorized performance range
Entry No.	Title and procedure	
2.d.6.b.	Rudder response Use 25 percent of maximum rudder deflection.(Applicable to approach or landing configuration.)	3°–6°/second yaw rate.
2.d.7.	Dutch roll, yaw damper off (Applicable to cruise and approach configurations.)	A period of 2–5 seconds; and 1/2–3 cycles.
2.d.8.	Steady state sideslip Use 50 percent rudder deflection. (Applicable to approach and landing configurations.)	2°–10° of bank; 4°–10° of sideslip; and 2°–10° of aileron.
6. FTD System Response Time		
6.a.	Flight deck instrument systems response to an abrupt pilot controller input. One test is required in each axis (pitch, roll, yaw).	300 milliseconds or less.

TABLE B2E.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 MULTI-ENGINE (TURBO-PROPELLER) AIRPLANE

QPS REQUIREMENT

The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.

Applicable test		Authorized performance range
Entry No.	Title and procedure	
1. Performance		
1.c.	Climb.	
1.b.1.	Normal climb with nominal gross weight, at best rate-of-climb airspeed.	Climb airspeed = 120–140 knots. Climb rate = 1000–3000 fpm (5–15 m/sec).
1.f.	Engines	
1.f.1.	Acceleration; idle to takeoff power	2–6 Seconds.
1.f.2.	Deceleration; takeoff power to idle	1–5 Seconds.
2. Handling Qualities		
2.c.	Longitudinal Tests	
2.c.1.	Power change force	
	(a) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Reduce power to flight idle. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	8 lbs (3.5 daN) of Push force to 8 lbs (3.5 daN) of Pull force.
	OR	
	(b) Trim for straight and level flight at 80% of normal cruise airspeed with necessary power. Add power to maximum setting. Do not change trim or configuration. After stabilized, record column force necessary to maintain original airspeed.	12–22 lbs (5.3–9.7 daN) of force (Push).
2.c.2.	Flap/slat change force	
	(a) Trim for straight and level flight with flaps fully retracted at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Extend the flaps to 50% of full flap travel. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Pull).

TABLE B2E.—ALTERNATIVE DATA SOURCE FOR FTD LEVEL 5 MULTI-ENGINE (TURBO-PROPELLER) AIRPLANE—Continued

QPS REQUIREMENT		
The performance parameters in this table must be used to program the FTD if flight test data is not used to program the FTD.		
Applicable test		Authorized performance range
Entry No.	Title and procedure	
	OR	
	(b) Trim for straight and level flight with flaps extended to 50% of full flap travel, at a constant airspeed within the flaps-extended airspeed range. Do not adjust trim or power. Retract the flaps to zero. After stabilized, record stick force necessary to maintain original airspeed.	5–15 lbs (2.2–6.6 daN) of force (Push).
2.c.4.	Gear change force	
	(a) Trim for straight and level flight with landing gear retracted at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Extend the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Pull).
	OR	
	(b) Trim for straight and level flight with landing gear extended, at a constant airspeed within the landing gear-extended airspeed range. Do not adjust trim or power. Retract the landing gear. After stabilized, record stick force necessary to maintain original airspeed.	2–12 lbs (0.88–5.3 daN) of force (Push).
2.b.5.	Longitudinal trim	Must be able to trim longitudinal stick force to “zero” in each of the following configurations: cruise; approach; and landing.
2.c.7.	Longitudinal static stability	Must exhibit positive static stability.
2.c.8.	Stall warning (actuation of stall warning device) with nominal gross weight; wings level; and a deceleration rate of not more than three (3) knots per second.	
	(a) Landing configuration	80–100 knots; # 5° of bank.
	(b) Clean configuration	Landing configuration speed + 10–20%.
2.c.8.b.	Phugoid dynamics	Must have a phugoid with a period of 30–60 seconds. May not reach ½ or double amplitude in less than 2 cycles.
2.d.	Lateral Directional Tests	
2.d.2.	Roll response Roll rate must be measured through at least 30° of roll. Aileron control must be deflected 1/3 (33.3 percent) of maximum travel.	Must have a roll rate of 4–25 degrees/second.
2.d.4.b.	Spiral stability Cruise configuration and normal cruise airspeed. Establish a 20°–30° bank. When stabilized, neutralize the aileron control and release. Must be completed in both directions of turn.	Initial bank angle (± 5°) after 20 seconds.
2.d.6.b.	Rudder response Use 25 percent of maximum rudder deflection. (Applicable to approach or landing configuration.)	3°–6° /second yaw rate.
2.d.7.	Dutch roll, yaw damper off (Applicable to cruise and approach configurations.)	A period of 2–5 seconds; and ½–2 cycles.
2.d.8.	Steady state sideslip Use 50 percent rudder deflection. (Applicable to approach and landing configurations.)	2°–10° of bank; 4°–10° of sideslip; and 2°–10° of aileron.
6. FTD System Response Time		
6.a.	Flight deck instrument systems response to an abrupt pilot controller input. One test is required in each axis (pitch, roll, yaw).	300 milliseconds or less.

End QPS Requirements**Begin QPS Requirements****5. Alternative Data Sources, Procedures, and Instrumentation: Level 6 FTD Only**

a. Sponsors are not required to use the alternative data sources, procedures, and instrumentation. However, a sponsor may choose to use one or more of the alternative sources, procedures, and instrumentation described in Table B2F.

End QPS Requirements**Begin Information**

b. It has become standard practice for experienced FTD manufacturers to use such techniques as a means of establishing data bases for new FTD configurations while awaiting the availability of actual flight test data; and then comparing this new data with the newly available flight test data. The results of such comparisons have, as reported by some recognized and experienced simulation experts, become increasingly consistent and indicate that these techniques, applied with appropriate experience, are becoming dependably accurate for the development of aerodynamic models for use in Level 6 FTDs.

c. In reviewing this history, the NSPM has concluded that, with proper care, those who are experienced in the development of

aerodynamic models for FTD application can successfully use these modeling techniques to acceptably alter the method by which flight test data may be acquired and, when applied to Level 6 FTDs, does not compromise the quality of that simulation.

d. The information in the table that follows (Table of Alternative Data Sources, Procedures, and Information: Level 6 FTD Only) is presented to describe an acceptable alternative to data sources for Level 6 FTD modeling and validation, and an acceptable alternative to the procedures and instrumentation found in the flight test methods traditionally accepted for gathering modeling and validation data.

(1) Alternative data sources that may be used for part or all of a data requirement are the Airplane Maintenance Manual, the Airplane Flight Manual (AFM), Airplane Design Data, the Type Inspection Report (TIR), Certification Data or acceptable supplemental flight test data.

(2) The NSPM recommends that use of the alternative instrumentation noted in Table B2F be coordinated with the NSPM prior to employment in a flight test or data gathering effort.

e. The NSPM position regarding the use of these alternative data sources, procedures, and instrumentation is based on three primary preconditions and presumptions regarding the objective data and FTD aerodynamic program modeling.

(1) Data gathered through the alternative means does not require angle of attack (AOA)

measurements or control surface position measurements for any flight test. AOA can be sufficiently derived if the flight test program insures the collection of acceptable level, unaccelerated, trimmed flight data. Angle of attack may be validated by conducting the three basic "fly-by" trim tests. The FTD time history tests should begin in level, unaccelerated, and trimmed flight, and the results should be compared with the flight test pitch angle.

(2) A simulation controls system model should be rigorously defined and fully mature. It should also include accurate gearing and cable stretch characteristics (where applicable) that are determined from actual aircraft measurements. Such a model does not require control surface position measurements in the flight test objective data for Level 6 FTD applications.

f. Table B2F is not applicable to Computer Controlled Aircraft FTDs.

g. Utilization of these alternate data sources, procedures, and instrumentation does not relieve the sponsor from compliance with the balance of the information contained in this document relative to Level 6 FTDs.

h. The term "inertial measurement system" allows the use of a functional global positioning system (GPS).

End Information

TABLE B2F.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION LEVEL 6 FTD

QPS REQUIREMENTS		Information
The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix B are not used.		
Objective test reference number and title	Alternative data sources, procedures, and instrumentation	Notes
1.b.1. Performance. Takeoff. Ground acceleration time.	Data may be acquired through a synchronized video recording of a stop watch and the calibrated airplane airspeed indicator. Hand-record the flight conditions and airplane configuration.	This test is required only if RTO is sought.
1.b.7. Performance. Takeoff. Rejected takeoff.	Data may be acquired through a synchronized video recording of a stop watch and the calibrated airplane airspeed indicator. Hand-record the flight conditions and airplane configuration.	This test is required only if RTO is sought.
1.c.1. Performance. Climb. Normal climb all engines operating.	Data may be acquired with a synchronized video of calibrated airplane instruments and engine power throughout the climb range.	
1.f.1. Performance. Engines. Acceleration	Data may be acquired with a synchronized video recording of engine instruments and throttle position.	
1.f.2. Performance. Engines. Deceleration	Data may be acquired with a synchronized video recording of engine instruments and throttle position.	

TABLE B2F.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION LEVEL 6 FTD—Continued

QPS REQUIREMENTS		Information
The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix B are not used.		
Objective test reference number and title	Alternative data sources, procedures, and instrumentation	Notes
2.a.1.a. Handling qualities. Static control tests. Pitch controller position vs. force and surface position calibration.	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant column positions (encompassing significant column position data points), acceptable to the NSPM, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same column position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.2.a. Handling qualities. Static control tests. Wheel position vs. force and surface position calibration.	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant wheel positions (encompassing significant wheel position data points), acceptable to the NSPM, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same wheel position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.3.a. Handling qualities. Static control tests. Rudder pedal position vs. force and surface position calibration.	Surface position data may be acquired from flight data recorder (FDR) sensor or, if no FDR sensor, at selected, significant rudder pedal positions (encompassing significant rudder pedal position data points), acceptable to the NSPM, using a control surface protractor on the ground. Force data may be acquired by using a hand held force gauge at the same rudder pedal position data points.	For airplanes with reversible control systems, surface position data acquisition should be accomplished with winds less than 5 kts.
2.a.4. Handling qualities. Static control tests. Nosewheel steering force.	Breakout data may be acquired with a hand held force gauge. The remainder of the force to the stops may be calculated if the force gauge and a protractor are used to measure force after breakout for at least 25% of the total displacement capability.	
2.a.5. Handling qualities. Static control tests. Rudder pedal steering calibration.	Data may be acquired through the use of force pads on the rudder pedals and a pedal position measurement device, together with design data for nosewheel position.	
2.a.6. Handling qualities. Static control tests. Pitch trim indicator vs. surface position calibration.	Data may be acquired through calculations.	
2.a.8. Handling qualities. Static control tests. Alignment of power lever angle vs. selected engine parameter (e.g., EPR, N ₁ , Torque, Manifold pressure).	Data may be acquired through the use of a temporary throttle quadrant scale to document throttle position. Use a synchronized video to record steady state instrument readings or hand-record steady state engine performance readings.	
2.a.9. Handling qualities. Static control tests. Brake pedal position vs. force.	Use of design or predicted data is acceptable. Data may be acquired by measuring deflection at "zero" and at "maximum."	
2.c.1. Handling qualities. Longitudinal control tests. Power change force.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments, throttle position, and the force/position measurements of flight deck controls.	Power change dynamics test is acceptable using the same data acquisition methodology.

TABLE B2F.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION LEVEL 6 FTD—Continued

QPS REQUIREMENTS		Information
The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix B are not used.		
Objective test reference number and title	Alternative data sources, procedures, and instrumentation	Notes
2.c.2. Handling qualities. Longitudinal control tests. Flap/slat change force.	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated airplane instruments, flap/slat position, and the force/position measurements of flight deck controls.	Flap/slat change dynamics test is acceptable using the same data acquisition methodology.
2.c.4. Handling qualities. Longitudinal control tests. Gear change force.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments, gear position, and the force/position measurements of flight deck controls.	Gear change dynamics test is acceptable using the same data acquisition methodology.
2.c.5. Handling qualities. Longitudinal control tests. Longitudinal trim.	Data may be acquired through use of an inertial measurement system and a synchronized video of flight deck controls position (previously calibrated to show related surface position) and engine instrument readings.	
2.c.6. Handling qualities. Longitudinal control tests. Longitudinal maneuvering stability (stick force/g).	Data may be acquired through the use of an inertial measurement system and a synchronized video of the calibrated airplane instruments; a temporary, high resolution bank angle scale affixed to the attitude indicator; and a wheel and column force measurement indication.	
2.c.7. Handling qualities. Longitudinal control tests. Longitudinal static stability	Data may be acquired through the use of a synchronized video of the airplane flight instruments and a hand held force gauge.	
2.c.8. Handling qualities. Longitudinal control tests. Stall Warning (activation of stall warning device).	Data may be acquired through a synchronized video recording of a stop watch and the calibrated airplane airspeed indicator. Hand-record the flight conditions and airplane configuration.	Airspeeds may be cross checked with those in the TIR and AFM.
2.c.9.a. Handling qualities. Longitudinal control tests. Phugoid dynamics.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments and the force/position measurements of flight deck controls.	
2.c.10. Handling qualities. Longitudinal control tests. Short period dynamics.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments and the force/position measurements of flight deck controls.	
2.c.11. Handling qualities. Longitudinal control tests. Gear and flap/slat operating times.	May use design data, production flight test schedule, or maintenance specification, together with an SOC.	
2.d.2. Handling qualities. Lateral directional tests. Roll response (rate).	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments and the force/position measurements of flight deck lateral controls.	
2.d.3. Handling qualities. Lateral directional tests. (a) Roll overshoot. OR (b) Roll response to flight deck roll controller step input.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments and the force/position measurements of flight deck lateral controls.	
2.d.4. Handling qualities. Lateral directional tests. Spiral stability.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments; the force/position measurements of flight deck controls; and a stop watch.	

TABLE B2F.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION LEVEL 6 FTD—Continued

QPS REQUIREMENTS		Information
The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix B are not used.		
Objective test reference number and title	Alternative data sources, procedures, and instrumentation	Notes
2.d.6.a. Handling qualities. Lateral directional tests. Rudder response.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments; the force/position measurements of rudder pedals.	
2.d.7. Handling qualities. Lateral directional tests. Dutch roll, (yaw damper OFF).	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments and the force/position measurements of flight deck controls.	
2.d.8. Handling qualities. Lateral directional tests. Steady state sideslip.	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated airplane instruments and the force/position measurements of flight deck controls.	

Attachment 3 to Appendix B to Part 60— Flight Training Device (FTD) Subjective Evaluation

Begin Information

1. Discussion

a. The subjective tests provide a basis for evaluating the capability of the FTD to perform over a typical utilization period. The items listed in the Table of Functions and Subjective Tests are used to determine whether the FTD competently simulates each required maneuver, procedure, or task; and verifying correct operation of the FTD controls, instruments, and systems. The tasks

do not limit or exceed the authorizations for use of a given level of FTD as described on the SOQ or as approved by the TPAA. All items in the following paragraphs are subject to examination.

b. All simulated airplane systems functions will be assessed for normal and, where appropriate, alternate operations. Simulated airplane systems are listed separately under “Any Flight Phase” to ensure appropriate attention to systems checks. Operational navigation systems (including inertial navigation systems, global positioning systems, or other long-range systems) and the associated electronic display systems will be evaluated if installed. The NSP pilot will include in his report to the TPAA, the effect

of the system operation and any system limitation.

c. At the request of the TPAA, the NSP Pilot may assess the FTD for a special aspect of a sponsor’s training program during the functions and subjective portion of an evaluation. Such an assessment may include a portion of a specific operation (e.g., a Line Oriented Flight Training (LOFT) scenario) or special emphasis items in the sponsor’s training program. Unless directly related to a requirement for the qualification level, the results of such an evaluation would not affect the qualification of the FTD.

End Information

TABLE B3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD

QPS requirements	
Entry No.	Operations tasks
Tasks in this table are subject to evaluation if appropriate for the airplane system or systems simulated as indicated in the SOQ Configuration List as defined in Appendix B, Attachment 2 of this part.	
1. Preflight	
	Accomplish a functions check of all installed switches, indicators, systems, and equipment at all crewmembers’ and instructors’ stations, and determine that the flight deck (or flight deck area) design and functions replicate the appropriate airplane.
2. Surface Operations (pre-takeoff)	
2.a.	Engine start:
2.a.1.	Normal start.
2.a.2.	Alternative procedures start.
2.a.3.	Abnormal procedures start/shut down.
2.b.	Pushback/Powerback (powerback requires visual system).
3. Takeoff (requires appropriate visual system as set out in Table B1A, item 6; Appendix B, Attachment 1.)	
3.a.	Instrument takeoff:
3.a.1.	Engine checks (e.g., engine parameter relationships, propeller/mixture controls).
3.a.2.	Acceleration characteristics.

TABLE B3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
3.a.3.	Nosewheel/rudder steering.
3.a.4.	Landing gear, wing flap, leading edge device operation.
3.b.	Rejected takeoff:
3.b.1.	Deceleration characteristics.
3.b.2.	Brakes/engine reverser/ground spoiler operation.
3.b.3.	Nosewheel/rudder steering.
4. In-Flight Operations	
4.a.	Normal climb.
4.b.	Cruise:
4.b.1.	Demonstration of performance characteristics (speed vs. power).
4.b.2.	Normal turns.
4.b.3.	Demonstration of high altitude handling.
4.b.4.	Demonstration of high airspeed handling/overspeed warning.
4.b.5.	Demonstration of Mach effects on control and trim.
4.b.6.	Steep turns.
4.b.7.	In-Flight engine shutdown (procedures only).
4.b.8.	In-Flight engine restart (procedures only).
4.b.9.	Specific flight characteristics.
4.b.10. ..	Response to loss of flight control power.
4.b.11. ..	Response to other flight control system failure modes.
4.b.12. ..	Operations during icing conditions.
4.b.13. ..	Effects of airframe/engine icing.
4.c.	Other flight phase:
4.c.1.	Approach to stalls in the following configurations:
4.c.1.a.	Cruise.
4.c.1.b.	Takeoff or approach.
4.c.1.c.	Landing.
4.c.2.	High angle of attack maneuvers in the following configurations:
4.c.2.a.	Cruise.
4.c.2.b.	Takeoff or approach.
4.c.2.c.	Landing.
4.c.3.	Slow flight.
4.c.4.	Holding.
5. Approaches	
5.a.	Non-precision Instrument Approaches:

TABLE B3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
5.a.1.	With use of autopilot and autothrottle, as applicable.
5.a.2.	Without use of autopilot and autothrottle, as applicable.
5.a.3.	With 10 knot tail wind.
5.a.4.	With 10 knot crosswind.
5.b.	Precision Instrument Approaches:
5.b.1.	With use of autopilot, autothrottle, and autoland, as applicable.
5.b.2.	Without use of autopilot, autothrottle, and autoland, as applicable.
5.b.3.	With 10 knot tail wind.
5.b.4.	With 10 knot crosswind.
6. Missed Approach	
6.a.	Manually controlled.
6.b.	Automatically controlled (if applicable).
7. Any Flight Phase, as appropriate	
7.a.	Normal system operation (installed systems).
7.b.	Abnormal/Emergency system operation (installed systems).
7.c.	Flap operation.
7.d.	Landing gear operation.
7.e.	Engine Shutdown and Parking.
7.e.1.	Systems operation.
7.e.2.	Parking brake operation.
8. Instructor Operating Station (IOS), as appropriate. Functions in this section are subject to evaluation only if appropriate for the airplane and/or installed on the specific FTD involved	
8.a.	Power Switch(es).
8.b.	Airplane conditions.
8.b.1.	Gross weight, center of gravity, and fuel loading and allocation.
8.b.2.	Airplane systems status.
8.b.3.	Ground crew functions (e.g., external power, push back).
8.c.	Airports.
8.c.1.	Selection.
8.c.2.	Runway selection.
8.c.3.	Preset positions (e.g., ramp, over FAF).
8.d.	Environmental controls.
8.d.1.	Temperature.
8.d.2.	Climate conditions (e.g., ice, rain).
8.d.3.	Wind speed and direction.
8.e.	Airplane system malfunctions.

TABLE B3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
8.e.1.	Insertion/deletion.
8.e.2.	Problem clear.
8.f.	Locks, Freezes, and Repositioning.
8.f.1.	Problem (all) freeze/release.
8.f.2.	Position (geographic) freeze/release.
8.f.3.	Repositioning (locations, freezes, and releases).
8.f.4.	Ground speed control.
8.f.5.	Remote IOS, if installed.
9. Sound Controls. On/off/adjustment	
10. Control Loading System (as applicable) On/off/emergency stop.	
11. Observer Stations.	
11.a.	Position.
11.b.	Adjustments.

End QPS Requirements

TABLE B3B.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 5 FTD

QPS requirements	
Entry No.	Operations tasks
Tasks in this table are subject to evaluation if appropriate for the airplane system or systems simulated as indicated in the SOQ Configuration List as defined in Appendix B, Attachment 2 of this part.	
1. Preflight	
	Accomplish a functions check of all installed switches, indicators, systems, and equipment at all crewmembers' and instructors' stations, and determine that the flight deck (or flight deck area) design and functions replicate the appropriate airplane.
2. Surface Operations (pre-takeoff)	
2.a.	Engine start (if installed):
2.a.1.	Normal start.
2.a.2.	Alternative procedures start.
2.a.3.	Abnormal/Emergency procedures start/shut down.
3. In-Flight Operations	
3.a.	Normal climb.
3.b.	Cruise:
3.b.1.	Performance characteristics (speed vs. power).
3.b.2.	Normal turns.
3.c.	Normal descent.
4. Approaches	
4.a.	Coupled instrument approach maneuvers (as applicable for the systems installed).
5. Any Flight Phase	
5.a.	Normal system operation (Installed systems).

TABLE B3B.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 5 FTD—Continued

QPS requirements	
Entry No.	Operations tasks Tasks in this table are subject to evaluation if appropriate for the airplane system or systems simulated as indicated in the SOQ Configuration List as defined in Appendix B, Attachment 2 of this part.
5.b.	Abnormal/Emergency system operation (Installed systems).
5.c.	Flap operation.
5.d.	Landing gear operation
5.e.	Engine Shutdown and Parking (if installed).
5.e.1.	Systems operation.
5.e.2.	Parking brake operation.
6. Instructor Operating Station (IOS)	
6.a.	Power Switch(es).
6.b.	Preset positions—ground, air.
6.c.	Airplane system malfunctions (Installed systems).
6.c.1.	Insertion/deletion.
6.c.2.	Problem clear.

TABLE B3C.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 4 FTD

QPS requirements	
Entry No.	Operations tasks Tasks in this table are subject to evaluation if appropriate for the airplane system or systems simulated as indicated in the SOQ Configuration List as defined in Appendix B, Attachment 2 of this part.
1.	Level 4 FTDs are required to have at least one operational system. The NSPM will accomplish a functions check of all installed systems, switches, indicators, and equipment at all crewmembers' and instructors' stations, and determine that the flight deck (or flight deck area) design and functions replicate the appropriate airplane.

**Attachment 4 to Appendix B to Part 60—
Sample Documents****Begin Information****Table of Contents**

Title of Sample

Figure B4A Sample Letter, Request for
Initial, Upgrade, or Reinstatement
EvaluationFigure B4B Attachment: FTD Information
Form

Figure B4C Sample Letter of Compliance

Figure B4D Sample Qualification Test
Guide Cover PageFigure B4E Sample Statement of
Qualification—CertificateFigure B4F Sample Statement of
Qualification—Configuration ListFigure B4G Sample Statement of
Qualification—List of Qualified TasksFigure B4H Sample Continuing
Qualification Evaluation Requirements
PageFigure B4I Sample MQTG Index of Effective
FTD Directives**BILLING CODE 4910-13-P**

**Attachment 4 to Appendix B to Part 60—
Figure B4A – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation.
INFORMATION**

Date _____

Edward D. Cook, Ph.D.
Manager, National Simulator Program
Federal Aviation Administration
100 Hartsfield Centre Parkway, Suite 400
Atlanta, GA 30354

Dear Dr. Cook:

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FTD Manufacturer), (Aircraft Type/Level) Flight Training Device (FTD), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FTD will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FTD will be sponsored as follows; (Select One)

- ☐ The FTD will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.
- ☐ The FTD will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

- ☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "1/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.
- ☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

4. Sponsor's Letter of Request (*Company Compliance Letter*).
5. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
6. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FTD Information and Characteristics Form
cc: POI/TCPM

**Attachment 4 to Appendix B to Part 60—
Figure B4B – Sample Letter , Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FSTD Information Form
INFORMATION**

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name:	_____	FSTD Location:	
Address:	_____	Physical Address:	_____
City:	_____	City:	_____
State:	_____	State:	_____
Country:	_____	Country:	_____
ZIP:	_____	ZIP:	_____
Manager	_____		
Sponsor ID No: (Four Letter FAA Designator)	_____	Nearest Airport: (Airport Designator)	_____
Type of Evaluation Requested: ☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series:	_____		
Initial Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	Manufacturer's Identification or Serial Number	_____
Upgrade Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	☐ eMQTG	
Qualification Basis: _____	☐ A	☐ B	☐ Interim C
	☐ 6	☐ 7	☐ Provisional Status
☐ C	☐ D		
Other Technical Information:			
FAA FSTD ID No: (If Applicable)	_____	FSTD Manufacturer:	_____
Convertible FSTD:	☐ Yes:	Date of Manufacture:	_____ MM/DD/YYYY
Related FAA ID No. (If Applicable)	_____	Sponsor FSTD ID No:	_____
Engine model(s) and data revision:	_____		
FMS identification and revision level:	_____		
Visual system manufacturer/model:	_____		
Flight control data revision:	_____		
Motion system manufacturer/type:	_____		
FSTD computer(s) identification:	_____		
National Aviation Authority (NAA): (If Applicable)	_____		
NAA FSTD ID No:	_____	Last NAA Evaluation Date:	_____
NAA Qualification Level:	_____		
NAA Qualification Basis:	_____		
Visual System Manufacturer and Type:	_____	FSTD Seats Available:	_____
		Motion System Manufacturer and Type:	_____ :

**Attachment 4 to Appendix B to Part 60—
Figure B4B – Sample Letter , Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FSTD Information Form**

INFORMATION

Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: ____ ☐ WX Radar ☐ Other: ____	Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: ____

Airport Models:	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator
Circle to Land:	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway
Visual Ground Segment	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway

Section 2. Supplementary Information

FAA Training Program Approval Authority:		☐ POI ☐ TCPM ☐ Other: _____	
Name:	_____	Office:	_____
Tel:	_____	Fax:	_____
Email:	_____		

FSTD Scheduling Person:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____

FSTD Technical Contact:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training /Checks:(142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating -Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____
Proficiency Checks (135/121/142)	☐	_____
CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____

Attachment 4 to Appendix B to Part 60—

Figure B4B – Sample Letter , Request for Initial, Upgrade, or Reinstatement Evaluation

Attachment: FSTD Information Form

INFORMATION

CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

**Attachment 4 to Appendix B to Part 60—
Figure B4C – Sample Letter of Compliance
INFORMATION**

(Date)

Mr. (Name of Training Program Approval Authority):

(Name of FAA FSDO)

(Address)

(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FTD for Level () qualification. The (FTD Manufacturer Name) FTD with (Visual System Manufacturer Name/Model) system is fully defined on the FTD Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FTD and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FTD and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FTD and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,

(Sponsor Representative)

cc:

FAA, National Simulator Program

**Attachment 4 to Appendix B to Part 60—
Figure B4D – Sample Qualification Test Guide Cover Page
INFORMATION**

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC AIRPLANE MODEL)

for example
Stratos BA797-320A

(Type of FTD)

(FTD Identification Including Manufacturer, Serial Number, Visual System Used)

(FTD Level)

(Qualification Performance Standard Used)

(FTD Location)

FAA Initial Evaluation

Date: _____

(Sponsor) Date: _____

Manager, National
Simulator Program, FAA Date: _____

Attachment 4 to Appendix B to Part 60—
Figure B4E – Sample Statement of Qualification - Certificate
INFORMATION

Federal Aviation Administration
National Simulator Program



Certificate of Qualification

This is to certify that representatives of the National Simulator Program
Completed an evaluation of the

Go-Fast Airlines
Farnsworth Z-100 Flight Training Device
FAA Identification Number 998

And pursuant to 14 CFR Part 60 found it to meet its original qualification basis, AC 120-45A (MM/DD/YY)

The Master Qualification Test Guide and the attached
Configuration List and Restrictions List
Provide the Qualification Basis for this device to operate at
Level 6

Until March 31, 2010

Unless sooner rescinded or extended by the National Simulator Program Manager

February 15, 2009

(date)

B. Williamson

(for the NSPM)

**Attachment 4 to Appendix B to Part 60—
Figure B4F – Sample Statement of Qualification; Configuration List
INFORMATION**

**CERTIFICATE OF QUALIFICATION
CONFIGURATION LIST**

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name:	_____	FSTD Location:	
Address:	_____	Physical Address:	_____
City:	_____	City:	_____
State:	_____	State:	_____
Country:	_____	Country:	_____
ZIP:	_____	ZIP:	_____
Manager	_____		
Sponsor ID No: (Four Letter FAA Designator)	_____	Nearest Airport: (Airport Designator)	_____
Type of Evaluation Requested: _____ ☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series:	_____		
Initial Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	Manufacturer's Identification or Serial Number	_____
Upgrade Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	☐ eMQTG	
Qualification Basis: _____	☐ A	☐ B	☐ Interim C
	☐ 6	☐ 7	☐ C ☐ D
		☐ Provisional Status	
Other Technical Information:			
FAA FSTD ID No: (If Applicable)	_____	FSTD Manufacturer:	_____
Convertible FSTD:	☐ Yes:	Date of Manufacture:	_____
			MM/DD/YYYY
Related FAA ID No. (If Applicable)	_____	Sponsor FSTD ID No:	_____
Engine model(s) and data revision: _____	Source of aerodynamic model: _____		
FMS identification and revision level: _____	Source of aerodynamic coefficient data: _____		
Visual system manufacturer/model: _____	Aerodynamic data revision number: _____		
Flight control data revision: _____	Visual system display: _____		
Motion system manufacturer/type: _____	FSTD computer(s) identification: _____		
National Aviation Authority (NAA):			
NAA FSTD ID No:	_____	Last NAA Evaluation Date:	_____
NAA Qualification Level:	_____		
NAA Qualification Basis:	_____		

**Attachment 4 to Appendix B to Part 60—
Figure B4F – Sample Statement of Qualification; Configuration List
INFORMATION**

Visual System Manufacturer and Type: _____		FSTD Seats Available: _____	Motion System Manufacturer and Type: _____	
Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: _____ ☐ WX Radar ☐ Other: _____		Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: _____
Airport Models:				
	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator	
Circle to Land:				
	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway	
Visual Ground Segment				
	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway	

Section 2. Supplementary Information

FAA Training Program Approval Authority: _____		☐ POI ☐ TCPM ☐ Other: _____	
Name: _____	Office: _____		
Tel: _____	Fax: _____		
Email: _____			
FSTD Scheduling Person:			
Name: _____			
Address 1: _____	Address 2: _____		
City: _____	State: _____		
ZIP: _____	Email: _____		
Tel: _____	Fax: _____		
FSTD Technical Contact:			
Name: _____			
Address 1: _____	Address 2: _____		
City: _____	State: _____		
ZIP: _____	Email: _____		
Tel: _____	Fax: _____		

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training / Checks: (142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating - Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____

**Attachment 4 to Appendix B to Part 60—
Figure B4F – Sample Statement of Qualification; Configuration List
INFORMATION**

Proficiency Checks (135/121/142)	☐	_____
CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____
CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

**Attachment 4 to Appendix B to Part 60—
Figure B4G – Sample Statement of Qualification;– List of Qualified Tasks
INFORMATION**

**CERTIFICATE OF QUALIFICATION
List of Qualified Tasks**

Go Fast Airline Training -- Farnsworth Z-100 -- Level D -- FAA ID# 999

**The FTD is qualified to perform all of the tasks listed in
Appendix 1, Table B1B
for its assigned level of qualification *except* for the following listed tasks.**

Qualified for all tasks in Table B1B, for which the sponsor has requested qualification, except for the following:

- 4.e. Circling Approach
- 6. (a) Emergency Descent (maximum rate)
- 6. (b) Inflight Fire and Smoke Removal
- 6. (c) Rapid Decompression
- 6. (d) Emergency Evacuation

Additional tasks for which this FTD is qualified (i.e., in addition to the list in Table B1B):

NONE

**Attachment 4 to Appendix B to Part 60—
Figure B4H – Sample Continuing Qualification Evaluation Requirements Page
INFORMATION**

Continuing qualification Evaluation Requirements <i>Completed at conclusion of Initial Evaluation</i>	
Continuing qualification Evaluations to be conducted each <u> (fill in) </u> months Allotting _____ hours of FTD time. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: <u> (month) </u> and <u> (month) </u> and <u> (month) </u> (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning):	
Continuing qualification Evaluations are to be conducted each <u> (fill in) </u> months. Allotting _____ hours. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: <u> (month) </u> and <u> (month) </u> and <u> (month) </u> (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning):	
Continuing qualification Evaluations are to be conducted each <u> (fill in) </u> months. Allotting _____ hours. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: <u> (month) </u> and <u> (month) </u> and <u> (month) </u> (enter or strike out, as appropriate) _____ Date

(Repeat as Necessary)

Index of Effective FSTD Directives Filed in this Section

[illegible]

Appendix C to Part 60—Qualification Performance Standards for Helicopter Full Flight Simulators

This appendix establishes the standards for Helicopter FFS evaluation and qualification. The NSPM is responsible for the development, application, and implementation of the standards contained within this appendix. The procedures and criteria specified in this appendix will be used by the NSPM, or a person assigned by the NSPM, when conducting helicopter FFS evaluations.

1. Introduction.
2. Applicability (§ 60.1) and (§ 60.2).
3. Definitions (§ 60.3).
4. Qualification Performance Standards (§ 60.4).
5. Quality Management System (§ 60.5).
6. Sponsor Qualification Requirements (§ 60.7).
7. Additional Responsibilities of the Sponsor (§ 60.9).
8. FFS Use (§ 60.11).
9. FFS Objective Data Requirements (§ 60.13).
10. Special Equipment and Personnel Requirements for Qualification of the FFS (§ 60.14).
11. Initial (and Upgrade) Qualification Requirements (§ 60.15).
12. Additional Qualifications for a Currently Qualified FFS (§ 60.16).
13. Previously Qualified FFSs (§ 60.17).

14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements (§ 60.19).
 15. Logging FFS Discrepancies (§ 60.20).
 16. Interim Qualification of FFSs for New Helicopter Types or Models (§ 60.21).
 17. Modifications to FFSs (§ 60.23).
 18. Operations with Missing, Malfunctioning, or Inoperative Components (§ 60.25).
 19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27).
 20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29).
 21. Record Keeping and Reporting (§ 60.31).
 22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33).
 23. [Reserved].
 24. [Reserved]
 25. FFS Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37).
- Attachment 1 to Appendix C to Part 60—General Simulator Requirements.
- Attachment 2 to Appendix C to Part 60—FFS Objective Tests.
- Attachment 3 to Appendix C to Part 60—Simulator Subjective Evaluation.
- Attachment 4 to Appendix C to Part 60—Sample Documents.
- Attachment 5 to Appendix C to Part 60—FSTD Directives Applicable to Helicopter FFSs

1. Introduction

a. This appendix contains background information as well as regulatory and informative material as described later in this section. To assist the reader in determining what areas are required and what areas are permissive, the text in this appendix is divided into two sections: “QPS Requirements” and “Information.” The QPS Requirements sections contain details regarding compliance with the part 60 rule language. These details are regulatory, but are found only in this appendix. The Information sections contain material that is advisory in nature, and designed to give the user general information about the regulation.

- b. Questions regarding the contents of this publication should be sent to the U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, National Simulator Program Staff, AFS-205, 100 Hartsfield Centre Parkway, Suite 400, Atlanta, Georgia, 30354. Telephone contact numbers for the NSP are: phone, 404-832-4700; fax, 404-761-8906. The general e-mail address for the NSP office is: *9-aso-avr-sim-team@faa.gov*. The NSP Internet Web site address is: *http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/nsfp/*. On this Web Site you will find an NSP personnel list with telephone and e-mail contact information for each NSP staff member, a list of qualified flight simulation devices, ACs, a description of the qualification process, NSP policy, and an NSP "In-Works" section. Also linked from this site are additional information sources.

handbook bulletins, frequently asked questions, a listing and text of the Federal Aviation Regulations, Flight Standards Inspector's handbooks, and other FAA links.

c. The NSPM encourages the use of electronic media for all communication, including any record, report, request, test, or statement required by this appendix. The electronic media used must have adequate security provisions and be acceptable to the NSPM. The NSPM recommends inquiries on system compatibility, and minimum system requirements are also included on the NSP Web site.

d. Related Reading References.

- (1) 14 CFR part 60.
- (2) 14 CFR part 61.
- (3) 14 CFR part 63.
- (4) 14 CFR part 119.
- (5) 14 CFR part 121.
- (6) 14 CFR part 125.
- (7) 14 CFR part 135.
- (8) 14 CFR part 141.
- (9) 14 CFR part 142.
- (10) AC 120–35, as amended, Line

Operational Simulations: Line-Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation.

(11) AC 120–57, as amended, Surface Movement Guidance and Control System (SMGCS).

(12) AC 120–63, as amended, Helicopter Simulator Qualification.

(13) AC 150/5300–13, as amended, Airport Design.

(14) AC 150/5340–1, as amended, Standards for Airport Markings.

(15) AC 150/5340–4, as amended, Installation Details for Runway Centerline Touchdown Zone Lighting Systems.

(16) AC 150/5340–19, as amended, Taxiway Centerline Lighting System.

(17) AC 150/5340–24, as amended, Runway and Taxiway Edge Lighting System.

(18) AC 150/5345–28, as amended, Precision Approach Path Indicator (PAPI) Systems

(19) AC 150/5390–2, as amended, Heliport Design

(20) International Air Transport Association document, "Flight Simulator Design and Performance Data Requirements," as amended.

(21) AC 29–2, as amended, Flight Test Guide for Certification of Transport Category Rotorcraft.

(22) AC 27–1, as amended, Flight Test Guide for Certification of Normal Category Rotorcraft.

(23) International Civil Aviation Organization (ICAO) Manual of Criteria for the Qualification of Flight Simulators, as amended.

(24) Airplane Flight Simulator Evaluation Handbook, Volume I, as amended and Volume II, as amended, The Royal Aeronautical Society, London, UK.

(25) FAA Publication FAA–S–8081 series (Practical Test Standards for Airline Transport Pilot Certificate, Type Ratings, Commercial Pilot, and Instrument Ratings).

(26) The FAA Aeronautical Information Manual (AIM). An electronic version of the AIM is on the Internet at <http://www.faa.gov/atpubs>.

(27) Aeronautical Radio, Inc. (ARINC) document number 436, titled *Guidelines For*

Electronic Qualification Test Guide (as amended).

(28) Aeronautical Radio, Inc. (ARINC) document 610, *Guidance for Design and Integration of Aircraft Avionics Equipment in Simulators* (as amended).

End Information

2. Applicability (§§ 60.1 and 60.2)

Begin Information

No additional regulatory or informational material applies to § 60.1, Applicability, or to § 60.2, Applicability of sponsor rules to person who are not sponsors and who are engaged in certain unauthorized activities.

End Information

3. Definitions (§ 60.3)

Begin Information

See Appendix F of this part for a list of definitions and abbreviations from part 1 and part 60, including the appropriate appendices of part 60.

End Information

4. Qualification Performance Standards (§ 60.4)

Begin Information

No additional regulatory or informational material applies to § 60.4, Qualification Performance Standards.

End Information

5. Quality Management System (§ 60.5)

Begin Information

See Appendix E of this part for additional regulatory and informational material regarding Quality Management Systems.

End Information

6. Sponsor Qualification Requirements (§ 60.7)

Begin Information

a. The intent of the language in § 60.7(b) is to have a specific FFS, identified by the sponsor, used at least once in an FAA-approved flight training program for the helicopter simulated during the 12-month period described. The identification of the specific FFS may change from one 12-month period to the next 12-month period as long as that sponsor sponsors and uses at least one FFS at least once during the prescribed period. There is no minimum number of hours or minimum FFS periods required.

b. The following examples describe acceptable operational practices:

- (1) Example One.

(a) A sponsor is sponsoring a single, specific FFS for its own use, in its own facility or elsewhere—this single FFS forms the basis for the sponsorship. The sponsor uses that FFS at least once in each 12-month period in that sponsor's FAA-approved flight training program for the helicopter simulated. This 12-month period is established according to the following schedule:

(i) If the FFS was qualified prior to May 30, 2008, the 12-month period begins on the date of the first continuing qualification evaluation conducted in accordance with § 60.19 after May 30, 2008, and continues for each subsequent 12-month period;

(ii) A device qualified on or after May 30, 2008, will be required to undergo an initial or upgrade evaluation in accordance with § 60.15. Once the initial or upgrade evaluation is complete, the first continuing qualification evaluation will be conducted within 6 months. The 12 month continuing qualification evaluation cycle begins on that date and continues for each subsequent 12-month period.

(b) There is no minimum number of hours of FFS use required.

(c) The identification of the specific FFS may change from one 12-month period to the next 12-month period as long as that sponsor sponsors and uses at least one FFS at least once during the prescribed period.

(2) Example Two.

(a) A sponsor sponsors an additional number of FFSs, in its facility or elsewhere. Each additionally sponsored FFS must be—

(i) Used by the sponsor in the sponsor's FAA-approved flight training program for the helicopter simulated (as described in § 60.7(d)(1)); or

(ii) Used by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the helicopter simulated (as described in § 60.7(d)(1)). This 12-month period is established in the same manner as in example one; or

(iii) Provided a statement each year from a qualified pilot, (after having flown the helicopter, not the subject FFS or another FFS, during the preceding 12-month period) stating that the subject FFS's performance and handling qualities represent the helicopter (as described in § 60.7(d)(2)). This statement is provided at least once in each 12-month period established in the same manner as in example one.

(b) There is no minimum number of hours of FFS use required.

(3) Example Three.

(a) A sponsor in New York (in this example, a Part 142 certificate holder) establishes "satellite" training centers in Chicago and Moscow.

(b) The satellite function means that the Chicago and Moscow centers must operate under the New York center's certificate (in accordance with all of the New York center's practices, procedures, and policies; e.g., instructor and/or technician training/checking requirements, record keeping, QMS program).

(c) All of the FFSs in the Chicago and Moscow centers could be dry-leased (i.e., the certificate holder does not have and use

FAA-approved flight training programs for the FFSs in the Chicago and Moscow centers) because—

(i) Each FFS in the Chicago center and each FFS in the Moscow center is used at least once each 12-month period by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the helicopter (as described in § 60.7(d)(1)); OR

(ii) A statement is obtained from a qualified pilot (having flown the helicopter, not the subject FFS or another FFS during the preceding 12-month period) stating that the performance and handling qualities of each FFS in the Chicago and Moscow centers represents the helicopter (as described in § 60.7(d)(2)).

End Information

7. Additional Responsibilities of the Sponsor (§ 60.9).

Begin Information

The phrase “as soon as practicable” in § 60.9(a) means without unnecessarily disrupting or delaying beyond a reasonable time the training, evaluation, or experience being conducted in the FFS.

End Information

8. FFS Use (§ 60.11)

Begin Information

No additional regulatory or informational material applies to § 60.11, FFS Use.

End Information

9. FFS Objective Data Requirements (§ 60.13)

Begin QPS Requirements

a. Flight test data used to validate FFS performance and handling qualities must have been gathered in accordance with a flight test program containing the following:

- (1) A flight test plan consisting of:
 - (a) The maneuvers and procedures required for aircraft certification and simulation programming and validation
 - (b) For each maneuver or procedure—
 - (i) The procedures and control input the flight test pilot and/or engineer used.
 - (ii) The atmospheric and environmental conditions.
 - (iii) The initial flight conditions.
 - (iv) The helicopter configuration, including weight and center of gravity.
 - (v) The data to be gathered.
 - (vi) All other information necessary to recreate the flight test conditions in the FFS.
- (2) Appropriately qualified flight test personnel.

(3) An understanding of the accuracy of the data to be gathered using appropriate alternative data sources, procedures, and instrumentation that is traceable to a recognized standard as described in Attachment 2, Table C2D of this appendix.

(4) Appropriate and sufficient data acquisition equipment or system(s), including appropriate data reduction and

analysis methods and techniques, acceptable to the FAA's Aircraft Certification Service.

b. The data, regardless of source, must be presented:

- (1) In a format that supports the FFS validation process;
- (2) In a manner that is clearly readable and annotated correctly and completely;
- (3) With resolution sufficient to determine compliance with the tolerances set forth in Attachment 2, Table C2A of this appendix.
- (4) With any necessary instructions or other details provided, such as Stability Augmentation System (SAS) or throttle position; and
- (5) Without alteration, adjustments, or bias. Data may be corrected to address known data calibration errors provided that an explanation of the methods used to correct the errors appears in the QTG. The corrected data may be re-scaled, digitized, or otherwise manipulated to fit the desired presentation.

c. After completion of any additional flight test, a flight test report must be submitted in support of the validation data. The report must contain sufficient data and rationale to support qualification of the FFS at the level requested.

d. As required by § 60.13(f), the sponsor must notify the NSPM when it becomes aware that an addition to, an amendment to, or a revision of data that may relate to FFS performance or handling characteristics is available. The data referred to in this paragraph is data used to validate the performance, handling qualities, or other characteristics of the aircraft, including data related to any relevant changes occurring after the type certificate was issued. The sponsor must—

- (1) Within 10 calendar days, notify the NSPM of the existence of this data; and
- (2) Within 45 calendar days, notify the NSPM of—

(a) The schedule to incorporate this data into the FFS; or

(b) The reason for not incorporating this data into the FFS.

e. In those cases where the objective test results authorize a “snapshot test” or a “series of snapshot test results” in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the “snapshot.” The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

End QPS Requirements

Begin Information

f. The FFS sponsor is encouraged to maintain a liaison with the manufacturer of the aircraft being simulated (or with the holder of the aircraft type certificate for the aircraft being simulated if the manufacturer is no longer in business), and, if appropriate, with the person who supplied the aircraft data package for the FFS in order to facilitate the notification required by § 60.13(f).

g. It is the intent of the NSPM that for new aircraft entering service, at a point well in advance of preparation of the QTG, the sponsor should submit to the NSPM for approval, a descriptive document (see Table C2D, Sample Validation Data Roadmap for

Helicopters) containing the plan for acquiring the validation data, including data sources. This document should clearly identify sources of data for all required tests, a description of the validity of these data for a specific engine type and thrust rating configuration, and the revision levels of all avionics affecting the performance or flying qualities of the aircraft. Additionally, this document should provide other information, such as the rationale or explanation for cases where data or data parameters are missing, instances where engineering simulation data are used or where flight test methods require further explanations. It should also provide a brief narrative describing the cause and effect of any deviation from data requirements. The aircraft manufacturer may provide this document.

h. There is no requirement for any flight test data supplier to submit a flight test plan or program prior to gathering flight test data. However, the NSPM notes that inexperienced data gatherers often provide data that is irrelevant, improperly marked, or lacking adequate justification for selection. Other problems include inadequate information regarding initial conditions or test maneuvers. The NSPM has been forced to refuse these data submissions as validation data for an FFS evaluation. It is for this reason that the NSPM recommends that any data supplier not previously experienced in this area review the data necessary for programming and for validating the performance of the FFS, and discuss the flight test plan anticipated for acquiring such data with the NSPM well in advance of commencing the flight tests.

i. The NSPM will consider, on a case-by-case basis, whether to approve supplemental validation data derived from flight data recording systems such as a Quick Access Recorder or Flight Data Recorder.

End Information

10. Special Equipment and Personnel Requirements for Qualification of the FFS (§ 60.14)

Begin Information

a. In the event that the NSPM determines that special equipment or specifically qualified persons will be required to conduct an evaluation, the NSPM will make every attempt to notify the sponsor at least one (1) week, but in no case less than 72 hours, in advance of the evaluation. Examples of special equipment include spot photometers, flight control measurement devices, and sound analyzers. Examples of specially qualified personnel include individuals specifically qualified to install or use any special equipment when its use is required.

b. Examples of a special evaluation include an evaluation conducted after an FFS is moved, at the request of the TPAA, or as a result of comments received from users of the FFS that raise questions about the continued qualification or use of the FFS.

End Information

11. Initial (and Upgrade) Qualification Requirements (§ 60.15)

Begin QPS Requirements

a. In order to be qualified at a particular qualification level, the FFS must:

(1) Meet the general requirements listed in Attachment 1 of this appendix;

(2) Meet the objective testing requirements listed in Attachment 2 of this appendix; and

(3) Satisfactorily accomplish the subjective tests listed in Attachment 3 of this appendix.

b. The request described in § 60.15(a) must include all of the following:

(1) A statement that the FFS meets all of the applicable provisions of this part and all applicable provisions of the QPS.

(2) A confirmation that the sponsor will forward to the NSPM the statement described in § 60.15(b) in such time as to be received no later than 5 business days prior to the scheduled evaluation and may be forwarded to the NSPM via traditional or electronic means.

(3) A QTG, acceptable to the NSPM, that includes all of the following:

(a) Objective data obtained from aircraft testing or another approved source.

(b) Correlating objective test results obtained from the performance of the FFS as prescribed in the appropriate QPS.

(c) The result of FFS subjective tests prescribed in the appropriate QPS.

(d) A description of the equipment necessary to perform the evaluation for initial qualification and the continuing qualification evaluations.

c. The QTG described in paragraph (a)(3) of this section, must provide the documented proof of compliance with the simulator objective tests in Attachment 2, Table C2A of this appendix.

d. The QTG is prepared and submitted by the sponsor, or the sponsor's agent on behalf of the sponsor, to the NSPM for review and approval, and must include, for each objective test:

(1) Parameters, tolerances, and flight conditions.

(2) Pertinent and complete instructions for the conduct of automatic and manual tests.

(3) A means of comparing the FFS test results to the objective data.

(4) Any other information as necessary, to assist in the evaluation of the test results.

(5) Other information appropriate to the qualification level of the FFS.

e. The QTG described in paragraphs (a)(3) and (b) of this section, must include the following:

(1) A QTG cover page with sponsor and FAA approval signature blocks (see Attachment 4, Figure C4C, of this appendix, for a sample QTG cover page).

(2) A continuing qualification evaluation schedule requirements page. This page will be used by the NSPM to establish and record the frequency with which continuing qualification evaluations must be conducted and any subsequent changes that may be determined by the NSPM in accordance with § 60.19. See Attachment 4 of this appendix, Figure C4G, for a sample Continuing Qualification Evaluation Requirements page.

(3) An FFS information page that provides the information listed in this paragraph (see

Attachment 4, Figure C4B, of this appendix for a sample FFS information page). For convertible FFSs, the sponsor must submit a separate page for each configuration of the FFS.

(a) The sponsor's FFS identification number or code.

(b) The helicopter model and series being simulated.

(c) The aerodynamic data revision number or reference.

(d) The source of the basic aerodynamic model and the aerodynamic coefficient data used to modify the basic model.

(e) The engine model(s) and its data revision number or reference.

(f) The flight control data revision number or reference.

(g) The flight management system identification and revision level.

(h) The FFS model and manufacturer.

(i) The date of FFS manufacture.

(j) The FFS computer identification.

(k) The visual system model and manufacturer, including display type.

(l) The motion system type and manufacturer, including degrees of freedom.

(4) A Table of Contents.

(5) A log of revisions and a list of effective pages.

(6) List of all relevant data references.

(7) A glossary of terms and symbols used (including sign conventions and units).

(8) Statements of compliance and capability (SOCs) with certain requirements.

(9) Recording procedures or equipment required to accomplish the objective tests.

(10) The following information for each objective test designated in Attachment 2 of this appendix, Table C2A, as applicable to the qualification level sought:

(a) Name of the test.

(b) Objective of the test.

(c) Initial conditions.

(d) Manual test procedures.

(e) Automatic test procedures (if applicable).

(f) Method for evaluating FFS objective test results.

(g) List of all relevant parameters driven or constrained during the automatically conducted test(s).

(h) List of all relevant parameters driven or constrained during the manually conducted test(s).

(i) Tolerances for relevant parameters.

(j) Source of Validation Data (document and page number).

(k) Copy of the Validation Data (if located in a separate binder, a cross reference for the identification and page number for pertinent data location must be provided).

(l) Simulator Objective Test Results as obtained by the sponsor. Each test result must reflect the date completed and must be clearly labeled as a product of the device being tested.

f. A convertible FFS is addressed as a separate FFS for each model and series helicopter to which it will be converted and for the FAA qualification level sought. If a sponsor seeks qualification for two or more models of a helicopter type using a convertible FFS, the sponsor must submit a QTG for each helicopter model, or a QTG for the first helicopter model and a supplement

to that QTG for each additional helicopter model. The NSPM will conduct evaluations for each helicopter model.

g. Form and manner of presentation of objective test results in the QTG:

(1) The sponsor's FFS test results must be recorded in a manner acceptable to the NSPM, that allows easy comparison of the FFS test results to the validation data (e.g., use of a multi-channel recorder, line printer, cross plotting, overlays, transparencies).

(2) FFS results must be labeled using terminology common to helicopter parameters as opposed to computer software identifications.

(3) Validation data documents included in a QTG may be photographically reduced only if such reduction will not alter the graphic scaling or cause difficulties in scale interpretation or resolution.

(4) Scaling on graphical presentations must provide the resolution necessary to evaluate the parameters shown in Attachment 2, Table C2A of this appendix.

(5) Tests involving time histories, data sheets (or transparencies thereof) and FFS test results must be clearly marked with appropriate reference points to ensure an accurate comparison between the FFS and the helicopter with respect to time. Time histories recorded via a line printer are to be clearly identified for cross plotting on the helicopter data. Over-plots must not obscure the reference data.

h. The sponsor may elect to complete the QTG objective and subjective tests at the manufacturer's facility or at the sponsor's training facility. If the tests are conducted at the manufacturer's facility, the sponsor must repeat at least one-third of the tests at the sponsor's training facility in order to substantiate FFS performance. The QTG must be clearly annotated to indicate when and where each test was accomplished. Tests conducted at the manufacturer's facility and at the sponsor's training facility must be conducted after the FFS is assembled with systems and sub-systems functional and operating in an interactive manner. The test results must be submitted to the NSPM.

i. The sponsor must maintain a copy of the MQTG at the FFS location.

j. All FFSs for which the initial qualification is conducted after May 30, 2014, must have an electronic MQTG (eMQTG) including all objective data obtained from helicopter testing, or another approved source (reformatted or digitized), together with correlating objective test results obtained from the performance of the FFS (reformatted or digitized) as prescribed in this appendix. The eMQTG must also contain the general FFS performance or demonstration results (reformatted or digitized) prescribed in this appendix, and a description of the equipment necessary to perform the initial qualification evaluation and the continuing qualification evaluations. The eMQTG must include the original validation data used to validate FFS performance and handling qualities in either the original digitized format from the data supplier or an electronic scan of the original time-history plots that were provided by the data supplier. A copy of the eMQTG must be provided to the NSPM.

k. All other FFSs not covered in subparagraph “j” must have an electronic copy of the MQTG by May 30, 2014. An electronic copy of the MQTG must be provided to the NSPM. This may be provided by an electronic scan presented in a Portable Document File (PDF), or similar format acceptable to the NSPM.

l. During the initial (or upgrade) qualification evaluation conducted by the NSPM, the sponsor must also provide a person who is a user of the device (e.g., a qualified pilot or instructor pilot with flight time experience in that aircraft) and knowledgeable about the operation of the aircraft and the operation of the FFS.

End QPS Requirements

Begin Information

m. Only those FFSs that are sponsored by a certificate holder as defined in Appendix F of this part will be evaluated by the NSPM. However, other FFS evaluations may be conducted on a case-by-case basis as the Administrator deems appropriate, but only in accordance with applicable agreements.

n. The NSPM will conduct an evaluation for each configuration, and each FFS must be evaluated as completely as possible. To ensure a thorough and uniform evaluation, each FFS is subjected to the general simulator requirements in Attachment 1 of this appendix, the objective tests listed in Attachment 2 of this appendix, and the subjective tests listed in Attachment 3 of this appendix. The evaluations described herein will include, but not necessarily be limited to the following:

(1) Helicopter responses, including longitudinal and lateral-directional control responses (see Attachment 2 of this appendix).

(2) Performance in authorized portions of the simulated helicopter's operating envelope, to include tasks evaluated by the NSPM in the areas of surface operations, takeoff, climb, cruise, descent, approach, and landing as well as abnormal and emergency operations (see Attachment 2 of this appendix).

(3) Control checks (see Attachment 1 and Attachment 2 of this appendix).

(4) Flight deck configuration (see Attachment 1 of this appendix).

(5) Pilot, flight engineer, and instructor station functions checks (see Attachment 1 and Attachment 3 of this appendix).

(6) Helicopter systems and sub-systems (as appropriate) as compared to the helicopter simulated (see Attachment 1 and Attachment 3 of this appendix).

(7) FFS systems and sub-systems, including force cueing (motion), visual, and aural (sound) systems, as appropriate (see Attachment 1 and Attachment 2 of this appendix).

(8) Certain additional requirements, depending upon the qualification level sought, including equipment or circumstances that may become hazardous to the occupants. The sponsor may be subject to Occupational Safety and Health Administration requirements.

o. The NSPM administers the objective and subjective tests, which includes an

examination of functions. The tests include a qualitative assessment of the FFS by an NSP pilot. The NSP evaluation team leader may assign other qualified personnel to assist in accomplishing the functions examination and/or the objective and subjective tests performed during an evaluation when required.

(1) Objective tests provide a basis for measuring and evaluating FFS performance and determining compliance with the requirements of this part.

(2) Subjective tests provide a basis for:

(a) Evaluating the capability of the FFS to perform over a typical utilization period;

(b) Determining that the FFS satisfactorily simulates each required task;

(c) Verifying correct operation of the FFS controls, instruments, and systems; and

(d) Demonstrating compliance with the requirements of this part.

p. The tolerances for the test parameters listed in Attachment 2 of this appendix reflect the range of tolerances acceptable to the NSPM for FFS validation and are not to be confused with design tolerances specified for FFS manufacture. In making decisions regarding tests and test results, the NSPM relies on the use of operational and engineering judgment in the application of data (including consideration of the way in which the flight test was flown and way the data was gathered and applied), data presentations, and the applicable tolerances for each test.

q. In addition to the scheduled continuing qualification evaluation, each FFS is subject to evaluations conducted by the NSPM at any time without prior notification to the sponsor. Such evaluations would be accomplished in a normal manner (i.e., requiring exclusive use of the FFS for the conduct of objective and subjective tests and an examination of functions) if the FFS is not being used for flight crewmember training, testing, or checking. However, if the FFS were being used, the evaluation would be conducted in a non-exclusive manner. This non-exclusive evaluation will be conducted by the FFS evaluator accompanying the check airman, instructor, Aircrew Program Designee (APD), or FAA inspector aboard the FFS along with the student(s) and observing the operation of the FFS during the training, testing, or checking activities.

r. Problems with objective test results are handled as follows:

(1) If a problem with an objective test result is detected by the NSP evaluation team during an evaluation, the test may be repeated or the QTG may be amended.

(2) If it is determined that the results of an objective test do not support the level requested but do support a lower level, the NSPM may qualify the FFS at that lower level. For example, if a Level D evaluation is requested and the FFS fails to meet sound test tolerances, it could be qualified at Level C.

s. After an FFS is successfully evaluated, the NSPM issues a certificate of qualification (COQ) to the sponsor. The NSPM recommends the FFS to the TPAA, who will approve the FFS for use in a flight training program. The COQ will be issued at the satisfactory conclusion of the initial or

continuing qualification evaluation and will list the tasks for which the FFS is qualified, referencing the tasks described in Table C1B in Attachment 1 of this appendix. However, it is the sponsor's responsibility to obtain TPAA approval prior to using the FFS in an FAA-approved flight training program.

t. Under normal circumstances, the NSPM establishes a date for the initial or upgrade evaluation within ten (10) working days after determining that a complete QTG is acceptable. Unusual circumstances may warrant establishing an evaluation date before this determination is made. A sponsor may schedule an evaluation date as early as 6 months in advance. However, there may be a delay of 45 days or more in rescheduling and completing the evaluation if the sponsor is unable to meet the scheduled date. See Attachment 4, of this appendix, Figure C4A, Sample Request for Initial, Upgrade, or Reinstatement Evaluation.

u. The numbering system used for objective test results in the QTG should closely follow the numbering system set out in Attachment 2, FFS Objective Tests, Table C2A of this appendix.

v. Contact the NSPM or visit the NSPM Web site for additional information regarding the preferred qualifications of pilots used to meet the requirements of § 60.15(d).

w. Examples of the exclusions for which the FFS might not have been subjectively tested by the sponsor or the NSPM and for which qualification might not be sought or granted, as described in § 60.15(g)(6), include takeoffs and landing from slopes and pinnacles.

End Information

12. Additional Qualifications for a Currently Qualified FFS (§ 60.16)

No additional regulatory or informational material applies to § 60.16, Additional Qualifications for a Currently Qualified FFS.

13. Previously Qualified FFSs (§ 60.17)

Begin QPS Requirements

a. In instances where a sponsor plans to remove an FFS from active status for a period of less than two years, the following procedures apply:

(1) The NSPM must be notified in writing and the notification must include an estimate of the period that the FFS will be inactive.

(2) Continuing Qualification evaluations will not be scheduled during the inactive period.

(3) The NSPM will remove the FFS from the list of qualified FSTDs on a mutually established date not later than the date on which the first missed continuing qualification evaluation would have been scheduled.

(4) Before the FFS is restored to qualified status, it must be evaluated by the NSPM. The evaluation content and the time required to accomplish the evaluation is based on the number of continuing qualification evaluations and sponsor-conducted quarterly inspections missed during the period of inactivity.

(5) The sponsor must notify the NSPM of any changes to the original scheduled time out of service.

b. Simulators qualified prior to May 30, 2008, are not required to meet the general simulation requirements, the objective test requirements, and the subjective test requirements of attachments 1, 2, and 3, of this appendix as long as the simulator continues to meet the test requirements contained in the MQTG developed under the original qualification basis.

c. After May 30, 2009, each visual scene or airport model beyond the minimum required for the FFS qualification level that is installed in and available for use in a qualified FFS must meet the requirements described in Attachment 3 of this appendix.

d. Simulators qualified prior to May 30, 2008, may be updated. If an evaluation is deemed appropriate or necessary by the NSPM after such an update, the evaluation will not require an evaluation to standards beyond those against which the simulator was originally qualified.

End QPS Requirements

Begin Information

e. Other certificate holders or persons desiring to use an FFS may contract with FFS sponsors to use FFSs previously qualified at a particular level for a helicopter type and approved for use within an FAA-approved flight training program. Such FFSs are not required to undergo an additional qualification process, except as described in § 60.16.

f. Each FFS user must obtain approval from the appropriate TPAA to use any FFS in an FAA-approved flight training program.

g. The intent of the requirement listed in § 60.17(b), for each FFS to have an SOQ within 6 years, is to have the availability of that statement (including the configuration list and the limitations to authorizations) to provide a complete picture of the FFS inventory regulated by the FAA. The issuance of the statement will not require any additional evaluation or require any adjustment to the evaluation basis for the FFS.

h. Downgrading of an FFS is a permanent change in qualification level and will necessitate the issuance of a revised SOQ to reflect the revised qualification level, as appropriate. If a temporary restriction is placed on an FFS because of a missing, malfunctioning, or inoperative component or on-going repairs, the restriction is not a permanent change in qualification level. Instead, the restriction is temporary and is removed when the reason for the restriction has been resolved.

i. The NSPM will determine the evaluation criteria for an FFS that has been removed from active status. The criteria will be based on the number of continuing qualification evaluations and quarterly inspections missed during the period of inactivity. For example, if the FFS were out of service for a 1 year period, it would be necessary to complete the entire QTG, since all of the quarterly evaluations would have been missed. The NSPM will also consider how the FFS was

stored, whether parts were removed from the FFS and whether the FFS was disassembled.

j. The FFS will normally be requalified using the FAA-approved MQTG and the criteria that was in effect prior to its removal from qualification. However, inactive periods of 2 years or more will require requalification under the standards in effect and current at the time of requalification.

End Information

14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements (§ 60.19)

Begin QPS Requirements

a. The sponsor must conduct a minimum of four evenly spaced inspections throughout the year. The objective test sequence and content of each inspection must be developed by the sponsor and must be acceptable to the NSPM.

b. The description of the functional preflight check must be contained in the sponsor's QMS.

c. Record "functional preflight" in the FFS discrepancy log book or other acceptable location, including any item found to be missing, malfunctioning, or inoperative.

d. During the continuing qualification evaluation conducted by the NSPM, the sponsor must also provide a person knowledgeable about the operation of the aircraft and the operation of the FFS.

e. The NSPM will conduct continuing qualification evaluations every 12 months unless:

(1) The NSPM becomes aware of discrepancies or performance problems with the device that warrants more frequent evaluations; or

(2) The sponsor implements a QMS that justifies less frequent evaluations. However, in no case shall the frequency of a continuing qualification evaluation exceed 36 months.

End QPS Requirements

Begin Information

f. The sponsor's test sequence and the content of each quarterly inspection required in § 60.19(a)(1) should include a balance and a mix from the objective test requirement areas listed as follows:

- (1) Performance.
- (2) Handling qualities.
- (3) Motion system (where appropriate).
- (4) Visual system (where appropriate).
- (5) Sound system (where appropriate).
- (6) Other FFS systems.

g. If the NSP evaluator plans to accomplish specific tests during a normal continuing qualification evaluation that requires the use of special equipment or technicians, the sponsor will be notified as far in advance of the evaluation as practical; but not less than 72 hours. Examples of such tests include latencies, control dynamics, sounds and vibrations, motion, and/or some visual system tests.

h. The continuing qualification evaluations, described in § 60.19(b), will normally require 4 hours of FFS time.

However, flexibility is necessary to address abnormal situations or situations involving aircraft with additional levels of complexity (e.g., computer controlled aircraft). The sponsor should anticipate that some tests may require additional time. The continuing qualification evaluations will consist of the following:

(1) Review of the results of the quarterly inspections conducted by the sponsor since the last scheduled continuing qualification evaluation.

(2) A selection of approximately 8 to 15 objective tests from the MQTG that provide an adequate opportunity to evaluate the performance of the FFS. The tests chosen will be performed either automatically or manually and should be able to be conducted within approximately one-third (1/3) of the allotted FFS time.

(3) A subjective evaluation of the FFS to perform a representative sampling of the tasks set out in attachment 3 of this appendix. This portion of the evaluation should take approximately two-thirds (2/3) of the allotted FFS time.

(4) An examination of the functions of the FFS may include the motion system, visual system, sound system, instructor operating station, and the normal functions and simulated malfunctions of the simulated helicopter systems. This examination is normally accomplished simultaneously with the subjective evaluation requirements.

End Information

15. Logging FFS Discrepancies (§ 60.20)

Begin Information

No additional regulatory or informational material applies to § 60.20. Logging FFS Discrepancies.

End Information

16. Interim Qualification of FFSs for New Helicopter Types or Models (§ 60.21)

Begin Information

No additional regulatory or informational material applies to § 60.21, Interim Qualification of FFSs for New Helicopter Types or Models.

End Information

17. Modifications to FFSs (§ 60.23)

Begin QPS Requirements

a. The notification described in § 60.23(c)(2) must include a complete description of the planned modification, with a description of the operational and engineering effect the proposed modification will have on the operation of the FFS and the results that are expected with the modification incorporated.

b. Prior to using the modified FFS:

(1) All the applicable objective tests completed with the modification

incorporated, including any necessary updates to the MQTG (e.g., accomplishment of FSTD Directives) must be acceptable to the NSPM; and

(2) The sponsor must provide the NSPM with a statement signed by the MR that the factors listed in § 60.15(b) are addressed by the appropriate personnel as described in that section.

End QPS Requirements

Begin Information

(3) FSTD Directives are considered modifications of an FFS. See Attachment 4 of this appendix for a sample index of effective FSTD Directives. See Attachment 6 of this appendix for a list of all effective FSTD Directives applicable to Helicopter FFSs.

End Information

18. Operation with Missing, Malfunctioning, or Inoperative Components (§ 60.25)

Begin Information

a. The sponsor's responsibility with respect to § 60.25(a) is satisfied when the sponsor fairly and accurately advises the user of the current status of an FFS, including any missing, malfunctioning, or inoperative (MMI) component(s).

b. It is the responsibility of the instructor, check airman, or representative of the administrator conducting training, testing, or checking to exercise reasonable and prudent judgment to determine if any MMI component is necessary for the satisfactory completion of a specific maneuver, procedure, or task.

c. If the 29th or 30th day of the 30-day period described in § 60.25(b) is on a Saturday, a Sunday, or a holiday, the FAA will extend the deadline until the next business day.

d. In accordance with the authorization described in § 60.25(b), the sponsor may develop a discrepancy prioritizing system to accomplish repairs based on the level of impact on the capability of the FFS. Repairs having a larger impact on FFS capability to provide the required training, evaluation, or flight experience will have a higher priority for repair or replacement.

End Information

19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27)

Begin Information

If the sponsor provides a plan for how the FFS will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic

fluid; control of the environmental factors in which the FFS is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing required for requalification.

End Information

20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29)

Begin Information

If the sponsor provides a plan for how the FFS will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FFS is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing required for requalification.

End Information

21. Record Keeping and Reporting (§ 60.31)

Begin QPS Requirements

a. FFS modifications can include hardware or software changes. For FFS modifications involving software programming changes, the record required by § 60.31(a)(2) must consist of the name of the aircraft system software, aerodynamic model, or engine model change, the date of the change, a summary of the change, and the reason for the change.

b. If a coded form for record keeping is used, it must provide for the preservation and retrieval of information with appropriate security or controls to prevent the inappropriate alteration of such records after the fact.

End QPS Requirements

22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33)

Begin Information

No additional regulatory or informational material applies to § 60.33, Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements.

23. [Reserved]

24. [Reserved]

25. FFS Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37)

No additional regulatory or informational material applies to § 60.37, FFS Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA).

End Information

Attachment 1 to Appendix C to Part 60—GENERAL SIMULATOR REQUIREMENTS

Begin QPS Requirements

1. Requirements

a. Certain requirements included in this appendix must be supported with an SOC as defined in Appendix F of this part, which may include objective and subjective tests. The requirements for SOC's are indicated in the "General Simulator Requirements" column in Table C1A of this appendix.

b. Table C1A describes the requirements for the indicated level of FFS. Many devices include operational systems or functions that exceed the requirements outlined in this section. However, all systems will be tested and evaluated in accordance with this appendix to ensure proper operation.

End QPS Requirements

Begin Information

2. Discussion

a. This attachment describes the general simulator requirements for qualifying a helicopter FFS. The sponsor should also consult the objective tests in Attachment 2 of this appendix and the examination of functions and subjective tests listed in Attachment 3 of this appendix to determine the complete requirements for a specific level simulator.

b. The material contained in this attachment is divided into the following categories:

- (1) General flight deck configuration.
- (2) Simulator programming.
- (3) Equipment operation.
- (4) Equipment and facilities for instructor/evaluator functions.
- (5) Motion system.
- (6) Visual system.
- (7) Sound system.

c. Table C1A provides the standards for the General Simulator Requirements.

d. Table C1B provides the tasks that the sponsor will examine to determine whether the FFS satisfactorily meets the requirements for flight crew training, testing, and experience, and provides the tasks for which the simulator may be qualified.

e. Table C1C provides the functions that an instructor/check airman must be able to control in the simulator.

f. It is not required that all of the tasks that appear on the List of Qualified Tasks (part of the SOQ) be accomplished during the initial or continuing qualification evaluation.

g. Table C1A addresses only Levels B, C, and D helicopter simulators because there are no Level A Helicopter simulators.

End Information

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS

Entry No.	QPS requirements	Simulator levels			Information
	General simulator requirements	B	C	D	Notes
1.	General Flight Deck Configuration				
1.a.	The simulator must have a flight deck that is a replica of the helicopter being simulated. The simulator must have controls, equipment, observable flight deck indicators, circuit breakers, and bulkheads properly located, functionally accurate and replicating the helicopter. The direction of movement of controls and switches must be identical to that in the helicopter. Pilot seats must afford the capability for the occupant to be able to achieve the design “eye position” established for the helicopter being simulated. Equipment for the operation of the flight deck windows must be included, but the actual windows need not be operable. Fire axes, extinguishers, and spare light bulbs must be available in the FFS but may be relocated to a suitable location as near as practical to the original position. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette.	X	X	X	For simulator purposes, the flight deck consists of all that space forward of a cross section of the fuselage at the most extreme aft setting of the pilots’ seats including additional, required flight crewmember duty stations and those required bulkheads aft of the pilot seats. For clarification, bulkheads containing only items such as landing gear pin storage compartments, fire axes and extinguishers, spare light bulbs, and aircraft documents pouches are not considered essential and may be omitted.
1.b.	Those circuit breakers that affect procedures or result in observable flight deck indications must be properly located and functionally accurate.	X	X	X	
2.	Programming				
2.a.	A flight dynamics model that accounts for various combinations of air speed and power normally encountered in flight must correspond to actual flight conditions, including the effect of change in helicopter attitude, aerodynamic and propulsive forces and moments, altitude, temperature, mass, center of gravity location, and configuration. An SOC is required	X	X	X	
2.b.	The simulator must have the computer capacity, accuracy, resolution, and dynamic response needed to meet the qualification level sought. An SOC is required	X	X	X	
2.c.	Ground handling (where appropriate) and aerodynamic programming must include the following:.				
2.c.1.	Ground effect Level B does not require hover programming An SOC is required	X	X	X	Applicable areas include flare and touch down from a running landing as well as for in-ground-effect (IGE) hover. A reasonable simulation of ground effect includes modeling of lift, drag, pitching moment, trim, and power while in ground effect.
2.c.2.	Ground reaction Level B does not require hover programming An SOC is required	X	X	X	Reaction of the helicopter upon contact with the landing surface during landing (e.g., strut deflection, tire or skid friction, side forces) may differ with changes in gross weight, airspeed, rate of descent on touchdown, and slide slip.
2.d.	The simulator must provide for manual and automatic testing of simulator hardware and software programming to determine compliance with simulator objective tests as prescribed in Attachment 2 of this appendix. An SOC is required		X	X	This may include an automated system, which could be used for conducting at least a portion of the QTG tests. Automatic “flagging” of out-of-tolerance situations is encouraged.

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

Entry No.	QPS requirements	Simulator levels			Information
	General simulator requirements	B	C	D	Notes
2.e.	The relative responses of the motion system, visual system, and flight deck instruments must be measured by latency tests or transport delay tests. Motion onset must occur before the end of the scan of that video field. Instrument response may not occur prior to motion onset. Test results must be within the following limits:				The intent is to verify that the simulator provides instrument, motion, and visual cues that are like the helicopter responses within the stated time delays. It is preferable motion onset occur before the start of the visual scene change (the start of the scan of the first video field containing different information). For helicopter response, acceleration in the appropriate corresponding rotational axis is preferred.
2.e.1.	Response must be within 150 milliseconds of the helicopter response.	X			
2.e.2.	Response must be within 100 milliseconds of the helicopter response.		X	X	
2.f.	The simulator must simulate brake and tire failure dynamics (including antiskid failure, if appropriate). An SOC is required.		X	X	The simulator should represent the motion (in the appropriate axes) and the directional control characteristics of the helicopter when experiencing simulated brake or tire failures.
2.g.	The aerodynamic modeling in the simulator must include: (1) Ground effect, (2) Effects of airframe and rotor icing (if applicable), (3) Aerodynamic interference effects between the rotor wake and fuselage, (4) Influence of the rotor on control and stabilization systems, (5) Representations of settling with power, and (6) Retreating blade stall. An SOC is required.		X	X	See Attachment 2 of this appendix for further information on ground effect.
2.h.	The simulator must provide for realistic mass properties, including gross weight, center of gravity, and moments of inertia as a function of payload and fuel loading. An SOC is required.	X	X	X	
3.	Equipment Operation				
3.a.	All relevant instrument indications involved in the simulation of the helicopter must automatically respond to control movement or external disturbances to the simulated helicopter; e.g., turbulence or windshear. Numerical values must be presented in the appropriate units.	X	X	X	
3.b.	Communications, navigation, caution, and warning equipment must be installed and operate within the tolerances applicable for the helicopter being simulated.	X	X	X	See Attachment 3 of this appendix for further information regarding long-range navigation equipment.
3.c.	Simulated helicopter systems must operate as the helicopter systems operate under normal, abnormal, and emergency operating conditions on the ground and in flight.	X	X	X	
3.d.	The simulator must provide pilot controls with control forces and control travel that correspond to the simulated helicopter. The simulator must also react in the same manner as the helicopter under the same flight conditions.	X	X	X	

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

Entry No.	QPS requirements	Simulator levels			Information
	General simulator requirements	B	C	D	Notes
3.e.	Simulator control feel dynamics must replicate the helicopter simulated. This must be determined by comparing a recording of the control feel dynamics of the simulator to helicopter measurements. For initial and upgrade evaluations, the control dynamic characteristics must be measured and recorded directly from the flight deck controls, and must be accomplished in takeoff, cruise, and landing conditions and configurations.		X	X	
4.	Instructor/Evaluator Facilities				
4.a.	In addition to the flight crewmember stations, the simulator must have at least two suitable seats for the instructor/check airman and FAA inspector. These seats must provide adequate vision to the pilot's panel and forward windows. All seats other than flight crew seats need not represent those found in the helicopter but must be adequately secured to the floor and equipped with similar positive restraint devices.	X	X	X	The NSPM will consider alternatives to this standard for additional seats based on unique flight deck configurations.
4.b.	The simulator must have controls that enable the instructor/evaluator to control all required system variables and insert all abnormal or emergency conditions into the simulated helicopter systems as described in the sponsor's FAA-approved training program, or as described in the relevant operating manual as appropriate.	X	X	X	
4.c.	The simulator must have instructor controls for all environmental effects expected to be available at the IOS; e.g., clouds, visibility, icing, precipitation, temperature, storm cells, and wind speed and direction.	X	X	X	
4.d.	The simulator must provide the instructor or evaluator the ability to present ground and air hazards.		X	X	For example, another aircraft crossing the active runway and converging airborne traffic.
4.e.	The simulator must provide the instructor or evaluator the ability to present the effect of re-circulating dust, water vapor, or snow conditions that develop as a result of rotor downwash.		X	X	This is a selectable condition that is not required for all operations on or near the surface.
5.	Motion System				
5.a.	The simulator must have motion (force) cues perceptible to the pilot that are representative of the motion in a helicopter.	X	X	X	For example, touchdown cues should be a function of the rate of descent (RoD) of the simulated helicopter.
5.b.	The simulator must have a motion (force cueing) system with a minimum of three degrees of freedom (at least pitch, roll, and heave). An SOC is required.	X			
5.c.	The simulator must have a motion (force cueing) system that produces cues at least equivalent to those of a six-degrees-of-freedom, synergistic platform motion system (i.e., pitch, roll, yaw, heave, sway, and surge). An SOC is required.		X	X	
5.d.	The simulator must provide for the recording of the motion system response time. An SOC is required.	X	X	X	
5.e.	The simulator must provide motion effects programming to include the following: (1) Runway rumble, oleo deflections, effects of ground speed, uneven runway, characteristics. (2) Buffets due to transverse flow effects. (3) Buffet during extension and retraction of landing gear.	X	X	X	

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

Entry No.	QPS requirements	Simulator levels			Information
	General simulator requirements	B	C	D	Notes
	(4) Buffet due to retreating blade stall. (5) Buffet due to vortex ring (settling with power). (6) Representative cues resulting from touchdown. (7) High speed rotor vibrations. (8) Tire failure dynamics (9) Engine malfunction and engine damage (10) Airframe ground strike (11) Motion vibrations that result from atmospheric disturbances.		X	X	For air turbulence, general purpose disturbance models are acceptable if, when used, they produce test results that approximate demonstrable flight test data.
5.f.	The simulator must provide characteristic motion vibrations that result from operation of the helicopter (for example, retreating blade stall, extended landing gear, settling with power) in so far as vibration marks an event or helicopter state, which can be sensed in the flight deck.			X	The simulator should be programmed and instrumented in such a manner that the characteristic buffet modes can be measured and compared to helicopter data.
6.	Visual System				Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained.
6.a.	The simulator must have a visual system providing an out-of-the-flight deck view.	X	X	X	
6.b.	The simulator must provide a continuous field-of-view of at least 75° horizontally and 30° vertically per pilot seat. Both pilot seat visual systems must be operable simultaneously. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC must explain the geometry of the installation. An SOC is required.	X			
6.c.	The simulator must provide a continuous visual field-of-view of at least 146° horizontally and 36° vertically per pilot seat. Both pilot seat visual systems must be operable simultaneously. Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC must explain the geometry of the installation. Capability for a field-of-view in excess of the minimum is not required for qualification at Level C. However, where specific tasks require extended fields of view beyond the 146° by 36° (e.g., to accommodate the use of "chin windows" where the accommodation is either integral with or separate from the primary visual system display), then the extended fields of view must be provided. When considering the installation and use of augmented fields of view, the sponsor must meet with the NSPM to determine the training, testing, checking, and experience tasks for which the augmented field-of-view capability may be required. An SOC is required.		X		Optimization of the vertical field-of-view may be considered with respect to the specific helicopter flight deck cut-off angle. The sponsor may request the NSPM to evaluate the FFS for specific authorization(s) for the following: (1) Specific areas within the database needing higher resolution to support landings, take-offs and ground cushion exercises and training away from a heliport, including elevated heliport, helidecks and confined areas. (2) For cross-country flights, sufficient scene details to allow for ground to map navigation over a sector length equal to 30 minutes at an average cruise speed. (3) For offshore airborne radar approaches (ARA), harmonized visual/radar representations of installations.

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

Entry No.	QPS requirements	Simulator levels			Information
		B	C	D	
	General simulator requirements				Notes
6.d.	The simulator must provide a continuous visual field-of-view of at least 176° horizontally and 56° vertically per pilot seat. Both pilot seat visual systems must be operable simultaneously. Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. The minimum horizontal field-of-view coverage must be plus and minus one-half (1/2) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. An SOC must explain the geometry of the installation. Capability for a field-of-view in excess of the minimum is not required for qualification at Level D. However, where specific tasks require extended fields of view beyond the 176° by 56° (e.g., to accommodate the use of "chin windows" where the accommodation is either integral with or separate from the primary visual system display), then the extended fields of view must be provided. When considering the installation and use of augmented fields of view, the sponsor must meet with the NSPM to determine the training, testing, checking, and experience tasks for which the augmented field-of-view capability may be required. An SOC is required.			X	Optimization of the vertical field-of-view may be considered with respect to the specific helicopter flight deck cut-off angle. The sponsor may request the NSPM to evaluate the FFS for specific authorization(s) for the following: (1) Specific areas within the database needing higher resolution to support landings, take-offs and ground cushion exercises and training away from a heliport, including elevated heliport, helidecks and confined areas. (2) For cross-country flights, sufficient scene details to allow for ground to map navigation over a sector length equal to 30 minutes at an average cruise speed. (3) For offshore airborne radar approaches (ARA), harmonized visual/radar representations of installations.
6.e.	The visual system must be free from optical discontinuities and artifacts that create non-realistic cues.	X	X	X	Nonrealistic cues might include image "swimming" and image "roll-off," that may lead a pilot to make incorrect assessments of speed, acceleration and/or situational awareness.
6.f.	The simulator must have operational landing lights for night scenes. Where used, dusk (or twilight) scenes require operational landing lights..	X	X	X	
6.g.	The simulator must have instructor controls for the following: (1) Visibility in statute miles (kilometers) and runway visual range (RVR) in ft. (meters). (2) Airport or landing area selection (3) Airport or landing area lighting	X	X	X	
6.h.	Each airport scene displayed must include the following: (1) Airport runways and taxiways (2) Runway definition (a) Runway surface and markings (b) Lighting for the runway in use, including runway threshold, edge, centerline, touchdown zone, VASI (or PAPI), and approach lighting of appropriate colors, as appropriate (c) Taxiway lights	X	X	X	
6.i.	The simulator must provide visual system compatibility with dynamic response programming.	X	X	X	
6.j.	The simulator must show that the segment of the ground visible from the simulator flight deck is the same as from the helicopter flight deck (within established tolerances) when at the correct airspeed and altitude above the touchdown zone.	X	X	X	This will show the modeling accuracy of the scene with respect to a predetermined position from the end of the runway "in use."
6.k.	The simulator must provide visual cues necessary to assess rate of change of height, height AGL, and translational displacement and rates during takeoffs and landings.	X			

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

Entry No.	QPS requirements	Simulator levels			Information
	General simulator requirements	B	C	D	Notes
6.l.	The simulator must provide visual cues necessary to assess rate of change of height, height AGL, as well as translational displacement and rates during takeoff, low altitude/low airspeed maneuvering, hover, and landing.		X	X	
6.m.	The simulator must provide for accurate portrayal of the visual environment relating to the simulator attitude.	X	X	X	Visual attitude vs. simulator attitude is a comparison of pitch and roll of the horizon as displayed in the visual scene compared to the display on the attitude indicator.
6.n.	The simulator must provide for quick confirmation of visual system color, RVR, focus, and intensity. An SOC is required.		X	X	
6.o.	The simulator must be capable of producing at least 10 levels of occulting.		X	X	
6.p.	Night Visual Scenes. The simulator must provide night visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Night scenes, as a minimum, must provide presentations of sufficient surfaces with appropriate textural cues that include self-illuminated objects such as road networks, ramp lighting, and airport signage, to conduct a visual approach, a landing, and airport movement (taxi). Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by helicopter landing lights.	X	X	X	
6.q.	Dusk (Twilight) Visual Scenes. The simulator must provide dusk (or twilight) visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. Dusk (or twilight) scenes, as a minimum, must provide full color presentations of reduced ambient intensity, sufficient surfaces with appropriate textural cues that include self-illuminated objects such as road networks, ramp lighting and airport signage, to conduct a visual approach, landing and airport movement (taxi). Scenes must include a definable horizon and typical terrain characteristics such as fields, roads and bodies of water and surfaces illuminated by representative aircraft lighting (e.g., landing lights). If provided, directional horizon lighting must have correct orientation and be consistent with surface shading effects. Total scene content must be comparable in detail to that produced by 10,000 visible textured surfaces and 15,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. An SOC is required.		X	X	

TABLE C1A.—MINIMUM SIMULATOR REQUIREMENTS—Continued

Entry No.	QPS requirements		Simulator levels			Information
	General simulator requirements		B	C	D	Notes
6.r.	Daylight Visual Scenes. The simulator must have daylight visual scenes with sufficient scene content to recognize the airport, the terrain, and major landmarks around the airport. The scene content must allow a pilot to successfully accomplish a visual landing. No ambient lighting may “washout” the displayed visual scene. Total scene content must be comparable in detail to that produced by 10,000 visible textured surfaces and 6,000 visible lights with sufficient system capacity to display 16 simultaneously moving objects. The visual display must be free of apparent and distracting quantization and other distracting visual effects while the simulator is in motion. An SOC is required.			X	X	
6.s.	The simulator must provide operational visual scenes that portray physical relationships known to cause landing illusions to pilots.			X	X	For example: short runways, landing approaches over water, uphill or downhill runways, rising terrain on the approach path, unique topographic features.
6.t.	The simulator must provide special weather representations of light, medium, and heavy precipitation near a thunderstorm on takeoff and during approach and landing. Representations need only be presented at and below an altitude of 2,000 ft. (610 m) above the airport surface and within 10 miles (16 km) of the airport.			X	X	
6.u.	The simulator must present visual scenes of wet and snow-covered runways, including runway lighting reflections for wet conditions, and partially obscured lights for snow conditions.			X	X	The NSPM will consider suitable alternative effects.
6.v.	The simulator must present realistic color and directionality of all airport lighting.			X	X	
7.	Sound System					
7.a.	The simulator must provide flight deck sounds that result from pilot actions that correspond to those that occur in the helicopter.		X	X	X	
7.b.	Volume control, if installed, must have an indication of the sound level setting.		X	X	X	
7.c.	The simulator must accurately simulate the sound of precipitation, windshield wipers, and other significant helicopter noises perceptible to the pilot during normal and abnormal operations, and include the sound of a crash (when the simulator is landed in an unusual attitude or in excess of the structural gear limitations); normal engine sounds; and the sounds of gear extension and retraction. An SOC is required.			X	X	
7.d.	The simulator must provide realistic amplitude and frequency of flight deck noises and sounds. Simulator performance must be recorded, compared to amplitude and frequency of the same sounds recorded in the helicopter, and made a part of the QTG.				X	

TABLE C1B.—TABLE OF TASKS VS. SIMULATOR LEVEL

QPS requirements					Information
Entry No.	Subjective requirements The simulator must be able to perform the tasks associated with that level of qualification.	Simulator levels			Notes
		B	C	D	
1. Preflight Procedures					
1.a.	Preflight Inspection (Flight deck Only) switches, indicators, systems, and equipment.	X	X	X	
1.b.	APU/Engine start and run-up.				
1.b.1. ...	Normal start procedures	X	X	X	
1.b.2. ...	Alternate start procedures	X	X	X	
1.b.3. ...	Abnormal starts and shutdowns (hot start, hung start)	X	X	X	
1.c.	Taxiing—Ground	X	X	X	
1.d.	Taxiing—Hover	X	X	X	
1.e.	Pre-takeoff Checks	X	X	X	
2. Takeoff and Departure Phase					
2.a.	Normal takeoff.				
2.a.1. ...	From ground	X	X	X	
2.a.2. ...	From hover		X	X	
2.a.3. ...	Running	X	X	X	
2.b.	Instrument	X	X	X	
2.c.	Powerplant Failure During Takeoff	X	X	X	
2.d.	Rejected Takeoff	X	X	X	
2.e.	Instrument Departure	X	X	X	
3. Climb					
3.a.	Normal	X	X	X	
3.b.	Obstacle clearance	X	X	X	
3.c.	Vertical	X	X	X	
3.d.	One engine inoperative	X	X	X	
4. In-flight Maneuvers					
4.a.	Turns (timed, normal, steep)	X	X	X	
4.b.	Powerplant Failure—Multiengine Helicopters	X	X	X	
4.c.	Powerplant Failure—Single-Engine Helicopters	X	X	X	
4.d.	Recovery From Unusual Attitudes	X	X	X	
4.e.	Settling with Power	X	X	X	
4.f.	Specific Flight Characteristics incorporated into the user’s FAA approved flight training program.	A	A	A	
5. Instrument Procedures					
5.a.	Instrument Arrival	X	X	X	
5.b.	Holding	X	X	X	
5.c.	Precision Instrument Approach.				

TABLE C1B.—TABLE OF TASKS VS. SIMULATOR LEVEL—Continued

QPS requirements					Information
Entry No.	Subjective requirements The simulator must be able to perform the tasks associated with that level of qualification.	Simulator levels			Notes
		B	C	D	
5.c.1. ...	Normal—All engines operating	X	X	X	
5.c.2. ...	Manually controlled—One or more engines inoperative	X	X	X	
5.d.	Non-precision Instrument Approach	X	X	X	
5.e.	Missed Approach.				
5.e.1. ...	All engines operating	X	X	X	
5.e.2. ...	One or more engines inoperative	X	X	X	
5.e.3. ...	Stability augmentation system failure	X	X	X	
6. Landings and Approaches to Landings					
6.a.	Visual Approaches (normal, steep, shallow)	X	X	X	
6.b.	Landings.				
6.b.1. ...	Normal/crosswind.				
6.b.1.a.	Running	X	X	X	
6.b.1.b.	From Hover		X	X	
6.b.2. ...	One or more engines inoperative	X	X	X	
6.b.3. ...	Rejected Landing	X	X	X	
7. Normal and Abnormal Procedures					
7.a.	Powerplant	X	X	X	
7.b.	Fuel System	X	X	X	
7.c.	Electrical System	X	X	X	
7.d.	Hydraulic System	X	X	X	
7.e.	Environmental System(s)	X	X	X	
7.f.	Fire Detection and Extinguisher Systems	X	X	X	
7.g.	Navigation and Aviation Systems	X	X	X	
7.h.	Automatic Flight Control System, Electronic Flight Instrument System, and Related Subsystems.	X	X	X	
7.i.	Flight Control Systems	X	X	X	
7.j.	Anti-ice and Deice Systems	X	X	X	
7.k.	Aircraft and Personal Emergency Equipment	X	X	X	
7.l.	Special Missions tasks (e.g., Night Vision goggles, Forward Looking Infrared System, External Loads and as listed on the SOQ).	A	A	X	
8. Emergency procedures (as applicable)					
8.a.	Emergency Descent	X	X	X	
8.b.	Inflight Fire and Smoke Removal	X	X	X	
8.c.	Emergency Evacuation	X	X	X	
8.d.	Ditching	X	X	X	
8.e.	Autorotative Landing	X	X	X	

TABLE C1B.—TABLE OF TASKS VS. SIMULATOR LEVEL—Continued

QPS requirements				Information	
Entry No.	Subjective requirements The simulator must be able to perform the tasks associated with that level of qualification.	Simulator levels			Notes
		B	C	D	
8.f.	Retreating blade stall recovery	X	X	X	
8.g.	Mast bumping	X	X	X	
8.h.	Loss of tail rotor effectiveness	X	X	X	
8.i.	Vortex recovery	X	X	X	

9. Postflight Procedures

9.a.	After-Landing Procedures	X	X	X	
9.b.	Parking and Securing.				
9.b.1. ...	Rotor brake operation	X	X	X	
9.b.2. ...	Abnormal/emergency procedures	X	X	X	

Note: An "A" in the table indicates that the system, task, or procedure may be examined if the appropriate aircraft system or control is simulated in the FFS and is working properly

TABLE C1C.—TABLE OF TASKS VS. SIMULATOR LEVEL

QPS requirements				Information	
Entry No.	Subjective requirements The simulator must be able to perform the tasks associated with that level of qualification.	Simulator levels			Notes
		B	C	D	
1.	Instructor Operating Station (IOS), as appropriate				
1.a.	Power switch(es)	X	X	X	
1.b.	Helicopter conditions	X	X	X	e.g., GW, CG, Fuel loading, Systems, Ground Crew.
1.c.	Airports/Heliports/Helicopter Landing Areas	X	X	X	e.g., Selection, Surface, Presets, Lighting controls
1.d.	Environmental controls.	X	X	X	e.g., Clouds, Visibility, RVR, Temp, Wind, Ice, Snow, Rain, and Windshear.
1.e.	Helicopter system malfunctions (Insertion/deletion)	X	X	X	
1.f.	Locks, Freezes, and Repositioning	X	X	X	
2.	Sound Controls.				
2.a.	On/off/adjustment	X	X	X	
3.	Motion/Control Loading System				
3.a.	On/off/emergency stop	X	X	X	
4.	Observer Seats/Stations				
4.a.	Position/Adjustment/Positive restraint system	X	X	X	

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1. Introduction

a. If relevant winds are present in the objective data, the wind vector (magnitude and direction) should be clearly noted as part of the data presentation, expressed in conventional terminology, and related to the runway being used for the test.

b. The NSPM will not evaluate any simulator unless the required SOC indicates that the motion system is designed and manufactured to safely operate within the simulator's maximum excursion, acceleration, and velocity capabilities (see Motion System in the following table).

c. Table C2A addresses helicopter simulators at Levels B, C, and D because there are no Level A Helicopter simulators.

End Information**Begin QPS Requirements****2. Test Requirements**

a. The ground and flight tests required for qualification are listed in Table of C2A, FFS Objective Tests. Computer-generated simulator test results must be provided for each test except where an alternative test is specifically authorized by the NSPM. If a flight condition or operating condition is required for the test but does not apply to the helicopter being simulated or to the qualification level sought, it may be

disregarded (*e.g.*, an engine out missed approach for a single-engine helicopter, or a hover test for a Level B simulator). Each test result is compared against the validation data described in § 60.13 and in this appendix. Although use of a driver program designed to automatically accomplish the tests is encouraged for all simulators and required for Level C and Level D simulators, each test must be able to be accomplished manually while recording all appropriate parameters. The results must be produced on an appropriate recording device acceptable to the NSPM and must include simulator number, date, time, conditions, tolerances, and appropriate dependent variables portrayed in comparison to the validation data. Time histories are required unless otherwise indicated in Table C2A. All results must be labeled using the tolerances and units given.

b. Table C2A sets out the test results required, including the parameters, tolerances, and flight conditions for simulator validation. Tolerances are provided for the listed tests because mathematical modeling and acquisition/development of reference data are often inexact. All tolerances listed in the following tables are applied to simulator performance. When two tolerance values are given for a parameter, the less restrictive value may be used unless otherwise indicated. In those cases where a tolerance is expressed only as a percentage,

the tolerance percentage applies to the maximum value of that parameter within its normal operating range as measured from the neutral or zero position unless otherwise indicated.

c. Certain tests included in this attachment must be supported with an SOC. In Table C2A, requirements for SOC are indicated in the "Test Details" column.

d. When operational or engineering judgment is used in making assessments for flight test data applications for simulator validity, such judgment may not be limited to a single parameter. For example, data that exhibit rapid variations of the measured parameters may require interpolations or a "best fit" data selection. All relevant parameters related to a given maneuver or flight condition must be provided to allow overall interpretation. When it is difficult or impossible to match simulator to helicopter data throughout a time history, differences must be justified by providing a comparison of other related variables for the condition being assessed.

e. The FFS may not be programmed so that the mathematical modeling is correct only at the validation test points. Unless noted otherwise, simulator tests must represent helicopter performance and handling qualities at operating weights and centers of gravity (CG) typical of normal operation. If a test is supported by helicopter data at one extreme weight or CG, another test supported

by helicopter data at mid-conditions or as close as possible to the other extreme must be included. Certain tests that are relevant only at one extreme CG or weight condition need not be repeated at the other extreme. Tests of handling qualities must include validation of augmentation devices.

f. When comparing the parameters listed to those of the helicopter, sufficient data must also be provided to verify the correct flight condition and helicopter configuration changes. For example, to show that control force is within ± 0.5 pound (0.22 daN) in a static stability test, data to show the correct airspeed, power, thrust or torque, helicopter configuration, altitude, and other appropriate datum identification parameters must also be given. If comparing short period dynamics, normal acceleration may be used to establish a match to the helicopter, but airspeed, altitude, control input, helicopter configuration, and other appropriate data must also be given. All airspeed values must be properly annotated (e.g., indicated versus calibrated). In addition, the same variables must be used for comparison (e.g., compare inches to inches rather than inches to centimeters).

g. The QTG provided by the sponsor must clearly describe how the simulator will be set up and operated for each test. Each simulator subsystem may be tested independently, but overall integrated testing of the simulator must be accomplished to assure that the total simulator system meets the prescribed standards. A manual test procedure with explicit and detailed steps for completing each test must also be provided.

h. For previously qualified simulators, the tests and tolerances of this attachment may

be used in subsequent continuing qualification evaluations for any given test if the sponsor has submitted a proposed MQTG revision to the NSPM and has received NSPM approval.

i. Motion System Tests:

(a) The minimum excursions, accelerations, and velocities for pitch, roll, and yaw must be measurable about a single, common reference point and must be achieved by driving one degree of freedom at a time.

(b) The minimum excursions, accelerations, and velocities for heave, sway, and surge may be measured about different, identifiable reference points and must be achieved by driving one degree of freedom at a time.

j. Tests of handling qualities must include validation of augmentation devices. FFSs for highly augmented helicopters will be validated both in the unaugmented configuration (or failure state with the maximum permitted degradation in handling qualities) and the augmented configuration. Where various levels of handling qualities result from failure states, validation of the effect of the failure is necessary. For those performance and static handling qualities tests where the primary concern is control position in the unaugmented configuration, unaugmented data are not required if the design of the system precludes any affect on control position. In those instances where the unaugmented helicopter response is divergent and non-repeatable, it may not be feasible to meet the specified tolerances. Alternative requirements for testing will be mutually agreed upon by the sponsor and the NSPM on a case-by-case basis.

k. Some tests will not be required for helicopters using helicopter hardware in the simulator flight deck (e.g., "helicopter modular controller"). These exceptions are noted in Table C2A of this attachment. However, in these cases, the sponsor must provide a statement that the helicopter hardware meets the appropriate manufacturer's specifications and the sponsor must have supporting information to that fact available for NSPM review.

l. In cases where light-class helicopters are being simulated, prior coordination with the NSPM on acceptable weight ranges is required. The terms "light", "medium", and "near maximum", as defined in Appendix F of this part, may not be appropriate for the simulation of light-class helicopters.

End QPS Requirements

Begin Information

m. In those cases where the objective test results authorize a "snapshot test" or a "series of snapshot test results" in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the "snapshot". The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

n. For references on basic operating weight, see AC 120-27, Aircraft Weight and Balance; and FAA-H-8083-1, Aircraft Weight and Balance Handbook.

End Information

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS

QPS requirements								Information	
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes	
Entry No.	Title				B	C	D		
1. Performance									
1.a.	Engine Assessment								
1.a.1.	Start Operations								
1.a.1.a ...	Engine start and acceleration (transient).	Light Off Time—±10% or ±1 sec., Torque—±5%, Rotor Speed—±3%, Fuel Flow—±10%, Gas Generator Speed—±5%, Power Turbine Speed—±5%, Gas Turbine Temp.—±30°C.	Ground with the Rotor Brake Used and Not Used, if applicable.	Record each engine start from the initiation of the start sequence to steady state idle and from steady state idle to operating RPM.	X	X	X		
1.a.1.b. ..	Steady State Idle and Operating RPM conditions.	Torque—±3%, Rotor Speed—±1.5%, Fuel Flow—±5%, Gas Generator Speed—±2%, Power Turbine Speed—±2%, Turbine Gas Temp.—±20°C.	Ground	Record both steady state idle and operating RPM conditions. May be a series of snapshot tests.	X	X	X		
1.a.2.	Power Turbine Speed Trim.	±10% of total change of power turbine speed, or ±0.5% change of rotor speed.	Ground	Record engine response to trim system actuation in both directions.	X	X	X		

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
1.a.3.	Engine and Rotor Speed Governing.	Torque—±5%, Rotor Speed—1.5%.	Climb and descent	Record results using a step input to the collective. May be conducted concurrently with climb and descent performance tests.	X	X	X	
1.b.	Surface Operations							
1.b.1.	Minimum Radius Turn	±3 ft. (0.9m) or 20% of helicopter turn radius.	Ground	If brakes are used, brake pedal position and brake system pressure must be matched to the helicopter flight test value.	X	X	X	
1.b.2.	Rate of Turn vs. Pedal Deflection, Brake Application, or Nosewheel Angle, as applicable.	±10% or ±2°/sec. Turn Rate.	Ground Takeoff	If brakes are used, brake pedal position and brake system pressure must be matched to the helicopter flight test value.	X	X	X	
1.b.3.	Taxi	Pitch Angle—±1.5°, Torque—±3%, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	Ground	Record results for control position and pitch attitude during ground taxi for a specific ground speed, wind speed and direction, and density altitude.	X	X	X	
1.b.4.	Brake Effectiveness	±10% of time and distance.	Ground		X	X	X	
1.c.	Takeoff When the speed range for the following tests is less than 40 knots, the applicable airspeed tolerance may be applied to either airspeed or ground speed, as appropriate.							
1.c.1.	All Engines	Airspeed—±3 kt, Altitude—±20 ft (6.1m), Torque—±3%, Rotor Speed—±1.5%, Vertical Velocity—±100 fpm (0.50m/sec) or 10%, Pitch Attitude—±1.5°, Bank Attitude—±2°, Heading—±2°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Ground/Takeoff and Initial Segment of Climb.	Record results of takeoff flight path as appropriate to helicopter model simulated (running takeoff for Level B, takeoff from a hover for Level C and D). For Level B, the criteria apply only to those segments at airspeeds above effective translational lift. Results must be recorded from the initiation of the takeoff to at least 200 ft (61m) AGL.	X	X	X	
1.c.2.	One Engine Inoperative continued takeoff.	Airspeed—±3 kt, Altitude—±20 ft (6.1m), Torque—±3%, Rotor Speed—±1.5%, Vertical Velocity—±100 fpm (0.50m/sec) or 10%, Pitch Attitude—±1.5°, Bank Attitude—±2°, Heading—±2°, Longitudinal Control Position—±10% Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Ground/Takeoff; and Initial Segment of Climb.	Record takeoff flight path as appropriate to helicopter model simulated. Results must be recorded from the initiation of the takeoff to at least 200 ft (61m) AGL.	X	X	X	Because several kinds of takeoff procedures can be performed, the specific type of takeoff profile should be recorded to ensure the proper takeoff profile comparison test is used.

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information	
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes	
Entry No.	Title				B	C	D		
1.c.3.	One Engine inoperative, rejected take off.	Airspeed—±3 kt, Altitude—±20 ft (6.1m), Torque—±3%, Rotor Speed—±1.5%, Pitch Attitude—±1.5°, Roll angle—± 1.5°, Heading—±2°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%, Distance:—±7.5% or ±30m (100ft).	Ground, Takeoff	Time history from the take off point to touch down. Test conditions near limiting performance.		X	X		
1.d. Hover									
	Performance	Torque—±3%, Pitch Attitude—±1.5°, Bank Attitude—±1.5°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	In Ground Effect (IGE); and Out of Ground Effect (OGE).	Record results for light and heavy gross weights. May be a series of snapshot tests.		X	X		
1.e. Vertical Climb									
	Performance	Vertical Velocity—±100 fpm (0.50 m/sec) or ±10%, Directional Control Position—±5%, Collective Control Position—±5%.	From OGE Hover	Record results for light and heavy gross weights. May be a series of snapshot tests.		X	X		
1.f. Level Flight									
	Performance and Trimmed Flight Control Positions.	Torque—±3%, Pitch Attitude—±1.5°, Sideslip Angle—±2°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	Cruise (Augmentation On and Off).	Record results for two gross weight and CG combinations with varying trim speeds throughout the air-speed envelope. May be a series of snapshot tests.	X	X	X	This test validates performance at speeds above maximum endurance airspeed.	
1.g. Climb									
	Performance and Trimmed Flight Control Positions.	Vertical Velocity—±100 fpm (6.1m/sec) or ±10%, Pitch Attitude—±1.5°, Sideslip Angle—±2°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	All engines operating; One engine inoperative; Augmentation System(s) On and Off.	Record results for two gross weight and CG combinations. The data presented must be for normal climb power conditions. May be a series of snapshot tests.	X	X	X		
1.h. Descent									

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
1.h.1.	Descent Performance and Trimmed Flight Control Positions.	Torque—±3%, Pitch Attitude—±1.5°, Sideslip Angle—±2°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	At or near 1,000 fpm (5 m/sec) rate of descent (RoD) at normal approach speed. Augmentation System(s) On and Off.	Results must be recorded for two gross weight and CG combinations. May be a series of snapshot tests.	X	X	X	
1.h.2.	Autorotation Performance and Trimmed Flight Control Positions.	Pitch Attitude—±1.5°, Sideslip Angle—±2°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%, Vertical Velocity—±100 fpm or 10%, Rotor Speed—±1.5%.	Steady descents. Augmentation System(s) On and Off.	Record results for two gross weight conditions. Data must be recorded for normal operating RPM. (Rotor speed tolerance applies only if collective control position is full down.) Data must be recorded for speeds from 50 kts, ±5 kts, through at least maximum glide distance airspeed, or maximum allowable autorotation airspeed, whichever is slower. May be a series of snapshot tests.	X	X	X	
1.i.	Autorotation							
	Entry	Rotor Speed—±3%, Pitch Attitude—±2°, Roll Attitude—±3°, Yaw Attitude—±5°, Airspeed—±5 kts., Vertical Velocity—±200 fpm (1.00 m/sec) or 10%.	Cruise or Climb	Record results of a rapid throttle reduction to idle. If the cruise condition is selected, comparison must be made for the maximum range airspeed. If the climb condition is selected, comparison must be made for the maximum rate of climb airspeed at or near maximum continuous power.		X	X	
1.j.	Landing When the speed range for tests 1.j.1., 1.j.2., or 1.j.3. is less than 40 knots, the applicable airspeed tolerance may be applied to either airspeed or ground speed, as appropriate.							
1.j.1.	All Engines	Airspeed—±3 kts., Altitude—±20 ft. (6.1m), Torque—±3%, Rotor Speed—±1.5%, Pitch Attitude—±1.5°, Bank Attitude—±1.5°, Heading—±2°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Approach	Record results of the approach and landing profile as appropriate to the helicopter model simulated (running landing for Level B, or approach to a hover for Level C and D). For Level B, the criteria apply only to those segments at airspeeds above effective translational lift.	X	X	X	

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
1.j.2.	One Engine Inoperative.	Airspeed—±3 kts., Altitude—±20 ft. (6.1m), Torque—±3%, Rotor Speed—±1.5%, Pitch Attitude—±1.5°, Bank Attitude—±1.5°, Heading—±2°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Approach	Record results for both Category A and Category B approaches and landing as appropriate to helicopter model simulated. For Level B, the criteria apply only to those segments at airspeeds above effective translational lift.	X	X	X	
1.j.3.	Balked Landing	Airspeed—±3 kts, Altitude—±20 ft. (6.1m), Torque—±3%, Rotor Speed—±1.5%, Pitch Attitude—±1.5°, Bank Attitude—±1.5°, Heading—±2°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Approach	Record the results for the maneuver initiated from a stabilized approach at the landing decision point (LDP).	X	X	X	
1.j.4.	Autorotational Landing.	Torque—±3%, Rotor Speed—±3%, Vertical Velocity—±100 fpm (0.50m/sec) or 10%, Pitch Attitude—±2°, Bank Attitude—±2°, Heading—±5°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Landing	Record the results of an autorotational deceleration and landing from a stabilized autorotational descent, to touch down. If flight test data containing all required parameters for a complete power-off landing is not available from the aircraft manufacturer for this test and other qualified flight test personnel are not available to acquire this data, the sponsor may coordinate with the NSPM to determine if it is appropriate to accept alternative testing means.		X	X	Alternative approaches for acquiring this data may be acceptable, depending on the aircraft as well as the personnel and the data recording, reduction, and interpretation facilities to be used, are: (1) a simulated autorotational flare and reduction of rate of descent (ROD) at altitude; or (2) a power-on termination following an autorotational approach and flare.

2. Handling Qualities

2.a.	Control System Mechanical Characteristics							
	For simulators requiring Static or Dynamic tests at the controls (i.e., cyclic, collective, and pedal), special test fixtures will not be required during initial or upgrade evaluations if the sponsor's QTG/MQTG shows both test fixture results and the results of an alternative approach, such as computer plots produced concurrently showing satisfactory agreement. Repeat of the alternative method during the initial or upgrade evaluation satisfies this test requirement. For initial and upgrade evaluations, the control dynamic characteristics must be measured at and recorded directly from the flight deck controls, and must be accomplished in hover, climb, cruise, and autorotation.							Contact the NSPM for clarification of any issue regarding helicopters with reversible controls or where the required validation data is not attainable.

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
2.a.1.	Cyclic	Breakout—±0.25 lbs. (0.112 daN) or 25%; Force—±1.0 lb. (0.224 daN) or 10%.	Ground; Static conditions with the hydraulic system (if applicable) pressurized; supplemental hydraulic pressurization system may be used. Trim On and Off. Friction Off Augmentation (if applicable) On and Off.	Record results for an un-interrupted control sweep to the stops. (This test does not apply if aircraft hardware modular controllers are used.)	X	X	X	Flight Test Data for this test does not require the rotor to be engaged/turning. The phrase “if applicable” regarding stability augmentation systems means if an augmentation system is available and if this system may be operational on the ground under static conditions as described here.
2.a.2.	Collective/Pedals	Breakout—±0.5 lb. (0.224 daN) or 25%; Force—±1.0 lb. (0.224 daN) or 10%.	Ground; Static conditions with the hydraulic system (if applicable) pressurized; supplemental hydraulic pressurization system may be used. Trim On and Off. Friction Off. Augmentation (if applicable) On and Off.	Record results for an un-interrupted control sweep to the stops.	X	X	X	Flight Test Data for this test does not require the rotor to be engaged/turning. The phrase “if applicable” regarding stability augmentation system means if a stability augmentation system is available and if this system may be operational on the ground under static conditions as described here.
2.a.3.	Brake Pedal Force vs. Position.	±5 lbs. (2.224 daN) or 10%.	Ground; Static conditions.		X	X	X	
2.a.4.	Trim System Rate (all applicable systems).	Rate—±10%.	Ground; Static conditions. Trim On, Friction Off.	The tolerance applies to the recorded value of the trim rate.	X	X	X	
2.a.5.	Control Dynamics (all axes).	±10% of time for first zero crossing and ±10 (N+1)% of period thereafter, ±10% of amplitude of first overshoot, 20% of amplitude of 2nd and subsequent overshoots greater than 5% of initial displacement, ±1 overshoot.	Hover/Cruise, Trim On, Friction Off.	Results must be recorded for a normal control displacement in both directions in each axis.		X	X	Typically, control displacement of 25% to 50% is necessary for proper excitation. Control Dynamics for irreversible control systems may be evaluated in a ground/static condition. Additional information on control dynamics is found later in this attachment. “N” is the sequential period of a full cycle of oscillation.
2.a.6.	Control System Freeplay	±0.10 inches (±2.5 mm).	Ground; Static conditions; with the hydraulic system (if applicable) pressurized; supplemental hydraulic pressurization system may be used.	Record and compare results for all controls.	X	X	X	Flight Test Data for this test does not require the rotor to be engaged/turning.
2.b.	Low Airspeed Handling Qualities							
2.b.1.	Trimmed Flight Control Positions.	Torque—±3%, Pitch Attitude—±1.5°, Bank Attitude—±2°, Longitudinal Control Position—±5%. Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	Translational Flight IGE—Sideward, rearward, and forward flight. Augmentation On and Off.	Record results for several airspeed increments to the translational airspeed limits and for 45 kts. forward airspeed. May be a series of snapshot tests.		X	X	

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
2.b.2.	Critical Azimuth	Torque—±3%, Pitch Attitude—±1.5°, Bank Attitude—±2°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	Stationary Hover. Augmentation On and Off.	Record results for three relative wind directions (including the most critical case) in the critical quadrant. May be a series of snapshot tests.		X	X	
2.b.3.	Control Response							
2.b.3.a. ..	Longitudinal	Pitch Rate—±10% or ±2°/sec., Pitch Attitude Change—±10% or 1.5°.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.		X	X	This is a “short time” test conducted in a hover, in ground effect, without entering translational flight, to provide better visual reference.
2.b.3.b. ..	Lateral	Roll Rate—±10% or ±3°/sec., Roll Attitude Change—±10% or ±3°.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.		X	X	This is a “short time” test conducted in a hover, in ground effect, without entering translational flight, to provide better visual reference.
2.b.3.c. ..	Directional	Yaw Rate—±10% or ±2°/sec., Heading Change—±10% or ±2°.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.		X	X	This is a “short time” test conducted in a hover, in ground effect, without entering translational flight, to provide better visual reference.
2.b.3.d. ..	Vertical	Normal Acceleration—±0.1 g.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.		X	X	
2.c.	Longitudinal Handling Qualities							
2.c.1.	Control Response	Pitch Rate—±10% or ±2°/sec., Pitch Attitude Change—±10% or ±1.5°.	Cruise Augmentation On and Off.	Results must be recorded for two cruise airspeeds to include minimum power required speed. Record data for a step control input. The Off-axis response must show correct trend for unaugmented cases.	X	X	X	
2.c.2.	Static Stability	Longitudinal Control Position: ±10% of change from trim or ±0.25 in. (6.3 mm) or Longitudinal Control Force : ±0.5 lb. (0.223 daN) or ±10%.	Cruise or Climb. Autorotation. Augmentation On and Off.	Record results for a minimum of two speeds on each side of the trim speed. May be a series of snapshot tests.	X	X	X	
2.c.3.	Dynamic Stability							

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
2.c.3.a. ..	Long-Term Response.	±10% of calculated period, ±10% of time to ½ or double amplitude, or ±0.02 of damping ratio.For non-periodic responses, the time history must be matched within ±3° pitch; and ±5 kts air-speed over a 20 sec period following release of the controls.	Cruise Augmentation On and Off.	For periodic responses, record results for three full cycles (6 overshoots after input completed) or that sufficient to determine time to ½ or double amplitude, whichever is less. The test may be terminated prior to 20 sec. if the test pilot determines that the results are becoming uncontrollably divergent.	X	X	X	The response may be unrepeatable throughout the stated time for certain helicopters. In these cases, the test should show at least that a divergence is identifiable. For example: Displacing the cyclic for a given time normally excites this test or until a given pitch attitude is achieved and then return the cyclic to the original position. For non-periodic responses, results should show the same convergent or divergent character as the flight test data.
2.c.3.b. ..	Short-Term Response.	±1.5° Pitch or ±2°/sec. Pitch Rate. ±0.1 g Normal Acceleration.	Cruise or Climb. Augmentation On and Off.	Record results for at least two airspeeds.	X	X	X	A control doublet inserted at the natural frequency of the aircraft normally excites this test. However, while input doublets are preferred over pulse inputs for Augmentation-Off tests, for Augmentation-On tests, when the short-term response exhibits 1st-order or deadbeat characteristics, longitudinal pulse inputs may produce a more coherent response.
2.c.4.	Maneuvering Stability.	Longitudinal Control Position—±10% of change from trim or ±0.25 in. (6.3 mm) or Longitudinal Control Forces—±0.5 lb. (0.223 daN) or ±10%.	Cruise or Climb. Augmentation On and Off.	Record results for at least two airspeeds at 30°–45° roll angle. The force may be shown as a cross plot for irreversible systems. May be a series of snapshot tests.	X	X	X	
2.d.	Lateral and Directional Handling Qualities							
2.d.1.	Control Response							
2.d.1.a ...	Lateral	Roll Rate—±10% or ±3°/sec., Roll Attitude Change—±10% or ±3°.	Cruise Augmentation On and Off.	Record results for at least two airspeeds, including the speed at or near the minimum power required air-speed. Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.	X	X	X	

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
2.d.1.b. ..	Directional	Yaw Rate—±10% or ±2°/ sec., Yaw Attitude Change—±10% or ±2°.	Cruise Augmentation On and Off.	Record data for at least two airspeeds, including the speed at or near the minimum power required air-speed. Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.	X	X	X	
2.d.2.	Directional Static Sta- bility.	Lateral Control Position—±10% of change from trim or ±0.25 in. (6.3 mm) or Lateral Control Force—±0.5 lb. (0.223 daN) or 10%, Roll Attitude—±1.5, Directional Control Position—±10% of change from trim or ±0.25 in. (6.3 mm) or Directional Control Force—±1 lb. (0.448 daN) or 10%, Longitudinal Control Position—±10% of change from trim or ±0.25 in. (6.3 mm), Vertical Velocity—±100 fpm (0.50m/sec) or 10%.	Cruise; or Climb (may use Descent instead of Climb if desired), Aug- mentation On and Off.	Record results for at least two sideslip angles on either side of the trim point. The force may be shown as a cross plot for irreversible sys- tems. May be a series of snapshot tests.	X	X	X	This is a steady heading sideslip test at a fixed collective position.
2.d.3.	Dynamic Lateral and Directional Stability							
2.d.3.a. ..	Lateral-Directional Oscil- lations.	±0.5 sec. or ±10% of pe- riod, ±10% of time to ½ or double amplitude or ±0.02 of damping ratio, ±20% or ±1 sec of time difference between peaks of bank and sideslip. For non-periodic responses, the time history must be matched within ±10 knots Airspeed; ±5°/s Roll Rate or ±5° Roll Attitude; ±4°/s Yaw Rate or ±4° Yaw Angle over a 20 sec period roll angle following re-lease of the controls.	Cruise or Climb. Aug- mentation On and Off.	Record results for at least two airspeeds. The test must be initiated with a cyclic or a pedal dou- ble input. Record re- sults for six full cycles (12 overshoots after input completed) or that sufficient to deter- mine time to ½ or dou- ble amplitude, which- ever is less. The test may be terminated prior to 20 sec if the test pilot determines that the results are be- coming uncontrollably divergent.	X	X	X	
2.d.3.b. ..	Spiral Stability.	±2° or ±10% roll angle.	Cruise or Climb. Aug- mentation On and Off.	Record the results of a release from pedal only or cyclic only turns for 20 sec. Results must be recorded from turns in both directions. Ter- minate check at zero roll angle or when the test pilot determines that the attitude is be- coming uncontrollably divergent.	X	X	X	
2.d.3.c. ..	Adverse/Proverse Yaw.	Correct Trend, ±2° tran- sient sideslip angle.	Cruise or Climb. Aug- mentation On and Off.	Record the time history of initial entry into cyclic only turns, using only a moderate rate for cyclic input. Results must be recorded for turns in both directions.	X	X	X	

3. Motion System

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
3.a.	Frequency response							
		Based on Simulator Capability.	N/A	Required as part of the MQTG. The test must demonstrate frequency response of the motion system as specified by the applicant for flight simulator qualification.	X	X	X	
3.b.	Leg Balance							
	Leg Balance	Based on Simulator Capability.	N/A	Required as part of the MQTG. The test must demonstrate motion system leg balance as specified by the applicant for flight simulator qualification.	X	X	X	
3.c.	Turn Around							
	Turn Around	Based on Simulator Capability.	N/A	Required as part of the MQTG. The test must demonstrate a smooth turn-around (shift to opposite direction of movement) of the motion system as specified by the applicant for flight simulator qualification.	X	X	X	
3.d.	Motion system repeatability							
		With the same input signal, the test results must be repeatable to within ±0.05g actual platform linear acceleration in each axis.	Accomplished in both the “ground” mode and in the “flight” mode of the motion system operation.	Required as part of the the MQTG. The test is accomplished by injecting a motion signal to generate movement of the platform. The input must be such that the rotational accelerations, rotational rates, and linear accelerations are inserted before the transfer from helicopter center of gravity to the pilot reference point with a minimum amplitude of 5°/sec/sec, 10°/sec and 0.3g, respectively.	X	X	X	See Paragraph 6.c. in this attachment for additional information. Note: if there is no difference in the model for “ground” and “flight” operation of the motion system, this should be described in an SOC and will not require tests in both modes.
3.e.	Motion cueing performance signature							
				Required as part of MQTG. These tests must be run with the motion buffet mode disabled.				See paragraph 6.d., of this attachment, Motion cueing performance signature.
3.e.1.	Takeoff (all engines).	As specified by the sponsor for flight simulator qualification.	Ground	Pitch attitude due to initial climb must dominate over cab tilt due to longitudinal acceleration.	X	X	X	Associated to test number 1.c.1.
3.e.2.	Hover performance (IGE and OGE).	As specified by the sponsor for flight simulator qualification.	Ground			X	X	Associated to test number 1.d.
3.e.3.	Autorotation (entry).	As specified by the sponsor for flight simulator qualification.	Flight			X	X	Associated to test number 1.i.

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
3.e.4.	Landing (all engines).	As specified by the sponsor for flight simulator qualification.	Flight		X	X	X	Associated to test number 1.j.1.
3.e.5.	Autorotation (landing).	As specified by the sponsor for flight simulator qualification.	Flight			X	X	Associated to test number 1.j.4.
3.e.6.	Control Response							
3.e.6.a. ..	Longitudinal	As specified by the sponsor for flight simulator qualification.	Flight		X	X	X	Associated to test number 2.c.1.
3.e.6.b. ..	Lateral.	As specified by the sponsor for flight simulator qualification.	Ground		X	X	X	Associated to test number 2.d.1.a.
3.e.6.c. ..	Directional	As specified by the sponsor for flight simulator qualification.			X	X	X	Associated to test number 2.d.1.c.
3.f.	Characteristic Motion (Vibration) Cues—For all of the following tests, the simulator test results must exhibit the overall appearance and trends of the helicopter data, with at least three (3) of the predominant frequency “spikes” being present within ± 2 Hz.				....	....	....	Characteristic motion cues may be separate from the “main” motion system.
3.f.1.	Vibrations—to include 1/Rev and n/Rev vibrations (where “n” is the number of main rotor blades).	+3db to –6db or $\pm 10\%$ of nominal vibration level in flight cruise and correct trend (see comment).	(a) On ground (idle); (b) In flight	Characteristic vibrations include those that result from operation of the helicopter (for example, high airspeed, retreating blade stall, extended landing gear, vortex ring or settling with power) in so far as vibration marks an event or helicopter state, which can be sensed in the flight deck. [See Table C1A, table entries 5.e. and 5.f.]			X	Correct trend refers to a comparison of vibration amplitudes between different maneuvers; e.g., if the 1/rev vibration amplitude in the helicopter is higher during steady state turns than in level flight this increasing trend should be demonstrated in the simulator. Additional examples of vibrations may include: (a) Low & High speed transition to and from hover; (b) Level flight; (c) Climb and descent (including vertical climb); (d) Auto-rotation; (e) Steady Turns.
3.f.2.	Buffet—Test against recorded results for characteristic buffet motion that can be sensed in the flight deck.	+3db to –6db or $\pm 10\%$ of nominal vibration level in flight cruise and correct trend (see comment).	On ground and in flight.	Characteristic buffets include those that result from operation of the helicopter (for example, high airspeed, retreating blade stall, extended landing gear, vortex ring or settling with power) in so far as a buffet marks an event or helicopter state, which can be sensed in the flight deck. [See Table C1A, table entries 5.e. and 5.f.]			X	The recorded test results for characteristic buffets should allow the checking of relative amplitude for different frequencies. For atmospheric disturbance, general purpose models are acceptable which approximate demonstrable flight test data.

4. Visual System

4.a.	Visual System Response Time: (Choose either test 4.a.1. or 4.a.2. to satisfy test 4.a., Visual System Response Time Test. This test is also sufficient for motion system response timing and flight deck instrument response timing.)
4.a.1.	Latency

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
		150 ms (or less) after helicopter response.	Takeoff, climb, and descent.	One test is required in each axis (pitch, roll and yaw) for each of the three conditions (take-off, cruise, and approach or landing).	X			
		100 ms (or less) after helicopter response.	Climb, cruise, descent, and hover.	One test is required in each axis (pitch, roll and yaw) for each of the three conditions (take-off, cruise, and approach or landing).		X	X	
4.a.2.	Transport Delay							
								If Transport Delay is the chosen method to demonstrate relative responses, the sponsor and the NSPM will use the latency values to ensure proper simulator response when reviewing those existing tests where latency can be identified (e.g., short period, roll response, rudder response).
		150 ms (or less) after controller movement.	N/A	A separate test is required in each axis (pitch, roll, and yaw).	X			
		100 ms (or less) after controller movement.	N/A	A separate test is required in each axis (pitch, roll, and yaw)..		X	X	
4.b.	Field-of-view							
4.b.1.	Continuous field-of-view.	The simulator must provide a continuous field-of-view of at least 75° horizontally and 30° vertically per pilot seat or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. Both pilot seat visual systems must be operable simultaneously. Wide-angle systems providing cross-flight deck viewing (for both pilots simultaneously) must provide a minimum field-of-view of at least 146° horizontally and 36° vertically. Any geometric error between the Image Generator eye point and the pilot eye point must be 8° or less.	N/A	An SOC is required and must explain the geometry of the installation. Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained.	X			Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. Field-of-view may be measured using a visual test pattern filling the entire visual scene (all channels) with a matrix of black and white 5° squares.

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
4.b.2.	Continuous field-of-view.	The simulator must provide a continuous field-of-view of at least 146° horizontally and 36° vertically or the number of degrees necessary to meet the visual ground segment requirement, whichever is greater. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. Any geometric error between the Image Generator eye point and the pilot eye point must be 8° or less.	N/A	An SOC is required and must explain the geometry of the installation. Horizontal field-of-view of at least 146° (including not less than 73° measured either side of the center of the design eye point). Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained. Vertical field-of-view of at least 36° measured from the pilot's and co-pilot's eye point.		X		Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. Field-of-view may be measured using a visual test pattern filling the entire visual scene (all channels) with a matrix of black and white 5° squares.
4.b.3.	Continuous field-of-view.	Continuous field-of-view of at least 176° horizontal and 56° vertical field-of-view for each pilot simultaneously. Any geometric error between the Image Generator eye point and the pilot eye point must be 8° or less.	N/A	An SOC is required and must explain the geometry of the installation. Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage. Horizontal field-of-view must be at least 176° (including not less than 88° either side of the center of the design eye point). Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained. Vertical field-of-view must not be less than a total of 56° measured from the pilot's and co-pilot's eye point.			X	The horizontal field-of-view is traditionally described as a 180° field-of-view. However, the field-of-view is technically no less than 176°. Field-of-view may be measured using a visual test pattern filling the entire visual scene (all channels) with a matrix of black and white 5° squares.
4.c.	Surface contrast ratio.	Not less than 5:1.	N/A	The ratio is calculated by dividing the brightness level of the center, bright square (providing at least 2 foot-lamberts or 7 cd/m²) by the brightness level of any adjacent dark square.			X	Measurements may be made using a 1° spot photometer and a raster drawn test pattern filling the entire visual scene (all channels) with a test pattern of black and white squares, 5 per square, with a white square in the center of each channel. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
4.d.	Highlight brightness.	Not less than six (6) foot-lamberts (20 cd/m ²).	N/A	Measure the brightness of the center, white square while superimposing a highlight on that white square. The use of calligraphic capabilities to enhance the raster brightness is acceptable; however, measuring light points is not acceptable.			X	Measurements may be made using a 1° spot photometer and a raster drawn test pattern filling the entire visual scene (all channels) with a test pattern of black and white squares, 5 per square, with a white square in the center of each channel.
4.e.	Surface resolution.	Not greater than two (2) arc minutes.	N/A	An SOC is required and must include the appropriate calculations and an explanation of those calculations. Level B requires surface resolution not greater than three (3) arc minutes.		X	X	When the eye is positioned on a 3° glide slope at the slant range distances indicated with white runway markings on a black runway surface, the eye will subtend two (2) arc minutes: (1) A slant range of 6,876 ft with stripes 150 ft long and 16 ft wide, spaced 4 ft apart. (2) For Configuration A, a slant range of 5,157 feet with stripes 150 ft long and 12 ft wide, spaced 3 ft apart. (3) For Configuration B, a slant range of 9,884 feet, with stripes 150 ft long and 5.75 ft wide, spaced 5.75 ft apart.
4.f.	Light point size	Not greater than five (5) arc minutes.	N/A	An SOC is required and must include the relevant calculations and an explanation of those calculations.		X	X	Light point size may be measured using a test pattern consisting of a centrally located single row of light points reduced in length until modulation is just discernible in each visual channel. A row of 48 lights will form a 4° angle or less.
4.g.	Light point contrast ratio.							A 1° spot photometer may be used to measure a square of at least 1° filled with light points (where light point modulation is just discernible) and compare the results to the measured adjacent background. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.
4.g.1.		Not less than 10:1	N/A	An SOC is required and must include the relevant calculations.	X			
4.g.2.		Not less than 25:1	N/A	An SOC is required and must include the relevant calculations.		X	X	
4.h.	Visual ground segment							

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes
Entry No.	Title				B	C	D	
		The visible segment in the simulator must be $\pm 20\%$ of the segment computed to be visible from the helicopter flight deck. This tolerance may be applied at the far end of the displayed segment. However, lights and ground objects computed to be visible from the helicopter flight deck at the near end of the visible segment must be visible in the simulator.	Landing configuration, with the aircraft trimmed for the appropriate airspeed, where the MLG are at 100 ft (30 m) above the plane of the touchdown zone, on the electronic glide slope with an RVR value set at 1,200 ft (350 m).	The QTG must contain appropriate calculations and a drawing showing the data used to establish the helicopter location and the segment of the ground that is visible considering design eye point, the helicopter attitude, flight deck cut-off angle, and a visibility of 1200 ft (350 m) RVR. Simulator performance must be measured against the QTG calculations. The data submitted must include at least the following: (1) Static helicopter dimensions as follows: (i) Horizontal and vertical distance from main landing gear (MLG) to glideslope reception antenna. (ii) Horizontal and vertical distance from MLG to pilot's eyepoint. (iii) Static flight deck cut-off angle. (2) Approach data as follows: (i) Identification of runway. (ii) Horizontal distance from runway threshold to glideslope intercept with runway. (iii) Glideslope angle. (iv) Helicopter pitch angle on approach. (3) Helicopter data for manual testing: (i) Gross weight. (ii) Helicopter configuration. (iii) Approach airspeed. If non-homogenous fog is used to obscure visibility, the vertical variation in horizontal visibility must be described and be included in the slant range visibility calculation used in the computations.	X	X	X	Pre-positioning for this test is encouraged, and may be achieved via manual or autopilot control to the desired position.
5.	Sound system							
	The sponsor will not be required to repeat the helicopter tests (i.e., tests 5.a.1. through 5.a.8. (or 5.b.1. through 5.b.9.) and 5.c., as appropriate) during continuing qualification evaluations if frequency response and background noise test results are within tolerance when compared to the initial qualification evaluation results, and the sponsor shows that no software changes have occurred that will affect the helicopter test results. If the frequency response test method is chosen and fails, the sponsor may elect to fix the frequency response problem and repeat the test or the sponsor may elect to repeat the helicopter tests. If the helicopter tests are repeated during continuing qualification evaluations, the results may be compared against initial qualification evaluation results or helicopter master data. All tests in this section must be presented using an unweighted $\frac{1}{3}$ -octave band format from band 17 to 42 (50 Hz to 16 kHz). A minimum 20 second average must be taken at the location corresponding to the helicopter data set. The helicopter and flight simulator results must be produced using comparable data analysis techniques.							
5.a.	Basic requirements							

TABLE C2A.—FULL FLIGHT SIMULATOR (FFS) OBJECTIVE TESTS—Continued

QPS requirements								Information	
Test		Tolerance(s)	Flight condition	Test details	Simulator level			Notes	
Entry No.	Title				B	C	D		
5.a.1.	Ready for engine start.	± 5 dB per 1/3 octave band.	Ground	Normal condition prior to engine start. The APU must be on if appropriate.			X		
5.a.2.	All engines at idle; rotor not turning (if applicable) and rotor turning.	± 5 dB per 1/3 octave band.	Ground	Normal condition prior to lift-off.			X		
5.a.3.	Hover	± 5 dB per 1/3 octave band.	Hover				X		
5.a.4.	Climb	± 5 dB per 1/3 octave band.	En-route climb	Medium altitude			X		
5.a.5.	Cruise	± 5 dB per 1/3 octave band.	Cruise	Normal cruise configuration.			X		
5.a.6.	Final approach	± 5 dB per 1/3 octave band.	Landing	Constant airspeed, gear down.			X		
5.b.	Special cases								
		±5 dB per 1/3 octave band.	As appropriate				X	These special cases are identified as particularly significant during critical phases of flight and ground operations for a specific helicopter type or model.	
5.c.	Background noise								
		±3 dB per 1/3 octave band.	As appropriate	Results of the background noise at initial qualification must be included in the MQTG. Measurements must be made with the simulation running, the sound muted, and a “dead” flight deck.			X	The simulated sound will be evaluated to ensure that the background noise does not interfere with training, testing, or checking.	
5.d.	Frequency response								
		±5 dB on three (3) consecutive bands when compared to initial evaluation; and ±2 dB when comparing the average of the absolute differences between initial and continuing qualification evaluation.		Applicable only to Continuing Qualification Evaluations. If frequency response plots are provided for each channel at the initial evaluation, these plots may be repeated at the continuing qualification evaluation with the following tolerances applied: (a) The continuing qualification 1/3 octave band amplitudes must not exceed ± 5 dB for three consecutive bands when compared to initial results. (b) The average of the sum of the absolute differences between initial and continuing qualification results must not exceed 2 dB (refer to table C2C in Appendix C).			X	Measurements are compared to those taken during initial qualification evaluation.	

Begin Information

3. General

- a. If relevant winds are present in the objective data, the wind vector should be clearly noted as part of the data presentation, expressed in conventional terminology, and related to the runway being used for test near the ground.
- b. The reader is encouraged to review the Airplane Flight Simulator Evaluation Handbook, Volumes I and II, published by the Royal Aeronautical Society, London, UK, and FAA AC 25–7, as amended, Flight Test Guide for Certification of Transport Category Airplanes, and AC 23–8, as amended, Flight Test Guide for Certification of Part 23 Airplanes, for references and examples regarding flight testing requirements and techniques.

4. Control Dynamics

- a. General. The characteristics of a helicopter flight control system have a major effect on the handling qualities. A significant consideration in pilot acceptability of a helicopter is the “feel” provided through the flight controls. Considerable effort is expended on helicopter feel system design so that pilots will be comfortable and will consider the helicopter desirable to fly. In order for an FFS to be representative, it should “feel” like the helicopter being simulated. Compliance with this requirement is determined by comparing a recording of the control feel dynamics of the FFS to actual helicopter measurements in the hover and cruise configurations.
 - (1) Recordings such as free response to an impulse or step function are classically used to estimate the dynamic properties of electromechanical systems. In any case, it is only possible to estimate the dynamic properties as a result of only being able to estimate true inputs and responses. Therefore, it is imperative that the best possible data be collected since close matching of the FFS control loading system to the helicopter system is essential. The required dynamic control tests are described in Table C2A of this attachment.
 - (2) For initial and upgrade evaluations, the QPS requires that control dynamics characteristics be measured and recorded directly from the flight controls (Handling Qualities—Table C2A). This procedure is usually accomplished by measuring the free response of the controls using a step or impulse input to excite the system. The procedure should be accomplished in the hover and cruise flight conditions and configurations.
 - (3) For helicopters with irreversible control systems, measurements may be obtained on the ground if proper pitot-static inputs are provided to represent airspeeds typical of those encountered in flight. Likewise, it may be shown that for some helicopters, hover, climb, cruise, and autorotation have like effects. Thus, one may suffice for another. If either or both considerations apply, engineering validation or helicopter manufacturer rationale should be submitted as justification for ground tests or for eliminating a configuration. For FFSs

- requiring static and dynamic tests at the controls, special test fixtures will not be required during initial and upgrade evaluations if the QTG shows both test fixture results and the results of an alternate approach (e.g., computer plots that were produced concurrently and show satisfactory agreement). Repeat of the alternate method during the initial evaluation satisfies this test requirement.
- b. Control Dynamics Evaluations. The dynamic properties of control systems are often stated in terms of frequency, damping, and a number of other classical measurements. In order to establish a consistent means of validating test results for FFS control loading, criteria are needed that will clearly define the measurement interpretation and the applied tolerances. Criteria are needed for underdamped, critically damped and overdamped systems. In the case of an underdamped system with very light damping, the system may be quantified in terms of frequency and damping. In critically damped or overdamped systems, the frequency and damping are not readily measured from a response time history. Therefore, the following suggested measurements may be used:
 - (1) For Levels C and D simulators. Tests to verify that control feel dynamics represent the helicopter should show that the dynamic damping cycles (free response of the controls) match those of the helicopter within specified tolerances. The NSPM recognizes that several different testing methods may be used to verify the control feel dynamic response. The NSPM will consider the merits of testing methods based on reliability and consistency. One acceptable method of evaluating the response and the tolerance to be applied is described below for the underdamped and critically damped cases. A sponsor using this method to comply with the QPS requirements should perform the tests as follows:
 - (a) Underdamped Response. Two measurements are required for the period, the time to first zero crossing (in case a rate limit is present) and the subsequent frequency of oscillation. It is necessary to measure cycles on an individual basis in case there are non-uniform periods in the response. Each period will be independently compared to the respective period of the helicopter control system and, consequently, will enjoy the full tolerance specified for that period. The damping tolerance will be applied to overshoots on an individual basis. Care should be taken when applying the tolerance to small overshoots since the significance of such overshoots becomes questionable. Only those overshoots larger than 5 percent of the total initial displacement should be considered significant. The residual band, labeled T(A_d) on Figure C2A is ±5 percent of the initial displacement amplitude A_d from the steady state value of the oscillation. Only oscillations outside the residual band are considered significant. When comparing FFS data to helicopter data, the process should begin by overlaying or aligning the FFS and helicopter steady state values and then comparing amplitudes of oscillation peaks, the time of the first zero crossing, and

- individual periods of oscillation. The FFS should show the same number of significant overshoots to within one when compared against the helicopter data. The procedure for evaluating the response is illustrated in Figure C2A.
- (b) Critically damped and Overdamped Response. Due to the nature of critically damped and overdamped responses (no overshoots), the time to reach 90 percent of the steady state (neutral point) value should be the same as the helicopter within ±10 percent. The simulator response must be critically damped also. Figure C2B illustrates the procedure.
- (c) Special considerations. Control systems that exhibit characteristics other than classical overdamped or underdamped responses should meet specified tolerances. In addition, special consideration should be given to ensure that significant trends are maintained.
 - (2) Tolerances.
 - (a) The following summarizes the tolerances, “T” for underdamped systems, and “n” is the sequential period of a full cycle of oscillation. See Figure C2A of this attachment for an illustration of the referenced measurements.

T(P ₀)	.....	±10% of P ₀
T(P ₁)	.....	±20% of P ₁
T(P ₂)	.....	±30% of P ₂
T(P _n)	.....	±10(n+1)% of P _n
T(A _n)	.....	±10% of A ₁ , ±20% of Subsequent Peaks
T(A _d)	.....	±5% of A _d = residual band
 - (b) Significant overshoots. First overshoot and ±1 subsequent overshoots
 - (b) The following tolerance applies to critically damped and overdamped systems only. See Figure C2B for an illustration of the reference measurements:

T(P ₀)		±10% of P ₀

End Information

Begin QPS Requirement

- c. Alternative method for control dynamics evaluation.
 - (1) An alternative means for validating control dynamics for aircraft with hydraulically powered flight controls and artificial feel systems is by the measurement of control force and rate of movement. For each axis of pitch, roll, and yaw, the control must be forced to its maximum extreme position for the following distinct rates. These tests are conducted under normal flight and ground conditions.
 - (a) Static test—Slowly move the control so that a full sweep is achieved within 95–105 seconds. A full sweep is defined as movement of the controller from neutral to the stop, usually aft or right stop, then to the opposite stop, then to the neutral position.
 - (b) Slow dynamic test—Achieve a full sweep within 8–12 seconds.
 - (c) Fast dynamic test—Achieve a full sweep in within 3–5 seconds.
 - Note:** Dynamic sweeps may be limited to forces not exceeding 100 lbs. (44.5 daN).
 - (d) Tolerances

(i) Static test—see Table C2A, FFS Objective Tests, Entries 2.a.1., 2.a.2., and 2.a.3.

(ii) Dynamic test— ± 2 lbs (0.9 daN) or $\pm 10\%$ on dynamic increment above static test.

End QPS Requirement**Begin Information**

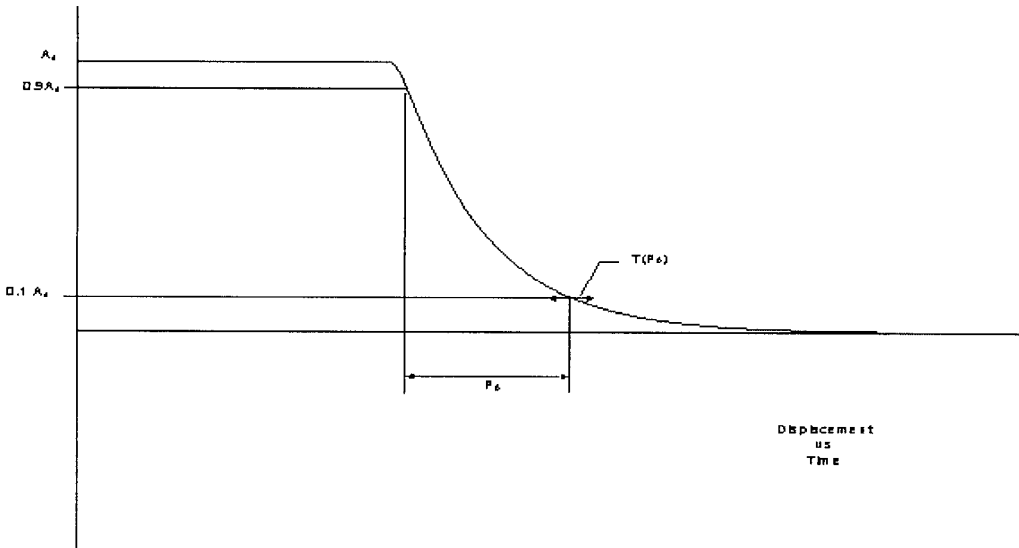
d. The FAA is open to alternative means that are justified and appropriate to the application. For example, the method described here may not apply to all manufacturers systems and certainly not to aircraft with reversible control systems. Each

case is considered on its own merit on an ad hoc basis. If the FAA finds that alternative methods do not result in satisfactory performance, more conventionally accepted methods will have to be used.

BILLING CODE 4910-13-P

Attachment 2 to Appendix C to Part 60—
Figure C2A. Under-Damped Step Response

Attachment 2 to Appendix C to Part 60—
Figure C2B. Critically-Damped Step Response



BILLING CODE 49-13-C
End Information

5. [Reserved]

Begin Information
6. Motion System.
a. General.
(1) Pilots use continuous information signals to regulate the state of the helicopter. In concert with the instruments and outside-

world visual information, whole-body motion feedback is essential in assisting the pilot to control the helicopter dynamics, particularly in the presence of external disturbances. The motion system should meet basic objective performance criteria, and be subjectively tuned at the pilot's seat

position to represent the linear and angular accelerations of the helicopter during a prescribed minimum set of maneuvers and conditions. The response of the motion cueing system should be repeatable.

(2) The Motion System tests in Section 3 of Table C2A are intended to qualify the FFS motion cueing system from a mechanical performance standpoint. Additionally, the list of motion effects provides a representative sample of dynamic conditions that should be present in the flight simulator. An additional list of representative, training-critical maneuvers, selected from Section 1, (Performance tests) and Section 2, (Handling Qualities tests) in Table C2A, that should be recorded during initial qualification (but without tolerance) to indicate the flight simulator motion cueing performance signature have been identified (reference Section 3.e). These tests are intended to help improve the overall standard of FFS motion cueing.

b. Motion System Checks. The intent of test 3a, Frequency Response, test 3b, Leg Balance, and test 3c, Turn-Around Check, as described in the Table of Objective Tests, is to demonstrate the performance of the motion system hardware, and to check the integrity of the motion set-up with regard to calibration and wear. These tests are independent of the motion cueing software and should be considered robotic tests.

c. Motion System Repeatability. The intent of this test is to ensure that the motion system software and motion system hardware have not degraded or changed over time. This diagnostic test should be completed during continuing qualification checks in lieu of the robotic tests. This will allow an improved ability to determine changes in the software or determine degradation in the hardware. The following information delineates the methodology that should be used for this test.

(1) Input: The inputs should be such that rotational accelerations, rotational rates, and linear accelerations are inserted before the transfer from helicopter center of gravity to pilot reference point with a minimum amplitude of 5 deg/sec/sec, 10 deg/sec and 0.3 g, respectively, to provide adequate analysis of the output.

(2) Recommended output:

(a) Actual platform linear accelerations; the output will comprise accelerations due to both the linear and rotational motion acceleration;

(b) Motion actuators position.

d. Motion Cueing Performance Signature.

(1) Background. The intent of this test is to provide quantitative time history records of

motion system response to a selected set of automated QTG maneuvers during initial qualification. It is not intended to be a comparison of the motion platform accelerations against the flight test recorded accelerations (i.e., not to be compared against helicopter cueing). If there is a modification to the initially qualified motion software or motion hardware (e.g., motion washout filter, simulator payload change greater than 10%) then a new baseline may need to be established.

(2) Test Selection. The conditions identified in Section 3.e. in Table C2A are those maneuvers where motion cueing is the most discernible. They are general tests applicable to all types of helicopters and should be completed for motion cueing performance signature at any time acceptable to the NSPM prior to or during the initial qualification evaluation, and the results included in the MQTG.

(3) Priority. Motion system should be designed with the intent of placing greater importance on those maneuvers that directly influence pilot perception and control of the helicopter motions. For the maneuvers identified in section 3.e. in Table C2A, the flight simulator motion cueing system should have a high tilt co-ordination gain, high rotational gain, and high correlation with respect to the helicopter simulation model.

(4) Data Recording. The minimum list of parameters provided should allow for the determination of the flight simulator's motion cueing performance signature for the initial qualification evaluation. The following parameters are recommended as being acceptable to perform such a function:

(a) Flight model acceleration and rotational rate commands at the pilot reference point;

(b) Motion actuators position;

(c) Actual platform position;

(d) Actual platform acceleration at pilot reference point.

e. Motion Vibrations.

(1) Presentation of results. The characteristic motion vibrations may be used to verify that the flight simulator can reproduce the frequency content of the helicopter when flown in specific conditions. The test results should be presented as a Power Spectral Density (PSD) plot with frequencies on the horizontal axis and amplitude on the vertical axis. The helicopter data and flight simulator data should be presented in the same format with the same scaling. The algorithms used for generating the flight simulator data should be the same as those used for the helicopter data. If they

are not the same then the algorithms used for the flight simulator data should be proven to be sufficiently comparable. As a minimum the results along the dominant axes should be presented and a rationale for not presenting the other axes should be provided.

(2) Interpretation of results. The overall trend of the PSD plot should be considered while focusing on the dominant frequencies. Less emphasis should be placed on the differences at the high frequency and low amplitude portions of the PSD plot. During the analysis, certain structural components of the flight simulator have resonant frequencies that are filtered and may not appear in the PSD plot. If filtering is required, the notch filter bandwidth should be limited to 1 Hz to ensure that the buffet feel is not adversely affected. In addition, a rationale should be provided to explain that the characteristic motion vibration is not being adversely affected by the filtering. The amplitude should match helicopter data as described below. However, if the PSD plot was altered for subjective reasons, a rationale should be provided to justify the change. If the plot is on a logarithmic scale it may be difficult to interpret the amplitude of the buffet in terms of acceleration. For example, a 1×10^{-3} g-rms²/Hz would describe a heavy buffet and may be seen in the deep stall regime. Alternatively, a 1×10^{-6} g-rms²/Hz buffet is almost imperceptible, but may represent a flap buffet at low speed. The previous two examples differ in magnitude by 1000. On a PSD plot this represents three decades (one decade is a change in order of magnitude of 10, and two decades is a change in order of magnitude of 100).

Note: In the example, "g-rms²" is the mathematical expression for "g's root mean squared."

f. Table C2B, Motion System Recommendations for Level C and Level D Helicopter Simulators, contains a description of the parameters that should be present in simulator motion systems to provide adequate onset motion cues to helicopter pilots. The information provided covers the six axes of motion (pitch, roll, yaw, vertical, lateral, and longitudinal) and addresses displacement, velocity, and acceleration. Also included is information about the parameters for initial rotational and linear acceleration. The parameters listed in this table apply only to Level C and Level D simulators, and are presented here as recommended targets for motion system capability. They are not requirements.

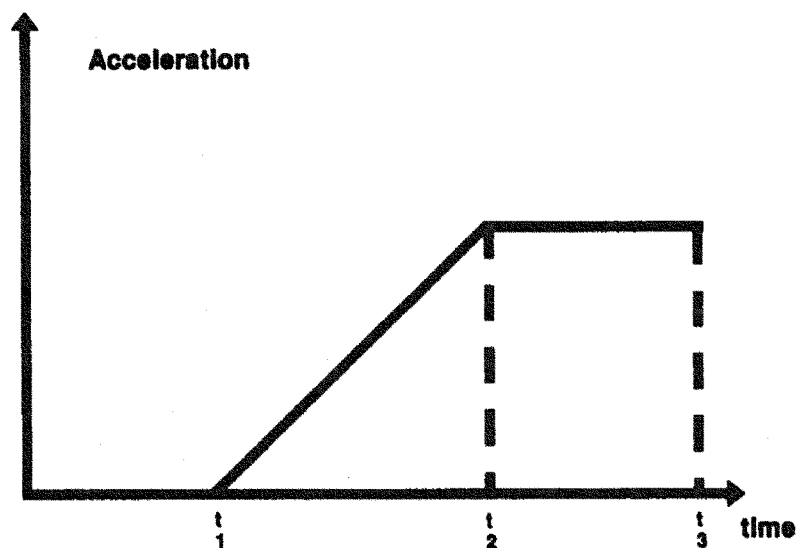
TABLE C2B.—MOTION SYSTEM RECOMMENDATIONS FOR LEVEL C AND LEVEL D HELICOPTER SIMULATORS

Motion System Envelope	
a.	
a.1. Pitch	
a.1.a. ... Displacement	±25°
a.1.b. ... Velocity	±20°/sec
a.1.c. ... Acceleration	±100°/sec ²
a.2. Roll	
a.2.a. ... Displacement	±25°
a.2.b. ... Velocity	±20°/sec
a.2.c. ... Acceleration	±100°/sec ²
a.3. Yaw	
a.3.a. ... Displacement	±25°
a.3.b. ... Velocity—	±20°/sec

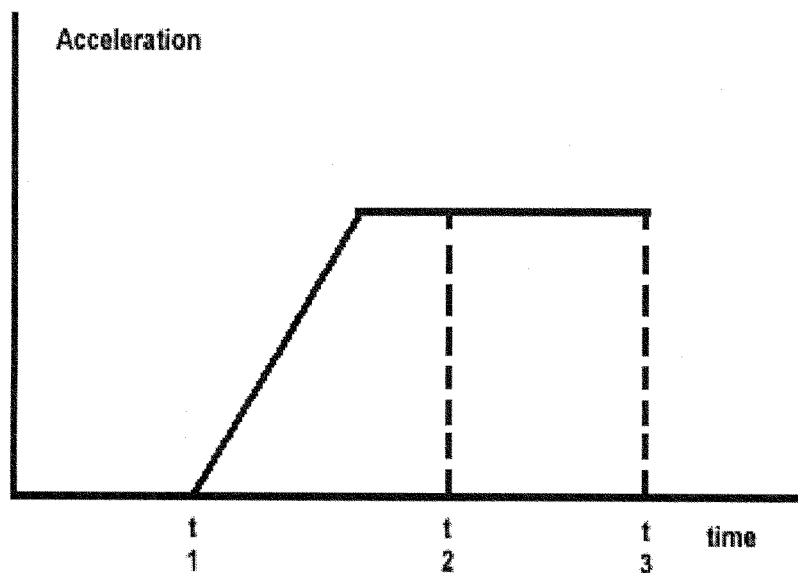
TABLE C2B.—MOTION SYSTEM RECOMMENDATIONS FOR LEVEL C AND LEVEL D HELICOPTER SIMULATORS—Continued

a.3.c. ...	Acceleration	$\pm 100^\circ/\text{sec}^2$
a.4.	Vertical	
a.4.a. ...	Displacement	± 34 in.
a.4.b. ...	Velocity	± 24 in.
a.4.c. ...	Acceleration	± 0.8 g.
a.5.	Lateral	
a.5.a. ...	Displacement	± 45 in.
a.5.b. ...	Velocity	± 28 in/sec.
a.5.c. ...	Acceleration	± 0.6 g.
a.6.	Longitudinal	
a.6.a. ...	Displacement	± 34 in.
a.6.b. ...	Velocity	± 28 in/sec.
a.6.c. ...	Acceleration	± 0.6 g.
a.7.	Initial Rotational Acceleration Ratio.	
		All axes $300^\circ/\text{sec}^2/\text{sec}$
a.8.	Initial Linear Acceleration Ratio.	
a.8.a. ...	Vertical	± 6 g/sec
a.8.b. ...	Lateral	± 3 g/sec
a.8.c. ...	Longitudinal	± 3 g/sec

Attachment 2 to Appendix C to Part 60—
Figure C2C. Acceleration Test Signals



Attachment 2 to Appendix C to Part 60—
Figure C2D. Test Signal Characteristics



NOTE: Motion system baseline performance repeatability tests should be repeated if the simulator weight changes for any reason (i.e., visual change or structural change). The new results should be used for future comparison.

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7. Sound System

a. General. The total sound environment in the helicopter is very complex, and changes with atmospheric conditions, helicopter configuration, airspeed, altitude, and power settings. Flight deck sounds are an important component of the flight deck operational environment and provide valuable

information to the flight crew. These aural cues can either assist the crew (as an indication of an abnormal situation), or hinder the crew (as a distraction or nuisance). For effective training, the flight simulator should provide flight deck sounds that are perceptible to the pilot during normal and abnormal operations, and that are comparable to those of the helicopter. The

flight simulator operator should carefully evaluate background noises in the location where the device will be installed. To demonstrate compliance with the sound requirements, the objective or validation tests in this attachment were selected to provide a representative sample of normal static conditions typically experienced by a pilot.

b. Alternate propulsion. For FFS with multiple propulsion configurations, any condition listed in Table C2A in this attachment should be presented for evaluation as part of the QTG if identified by the helicopter manufacturer or other data supplier as significantly different due to a change in propulsion system (engine or propeller).

c. Data and Data Collection System.

(1) Information provided to the flight simulator manufacturer should comply be presented in the format suggested by the "International Air Transport Association (IATA) Flight Simulator Design and Performance Data Requirements," as amended. This information should contain calibration and frequency response data.

(2) The system used to perform the tests listed in Table C2A should comply with the following standards:

(a) The specifications for octave, half octave, and third octave band filter sets may be found in American National Standards Institute (ANSI) S1.11-1986.

(b) Measurement microphones should be type WS2 or better, as described in

International Electrotechnical Commission (IEC) 1094-4-1995.

(3) Headsets. If headsets are used during normal operation of the helicopter they should also be used during the flight simulator evaluation.

(4) Playback equipment. Playback equipment and recordings of the QTG conditions should be provided during initial evaluations.

(5) Background noise.

(a) Background noise is the noise in the flight simulator that is not associated with the helicopter, but is caused by the flight simulator's cooling and hydraulic systems and extraneous noise from other locations in the building. Background noise can seriously impact the correct simulation of helicopter sounds, and should be kept below the helicopter sounds. In some cases, the sound level of the simulation can be increased to compensate for the background noise. However, this approach is limited by the specified tolerances and by the subjective acceptability of the sound environment to the evaluation pilot.

(b) The acceptability of the background noise levels is dependent upon the normal sound levels in the helicopter being represented. Background noise levels that fall below the lines defined by the following points, may be acceptable:

- (i) 70 dB @ 50 Hz;
- (ii) 55 dB @ 1000 Hz;
- (iii) 30 dB @ 16 kHz.

(Note: These limits are for unweighted 1/3 octave band sound levels. Meeting these limits for background noise does not ensure an acceptable flight simulator. Helicopter sounds that fall below this limit require careful review and may require lower limits on background noise.)

(6) Validation testing. Deficiencies in helicopter recordings should be considered when applying the specified tolerances to ensure that the simulation is representative of the helicopter. Examples of typical deficiencies are:

- (a) Variation of data between tail numbers.
- (b) Frequency response of microphones.
- (c) Repeatability of the measurements.

TABLE C2C.—EXAMPLE OF CONTINUING QUALIFICATION FREQUENCY RESPONSE TEST TOLERANCE

Band center frequency	Initial results (dBSPL)	Continuing qualification results (dBSPL)	Absolute difference
50	75.0	73.8	1.2
63	75.9	75.6	0.3
80	77.1	76.5	0.6
100	78.0	78.3	0.3
125	81.9	81.3	0.6
160	79.8	80.1	0.3
200	83.1	84.9	1.8
250	78.6	78.9	0.3
315	79.5	78.3	1.2
400	80.1	79.5	0.9
500	80.7	79.8	0.9
630	81.9	80.4	1.5
800	73.2	74.1	0.9
1000	79.2	80.1	0.9
1250	80.7	82.8	2.1
1600	81.6	78.6	3.0
2000	76.2	74.4	1.8
2500	79.5	80.7	1.2
3150	80.1	77.1	3.0
4000	78.9	78.6	0.3
5000	80.1	77.1	3.0
6300	80.7	80.4	0.3
8000	84.3	85.5	1.2
10000	81.3	79.8	1.5
12500	80.7	80.1	0.6
16000	71.1	71.1	0.0
Average			1.1

8. Additional Information About Flight Simulator Qualification for New or Derivative Helicopters

a. Typically, a helicopter manufacturer's approved final data for performance, handling qualities, systems or avionics is not available until well after a new or derivative helicopter has entered service. However, flight crew training and certification often begins several months prior to the entry of

the first helicopter into service.

Consequently, it may be necessary to use preliminary data provided by the helicopter manufacturer for interim qualification of flight simulators.

b. In these cases, the NSPM may accept certain partially validated preliminary helicopter and systems data, and early release ("red label") avionics data in order to permit the necessary program schedule for

training, certification, and service introduction.

c. Simulator sponsors seeking qualification based on preliminary data should consult the NSPM to make special arrangements for using preliminary data for flight simulator qualification. The sponsor should also consult the helicopter and flight simulator manufacturers to develop a data plan and flight simulator qualification plan.

d. The procedure to be followed to gain NSPM acceptance of preliminary data will vary from case to case and between helicopter manufacturers. Each helicopter manufacturer's new helicopter development and test program is designed to suit the needs of the particular project and may not contain the same events or sequence of events as another manufacturer's program or even the same manufacturer's program for a different helicopter. Therefore, there cannot be a prescribed invariable procedure for acceptance of preliminary data; instead there should be a statement describing the final sequence of events, data sources, and validation procedures agreed by the simulator sponsor, the helicopter manufacturer, the flight simulator manufacturer, and the NSPM.

Note: A description of helicopter manufacturer-provided data needed for flight simulator modeling and validation is to be found in the "Royal Aeronautical Society Data Package Requirements for Design and Performance Evaluation of Rotary Wing Synthetic Training Devices."

e. The preliminary data should be the manufacturer's best representation of the helicopter, with assurance that the final data will not deviate significantly from the preliminary estimates. Data derived from these predictive or preliminary techniques should be validated by available sources including, at least, the following:

(1) Manufacturer's engineering report. The report should explain the predictive method used and illustrate past success of the method on similar projects. For example, the manufacturer could show the application of the method to an earlier helicopter model or predict the characteristics of an earlier model and compare the results to final data for that model.

(2) Early flight test results. This data is often derived from helicopter certification tests and should be used to maximum advantage for early flight simulator validation. Certain critical tests that would normally be done early in the helicopter certification program should be included to validate essential pilot training and certification maneuvers. These tests include cases where a pilot is expected to cope with a helicopter failure mode or an engine failure. The early data available will depend on the helicopter manufacturer's flight test program design and may not be the same in each case. The flight test program of the helicopter manufacturer should include provisions for generation of very early flight tests results for flight simulator validation.

f. The use of preliminary data is not indefinite. The helicopter manufacturer's final data should be available within 12 months after the helicopter first entry into service or as agreed by the NSPM, the simulator sponsor, and the helicopter manufacturer. When applying for interim qualification using preliminary data, the simulator sponsor and the NSPM should agree on the update program. This includes specifying that the final data update will be installed in the flight simulator within a period of 12 months following the final data release, unless special conditions exist and a different schedule is acceptable. The flight

simulator performance and handling validation would then be based on data derived from flight tests. Initial helicopter systems data should be updated after engineering tests. Final helicopter systems data should also be used for flight simulator programming and validation.

g. Flight simulator avionics should stay essentially in step with helicopter avionics (hardware and software) updates. The permitted time lapse between helicopter and flight simulator updates should be minimal. It may depend on the magnitude of the update and whether the QTG and pilot training and certification are affected. Differences in helicopter and flight simulator avionics versions and the resulting effects on flight simulator qualification should be agreed between the simulator sponsor and the NSPM. Consultation with the flight simulator manufacturer is desirable throughout the qualification process.

h. The following describes an example of the design data and sources that might be used in the development of an interim qualification plan.

(1) The plan should consist of the development of a QTG based upon a mix of flight test and engineering simulation data. For data collected from specific helicopter flight tests or other flights the required design model or data changes necessary to support an acceptable Proof of Match (POM) should be generated by the helicopter manufacturer.

(2) For proper validation of the two sets of data, the helicopter manufacturer should compare their simulation model responses against the flight test data, when driven by the same control inputs and subjected to the same atmospheric conditions as recorded in the flight test. The model responses should result from a simulation where the following systems are run in an integrated fashion and are consistent with the design data released to the flight simulator manufacturer:

- (a) Propulsion.
- (b) Aerodynamics.
- (c) Mass properties.
- (d) Flight controls.
- (e) Stability augmentation.
- (f) Brakes/landing gear.

i. A qualified test pilot should be used to assess handling qualities and performance evaluations for the qualification of flight simulators of new helicopter types.

End Information

Begin QPS Requirement

9. Engineering Simulator—Validation Data

a. When a fully validated simulation (i.e., validated with flight test results) is modified due to changes to the simulated helicopter configuration, the helicopter manufacturer or other acceptable data supplier must coordinate with the NSPM to supply validation data from an "audited" engineering simulator/simulation to selectively supplement flight test data. The NSPM must be provided an opportunity to audit the use of the engineering simulation or the engineering simulator during the acquisition of the data that will be used as validation data. Audited data may be used for changes that are incremental in nature.

Manufacturers or other data suppliers must be able to demonstrate that the predicted changes in helicopter performance are based on acceptable aeronautical principles with proven success history and valid outcomes. This must include comparisons of predicted and flight test validated data.

b. Helicopter manufacturers or other acceptable data suppliers seeking to use an engineering simulator for simulation validation data as an alternative to flight-test derived validation data, must contact the NSPM and provide the following:

(1) A description of the proposed aircraft changes, a description of the proposed simulation model changes, and the use of an integral configuration management process, including an audit of the actual simulation model modifications that includes a step-by-step description leading from the original model(s) to the current model(s).

(2) A schedule for review by the NSPM of the proposed plan and the subsequent validation data to establish acceptability of the proposal.

(3) Validation data from an audited engineering simulator/simulation to supplement specific segments of the flight test data.

c. To be qualified to supply engineering simulator validation data, for aerodynamic, engine, flight control, or ground handling models, a helicopter manufacturer or other acceptable data supplier must:

- (1) Be able to verify their ability to:
 - (a) Develop and implement high fidelity simulation models; and
 - (b) Predict the handling and performance characteristics of a helicopter with sufficient accuracy to avoid additional flight test activities for those handling and performance characteristics.
- (2) Have an engineering simulator that:
 - (a) Is a physical entity, complete with a flight deck representative of the simulated class of helicopter;
 - (b) Has controls sufficient for manual flight;
 - (c) Has models that run in an integrated manner;
 - (d) Had fully flight-test validated simulation models as the original or baseline simulation models;
 - (e) Has an out-of-the-flight deck visual system;
 - (f) Has actual avionics boxes interchangeable with the equivalent software simulations to support validation of released software;
 - (g) Uses the same models as released to the training community (which are also used to produce stand-alone proof-of-match and checkout documents);
 - (h) Is used to support helicopter development and certification; and
 - (i) Has been found to be a high fidelity representation of the helicopter by the manufacturer's pilots (or other acceptable data supplier), certificate holders, and the NSPM.

(3) Use the engineering simulator to produce a representative set of integrated proof-of-match cases.

(4) Use a configuration control system covering hardware and software for the operating components of the engineering simulator.

(5) Demonstrate that the predicted effects of the change(s) are within the provisions of sub-paragraph “a” of this section, and confirm that additional flight test data are not required.

d. Additional Requirements for Validation Data

(1) When used to provide validation data, an engineering simulator must meet the simulator standards currently applicable to training simulators except for the data package.

(2) The data package used must be:

(a) Comprised of the engineering predictions derived from the helicopter design, development, or certification process;

(b) Based on acceptable aeronautical principles with proven success history and valid outcomes for aerodynamics, engine operations, avionics operations, flight control applications, or ground handling;

(c) Verified with existing flight-test data; and

(d) Applicable to the configuration of a production helicopter, as opposed to a flight-test helicopter.

(3) Where engineering simulator data are used as part of a QTG, an essential match must exist between the training simulator and the validation data.

(4) Training flight simulator(s) using these baseline and modified simulation models must be qualified to at least internationally recognized standards, such as contained in the ICAO Document 9625, the “Manual of Criteria for the Qualification of Flight Simulators.”

End QPS Requirement

10. [Reserved]

11. Validation Test Tolerances

Begin Information

a. Non-Flight-Test Tolerances. If engineering simulator data or other non-flight-test data are used as an allowable form of reference validation data for the objective tests listed in Table C2A of this attachment, the data provider must supply a well-documented mathematical model and testing procedure that enables a replication of the engineering simulation results within 20% of the corresponding flight test tolerances.

b. Background

(1) The tolerances listed in Table C2A of this attachment are designed to measure the quality of the match using flight-test data as a reference.

(2) Good engineering judgment should be applied to all tolerances in any test. A test is failed when the results fall outside of the prescribed tolerance(s).

(3) Engineering simulator data are acceptable because the same simulation models used to produce the reference data are also used to test the flight training simulator (i.e., the two sets of results should be “essentially” similar).

(4) The results from the two sources may differ for the following reasons:

(a) Hardware (avionics units and flight controls);

(b) Iteration rates;

(c) Execution order;

(d) Integration methods;

(e) Processor architecture;

(f) Digital drift, including:

(i) Interpolation methods;

(ii) Data handling differences;

(iii) Auto-test trim tolerances.

(5) The tolerance limit between the reference data and the flight simulator results is generally 20% of the corresponding “flight-test” tolerances. However, there may be cases where the simulator models used are of higher fidelity, or the manner in which they are cascaded in the integrated testing loop have the effect of a higher fidelity, than those supplied by the data provider. Under these circumstances, it is possible that an error greater than 20% may be generated. An error greater than 20% may be acceptable if the simulator sponsor can provide an adequate explanation.

(6) Guidelines are needed for the application of tolerances to engineering-simulator-generated validation data because:

(a) Flight-test data are often not available due to sound technical reasons;

(b) Alternative technical solutions are being advanced; and

(c) The costs are high.

12. Validation Data Roadmap

a. Helicopter manufacturers or other data suppliers should supply a validation data roadmap (VDR) document as part of the data package. A VDR document contains guidance material from the helicopter validation data supplier recommending the best possible sources of data to be used as validation data

in the QTG. A VDR is of special value when requesting interim qualification, qualification of simulators for helicopters certificated prior to 1992, and qualification of alternate engine or avionics fits. A sponsor seeking to have a device qualified in accordance with the standards contained in this QPS appendix should submit a VDR to the NSPM as early as possible in the planning stages. The NSPM is the final authority to approve the data to be used as validation material for the QTG. The NSPM and the Joint Aviation Authorities’ Synthetic Training Devices Advisory Board have committed to maintain a list of agreed VDRs.

b. The VDR should identify (in matrix format) sources of data for all required tests. It should also provide guidance regarding the validity of these data for a specific engine type, thrust rating configuration, and the revision levels of all avionics affecting helicopter handling qualities and performance. The VDR should include rationale or explanation in cases where data or parameters are missing, engineering simulation data are to be used, flight test methods require explanation, or where there is any deviation from data requirements. Additionally, the document should refer to other appropriate sources of validation data (e.g., sound and vibration data documents).

c. The Sample Validation Data Roadmap (VDR) for helicopters, shown in Table C2D, depicts a generic roadmap matrix identifying sources of validation data for an abbreviated list of tests. This sample document uses fixed wing parameters instead of helicopter values. It is merely a sample and does not provide actual data. A complete matrix should address all test conditions for helicopter application and provide actual data and data sources.

d. Two examples of rationale pages are presented in Appendix F of IATA Flight Simulator Design and Performance Data Requirements document. These illustrate the type of helicopter and avionics configuration information and descriptive engineering rationale used to describe data anomalies or provide an acceptable basis for using alternative data for QTG validation requirements.

End Information

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ICAO or IATA #	Test Description		Validation Source		Validation Document						Comments		
<i>Notes:</i> 1. Only one page is shown; and some test conditions were deleted for brevity. 2. Relevant regulatory material should be consulted and all applicable tests addressed. 3. Validation source, document and comments provided herein are for reference only and do not constitute approval for use. 4. CCA mode must be described for each test condition. 5. If more than one aircraft type (e.g., derivative and baseline) are used as validation data more columns may be necessary.	CCA Mode		Aircraft Flight Test Data	Engineering Simulator Data (DEF-73 Engines)	Aerodynamics POM Doc. #xxx123, Rev. A	Flight Controls POM Doc. #xxx456, NEW	Ground Handling POM Doc. #xxx789, Rev. B	Propulsion POM Doc. #321, Rev. C	Integrated POM Doc. #xxx654, Rev. A	Appendix to this VDR Doc. #xxx987, NEW	<i>Legend:</i> D71 = Engine Type (Thrust Rating of 71.5K) D73 = Engine Type (Thrust Rating of 73K) Bold upper case = primary validation source. Lower case, within parentheses = alternative validation source. R = Rationale included in the data package Appendix.		
	1.a.1.	Minimum Radius Turn.	X				D71						
	1.a.2.	Rate of Turn vs. Nosewheel Angle (2 speeds).	X				D71						
	1.b.1.	Ground Acceleration Time and Distance.	X			(d71)			D73			Primary data contained in IPOM.	
	1.b.2.	Minimum Control Speed, Ground (V _{mcg}).	(x)		X					D73		See engineering rationale for test data in VDR.	
	1.b.3.	Minimum Unstick Speed (V _{mu}).	X		X	D71							
	1.b.4.	Normal Takeoff.	X		X	(d73)				D73		Primary data contained in IPOM.	
	1.b.5.	Critical Engine Failure on Takeoff.	X		X	(d71)						Alternative engine thrust rating flight test data in VDR.	
	1.b.6.	Crosswind Takeoff.	X		X	(d71)						Alternative engine thrust rating flight test data in VDR.	
	1.b.7.	Rejected Takeoff.	X		X	D71				R		Test procedure anomaly; see rationale.	
	1.b.8.	Dynamic Engine Failure After Takeoff.			X					D73		No flight test data available; see rationale.	
	1.c.1.	Normal Climb – All Engines.	X		X	(d71)				D71		Primary data contained in IPOM.	
	1.c.2.	Climb – Engine-out, Second Segment.	X		X	(d71)						Alternative engine thrust rating flight test data in VDR.	
	1.c.3.	Climb – Engine-out, Enroute.	X		X	(d71)				D73		AFM data available (73K).	
	1.c.4.	Engine-out, Approach Climb.	X		X	D71							
	1.c.5.a.	Level Flight Acceleration.	(x)		X	(d73)						D73	Eng sim data w/ modified EEC accel rate in VDR.
	1.c.5.b.	Level Flight Deceleration.	(x)		X	(d73)						D73	Eng sim data w/ modified EEC accel rate in VDR.
	1.d.1.	Cruise Performance.	X		X	D71							
	1.e.1.a.	Stopping Time & Distance (Wheel brakes / Light weight).			X							(d73)	No flight test data available; see rationale.
1.e.1.b.	Stopping Time & Distance (Wheel brakes/ Med. weight).	X		(x)	D71					(d73)			
1.e.1.c.	Stopping Time & Distance (Wheel brakes / Heavy weight).	X		(x)	D71					(d73)			
1.e.2.a.	Stopping Time & Distance (Reverse thrust / Light weight).	X		(x)	D71					(d73)			
1.e.2.b.	Stopping Time & Distance (Reverse thrust / Med. Weight).			X	(d71)					D73	No flight test data available; see rationale.		

Begin Information**13. [Reserved]****14. Acceptance Guidelines for Alternative Avionics (Flight-Related Computers and Controllers)****a. Background**

(1) For a new helicopter type, the majority of flight validation data are collected on the first helicopter configuration with a "baseline" flight-related avionics ship-set; (see subparagraph b.(2) of this section). These data are then used to validate all flight simulators representing that helicopter type.

(2) Additional validation data may be needed for flight simulators representing a helicopter with avionics of a different hardware design than the baseline, or a different software revision than that of previously validated configurations.

(3) When a flight simulator with additional or alternate avionics configurations is to be qualified, the QTG should contain tests against validation data for selected cases where avionics differences are expected to be significant.

b. Approval Guidelines For Validating Alternate Avionics

(1) The following guidelines apply to flight simulators representing helicopters with a revised avionics configuration, or more than one avionics configuration.

(2) The baseline validation data should be based on flight test data, except where other data are specifically allowed (e.g., engineering flight simulator data).

(3) The helicopter avionics can be segmented into two groups, systems or components whose functional behavior contributes to the aircraft response presented in the QTG results, and systems that do not. The following avionics are examples of contributory systems for which hardware design changes or software revisions may lead to significant differences in the aircraft response relative to the baseline avionics configuration: Flight control computers and controllers for engines, autopilot, braking system, and nosewheel steering system, if applicable. Related avionics such as augmentation systems should also be considered.

(4) The acceptability of validation data used in the QTG for an alternative avionics fit should be determined as follows:

(a) For changes to an avionics system or component that do not affect QTG validation test response, the QTG test can be based on validation data from the previously validated avionics configuration.

(b) For an avionics change to a contributory system, where a specific test is not affected by the change (e.g., the avionics change is a Built In Test Equipment (BITE) update or a modification in a different flight phase), the QTG test can be based on validation data from the previously-validated avionics configuration. The QTG should include authoritative justification (e.g., from the helicopter manufacturer or system supplier) that this avionics change does not affect the test.

(c) For an avionics change to a contributory system, the QTG may be based on validation

data from the previously-validated avionics configuration if no new functionality is added and the impact of the avionics change on the helicopter response is based on acceptable aeronautical principles with proven success history and valid outcomes. This should be supplemented with avionics-specific validation data from the helicopter manufacturer's engineering simulation, generated with the revised avionics configuration. The QTG should include an explanation of the nature of the change and its effect on the helicopter response.

(d) For an avionics change to a contributory system that significantly affects some tests in the QTG, or where new functionality is added, the QTG should be based on validation data from the previously validated avionics configuration and supplemental avionics-specific flight test data sufficient to validate the alternate avionics revision. Additional flight test validation data may not be needed if the avionics changes were certified without the need for testing with a comprehensive flight instrumentation package. The helicopter manufacturer should coordinate flight simulator data requirements in advance with the NSPM.

(5) A matrix or "roadmap" should be provided with the QTG indicating the appropriate validation data source for each test. The roadmap should include identification of the revision state of those contributory avionics systems that could affect specific test responses.

15. Transport Delay Testing

a. This paragraph describes how to determine the introduced transport delay through the flight simulator system so that it does not exceed a specific time delay. The transport delay should be measured from control inputs through the interface, through each of the host computer modules and back through the interface to motion, flight instrument, and visual systems. The transport delay should not exceed the maximum allowable interval.

b. Four specific examples of transport delay are:

(1) Simulation of classic non-computer controlled aircraft;

(2) Simulation of Computer Controlled Aircraft using real helicopter black boxes;

(3) Simulation of Computer Controlled Aircraft using software emulation of helicopter boxes;

(4) Simulation using software avionics or rehosted instruments.

c. Figure C2C illustrates the total transport delay for a non-computer-controlled helicopter or the classic transport delay test. Since there are no helicopter-induced delays for this case, the total transport delay is equivalent to the introduced delay.

d. Figure C2D illustrates the transport delay testing method using the real helicopter controller system.

e. To obtain the induced transport delay for the motion, instrument and visual signal, the delay induced by the helicopter controller should be subtracted from the total transport delay. This difference represents the introduced delay and should not exceed the standards prescribed in Table C1A.

f. Introduced transport delay is measured from the flight deck control input to the reaction of the instruments and motion and visual systems (See Figure C2C).

g. The control input may also be introduced after the helicopter controller system input and the introduced transport delay may be measured directly from the control input to the reaction of the instruments, and simulator motion and visual systems (See Figure C2D).

h. Figure C2E illustrates the transport delay testing method used on a flight simulator that uses a software emulated helicopter controller system.

i. It is not possible to measure the introduced transport delay using the simulated helicopter controller system architecture for the pitch, roll and yaw axes. Therefore, the signal should be measured directly from the pilot controller. The flight simulator manufacturer should measure the total transport delay and subtract the inherent delay of the actual helicopter components because the real helicopter controller system has an inherent delay provided by the helicopter manufacturer. The flight simulator manufacturer should ensure that the introduced delay does not exceed the standards prescribed in Table C1A.

j. Special measurements for instrument signals for flight simulators using a real helicopter instrument display system instead of a simulated or re-hosted display. For flight instrument systems, the total transport delay should be measured and the inherent delay of the actual helicopter components subtracted to ensure that the introduced delay does not exceed the standards prescribed in Table C1A.

(1) Figure C2FA illustrates the transport delay procedure without helicopter display simulation. The introduced delay consists of the delay between the control movement and the instrument change on the data bus.

(2) Figure C2FB illustrates the modified testing method required to measure introduced delay due to software avionics or re-hosted instruments. The total simulated instrument transport delay is measured and the helicopter delay should be subtracted from this total. This difference represents the introduced delay and should not exceed the standards prescribed in Table C1A. The inherent delay of the helicopter between the data bus and the displays is indicated in figure C2FA. The display manufacturer should provide this delay time.

k. Recorded signals. The signals recorded to conduct the transport delay calculations should be explained on a schematic block diagram. The flight simulator manufacturer should also provide an explanation of why each signal was selected and how they relate to the above descriptions.

l. Interpretation of results. Flight simulator results vary over time from test to test due to "sampling uncertainty." All flight simulators run at a specific rate where all modules are executed sequentially in the host computer. The flight controls input can occur at any time in the iteration, but these data will not be processed before the start of the new iteration. For example, a flight simulator running at 60 Hz may have a difference of as much as 16.67 msec between

results. This does not mean that the test has failed. Instead, the difference is attributed to variation in input processing. In some conditions, the host simulator and the visual system do not run at the same iteration rate, so the output of the host computer to the

visual system will not always be synchronized.

m. The transport delay test should account for both daylight and night modes of operation of the visual system. In both cases, the tolerances prescribed in Table C1A

should be met and the motion response should occur before the end of the first video scan containing new information.

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Figure C2E

Transport Delay for simulation of classic non-Computer Controlled Aircraft.

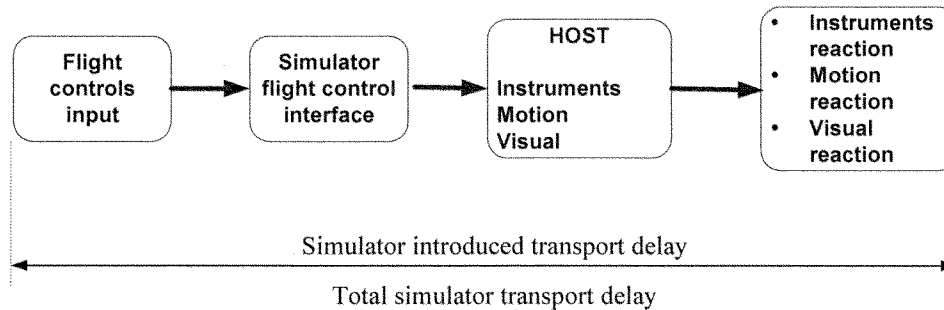


Figure C2F

Transport Delay for simulation of Computer Controlled Aircraft using real helicopter black boxes

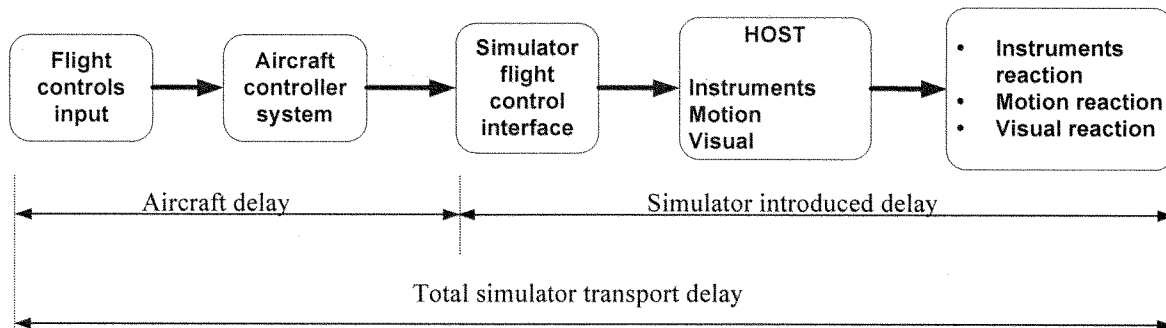
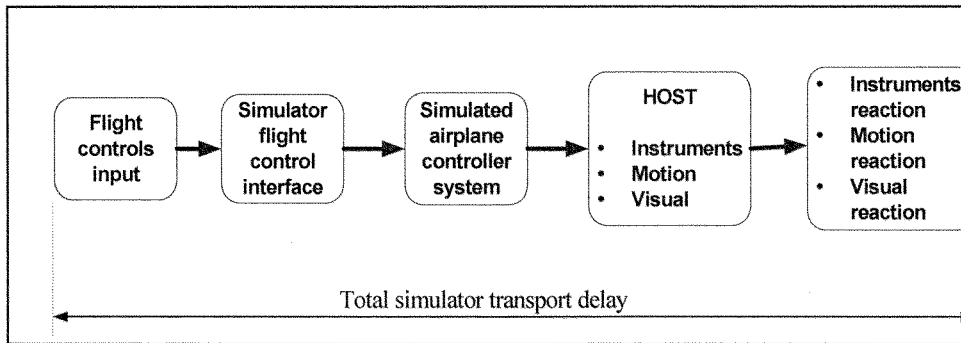
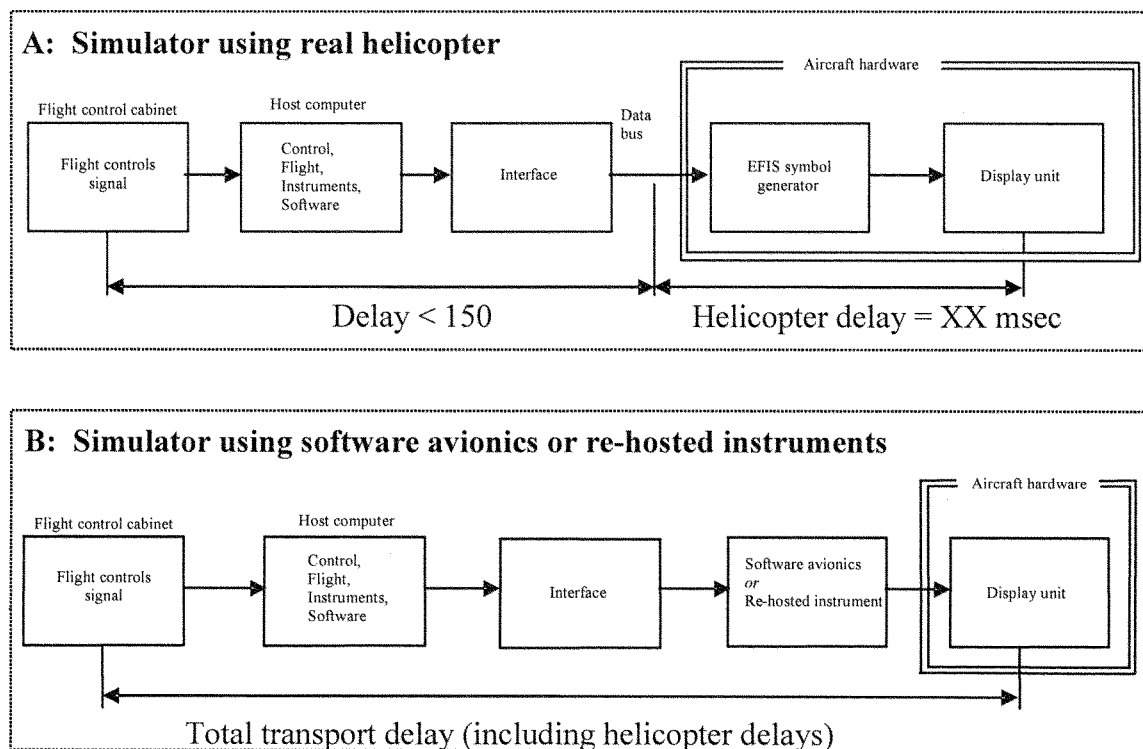


Figure C2G

Transport Delay for simulation of Computer Controlled Aircraft using software emulation of helicopter boxes

**Figure C2HA and C2HB**

Transport delay for simulation of helicopters using real or re-hosted instrument drivers



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16. Continuing Qualification Evaluations—Validation Test Data Presentation

a. Background

(1) The MQTG is created during the initial evaluation of a flight simulator. This is the master document, as amended, to which flight simulator continuing qualification evaluation test results are compared.

(2) The currently accepted method of presenting continuing qualification evaluation test results is to provide flight

simulator results over-plotted with reference data. Test results are carefully reviewed to determine if the test is within the specified tolerances. This can be a time consuming process, particularly when reference data exhibits rapid variations or an apparent anomaly requiring engineering judgment in the application of the tolerances. In these cases, the solution is to compare the results to the MQTG. The continuing qualification results are compared to the results in the MQTG for acceptance. The flight simulator operator and the NSPM should look for any

change in the flight simulator performance since initial qualification.

b. Continuing Qualification Evaluation Test Results Presentation

(1) Flight simulator operators are encouraged to over-plot continuing qualification validation test results with MQTG flight simulator results recorded during the initial evaluation and as amended. Any change in a validation test will be readily apparent. In addition to plotting continuing qualification validation test and

MQTG results, operators may elect to plot reference data.

(2) There are no suggested tolerances between flight simulator continuing qualification and MQTG validation test results. Investigation of any discrepancy between the MQTG and continuing qualification flight simulator performance is left to the discretion of the flight simulator operator and the NSPM.

(3) Differences between the two sets of results, other than variations attributable to repeatability issues that cannot be explained should be investigated.

(4) The flight simulator should retain the ability to over-plot both automatic and manual validation test results with reference data.

End Information

Begin QPS Requirements

17. Alternative Data Sources, Procedures, and Instrumentation: Level B Simulators Only

a. Sponsors are not required to use the alternative data sources, procedures, and instrumentation. However, any sponsor choosing to use alternative sources must comply with the requirements in Table C2E.

End QPS Requirements

Begin Information

b. It has become standard practice for experienced simulator manufacturers to use such techniques as a means of establishing data bases for new simulator configurations while awaiting the availability of actual flight test data. The data generated from the aerodynamic modeling techniques is then compared to the flight test data when it

becomes available. The results of such comparisons have become increasingly consistent, indicating that these techniques, applied with appropriate experience, are dependable and accurate for the development of aerodynamic models for use in Level B simulators.

c. Based on this history of successful comparisons, the NSPM has concluded that those who are experienced in the development of aerodynamic models for simulator application can successfully use these modeling techniques to alter the method for acquiring flight test data for Level B simulators.

d. The information in Table C2E (Alternative Data Sources, Procedures, and Information) is presented to describe an acceptable alternative to data sources for simulator modeling and validation and an acceptable alternative to the procedures and instrumentation traditionally used to gather such modeling and validation data.

(1) Alternative data sources that may be used for part or all of a data requirement are the Helicopter Maintenance Manual, the Rotorcraft Flight Manual (RFM), Helicopter Design Data, the Type Inspection Report (TIR), Certification Data or acceptable supplemental flight test data.

(2) The sponsor should coordinate with the NSPM prior to using alternative data sources in a flight test or data gathering effort.

e. The NSPM position on the use of these alternative data sources, procedures, and instrumentation is based on the use of a rigorously defined and fully mature simulation controls system model that includes accurate gearing and cable stretch characteristics (where applicable), determined from actual aircraft measurements. The model does not require control surface position measurements in the flight test objective data in these limited applications.

f. Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated helicopter instruments, including the inclinometer; the force/position measurements of flight deck controls; and a clear visual directional reference for a known magnetic bearing (e.g., a runway centerline). Ground track and wind corrected heading may be used for sideslip angle.

g. The sponsor is urged to contact the NSPM for clarification of any issue regarding helicopters with reversible control systems. This table is not applicable to Computer Controlled Aircraft flight simulators.

h. Use of these alternate data sources, procedures, and instrumentation does not relieve the sponsor from compliance with the balance of the information contained in this document relative to Level B FFSs.

i. The term "inertial measurement system" is used in table C2E includes the use of a functional global positioning system (GPS).

j. Synchronized video for the use of alternative data sources, procedures, and instrumentation should have:

(1) sufficient resolution to allow magnification of the display to make appropriate measurement and comparisons; and

(2) sufficient size and incremental marking to allow similar measurement and comparison. The detail provided by the video should provide sufficient clarity and accuracy to measure the necessary parameter(s) to at least 1/2 of the tolerance authorized for the specific test being conducted and allow an integration of the parameter(s) in question to obtain a rate of change.

End Information

TABLE C2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION

[The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix C are not used]

QPS requirements			Information
Table of objective tests	Level By only	Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title			
1.a.1.a. Performance. Engine Start and Accelerations.	X	Data may be acquired using a synchronized video recording of all engine instruments, start buttons, means for fuel introduction and means for moving from "idle" to "flight." A stopwatch is necessary.	
1.a.1.b. Performance. Steady State Idle and Operating RPM Conditions.	X	Data may be acquired using a synchronized video recording of all engine instruments, and include the status of the means for moving from "idle" to "flight."	
1.a.2. Performance. Power Turbine Speed Trim.	X	Data may be acquired using a synchronized video recording of all engine instruments. Speed trim actuator position may be hand recorded.	
1.a.3. Performance. Engine and Rotor Speed Governing.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	

TABLE C2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

[The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix C are not used]

QPS requirements			Information
Table of objective tests	Level By only	Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title			
1.b.1. Performance. On Surface Taxi. Minimum Radius Turn.	X	TIR, AFM, or Design data may be used.	A single procedure may not be adequate for all rotorcraft steering systems. Appropriate measurement procedures must be devised and proposed for NSPM concurrence.
1.b.2. Performance. On Surface Taxi Rate of Turn vs. Nosewheel Steering Angle.	X	Data may be acquired by using a constant tiller position (measured with a protractor), or full pedal application for steady state turn, and synchronized video of heading indicator. If less than full pedal is used, pedal position must be recorded.	
1.b.3. Performance. Taxi	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
1.b.4. Performance. Brake	X	Data may be acquired using a stopwatch and a means for measuring distance such as runway distance markers conforming with runway distance marker standards.	
1.c.1. Performance. Running Takeoff	X	Preliminary certification data may be used. Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls. Collective, cyclic, and pedal position time history must be recorded from the start of collective movement through to normal climb. Indicated torque settings may be hand recorded at the moment of lift-off and in a steady normal climb.	
1.c.2. Performance. One Engine Inoperative (OEI), continued takeoff.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls. Collective, cyclic, and pedal position time history must be recorded from the start of collective movement through to normal OEI climb. Indicated torque settings may be hand recorded at the moment of lift-off and in a steady normal OEI climb.	
1.f. Performance. Level Flight. Trimmed Flight Control Positions.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
1.g. Performance. Normal Climb. Trimmed Flight Control Positions.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
1.h.1. Descent Performance and Trimmed Flight Control Positions.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
1.h.2. Autorotation Performance and Trimmed Flight Control Positions.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	

TABLE C2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued

[The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix C are not used]

QPS requirements			Information
Table of objective tests	Level By only	Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title			
1.j.1. Performance. Running Landing All Engines.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
1.j.2. Performance. Running Landing One Engine Inoperative.	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
1.j.3. Performance. Balked Landing	X	Data may be acquired by using a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls. The synchronized video must record the time of the "balk landing" decision.	
2.a.1. Handling Qualities. Static Control Checks. Cyclic Controller Position vs. Force.	X	Control positions can be obtained using continuous control position recordings. Force data may be acquired by using a hand held force gauge so that the forces can be cross-plotted against control position in each of the control axes.	
2.a.2. Handling Qualities. Static Control Checks. Collective/Pedals vs. Force.	X	Control positions can be obtained using continuous control position recordings. Force data may be acquired by using a hand held force gauge so that the forces can be cross-plotted against control position in each of the control axes.	
2.a.3. Handling Qualities. Brake Pedal Force vs. Position.	X	Brake pedal positions can be obtained using continuous position recordings. Force data may be acquired by using a hand held force gauge so that the forces can be cross-plotted against brake pedal position.	
2.a.4. Handling Qualities. Trim System Rate (all applicable systems).	X	Control positions can be obtained using continuous control position recordings plotted against time to provide rate in each applicable system.	
2.a.6. Handling Qualities. Control System Freeplay.	X	Data may be acquired by direct measurement.	
2.c.1. Longitudinal Handling Qualities. Control Response.	X	Data may be acquired by using an inertial measurement system, a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
2.c.2. Longitudinal Handling Qualities. Static Stability.	X	Data may be acquired by using an inertial measurement system, a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
2.c.3.a. Longitudinal Handling Qualities. Dynamic Stability, Long Term Response.	X	Data may be acquired by using an inertial measurement system, a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	

TABLE C2E.—ALTERNATIVE DATA SOURCES, PROCEDURES, AND INSTRUMENTATION—Continued
 [The standards in this table are required if the data gathering methods described in paragraph 9 of Appendix C are not used]

QPS requirements			Information
Table of objective tests	Level By only	Alternative data sources, procedures, and instrumentation	Notes
Test entry number and title			
2.c.3.b. Longitudinal Handling Qualities. Dynamic Stability, Short Term Response.	X	Data may be acquired by using an inertial measurement system, a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
2.c.4. Longitudinal Handling Qualities. Maneuvering stability.	X	Data may be acquired by using an inertial measurement system, a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
2.d.1.a. Lateral Handling Qualities. Control Response.	X	Data may be acquired by using an inertial measurement system, a synchronized video of the calibrated helicopter instruments and the force/position measurements of flight deck controls.	
2.d.1.b Directional Handling Qualities. Control Response..	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated helicopter instruments and force/position measurements of flight deck directional controls.	
2.d.2. Handling Qualities. Directional Static Stability.	X	Data may be acquired by using an inertial measurement system and a synchronized video of calibrated helicopter instruments and force/position measurements of flight deck directional controls.	
2.d.3.a. Handling Qualities. Dynamic Lateral and Directional Stability Lateral-Directional Oscillations.	X	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated helicopter instruments, the force/position measurements of flight deck controls, and a stop watch.	
2.d.3.b. Handling Qualities. Dynamic Lateral and Directional Stability Spiral Stability.	X	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated helicopter instruments, the force/position measurements of flight deck controls, and a stop watch.	
2.d.3.c. Handling Qualities. Dynamic Lateral and Directional Stability. Adverse/Proverse Yaw.	X	Data may be acquired by using an inertial measurement system and a synchronized video of the calibrated helicopter instruments, the force/position measurements of flight deck controls.	

Begin Information

18. Visual Display Systems.

a. Basic principles of a FFS collimated display:

(1) The essential feature of a collimated display is that light rays coming from a given point in a picture are parallel. There are two main implications of the parallel rays:

(a) The viewer's eyes focus at infinity and have zero convergence, providing a cue that the object is distant; and

(b) The angle to any given point in the picture does not change when viewed from a different position so the object behaves

geometrically as though it were located at a significant distance from the viewer. These cues are self-consistent, and are appropriate for any object that has been modeled as being at a significant distance from the viewer.

(2) In an ideal situation the rays are perfectly parallel, but most implementations provide only an approximation to the ideal. Typically, an FFS display provides an image located not closer than about 20–33 ft (6–10 m) from the viewer, with the distance varying over the field-of-view. A schematic representation of a collimated display is provided in Figure C2A.

(3) Collimated displays are well suited to many simulation applications as the area of interest is relatively distant from the observer

so the angles to objects should remain independent of viewing position. Consider the view of the runway seen by the flight crew lined up on an approach. In the real world, the runway is distant and the light rays from the runway to the eyes are parallel. The runway appears to be straight ahead to both crew members. This situation is well simulated by a collimated display and is presented in Figure C2B. Note that the distance to the runway has been shortened for clarity. If drawn to scale, the runway would be farther away and the rays from the two seats would be closer to being parallel.

(4) While the horizontal field-of-view of a collimated display can be extended to approximately 210°–220°, the vertical field-

of-view has been limited to about 40°–45°. These limitations result from tradeoffs in optical quality and interference between the display components and flight deck structures, but were sufficient to meet FFS regulatory approval for Helicopter FFSs. However, recent designs have been introduced with vertical fields of view of up to 60° for helicopter applications.

b. Basic principles of a FFS dome (or non-collimated) display:

(1) The situation in a dome display is shown in Figure C2C. As the angles can be correct for only one eye point at a time, the visual system in the figure has been aligned for the right seat eye point position. The runway appears to be straight ahead of the aircraft for this viewer. For the left seat viewer, however, the runway appears to be somewhat to the right of the aircraft. As the aircraft is still moving towards the runway, the perceived velocity vector will be directed towards the runway and this will be interpreted as the aircraft having some yaw offset.

(2) The situation is substantially different for near field objects encountered in helicopter operations close to the ground. In those cases, objects that should be interpreted as being close to the viewer will be misinterpreted as being distant in a collimated display. The errors can actually be reduced in a dome display.

(3) The field-of-view possible with a dome display can be larger than that of a collimated display. Depending on the configuration, a field-of-view of 240° by 90° is possible and can be exceeded.

c. Additional display considerations

(1) While the situations described above are for discrete viewing positions, the same arguments can be extended to moving eye points produced by the viewer's head movement. In the real world, the parallax effects resulting from head movement provide distance cues. The effect is particularly strong for relative movement of flight deck structure in the near field and modeled objects in the distance. Collimated displays will provide accurate parallax cues

for distant objects, but increasingly inaccurate cues for near field objects. The situation is reversed for dome displays.

(2) Stereopsis cues resulting from the different images presented to each eye for objects relatively close to the viewer also provide depth cues. Again, the collimated and dome displays provide more or less accurate cues depending on the modeled distance of the objects being viewed.

d. Training implications

(1) In view of the basic principles described above, it is clear that neither display approach provides a completely accurate image for all possible object distances. The sponsor should consider the training role of the FFS when configuring the display system to make the optimum choice. Factors that should be considered include relative importance of training tasks at low altitudes, the role of the two crew members in the flying tasks, and the field-of-view required for specific training tasks.

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Plan Views of Collimated and Dome (or Non-collimated) Visual Display Systems

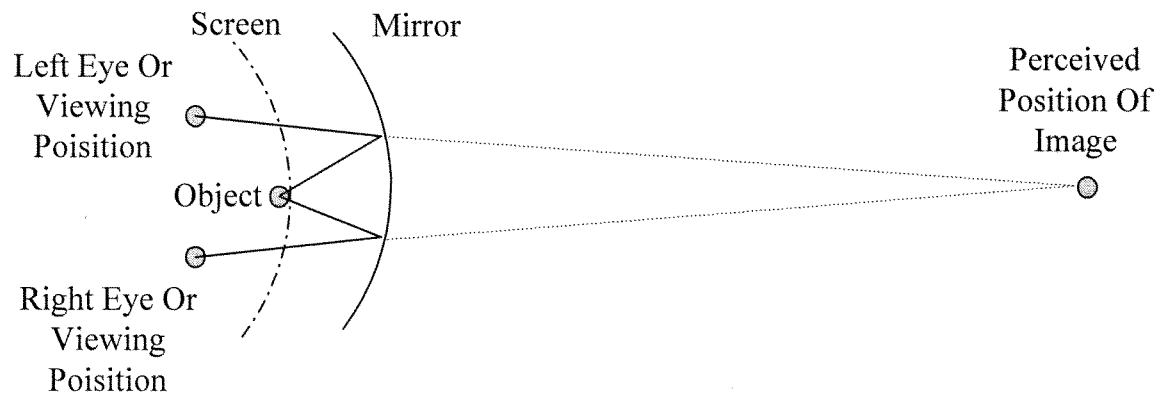


Figure C2I - Collimated display

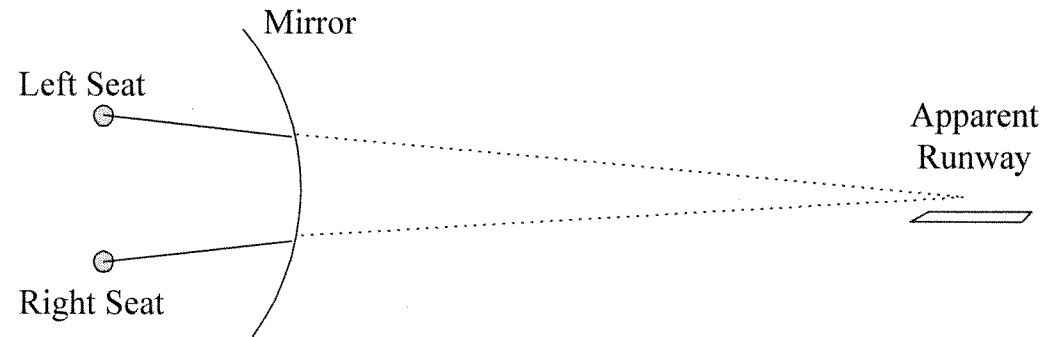


Figure C2J - Runway view in a collimated display

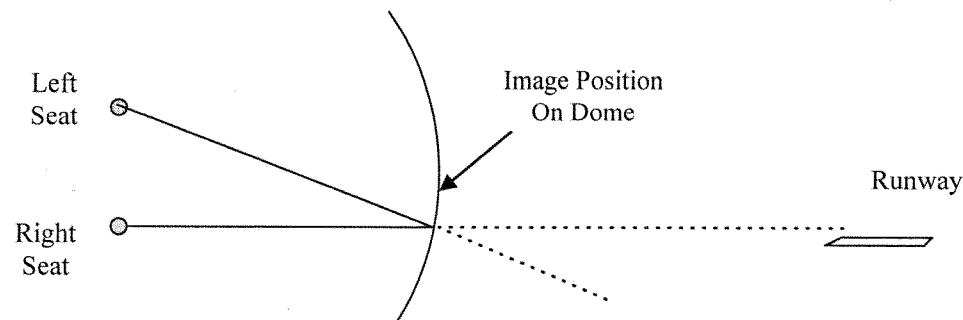


Figure C2K - Runway view in a dome display

End Information

Attachment 3 to Appendix C to Part 60— Simulator Subjective Evaluation

Begin QPS Requirements

1. Requirements

a. Except for special use airport models, all airport models required by this part must be representations of real-world, operational airports or representations of fictional airports and must meet the requirements set out in Tables C3B or C3C of this attachment, as appropriate.

b. If fictional airports are used, the sponsor must ensure that navigational aids and all appropriate maps, charts, and other navigational reference material for the fictional airports (and surrounding areas as necessary) are compatible, complete, and accurate with respect to the visual presentation and airport model of this fictional airport. An SOC must be submitted that addresses navigation aid installation and performance and other criteria (including obstruction clearance protection) for all instrument approaches to the fictional airports that are available in the simulator. The SOC must reference and account for information in the terminal instrument procedures manual and the construction and availability of the required maps, charts, and other navigational material. This material must be clearly marked “for training purposes only.”

c. When the simulator is being used by an instructor or evaluator for purposes of training, checking, or testing under this chapter, only airport models classified as Class I, Class II, or Class III may be used by the instructor or evaluator. Detailed descriptions/definitions of these classifications are found in Appendix F of this part.

d. When a person sponsors an FFS maintained by a person other than a U.S. certificate holder, the sponsor is accountable for that FFS originally meeting, and continuing to meet, the criteria under which it was originally qualified and the appropriate Part 60 criteria, including the visual scenes and airport models that may be used by instructors or evaluators for purposes of training, checking, or testing under this chapter.

e. Neither Class II nor Class III airport visual models are required to appear on the SOQ, and the method used for keeping instructors and evaluators apprised of the airport models that meet Class II or Class III requirements on any given simulator is at the option of the sponsor, but the method used must be available for review by the TPAA.

f. When an airport model represents a real world airport and a permanent change is made to that real world airport (e.g., a new runway, an extended taxiway, a new lighting system, a runway closure) without a written extension grant from the NSPM (described in paragraph 1.g., of this section), an update to that airport model must be made in accordance with the following time limits:

(1) For a new airport runway, a runway extension, a new airport taxiway, a taxiway extension, or a runway/taxiway closure—within 90 days of the opening for use of the

new airport runway, runway extension, new airport taxiway, or taxiway extension; or within 90 days of the closure of the runway or taxiway.

(2) For a new or modified approach light system—within 45 days of the activation of the new or modified approach light system.

(3) For other facility or structural changes on the airport (e.g., new terminal, relocation of Air Traffic Control Tower)—within 180 days of the opening of the new or changed facility or structure.

g. If a sponsor desires an extension to the time limit for an update to a visual scene or airport model or has an objection to what must be updated in the specific airport model requirement, the sponsor must provide a written extension request to the NSPM stating the reason for the update delay and a proposed completion date or provide an explanation for the objection, explaining why the identified airport change will not have an impact on flight training, testing, or checking. A copy of this request or objection must also be sent to the POI/TCPPM. The NSPM will send the official response to the sponsor and a copy to the POI/TCPPM; however, if there is an objection, after consultation with the appropriate POI/TCPPM regarding the training, testing, or checking impact, the NSPM will send the official response to the sponsor and a copy to the POI/TCPPM.

End QPS Requirements

Begin Information

2. Discussion

a. The subjective tests provide a basis for evaluating the capability of the simulator to perform over a typical utilization period; determining that the simulator competently simulates each required maneuver, procedure, or task; and verifying correct operation of the simulator controls, instruments, and systems. The items listed in the following Tables are for simulator evaluation purposes only. They may not be used to limit or exceed the authorizations for use of a given level of simulator as described on the SOQ or as approved by the TPAA. All items in the following paragraphs are subject to an examination.

b. The tests in Table C3A, Operations Tasks, in this attachment address pilot functions, including maneuvers and procedures (called flight tasks), and are divided by flight phases. The performance of these tasks by the NSPM includes an operational examination of the visual system and special effects. There are flight tasks included to address some features of advanced technology helicopters and innovative training programs.

c. The tests in Table C3A, Operations Tasks, and Table C3G, Instructor Operating Station, in this attachment address the overall function and control of the simulator including the various simulated environmental conditions; simulated helicopter system operation (normal, abnormal, and emergency); visual system displays; and special effects necessary to meet flight crew training, evaluation, or flight experience requirements.

d. All simulated helicopter systems functions will be assessed for normal and,

where appropriate, alternate operations. Normal, abnormal, and emergency operations associated with a flight phase will be assessed during the evaluation of flight tasks or events within that flight phase. Simulated helicopter systems are listed separately under “Any Flight Phase” to ensure appropriate attention to systems checks. Operational navigation systems (including inertial navigation systems, global positioning systems, or other long-range systems) and the associated electronic display systems will be evaluated if installed. The NSP pilot will include in his report to the TPAA, the effect of the system operation and any system limitation.

e. Simulators demonstrating a satisfactory circling approach will be qualified for the circling approach maneuver and may be approved for such use by the TPAA in the sponsor's FAA-approved flight training program. To be considered satisfactory, the circling approach will be flown at maximum gross weight for landing, with minimum visibility for the helicopter approach category, and must allow proper alignment with a landing runway at least 90° different from the instrument approach course while allowing the pilot to keep an identifiable portion of the airport in sight throughout the maneuver (reference—14 CFR 91.175(e)).

f. At the request of the TPAA, the NSP Pilot may assess the simulator for a special aspect of a sponsor's training program during the functions and subjective portion of an evaluation. Such an assessment may include a portion of a Line Oriented Flight Training (LOFT) scenario or special emphasis items in the sponsor's training program. Unless directly related to a requirement for the qualification level, the results of such an evaluation would not affect the qualification of the simulator.

g. This appendix addresses helicopter simulators at Levels B, C, and D because there are no Level A Helicopter simulators.

h. The FAA intends to allow the use of Class III airport models on a limited basis when the sponsor provides the TPAA (or other regulatory authority) an appropriate analysis of the skills, knowledge, and abilities (SKAs) necessary for competent performance of the tasks in which this particular media element is used. The analysis should describe the ability of the FFS/visual media to provide an adequate environment in which the required SKAs are satisfactorily performed and learned. The analysis should also include the specific media element, such as the visual scene or airport model. Additional sources of information on the conduct of task and capability analysis may be found on the FAA's Advanced Qualification Program (AQP) Web site at: http://www.faa.gov/education_research/training/aqp/.

h. The TPAA may accept Class III airport models without individual observation provided the sponsor provides the TPAA with an acceptable description of the process for determining the acceptability of a specific airport model, outlines the conditions under which such an airport model may be used, and adequately describes what restrictions will be applied to each resulting airport or landing area model. Examples of situations

that may warrant Class III model designation by the TPAA include the following:

(a) Training, testing, or checking on very low visibility operations, including SMGCS operations.

(b) Instrument operations training (including instrument takeoff, departure, arrival, approach, and missed approach training, testing, or checking) using—

(i) A specific model that has been geographically “moved” to a different location and aligned with an instrument procedure for another airport.

(ii) A model that does not match changes made at the real-world airport (or landing area for helicopters) being modeled.

(iii) A model generated with an “off-board” or an “on-board” model development tool (by providing proper latitude/longitude reference; correct runway or landing area orientation, length, width, marking, and lighting information; and appropriate

adjacent taxiway location) to generate a facsimile of a real world airport or landing area.

i. Previously qualified simulators with certain early generation Computer Generated Image (CGI) visual systems, are limited by the capability of the Image Generator or the display system used. These systems are:

(1) Early CGI visual systems that are exempt from the necessity of including runway numbers as a part of the specific runway marking requirements are:

(a) Link NVS and DNVs.

(b) Novoview 2500 and 6000.

(c) FlightSafety VITAL series up to, and including, VITAL III, but not beyond.

(d) Redifusion SP1, SP1T, and SP2.

(2) Early CGI visual systems are excepted from the necessity of including runway numbers unless the runway is used for LOFT training sessions. These LOFT airport models require runway numbers, but only for the

specific runway end (one direction) used in the LOFT session. The systems required to display runway numbers only for LOFT scenes are:

(a) FlightSafety VITAL IV.

(b) Redifusion SP3 and SP3T.

(c) Link-Miles Image II.

(3) The following list of previously qualified CGI and display systems are incapable of generating blue lights. These systems are not required to have accurate taxi-way edge lighting are:

(a) Redifusion SP1 and SP1T.

(b) FlightSafety Vital IV.

(c) Link-Miles Image II and Image IIT

(d) XKD displays (even though the XKD image generator is capable of generating blue colored lights, the display cannot accommodate that color).

End Information

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
Tasks in this table are subject to evaluation if appropriate for the helicopter simulated as indicated in the SOQ Configuration List or the level of simulator qualification involved. Items not installed or not functional on the simulator and, therefore, not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.				
1. Preparation for Flight				
1.a.	Flight deck check: Switches, indicators, systems, and equipment	X	X	X
2. APU/Engine start and run-up				
2.a.	Normal start procedures	X	X	X
2.b.	Alternate start procedures	X	X	X
2.c.	Abnormal starts and shutdowns (e.g., hot start, hung start)	X	X	X
2.d.	Rotor engagement	X	X	X
2.e.	System checks	X	X	X
3. Taxiing—Ground				
3.a.	Power required to taxi	X	X	X
3.b.	Brake effectiveness	X	X	X
3.c.	Ground handling	X	X	X
3.d.	Water handling (if applicable)		X	X
3.e.	Abnormal/emergency procedures:			
3.e.1.	Brake system failure	X	X	X
3.e.2.	Ground resonance		X	X
3.e.3.	Dynamic rollover		X	X
3.e.4.	Deployment of emergency floats/water landing		X	X
3.e.5.	Others listed on the SOQ	A	X	X
4. Taxiing—Hover				
4.a.	Takeoff to a hover	X	X	X

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
4.b.	Instrument response:			
4.b.1.	Engine instruments	X	X	X
4.b.2.	Flight instruments	X	X	X
4.b.3.	Hovering turns	X	X	X
4.c.	Hover power checks:			
4.c.1.	In ground effect (IGE)	X	X	X
4.c.2.	Out of ground effect (OGE)	X	X	X
4.d.	Crosswind/tailwind hover	X	X	X
4.e.	Translating tendency	X	X	X
4.f.	External load operations:			
4.f.1.	Hookup		X	X
4.f.2.	Release		X	X
4.f.3.	Winch operations		X	X
4.g.	Abnormal/emergency procedures:			
4.g.1.	Engine failure	X	X	X
4.g.2.	Fuel governing system failure	X	X	X
4.g.3.	Settling with power (OGE)	X	X	X
4.g.4.	Hovering autorotation		X	X
4.g.5.	Stability augmentation system failure	X	X	X
4.g.6.	Directional control malfunction	X	X	X
4.g.7.	Loss of tail rotor effectiveness (LTE)		X	X
4.g.8.	Others listed on the SOQ	A	X	X
4.h.	Pre-takeoff checks	X	X	X
5. Takeoff/Translational Flight				
5.a.	Forward (up to effective translational lift)		X	X
5.b.	Sideward (up to limiting airspeed)		X	X
5.c.	Rearward (up to limiting airspeed)		X	X
6. Takeoff and Departure Phase				
6.a.	Normal	X	X	X
6.a.1.	From ground	X	X	X
6.a.2.	From hover	X	X	X
6.a.2.a.	Cat A	X	X	X
6.a.2.b.	Cat B	X	X	X
6.a.3.	Running	X	X	X
6.a.4.	Crosswind/tailwind	X	X	X

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
6.a.5.	Maximum performance	X	X	X
6.a.6.	Instrument	X	X	X
6.a.7.	Takeoff from a confined area	X	X	X
6.a.8.	Takeoff from a pinnacle/platform	X	X	X
6.a.9.	Takeoff from a slope	X	X	X
6.a.10.	External load operations		X	X
6.b.	Abnormal/emergency procedures:	X	X	X
6.b.1.	Takeoff with engine failure after critical decision point (CDP)	X	X	X
6.b.1.a.	Cat A		X	X
6.b.1.b.	Cat B		X	X
6.c.	Rejected takeoff			
6.c.1.	Land	X	X	X
6.c.2.	Water (if appropriate)	X	X	X
6.d.	Instrument departure	X	X	X
6.e.	Others as listed on the SOQ	A	X	X
7. Climb				
7.a.	Normal	X	X	X
7.b.	Obstacle clearance	X	X	X
7.c.	Vertical		X	X
7.d.	One engine inoperative	X	X	X
7.e.	Others as listed on the SOQ	A	X	X
8. Cruise				
8.a.	Performance	X	X	X
8.b.	Flying qualities	X	X	X
8.c.	Turns	X	X	X
8.c.1.	Timed	X	X	X
8.c.2.	Normal	X	X	X
8.c.3.	Steep	X	X	X
8.d.	Accelerations and decelerations	X	X	X
8.e.	High speed vibrations	X	X	X
8.f.	External Load Operations (see entry 4.f. of this table)		X	X
8.g.	Abnormal/emergency procedures	X	X	X
8.g.1.	Engine fire	X	X	X
8.g.2.	Engine failure	X	X	X
8.g.3.	Inflight engine shutdown and restart	X	X	X

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
8.g.4.	Fuel governing system failures	X	X	X
8.g.5.	Directional control malfunction	X	X	X
8.g.6.	Hydraulic failure	X	X	X
8.g.7.	Stability system failure	X	X	X
8.g.8.	Rotor vibrations	X	X	X
8.g.9.	Recovery from unusual attitudes	X	X	X
9. Descent				
9.a.	Normal	X	X	X
9.b.	Maximum rate	X	X	X
9.c.	Autorotative			
9.c.1.	Straight-in	X	X	X
9.c.2.	With turn	X	X	X
9.d.	External Load		X	X
10. Approach				
10.a.	Non-precision	X	X	X
10.a.1.	All engines operating	X	X	X
10.a.2.	One or more engines inoperative	X	X	X
10.a.3.	Approach procedures:	X	X	X
10.a.3.a.	NDB	X	X	X
10.a.3.b.	VOR, RNAV, TACAN	X	X	X
10.a.3.c.	ASR	X	X	X
10.a.3.d.	Circling	X	X	X
10.a.3.e.	Helicopter only	X	X	X
10.a.4.	Missed approach	X	X	X
10.a.4.a.	All engines operating	X	X	X
10.a.4.b.	One or more engines inoperative	X	X	X
10.b.	Precision	X	X	X
10.b.1.	All engines operating	X	X	X
10.b.2.	Manually controlled—one or more engines inoperative	X	X	X
10.b.3.	Approach procedures:	X	X	X
10.b.3.a.	PAR	X	X	X
10.b.3.b.	MLS	X	X	X
10.b.3.c.	ILS	X	X	X
10.b.3.c.	(1) Manual (raw data)	X	X	X
10.b.3.c.	(2) Flight director only	X	X	X

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
10.b.3.c.	(3) Autopilot* only	X	X	X
10.b.3.c.	(4) Cat I	X	X	X
10.b.3.c.	(5) Cat II	X	X	X
10.b.4.	Missed approach:			
10.b.4.a.	All engines operating	X	X	X
10.b.4.b.	One or more engines inoperative	X	X	X
10.b.4.c.	Stability system failure	X	X	X
10.c.	Others as listed on the SOQ	A	X	X
11. Landings and Approaches to Landings				
11.a.	Visual Approaches:			
11.a.1.	Normal	X	X	X
11.a.2.	Steep	X	X	X
11.a.3.	Shallow	X	X	X
11.a.4.	Crosswind	X	X	X
11.a.5.	Category A profile		X	X
11.a.6.	Category B profile		X	X
11.a.7.	External Load		X	X
11.b.	Abnormal/emergency procedures:			
11.b.1.	Directional control failure	X	X	X
11.b.2.	Hydraulics failure	X	X	X
11.b.3.	Fuel governing failure	X	X	X
11.b.4.	Autorotation	X	X	X
11.b.5.	Stability system failure	X	X	X
11.b.6.	Others listed on the SOQ	A	X	X
11c.	Landings:			
11.c.1.	Normal:			
11.c.1.a.	Running	X	X	X
11.c.1.b.	From Hover	X	X	X
11.c.2.	Pinnacle/platform	X	X	X
11.c.3.	Confined area	X	X	X
11.c.4.	Slope		X	X
11.c.5.	Crosswind	X	X	X
11.c.6.	Tailwind	X	X	X
11.c.7.	Rejected Landing	X	X	X
11.c.8.	Abnormal/emergency procedures:			

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
11.c.8.a.	From autorotation		X	X
11.c.8.b.	One or more engines inoperative	X	X	X
11.c.8.c.	Directional control failure	X	X	X
11.c.8.d.	Hydraulics failure	X	X	X
11.c.8.e.	Stability augmentation system failure	X	X	X
11.c.9.	Other (listed on the SOQ)	A	X	X
12. Any Flight Phase				
12.a.1.	Air conditioning	X	X	X
12.a.2.	Anti-icing/deicing	X	X	X
12.a.3.	Auxiliary power-plant	X	X	X
12.a.4.	Communications	X	X	X
12.a.5.	Electrical	X	X	X
12.a.6.	Fire detection and suppression	X	X	X
12.a.7.	Stabilizer	X	X	X
12.a.8.	Flight controls	X	X	X
12.a.9.	Fuel and oil	X	X	X
12.a.10.	Hydraulic	X	X	X
12.a.11.	Landing gear	X	X	X
12.a.12.	Oxygen	X	X	X
12.a.13.	Pneumatic	X	X	X
12.a.14.	Powerplant	X	X	X
12.a.15.	Flight control computers	X	X	X
12.a.16.	Stability and control augmentation	X	X	X
12.b.	Flight management and guidance system:			
12.b.1.	Airborne radar	X	X	X
12.b.2.	Automatic landing aids	X	X	X
12.b.3.	Autopilot	X	X	X
12.b.4.	Collision avoidance system	X	X	X
12.b.5.	Flight data displays	X	X	X
12.b.6.	Flight management computers	X	X	X
12.b.7.	Heads-up displays	X	X	X
12.b.8.	Navigation systems	X	X	X
12.c.	Airborne procedures:			
12.c.1.	Holding	X	X	X
12.c.2.	Air hazard avoidance	X	X	X

TABLE C3A.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Operations tasks	Simulator level		
		B	C	D
12.c.3.	Retreating blade stall recovery	X	X	X
12.c.4.	Mast bumping	X	X	X
12.c.5.	Loss of directional control	X	X	X
12.c.6.	Loss of tail rotor effectiveness		X	X
12.c.7.	Other (listed on the SOQ)	A	X	X

13. Engine Shutdown and Parking

13.a.	Engine and systems operation	X	X	X
13.b.	Parking brake operation	X	X	X
13.c.	Rotor brake operation	X	X	X
13.d.	Abnormal/emergency procedures	X	X	X

*“Autopilot” means attitude retention mode of operation.

Note: An “A” in the table indicates that the system, task, or procedure may be examined if the appropriate aircraft system or control is simulated in the FFS and is working properly.

TABLE C3B.—FUNCTIONS AND SUBJECTIVE TESTS

QPS requirements				
Entry No.	Visual requirements for qualification at the stated level class I airport or landing area models	Simulator level		
		B	C	D

This table specifies the minimum airport visual model content and functionality to qualify a simulator at the indicated level. This table applies only to the airport scenes required for simulator qualification; i.e., two helicopter landing area models for Level B simulators; four helicopter landing area models for Level C and Level D simulators.

1.	Functional test content requirements The following is the minimum airport/landing area model content requirement to satisfy visual capability tests, and provides suitable visual cues to allow completion of all functions and subjective tests described in this attachment for simulators at Level B.			
1.a.	A minimum of one (1) representative airport and one (1) representative helicopter landing area model. The airport and the helicopter landing area may be contained within the same model. If but if this option is selected, the approach path to the airport runway(s) and the approach path to the helicopter landing area must be different. The model(s) used to meet the following requirements may be demonstrated at either a fictional or a real-world airport or helicopter landing area, but each must be acceptable to the sponsor's TPAA, selectable from the IOS, and listed on the SOQ.	X		
1.b.	The fidelity of the visual scene must be sufficient for the aircrew to visually identify the airport and/or helicopter landing area; determine the position of the simulated helicopter within the visual scene; successfully accomplish take-offs, approaches, and landings; and maneuver around the airport on the ground, or hover taxi, as necessary.	X		
1.c.	Runways:			
1.c.1. ...	Visible runway number	X		
1.c.2. ...	Runway threshold elevations and locations must be modeled to provide sufficient correlation with helicopter systems (e.g., altimeter).	X		
1.c.3. ...	Runway surface and markings	X		
1.c.4. ...	Lighting for the runway in use including runway edge and centerline	X		
1.c.5. ...	Lighting, visual approach aid (VASI or PAPI) and approach lighting of appropriate colors	X		
1.c.6. ...	Representative taxiway lights	X		
1.d.	Other helicopter landing area:			

TABLE C3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Visual requirements for qualification at the stated level class I airport or landing area models	Simulator level		
		B	C	D
1.d.1. ...	Standard heliport designation (“H”) marking, properly sized and oriented	X		
1.d.2. ...	Perimeter markings for the Touchdown and Lift-Off Area (TLOF) or the Final Approach and Takeoff Area (FATO), as appropriate.	X		
1.d.3. ...	Perimeter lighting for the TLOF or the FATO areas, as appropriate	X		
1.d.4. ...	Appropriate markings and lighting to allow movement from the runway or helicopter landing area to another part of the landing facility.	X		
2.	Functional test content requirements for Level C and Level D simulators The following is the minimum airport/landing area model content requirement to satisfy visual capability tests, and provide suitable visual cues to allow completion of all functions and subjective tests described in this attachment for simulators at Level C and Level D. Not all of the elements described in this section must be found in a single airport/landing area scene. However, all of the elements described in this section must be found throughout a combination of the four (4) airport/landing area models described in entry 2.a. The representations of the hazards (as described in 2.d.) must be “hard objects” that interact as such if contacted by the simulated helicopter. Additionally, surfaces on which the helicopter lands must be “hard surfaces.” The model(s) used to meet the following requirements must be demonstrated at either a fictional or a real-world airport or helicopter landing area, and each must be acceptable to the sponsor’s TPAA, selectable from the IOS, and listed on the SOQ.			
2.a.	There must be at least the following airport/helicopter landing areas.			
2.a.1. ...	At least one (1) representative airport		X	X
2.a.2. ...	At least three representative non-airport landing areas, as follows:			
2.a.2.a	At least one (1) representative helicopter landing area situated on a substantially elevated surface with respect to the surrounding structures or terrain (e.g., building top, offshore oil rig).		X	X
2.a.2.b.	At least one (1) helicopter landing area that meets the definition of a “confined landing area”		X	X
2.a.2.c.	At least one (1) helicopter landing area on a sloped surface where the slope is at least 2½°		X	X
2.b.	For each of the airport/helicopter landing areas described in 2.a., the simulator must be able to provide at least the following:		X	X
2.b.1. ...	A night and twilight (dusk) environment.		X	X
2.b.2. ...	A daylight environment			X
2.c.	Non-airport helicopter landing areas must have the following:			
2.c.1. ...	Representative buildings, structures, and lighting within appropriate distances		X	X
2.c.2. ...	Representative moving and static clutter (e.g., other aircraft, power carts, tugs, fuel trucks)		X	X
2.c.3. ...	Representative depiction of terrain and obstacles as well as significant and identifiable natural and cultural features, within 25 NM of the reference landing area.		X	X
2.c.4. ...	Standard heliport designation (“H”) marking, properly sized and oriented		X	X
2.c.5. ...	Perimeter markings for the Touchdown and Lift-Off Area (TLOF) or the Final Approach and Takeoff Area (FATO), as appropriate.		X	X
2.c.6. ...	Perimeter lighting for the TLOF or the FATO areas, as appropriate		X	X
2.c.7. ...	Appropriate markings and lighting to allow movement from the area to another part of the landing facility, if appropriate		X	X
2.c.8. ...	Representative markings, lighting, and signage, including a windsock that gives appropriate wind cues		X	X
2.c.9. ...	Appropriate markings, lighting, and signage necessary for position identification, and to allow movement from the landing area to another part of the landing facility.		X	X
2.c.10.	Representative moving and static ground traffic (e.g., vehicular and aircraft), including the ability to present surface hazards (e.g., conflicting traffic, vehicular or aircraft, on or approaching the landing area).		X	X
2.c.11.	Portrayal of landing surface contaminants, including lighting reflections when wet and partially obscured lights when snow is present, or suitable alternative effects.		X	X

TABLE C3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Visual requirements for qualification at the stated level class I airport or landing area models	Simulator level		
		B	C	D
2.d.	All of the following three (3) hazards must be presented in a combination of the three (3) non-airport landing areas (described in entry 2.a.2. of this table) and each of these non-airport landing areas must have at least one of the following hazards:			
2.d.1. ...	Other airborne traffic		X	X
2.d.2. ...	Buildings, trees, or other vertical obstructions in the immediate landing area		X	X
2.d.3. ...	Suspended wires in the immediate landing area		X	X
2.e.	Airport applications. Each airport must have the following:			
2.e.1. ...	At least one runway designated as “in-use”, appropriately marked and capable of being lighted fully		X	X
2.e.2. ...	Runway threshold elevations and locations must be modeled to provide sufficient correlation with helicopter systems (e.g., HGS, GPS, altimeter). Slopes in runways, taxiways, and ramp areas, if depicted in the visual scene, may not cause distracting or unrealistic effects, including pilot eye-point height variation.	X	X	X
2.e.3. ...	Appropriate approach lighting systems and airfield lighting for a VFR circuit and landing, non-precision approaches and landings, and precision approaches and landings, as appropriate..		X	X
2.e.4. ...	Representative taxiway lights			X
3.	Airport or landing area model management The following is the minimum visual scene management requirements			
3.a.	Runway and helicopter landing area approach lighting must fade into view in accordance with the environmental conditions set in the simulator.	X	X	X
3.b.	The direction of strobe lights, approach lights, runway edge lights, visual landing aids, runway centerline lights, threshold lights, touchdown zone lights, and TLOF or FATO lights must be replicated.	X	X	X
4.	Visual feature recognition. The following are the minimum distances at which runway features must be visible. Distances are measured from runway threshold or a helicopter landing area to a helicopter aligned with the runway or helicopter landing area on an extended 3° glide-slope in simulated meteorological conditions. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing			
4.a.	For runways: Runway definition, strobe lights, approach lights, and runway edge lights from 5 sm (8 km) of the runway threshold.	X	X	X
4.b.	For runways: Centerline lights and taxiway definition from 3 sm (5 km)	X	X	X
4.c.	For runways: Visual Approach Aid lights (VASI or PAPI) from 3 sm (5 km) of the threshold	X		
4.d.	For runways: Visual Approach Aid lights (VASI or PAPI) from 5 sm (8 km) of the threshold		X	X
4.e.	For runways: Runway threshold lights and touchdown zone lights from 2 sm (3 km)	X	X	X
4.f.	For runways and helicopter landing areas: Markings within range of landing lights for night/twilight scenes and the surface resolution test on daylight scenes, as required.	X	X	X
4.g.	For circling approaches, the runway of intended landing and associated lighting must fade into view in a non-distracting manner.	X	X	X
4.h.	For helicopter landing areas: Landing direction lights and raised FATO lights from 1 sm (1.5 km)	X	X	X
4.i.	For helicopter landing areas: Flush mounted FATO lights, TOFL lights, and the lighted windsock from 0.5 sm (750 m) ..			X
4.j.	Hover taxiway lighting (yellow/blue/yellow cylinders) from TOFL area			X
5.	Airport or helicopter landing area model content			

TABLE C3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Visual requirements for qualification at the stated level class I airport or landing area models	Simulator level		
		B	C	D
	The following prescribes the minimum requirements for an airport/helicopter landing area model and identifies other aspects of the environment that must correspond with that model for simulators at Level B, Level C, and Level D. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing. If all runways or landing areas in a visual model used to meet the requirements of this attachment are not designated as “in use,” then the “in use” runways/landing areas must be listed on the SOQ (e.g., KORD, Rwy 9R, 14L, 22R). Models of airports or helicopter landing areas with more than one runway or landing area must have all significant runways or landing areas not “in-use” visually depicted for airport runway/landing area recognition purposes. The use of white or off-white light strings that identify the runway or landing area for twilight and night scenes are acceptable for this requirement; and rectangular surface depictions are acceptable for daylight scenes. A visual system’s capabilities must be balanced between providing visual models with an accurate representation of the airport and a realistic representation of the surrounding environment. Each runway or helicopter landing area designated as an “in-use” runway or area must include the following detail that is developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material; however, this does not require that such models contain details that are beyond the design capability of the currently qualified visual system. Only one “primary” taxi route from parking to the runway end or helicopter takeoff/landing area will be required for each “in-use” runway or helicopter takeoff/landing area.			
5.a.	The surface and markings for each “in-use” runway or helicopter landing area must include the following:			
5.a.1. ...	For airports: Runway threshold markings, runway numbers, touchdown zone markings, fixed distance markings, runway edge markings, and runway centerline stripes.	X	X	X
5.a.2. ...	For helicopter landing areas: Markings for standard heliport identification (“H”) and TOFL, FATO, and safety areas	X	X	X
5.b.	The lighting for each “in-use” runway or helicopter landing area must include the following:			
5.b.1. ...	For airports: Runway approach, threshold, edge, end, centerline (if applicable), touchdown zone (if applicable), leadoff, and visual landing aid lights or light systems for that runway.	X	X	X
5.b.2. ...	For helicopter landing areas: landing direction, raised and flush FATO, TOFL, windsock lighting	X	X	X
5.c.	The taxiway surface and markings associated with each “in-use” runway or helicopter landing area must include the following:			
5.c.1. ...	For airports: Taxiway edge, centerline (if appropriate), runway hold lines, and ILS critical area(s)	X	X	X
5.c.2. ...	For helicopter landing areas: taxiways, taxi routes, and aprons	X	X	X
5.d.	The taxiway lighting associated with each “in-use” runway or helicopter landing area must include the following:			
5.d.1. ...	For airports: Runway edge, centerline (if appropriate), runway hold lines, ILS critical areas	X	X	X
5.d.2. ...	For helicopter landing areas: taxiways, taxi routes, and aprons	X	X	X
5.d.3. ...	For airports: taxiway lighting of correct color			X
5.e.	Airport signage associated with each “in-use” runway or helicopter landing area must include the following:			
5.e.1. ...	For airports: Signs for runway distance remaining, intersecting runway with taxiway, and intersecting taxiway with taxiway.	X	X	X
5.e.2. ...	For helicopter landing areas: as appropriate for the model used	X	X	X
5.f.	Required visual model correlation with other aspects of the airport or helicopter landing environment simulation:			
5.f.1.	The airport or helicopter landing area model must be properly aligned with the navigational aids that are associated with operations at the “in-use” runway or helicopter landing area.	X	X	X
5.f.2.	The simulation of runway or helicopter landing area contaminants must be correlated with the displayed runway surface and lighting where applicable.		X	X
6.	Correlation with helicopter and associated equipment The following are the minimum correlation comparisons that must be made for simulators at Level B, Level C, and Level D			
6.a.	Visual system compatibility with aerodynamic programming	X	X	X
6.b.	Visual cues to assess sink rate and depth perception during landings	X	X	X
6.c.	Accurate portrayal of environment relating to flight simulator attitudes	X	X	X

TABLE C3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Visual requirements for qualification at the stated level class I airport or landing area models	Simulator level		
		B	C	D
6.d.	The visual scene must correlate with integrated helicopter systems (e.g., terrain, traffic and weather avoidance systems and Head-up Guidance System (HGS)).		X	X
6.e.	Representative visual effects for each visible, own-ship, helicopter external light(s)—taxi and landing light lobes (including independent operation, if appropriate).	X	X	X
6.f.	The effect of rain removal devices		X	X
7.	Scene quality The following are the minimum scene quality tests that must be conducted for simulators at Level B, Level C, and Level D.			
7.a.	Surfaces and textural cues must be free from apparent and distracting quantization (aliasing)		X	X
7.b.	System capable of portraying full color realistic textural cues		X	X
7.c.	The system light points must be free from distracting jitter, smearing or streaking	X	X	X
7.d.	Demonstration of occulting through each channel of the system in an operational scene	X	X	X
7.e.	Demonstration of a minimum of ten levels of occulting through each channel of the system in an operational scene		X	X
7.f.	System capable of providing focus effects that simulate rain.		X	X
7.g.	System capable of providing focus effects that simulate light point perspective growth		X	X
7.h.	Runway light controls capable of six discrete light steps (0–5)	X	X	X
8.	Environmental effects. The following are the minimum environmental effects that must be available in simulators at Level B, Level C, and Level D.			
8.a.	The displayed scene corresponding to the appropriate surface contaminants and include appropriate lighting reflections for wet, partially obscured lights for snow, or alternative effects.			X
8.b.	Special weather representations which include:			
8.b.1. ...	The sound, motion and visual effects of light, medium and heavy precipitation near a thunderstorm on take-off, approach, and landings at and below an altitude of 2,000 ft (600 m) above the surface and within a radius of 10 sm (16 km) from the airport or helicopter landing area.			X
8.b.2. ...	One airport or helicopter landing area with a snow scene to include terrain snow and snow-covered surfaces			X
8.c.	In-cloud effects such as variable cloud density, speed cues and ambient changes		X	X
8.d.	The effect of multiple cloud layers representing few, scattered, broken and overcast conditions giving partial or complete obstruction of the ground scene.		X	X
8.e.	Visibility and RVR measured in terms of distance. Visibility/RVR checked at 2,000 ft (600 m) above the airport or helicopter landing area and at two heights below 2,000 ft with at least 500 ft of separation between the measurements. The measurements must be taken within a radius of 10 sm (16 km) from the airport or helicopter landing area.	X	X	X
8.f.	Patchy fog giving the effect of variable RVR			X
8.g.	Effects of fog on airport lighting such as halos and defocus		X	X
8.h.	Effect of own-ship lighting in reduced visibility, such as reflected glare, including landing lights, strobes, and beacons ...		X	X
8.i.	Wind cues to provide the effect of blowing snow or sand across a dry runway or taxiway selectable from the instructor station.			X
8.j.	“White-out” or “Brown-out” effects due to rotor downwash beginning at a distance above the ground equal to the rotor diameter.			X
9.	Instructor control of the following: The following are the minimum instructor controls that must be available in Level B, Level C, and Level D simulators, as indicated.			
9.a.	Environmental effects, e.g. cloud base, cloud effects, cloud density, visibility in statute miles/ kilometers and RVR in feet/meters.	X	X	X

TABLE C3B.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Visual requirements for qualification at the stated level class I airport or landing area models	Simulator level		
		B	C	D
9.b.	Airport or helicopter landing area selection	X	X	X
9.c.	Airport or helicopter landing area lighting, including variable intensity	X	X	X
9.d.	Dynamic effects including ground and flight traffic		X	X
End QPS Requirement				
Begin Information				
10.	An example of being able to “combine two airport models to achieve two “in-use” runways: One runway designated as the “in-use” runway in the first model of the airport, and the second runway designated as the “in-use” runway in the second model of the same airport. For example, the clearance is for the ILS approach to Runway 27, Circle to Land on Runway 18 right. Two airport visual models might be used: the first with Runway 27 designated as the “in use” runway for the approach to runway 27, and the second with Runway 18 Right designated as the “in use” runway. When the pilot breaks off the ILS approach to runway 27, the instructor may change to the second airport visual model in which runway 18 Right is designated as the “in use” runway, and the pilot would make a visual approach and landing. This process is acceptable to the FAA as long as the temporary interruption due to the visual model change is not distracting to the pilot.			
11.	Sponsors are not required to provide every detail of a runway, but the detail that is provided should be correct within reasonable limits.			
End Information				

TABLE C3C.—FUNCTIONS AND SUBJECTIVE TESTS

QPS requirements				
Entry No.	Visual scene content additional airport or landing area models beyond minimum required for qualification Class II airport or landing area models	Simulator level		
		B	C	D
This table specifies the minimum airport or helicopter landing area visual model content and functionality necessary to add visual models to a simulator's visual model library (i.e., beyond those necessary for qualification at the stated level) without the necessity of further involvement of the NSPM or TPAА.				
1.	Airport or landing area model management The following is the minimum visual scene management requirements for simulators at Levels B, C, and D.			
1.a.	The installation and direction of the following lights must be replicated for the “in-use” surface:			
1.a.1. ...	For “in-use” runways: Strobe lights, approach lights, runway edge lights, visual landing aids, runway centerline lights, threshold lights, and touchdown zone lights.	X	X	X
1.a.2. ...	For “in-use” helicopter landing areas: ground level TLOF perimeter lights, elevated TLOF perimeter lights (if applicable), Optional TLOF lights (if applicable), ground FATO perimeter lights, elevated TLOF lights (if applicable), landing direction lights.	X	X	X
2.	Visual feature recognition The following are the minimum distances at which runway or landing area features must be visible for simulators at Levels B, C, and D. Distances are measured from runway threshold or a helicopter landing area to an aircraft aligned with the runway or helicopter landing area on a 3° glide-slope from the aircraft to the touchdown point, in simulated meteorological conditions. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing.			
2.a.	For Runways:			
2.a.1. ...	Strobe lights, approach lights, and edge lights from 5 sm (8 km) of the threshold	X	X	X
2.a.2. ...	Centerline lights and taxiway definition from 3 sm (5 km)	X	X	X
2.a.3. ...	Visual Approach Aid lights (VASI or PAPI) from 3 sm (5 km) of the threshold	X		
2.a.4. ...	Visual Approach Aid lights (VASI or PAPI) from 5 sm (8 km) of the threshold		X	X
2.a.5. ...	Threshold lights and touchdown zone lights from 2 sm (3 km)	X	X	X

TABLE C3C.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements				
Entry No.	Visual scene content additional airport or landing area models beyond minimum required for qualification Class II airport or landing area models	Simulator level		
		B	C	D
2.a.6. ...	Markings within range of landing lights for night/twilight (dusk) scenes and as required by the surface resolution test on daylight scenes.	X	X	X
2.a.7. ...	For circling approaches, the runway of intended landing and associated lighting must fade into view in a non-distracting manner.	X	X	X
2.b.	For Helicopter landing areas:			
2.b.1. ...	Landing direction lights and raised FATO lights from 1 sm (1.5 km)	X	X	X
2.b.2. ...	Flush mounted FATO lights, TOFL lights, and the lighted windsock from 0.5 sm (750 m)		X	X
2.b.3. ...	Hover taxiway lighting (yellow/blue/yellow cylinders) from TOFL area		X	X
2.b.4. ...	Markings within range of landing lights for night/twilight (dusk) scenes and as required by the surface resolution test on daylight scenes.	X	X	X
3.	Airport or Helicopter landing area model content The following prescribes the minimum requirements for what must be provided in an airport visual model and identifies other aspects of the airport environment that must correspond with that model for simulators at Level B, C, and D. The detail must be developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material; however, this does not require that airport or helicopter landing area models contain details that are beyond the designed capability of the currently qualified visual system. For circling approaches, all requirements of this section apply to the runway used for the initial approach and to the runway of intended landing. Only one "primary" taxi route from parking to the runway end or helicopter takeoff/landing area will be required for each "in-use" runway or helicopter takeoff/landing area.			
3.a.	The surface and markings for each "in-use" runway or helicopter landing area must include the following:			
3.a.1. ...	For airports: Runway threshold markings, runway numbers, touchdown zone markings, fixed distance markings, runway edge markings, and runway centerline stripes.	X	X	X
3.a.2. ...	For helicopter landing areas: Standard heliport marking ("H"), TOFL, FATO, and safety areas	X	X	X
3.b.	The lighting for each "in-use" runway or helicopter landing area must include the following:			
3.b.1. ...	For airports: Runway approach, threshold, edge, end, centerline (if applicable), touchdown zone (if applicable), leadoff, and visual landing aid lights or light systems for that runway.	X	X	X
3.b.2. ...	For helicopter landing areas: Landing direction, raised and flush FATO, TOFL, windsock lighting	X	X	X
3.c.	The taxiway surface and markings associated with each "in-use" runway or helicopter landing area must include the following:			
3.c.1. ...	For airports: Taxiway edge, centerline (if appropriate), runway hold lines, and ILS critical area(s)	X	X	X
3.c.2. ...	For helicopter landing areas: Taxiways, taxi routes, and aprons	X	X	X
3.d.	The taxiway lighting associated with each "in-use" runway or helicopter landing area must include the following:			
3.d.1. ...	For airports: Runway edge, centerline (if appropriate), runway hold lines, ILS critical areas	X	X	X
3.d.2. ...	For helicopter landing areas: Taxiways, taxi routes, and aprons	X	X	X
3.d.3. ...	For airports: Taxiway lighting of correct color			X
4.	Required visual model correlation with other aspects of the airport environment simulation The following are the minimum visual model correlation tests that must be conducted for Level B, Level C, and Level D simulators, as indicated.			
4.a.	The airport model must be properly aligned with the navigational aids that are associated with operations at the "in-use" runway.	X	X	X
4.b.	Slopes in runways, taxiways, and ramp areas, if depicted in the visual scene, must not cause distracting or unrealistic effects.	X	X	X
5.	Correlation with helicopter and associated equipment The following are the minimum correlation comparisons that must be made for simulators at Level B, C, and D.			
5.a.	Visual system compatibility with aerodynamic programming	X	X	X

TABLE C3C.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements					
Entry No.	Visual scene content additional airport or landing area models beyond minimum required for qualification Class II airport or landing area models	Simulator level			
		B	C	D	
5.b.	Accurate portrayal of environment relating to flight simulator attitudes	X	X	X	
5.c.	Visual cues to assess sink rate and depth perception during landings	X	X	X	
6.	Scene quality The following are the minimum scene quality tests that must be conducted for simulators at Level B, C, and D.				
6.a.	Light points free from distracting jitter, smearing or streaking	X	X	X	
6.b.	Surfaces and textural cues free from apparent and distracting quantization (aliasing)		X	X	
6.c.	Correct color and realistic textural cues			X	
7.	Instructor controls of the following: The following are the minimum instructor controls that must be available in Level B, Level C, and Level D simulators, as indicated.				
7.a.	Environmental effects, e.g., cloud base (if used), cloud effects, cloud density, visibility in statute miles/kilometers and RVR in feet/meters.	X	X	X	
7.b.	Airport/Heliport selection	X	X	X	
7.c.	Airport lighting including variable intensity	X	X	X	
7.d.	Dynamic effects including ground and flight traffic		X	X	
End QPS Requirements					
Begin Information					
8.	Sponsors are not required to provide every detail of a runway or helicopter landing area, but the detail that is provided must be correct within the capabilities of the system.	X	X	X	
End Information					

TABLE C3D—FUNCTIONS AND SUBJECTIVE TESTS

QPS requirements					Information	
Entry No.	Motion system (and special aerodynamic model) effects	Simulator level			Notes	
		B	C	D		
1	Runway rumble, oleo deflection, ground speed, uneven runway, runway and taxiway centerline light characteristics: Procedure: After the helicopter has been pre-set to the takeoff position and then released, taxi at various speeds with a smooth runway and note the general characteristics of the simulated runway rumble effects of oleo deflections. Repeat the maneuver with a runway roughness of 50%, then with maximum roughness. Note the associated motion vibrations affected by ground speed and runway roughness	X	X	X	If time permits, different gross weights can also be selected as this may also affect the associated vibrations depending on helicopter type. The associated motion effects for the above tests should also include an assessment of the effects of rolling over centerline lights, surface discontinuities of uneven runways, and various taxiway characteristics.	
2	Friction Drag from Skid-type Landing Gear: Procedure: Perform a running takeoff or a running landing and note an increase in a fuselage vibration (as opposed to rotor vibration) due to the friction of dragging the skid along the surface. This vibration will lessen as the ground speed decreases		X	X		

This table specifies motion effects that are required to indicate the threshold at which a flight crewmember must be able to recognize an event or situation. Where applicable, flight simulator pitch, side loading and directional control characteristics must be representative of the helicopter.

TABLE C3D—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements					Information
Entry No.	Motion system (and special aerodynamic model) effects	Simulator level			Notes
		B	C	D	
3.	Rotor Out-of-Track and/or Out-of-Balance condition: Procedure: Select the malfunction or condition from the IOS. Start the engine(s) normally and check for an abnormal vibration for an Out-of-Track condition and check for an abnormal vibration for an Out-of-Balance condition	X	X	X	Does not require becoming airborne. The abnormal vibration for Out-of-Track and Out-of-Balance conditions should be recognized in the frequency range of the inverse of the period for each; i.e., 1/P for vertical vibration, and 1/P for lateral vibration.
4.	Bumps associated with the landing gear: Procedure: Perform a normal take-off paying special attention to the bumps that could be perceptible due to maximum oleo extension after lift-off	X	X	X	When the landing gear is extended or retracted, motion bumps can be felt when the gear locks into position.
5.	Buffet during extension and retraction of landing gear: Procedure: Operate the landing gear. Check that the motion cues of the buffet experienced represent the actual helicopter	X	X	X	
6.	Failure of Dynamic Vibration Absorber or similar system as appropriate for the helicopter (e.g., droop stop or static stop): Procedure: May be accomplished any time the rotor is engaged. Select the appropriate failure at the IOS, note an appropriate increase in vibration and check that the vibration intensity and frequency increases with an increase in RPM and an increase in collective application	X	X	X	
7.	Tail Rotor Drive Failure: Procedure: With the engine(s) running and the rotor engaged—select the malfunction and note the immediate increase of medium frequency vibration	X	X	X	The tail rotor operates in the medium frequency range, normally estimated by multiplying the tail rotor gear box ratio by the main rotor RPM. The failure can be recognized by an increase in the vibrations in this frequency range.
8.	Touchdown cues for main and nose gear: Procedure: Conduct several normal approaches with various rates of descent. Check that the motion cues for the touchdown bumps for each descent rate are representative of the actual helicopter	X	X	X	
9.	Tire failure dynamics: Procedure: Simulate a single tire failure and a multiple tire failure		X	X	The pilot may notice some yawing with a multiple tire failure selected on the same side. This should require the use of the pedal to maintain control of the helicopter. Dependent on helicopter type, a single tire failure may not be noticed by the pilot and may not cause any special motion effect. Sound or vibration may be associated with the actual tire losing pressure.
10.	Engine malfunction and engine damage: Procedure: The characteristics of an engine malfunction as prescribed in the malfunction definition document for the particular flight simulator must describe the special motion effects felt by the pilot. Note the associated engine instruments varying according to the nature of the malfunction and note the replication of the effects of the airframe vibration	X	X	X	
11.	Tail boom strikes: Procedure: Tail-strikes can be checked by over-rotation of the helicopter at a quick stop or autorotation to the ground	X	X	X	The motion effect should be felt as a noticeable nose down pitching moment.

TABLE C3D—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS requirements					Information
Entry No.	Motion system (and special aerodynamic model) effects	Simulator level			Notes
		B	C	D	
12.	Vortex Ring State (Settling with Power): Procedure: Specific procedures may differ between helicopters and may be prescribed by the Helicopter Manufacturer or other subject matter expert. However, the following information is provided for illustrative purposes * * * To enter the maneuver, reduce power below hover power. Hold altitude with aft cyclic until the airspeed approaches 20 knots. Then allow the sink rate to increase to 300 feet per minute or more as the attitude is adjusted to obtain an airspeed of less than 10 knots		X	X	When the aircraft begins to shudder, the application of additional up collective increases the vibration and sink rate. One recovery method is to decrease collective to enter vertical autorotation and/or use cyclic inputs to gain horizontal airspeed and exit from vortex ring state.
13.	Retreating Blade Stall: Procedure: Specific procedures may differ between helicopters and may be prescribed by the Helicopter Manufacturer or other subject matter expert. However, the following information is provided for illustrative purposes: To enter the maneuver, increase forward airspeed; the effect will be recognized through the development of a low frequency vibration, pitching up of the nose, and a roll in the direction of the retreating blade. High weight, low rotor RPM, high density altitude, turbulence or steep, abrupt turns are all conducive to retreating blade stall at high forward airspeeds		X	X	Correct recovery from retreating blade stall requires the collective to be lowered first, which reduces blade angles and the angle of attack. Aft cyclic can then be used to slow the helicopter.
14.	Translational Lift Effects: Procedure: From a stabilized in-ground-effect (IGE) Hover begin a forward acceleration. When passing through the effective translational lift range, the noticeable effect will be a possible nose pitch-up in some helicopters, an increase in the rate of climb, and a temporary increase in vibration level (in some cases this vibration may be pronounced). This effect is experienced again upon deceleration through the appropriate speed range. During deceleration, the pitch and rate of climb will have the reverse effect, but there will be a similar, temporary increase in vibration level	X	X	X	

TABLE C3E.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements				
Entry number	Sound system	Simulator level		
		B	C	D
The following checks are performed during a normal flight profile, motion system ON.				
1.	Precipitation.		X	X
2.	Rain removal equipment.		X	X
3.	Helicopter noises used by the pilot for normal helicopter operation.		X	X
4.	Abnormal operations for which there are associated sound cues, including engine malfunctions, landing gear or tire malfunctions, tail boom.		X	X
5.	Sound of a crash when the flight simulator is landed in excess of limitations		X	X

TABLE C3F.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements				
Entry number	Special effects	Simulator level		
		B	C	D
This table specifies the minimum special effects necessary for the specified simulator level.				
1.	Braking Dynamics: Representations of the dynamics of brake failure (flight simulator pitch, side-loading, and directional control characteristics representative of the helicopter), including antiskid and decreased brake efficiency due to high brake temperatures (based on helicopter related data), sufficient to enable pilot identification of the problem and implementation of appropriate procedures.		X	X
2.	Effects of Airframe and Engine Icing: Required only for those helicopters authorized for operations in known icing conditions. Procedure: With the simulator airborne, in a clean configuration, nominal altitude and cruise airspeed, autopilot on and auto-throttles off, engine and airfoil anti-ice/de-ice systems deactivated; activate icing conditions at a rate that allows monitoring of simulator and systems response. Icing recognition will include an increase in gross weight, airspeed decay, change in simulator pitch attitude, change in engine performance indications (other than due to airspeed changes), and change in data from pitot/static system, or rotor out-of-track/balance. Activate heating, anti-ice, or de-ice systems independently. Recognition will include proper effects of these systems, eventually returning the simulated helicopter to normal flight.		X	X

TABLE C3G.—FUNCTIONS AND SUBJECTIVE TESTS

QPS Requirements				
Entry number	Instructor Operating Station (IOS)	Simulator level		
		B	C	D
Functions in this table are subject to evaluation only if appropriate for the helicopter or the system is installed on the specific simulator.				
1.	Simulator Power Switch(es)	X	X	X
2.	Helicopter conditions.			
2.a.	Gross weight, center of gravity, fuel loading and allocation	X	X	X
2.b.	Helicopter systems status	X	X	X
2.c.	Ground crew functions	X	X	X
3.	Airports/Heliports.			
3.a.	Number and selection	X	X	X
3.b.	Runway or landing area selection	X	X	X
3.c.	Landing surface conditions (rough, smooth, icy, wet, dry, snow)	X	X	X
3.d.	Preset positions	X	X	X
3.e.	Lighting controls	X	X	X
4.	Environmental controls.			
4.a.	Visibility (statute miles/kilometers)	X	X	X
4.b.	Runway visual range (in feet/meters)	X	X	X
4.c.	Temperature	X	X	X
4.d.	Climate conditions	X	X	X
4.e.	Wind speed and direction	X	X	X
5.	Helicopter system malfunctions (Insertion/deletion).	X	X	X
6.	Locks, Freezes, and Repositioning.			
6.a.	Problem (all) freeze/release	X	X	X

TABLE C3G.—FUNCTIONS AND SUBJECTIVE TESTS—Continued

QPS Requirements				
Entry number	Instructor Operating Station (IOS)	Simulator level		
		B	C	D
6.b.	Position (geographic) freeze/release	X	X	X
6.c.	Repositioning (locations, freezes, and releases)	X	X	X
6.d.	Ground speed control	X	X	X
7.	Remote IOS.	X	X	X
8.	Sound Controls. On/off/adjustment	X	X	X
9.	Motion/Control Loading System.			
9.a.	On/off/emergency stop	X	X	X
10.	Observer Seats/Stations. Position/Adjustment/Positive restraint system	X	X	X

**Attachment 4 to Appendix C to Part 60—
SAMPLE DOCUMENTS**

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BILLING CODE 4910-13-P

**Attachment 4 to Appendix C to Part 60—
Figure C4A – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
INFORMATION**

Date _____

Charles A. Spillner
Manager, National Simulator Program
Federal Aviation Administration
100 Hartsfield Centre Parkway, Suite 400
Atlanta, GA 30354

Dear Mr. Spillner:

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FFS Manufacturer), (Aircraft Type/Level) Full Flight Simulator (FFS), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FFS will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FFS will be sponsored as follows; (Select One)

- ☐ The FFS will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.
- ☐ The FFS will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

- ☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "1/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.
- ☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

7. Sponsor's Letter of Request (*Company Compliance Letter*).
8. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
9. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FFS Information Form
cc: POI/TCPM

**Attachment 4 to Appendix C to Part 60—
Figure C4B – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FFS Information Form
INFORMATION**

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name:	_____	FSTD Location:	_____
Address:	_____	Physical Address:	_____
City:	_____	City:	_____
State:	_____	State:	_____
Country:	_____	Country:	_____
ZIP:	_____	ZIP:	_____
Manager	_____		
Sponsor ID No: (Four Letter FAA Designator)	_____	Nearest Airport: (Airport Designator)	_____
Type of Evaluation Requested:		☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement	
Aircraft Make/model/series:	_____		
Initial Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	Manufacturer's Identification or Serial Number	_____
Upgrade Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	☐ eMQTG	
Qualification Basis: _____	☐ A	☐ B	☐ Interim C
	☐ 6	☐ 7	☐ C ☐ D
		☐ Provisional Status	
Other Technical Information:			
FAA FSTD ID No: (If Applicable)	_____	FSTD Manufacturer:	_____
Convertible FSTD:	☐ Yes:	Date of Manufacture:	_____
			MM/DD/YYYY
Related FAA ID No. (If Applicable)	_____	Sponsor FSTD ID No:	_____
Engine model(s) and data revision:	_____		
FMS identification and revision level:	_____		
Visual system manufacturer/model:	_____		
Flight control data revision:	_____		
Motion system manufacturer/type:	_____		
	FSTD computer(s) identification: _____		
National Aviation Authority (NAA):			
NAA FSTD ID No:	_____	Last NAA Evaluation Date:	_____
NAA Qualification Level:	_____		
NAA Qualification Basis:	_____		
Visual System Manufacturer and Type:			
_____	FSTD Seats Available:	Motion System Manufacturer and Type:	_____

**Attachment 4 to Appendix C to Part 60—
Figure C4B – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FFS Information Form**

INFORMATION

Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: ____ ☐ WX Radar ☐ Other: ____	Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: ____
Airport Models:	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator
Circle to Land:	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway
Visual Ground Segment	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway

Section 2. Supplementary Information

FAA Training Program Approval Authority:		☐ POI ☐ TCPM ☐ Other: _____	
Name:	_____	Office:	_____
Tel:	_____	Fax:	_____
Email:	_____		
FSTD Scheduling Person:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____
FSTD Technical Contact:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training / Checks: (142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating - Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____
Proficiency Checks (135/121/142)	☐	_____
CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____

**Attachment 4 to Appendix C to Part 60—
Figure C4B – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FFS Information Form
INFORMATION**

CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIb (≤ 150 ft.), or CAT IIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

Attachment 4 to Appendix C to Part 60—
Figure C4C – Sample Letter of Compliance
INFORMATION

(Date)

Mr. (Name of Training Program Approval Authority):

(Name of FAA FSDO)

(Address)

(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FFS for Level () qualification. The (FFS Manufacturer Name) FFS with (Visual System Manufacturer Name/Model) system is fully defined on the FFS Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FFS and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FFS and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FFS and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,

(Sponsor Representative)

cc:

FAA, National Simulator Program

**Attachment 4 to Appendix C to Part 60—
Figure C4D – Sample Qualification Test Guide Cover Page
INFORMATION**

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC Helicopter MODEL)

for example

Farnsworth Z-100

(Type of Simulator)

(Simulator Identification Including Manufacturer, Serial Number, Visual System Used)

(Simulator Level)

(Qualification Performance Standard Used)

(Simulator Location)

FAA Initial Evaluation

Date: _____

(Sponsor) Date: _____

Manager, National
Simulator Program, FAA Date: _____

Attachment 4 to Appendix C to Part 60—
Figure C4E – Sample Statement of Qualification - Certificate
INFORMATION

Federal Aviation Administration
National Simulator Program



Certificate of Qualification

This is to certify that representatives of the National Simulator Program
Completed an evaluation of the

Go-Fast Airlines
Farnsworth Z-100 Full Flight Simulator
FAA Identification Number 0999

And pursuant to 14 CFR Part 60 found it to meet its original qualification basis, AC 120-63 (MM/DD/YY)

**The Master Qualification Test Guide and the attached
Configuration List and List of Qualified Tasks
Provide the Qualification Basis for this device to operate at
Level D**

Until April 30, 2010

Unless sooner rescinded or extended by the National Simulator Program Manager

March 15, 2009

(date)

C. Nordlie

(for the NSPM)

**Attachment 4 to Appendix C to Part 60—
Figure C4F – Sample Statement of Qualification; Configuration List
INFORMATION**

STATEMENT of QUALIFICATION CONFIGURATION LIST

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name:	_____	FSTD Location:	_____
Address:	_____	Physical Address:	_____
City:	_____	City:	_____
State:	_____	State:	_____
Country:	_____	Country:	_____
ZIP:	_____	ZIP:	_____
Manager	_____		_____
Sponsor ID No: (Four Letter FAA Designator)	_____	Nearest Airport: (Airport Designator)	_____
Type of Evaluation Requested: _____ ☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series:	_____		
Initial Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	Manufacturer's Identification or Serial Number	_____
Upgrade Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	☐ eMQTG	_____
Qualification Basis: _____	☐ A	☐ B	☐ Interim C
	☐ 6	☐ 7	☐ Provisional Status
☐ C ☐ D			
Other Technical Information:			
FAA FSTD ID No: (If Applicable)	_____	FSTD Manufacturer:	_____
Convertible FSTD:	☐ Yes:	Date of Manufacture:	_____
			MM/DD/YYYY
Related FAA ID No. (If Applicable)	_____	Sponsor FSTD ID No:	_____
Engine model(s) and data revision: _____	Source of aerodynamic model: _____		
FMS identification and revision level: _____	Source of aerodynamic coefficient data: _____		
Visual system manufacturer/model: _____	Aerodynamic data revision number: _____		
Flight control data revision: _____	Visual system display: _____		
Motion system manufacturer/type: _____	FSTD computer(s) identification: _____		
National Aviation Authority (NAA): (If Applicable)	_____		
NAA FSTD ID No:	_____	Last NAA Evaluation Date:	_____
NAA Qualification Level:	_____		
NAA Qualification Basis:	_____		

**Attachment 4 to Appendix C to Part 60—
Figure C4F – Sample Statement of Qualification; Configuration List
INFORMATION**

Visual System Manufacturer and Type:	_____	FSTD Seats Available:	Motion System Manufacturer and Type:	_____:
Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: _____ ☐ WX Radar ☐ Other: _____		Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: _____
Airport Models:				
	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator	
Circle to Land:	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway	
Visual Ground Segment	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway	

Section 2. Supplementary Information

FAA Training Program Approval Authority:		☐ POI ☐ TCPM ☐ Other: _____	
Name:	_____	Office:	_____
Tel:	_____	Fax:	_____
Email:	_____		
FSTD Scheduling Person:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____
FSTD Technical Contact:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training / Checks: (142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating - Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____

**Attachment 4 to Appendix C to Part 60—
Figure C4F – Sample Statement of Qualification; Configuration List
INFORMATION**

Proficiency Checks (135/121/142)	☐	_____
CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____
CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

**Attachment 4 to Appendix C to Part 60—
Figure C4G – Sample Statement of Qualification – List of Qualified Tasks
INFORMATION**

**STATEMENT of QUALIFICATION
List of Qualified Tasks**

Go Fast Airline Training -- Farnsworth Z-100 -- Level D -- FAA ID# 0999

**The FFS is qualified to perform all of the Maneuvers, Procedures, Tasks, and Functions
Listed in Appendix A, Attachment 1, Table A1B, Minimum FFS Requirements
In Effect on [mm/dd/yyyy] except for the following listed Tasks or Functions.**

Qualified for all tasks in Table C1B for which the sponsor has requested qualification, except for the following:

- 6.e. Environmental system.
- 6.f. Fire detection and extinguisher system.
- 7.b. In-flight fire and smoke removal.
- 7.d. Ditching.

Additional tasks for which this FFS is qualified (i.e., in addition to the list in Table C1B)

Enhanced Visual System

**Attachment 4 to Appendix C to Part 60—
Figure C4H – Sample Continuing Qualification Evaluation Requirements Page
INFORMATION**

Continuing qualification Evaluation Requirements <i>Completed at conclusion of Initial Evaluation</i>	
Continuing qualification Evaluations to be conducted each __ (fill in) __ months Allotting _____ hours of FTD time. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: __ (month) __ and __ (month) __ and __ (month) __ (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning):	
Continuing qualification Evaluations are to be conducted each __ (fill in) __ months. Allotting _____ hours. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: __ (month) __ and __ (month) __ and __ (month) __ (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning):	
Continuing qualification Evaluations are to be conducted each __ (fill in) __ months. Allotting _____ hours. Signed: _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: __ (month) __ and __ (month) __ and __ (month) __ (enter or strike out, as appropriate) _____ Date

(Repeat as Necessary)

Attachment 4 to Appendix C to Part 60—
Figure C4I – Sample MQTG Index of Effective FFS Directives
INFORMATION

Index of Effective FSTD Directives Filed in this Section			
Number	Effective Date	Date of Notification	Details

Continue as Necessary....

BILLING CODE 4910-13-C

**Attachment 5 to Appendix C to Part 60—
FSTD DIRECTIVES APPLICABLE TO
HELICOPTER FFSs**

**Flight Simulation Training Device (FSTD)
Directive**

FSTD Directive 1. Applicable to all FFSs, regardless of the original qualification basis and qualification date (original or upgrade), having Class II or Class III airport models available.

Agency: Federal Aviation Administration (FAA), DOT

Action: This is a retroactive requirement to have all Class II or Class III airport models meet current requirements.

Summary: Notwithstanding the authorization listed in paragraph 13b in Appendices A and C of this part, this FSTD Directive requires each certificate holder to ensure that by May 30, 2009, except for the airport model(s) used to qualify the simulator at the designated level, each airport model used by the certificate holder's instructors or evaluators for training, checking, or testing under this chapter in an FFS, meets the definition of a Class II or Class III airport model as defined in 14CFR part 60. The completion of this requirement will not require a report, and the method used for keeping instructors and evaluators apprised of the airport models that meet Class II or Class III requirements on any given simulator is at the option of the certificate holder whose employees are using the FFS, but the

method used must be available for review by the TPAA for that certificate holder.

Dates: FSTD Directive 1 becomes effective on May 30, 2008.

For Further Information Contact: Ed Cook, Senior Advisor to the Division Manager, Air Transportation Division, AFS-200, 800 Independence Ave, SW, Washington, DC, 20591; telephone: (404) 832-4701; fax: (404) 761-8906.

Specific Requirements:

1. Part 60 requires that each FSTD be:
 - a. Sponsored by a person holding or applying for an FAA operating certificate under Part 119, Part 141, or Part 142, or holding or applying for an FAA-approved training program under Part 63, Appendix C, for flight engineers, and
 - b. Evaluated and issued an SOQ for a specific FSTD level.
2. FFSs also require the installation of a visual system that is capable of providing an out-of-the-flight-deck view of airport models. However, historically these airport models were not routinely evaluated or required to meet any standardized criteria. This has led to qualified simulators containing airport models being used to meet FAA-approved training, testing, or checking requirements with potentially incorrect or inappropriate visual references.
3. To prevent this from occurring in the future, by May 30, 2009, except for the airport model(s) used to qualify the simulator at the designated level, each certificate holder must assure that each airport model used for training, testing, or checking under

this chapter in a qualified FFS meets the definition of a Class II or Class III airport model as defined in Appendix F of this part.

4. These references describe the requirements for visual scene management and the minimum distances from which runway or landing area features must be visible for all levels of simulator. The visual scene or airport model must provide, for each "in-use runway" or "in-use landing area," runway or landing area surface and markings, runway or landing area lighting, taxiway surface and markings, and taxiway lighting. Additional requirements include correlation of the visual scenes or airport models with other aspects of the airport environment, correlation of the aircraft and associated equipment, scene quality assessment features, and the extent to which the instructor is able to exercise control of these scenes or models.

5. For circling approaches, all requirements of this section apply to the runway used for the initial approach and to the runway of intended landing.

6. The details in these scenes or models must be developed using airport pictures, construction drawings and maps, or other similar data, or be developed in accordance with published regulatory material. However, FSTD Directive 1 does not require that airport models contain details that are beyond the initially designed capability of the visual system, as currently qualified. The recognized limitations to visual systems are as follows:

a. Visual systems not required to have runway numbers as a part of the specific runway marking requirements are:

- (1) Link NVS and DNVs.
- (2) Novoview 2500 and 6000.
- (3) FlightSafety VITAL series up to, and including, VITAL III, but not beyond.
- (4) Redifusion SP1, SP1T, and SP2.

b. Visual systems required to display runway numbers only for LOFT scenes are:

- (1) FlightSafety VITAL IV.
- (2) Redifusion SP3 and SP3T.
- (3) Link-Miles Image II.

c. Visual systems not required to have accurate taxiway edge lighting are:

- (1) Redifusion SP1.
- (2) FlightSafety Vital IV.
- (3) Link-Miles Image II and Image IIT
- (4) XKD displays (even though the XKD

image generator is capable of generating blue colored lights, the display cannot accommodate that color).

7. A copy of this Directive must be filed in the MQTG in the designated FSTD Directive Section, and its inclusion must be annotated on the Index of Effective FSTD Directives chart. See Attachment 4, Appendices A through D of this part for a sample MQTG Index of Effective FSTD Directives chart.

Appendix D to Part 60—Qualification Performance Standards for Helicopter Flight Training Devices

Begin Information

This appendix establishes the standards for Helicopter Flight Training Device (FTD) evaluation and qualification at Level 4, Level 5, Level 6, or Level 7. The NSPM is responsible for the development, application, and implementation of the standards contained within this appendix. The procedures and criteria specified in this appendix will be used by the NSPM, or a person or persons assigned by the NSPM when conducting helicopter FTD evaluations.

Table of Contents

1. Introduction.
2. Applicability (§§ 60.1, 60.2).
3. Definitions (§ 60.3).
4. Qualification Performance Standards (§ 60.4).
5. Quality Management System (§ 60.5).
6. Sponsor Qualification Requirements (§ 60.7).
7. Additional Responsibilities of the Sponsor (§ 60.9).
8. FTD Use (§ 60.11).
9. FTD Objective Data Requirements (§ 60.13).
10. Special Equipment and Personnel Requirements for Qualification of the FTD (§ 60.14).
11. Initial (and Upgrade) Qualification Requirements (§ 60.15).
12. Additional Qualifications for Currently Qualified FTDs (§ 60.16).
13. Previously Qualified FTDs (§ 60.17).
14. Inspection, Continuing Qualification Evaluation, and Maintenance Requirements (§ 60.19).
15. Logging FTD Discrepancies (§ 60.20).

16. Interim Qualification of FTDs for New Helicopter Types or Models (§ 60.21).

17. Modifications to FTDs (§ 60.23).

18. Operations with Missing, Malfunctioning, or Inoperative Components (§ 60.25).

19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27).

20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29).

21. Recordkeeping and Reporting (§ 60.31).

22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33).

23. [Reserved]

24. Levels of FTD.

25. FTD Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37).

Attachment 1 to Appendix D to Part 60—General FTD Requirements.

Attachment 2 to Appendix D to Part 60—Flight Training Device (FTD) Objective Tests.

Attachment 3 to Appendix D to Part 60—Flight Training Device (FTD) Subjective Evaluation.

Attachment 4 to Appendix D to Part 60—Sample Documents.

End Information

1. Introduction

Begin Information

a. This appendix contains background information as well as regulatory and informative material as described later in this section. To assist the reader in determining what areas are required and what areas are permissive, the text in this appendix is divided into two sections: “QPS Requirements” and “Information.” The QPS Requirements sections contain details regarding compliance with the part 60 rule language. These details are regulatory, but are found only in this appendix. The Information sections contain material that is advisory in nature, and designed to give the user general information about the regulation.

b. Questions regarding the contents of this publication should be sent to the U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, National Simulator Program Staff, AFS-205, 100 Hartsfield Centre Parkway, Suite 400, Atlanta, Georgia 30354. Telephone contact numbers for the NSP are: Phone, 404-832-4700; fax, 404-761-8906. The general e-mail address for the NSP office is: 9-aso-avr-sim-team@faa.gov. The NSP Internet Web Site address is: http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/nsfp/. On this Web Site you will find an NSP personnel list with telephone and e-mail contact information for each NSP staff member, a list of qualified flight simulation devices, ACs, a description of the qualification process, NSP policy, and an NSP “In-Works” section. Also linked from this site are additional information sources, handbook bulletins, frequently asked questions, a listing and text of the Federal

Aviation Regulations, Flight Standards Inspector's handbooks, and other FAA links.

c. The NSPM encourages the use of electronic media for all communication, including any record, report, request, test, or statement required by this appendix. The electronic media used must have adequate security provisions and be acceptable to the NSPM. The NSPM recommends inquiries on system compatibility, and minimum system requirements are also included on the NSP Web site.

d. Related Reading References.

- (1) 14 CFR part 60.
- (2) 14 CFR part 61.
- (3) 14 CFR part 63.
- (4) 14 CFR part 119.
- (5) 14 CFR part 121.
- (6) 14 CFR part 125.
- (7) 14 CFR part 135.
- (8) 14 CFR part 141.
- (9) 14 CFR part 142.
- (10) AC 120-28, as amended, Criteria for Approval of Category III Landing Weather Minima.
- (11) AC 120-29, as amended, Criteria for Approving Category I and Category II Landing Minima for part 121 operators.
- (12) AC 120-35, as amended, Line Operational Simulations: Line-Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation.
- (13) AC 120-41, as amended, Criteria for Operational Approval of Airborne Wind Shear Alerting and Flight Guidance Systems.
- (14) AC 120-57, as amended, Surface Movement Guidance and Control System (SMGCS).
- (15) AC 120-63, as amended, Helicopter Simulator Qualification.
- (16) AC 150/5300-13, as amended, Airport Design.
- (17) AC 150/5340-1, as amended, Standards for Airport Markings.
- (18) AC 150/5340-4, as amended, Installation Details for Runway Centerline Touchdown Zone Lighting Systems.
- (19) AC 150/5390-2, as amended, Heliport Design.
- (20) AC 150/5340-19, as amended, Taxiway Centerline Lighting System.
- (21) AC 150/5340-24, as amended, Runway and Taxiway Edge Lighting System.
- (22) AC 150/5345-28, as amended, Precision Approach Path Indicator (PAPI) Systems.
- (23) International Air Transport Association document, “Flight Simulator Design and Performance Data Requirements,” as amended.
- (24) AC 29-2, as amended, Flight Test Guide for Certification of Transport Category Rotorcraft.
- (25) AC 27-1, as amended, Flight Test Guide for Certification of Normal Category Rotorcraft.
- (26) International Civil Aviation Organization (ICAO) Manual of Criteria for the Qualification of Flight Simulators, as amended.
- (27) Airplane Flight Simulator Evaluation Handbook, Volume I, as amended and Volume II, as amended, The Royal Aeronautical Society, London, UK.
- (28) FAA Publication FAA-S-8081 series (Practical Test Standards for Airline

Transport Pilot Certificate, Type Ratings, Commercial Pilot, and Instrument Ratings).

(29) The FAA Aeronautical Information Manual (AIM). An electronic version of the AIM is on the Internet at <http://www.faa.gov/atpubs>.

(30) Aeronautical Radio, Inc. (ARINC) document number 436, *Guidelines For Electronic Qualification Test Guide* (as amended).

(31) Aeronautical Radio, Inc. (ARINC) document 610, *Guidance for Design and Integration of Aircraft Avionics Equipment in Simulators* (as amended).

End Information

2. Applicability (§ 60.1 and 60.2)

Begin Information

No additional regulatory or informational material applies to § 60.1, Applicability, or to § 60.2, Applicability of sponsor rules to person who are not sponsors and who are engaged in certain unauthorized activities.

End Information

3. Definitions (§ 60.3)

Begin Information

See Appendix F of this part for a list of definitions and abbreviations from part 1, part 60, and the QPS appendices of part 60.

End Information

4. Qualification Performance Standards (§ 60.4)

Begin Information

No additional regulatory or informational material applies to § 60.4, Qualification Performance Standards.

End Information

5. Quality Management System (§ 60.5)

Begin Information

Additional regulatory material and informational material regarding Quality Management Systems for FTDs may be found in Appendix E of this part.

End Information

6. Sponsor Qualification Requirements (§ 60.7)

Begin Information

a. The intent of the language in § 60.7(b) is to have a specific FTD, identified by the sponsor, used at least once in an FAA-approved flight training program for the helicopter simulated during the 12-month period described. The identification of the specific FTD may change from one 12-month period to the next 12-month period as long

as that sponsor sponsors and uses at least one FTD at least once during the prescribed period. There is no minimum number of hours or minimum FTD periods required.

b. The following examples describe acceptable operational practices:

(1) Example One.

(a) A sponsor is sponsoring a single, specific FTD for its own use, in its own facility or elsewhere—this single FTD forms the basis for the sponsorship. The sponsor uses that FTD at least once in each 12-month period in that sponsor's FAA-approved flight training program for the helicopter simulated. This 12-month period is established according to the following schedule:

(i) If the FTD was qualified prior to May 30, 2008, the 12-month period begins on the date of the first continuing qualification evaluation conducted in accordance with § 60.19 after May 30, 2008, and continues for each subsequent 12-month period;

(ii) A device qualified on or after May 30, 2008, will be required to undergo an initial or upgrade evaluation in accordance with § 60.15. Once the initial or upgrade evaluation is complete, the first continuing qualification evaluation will be conducted within 6 months. The 12 month continuing qualification evaluation cycle begins on that date and continues for each subsequent 12-month period.

(b) There is no minimum number of hours of FTD use required.

(c) The identification of the specific FTD may change from one 12-month period to the next 12-month period as long as that sponsor sponsors and uses at least one FTD at least once during the prescribed period.

(2) Example Two.

(a) A sponsor sponsors an additional number of FTDs, in its facility or elsewhere. Each additionally sponsored FTD must be—

(i) Used by the sponsor in the sponsor's FAA-approved flight training program for the helicopter simulated (as described in § 60.7(d)(1)); or

(ii) Used by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the helicopter simulated (as described in § 60.7(d)(1)). This 12-month period is established in the same manner as in example one; or

(iii) Provided a statement each year from a qualified pilot, (after having flown the helicopter not the subject FTD or another FTD, during the preceding 12-month period) stating that the subject FTD's performance and handling qualities represent the helicopter (as described in § 60.7(d)(2)). This statement is provided at least once in each 12-month period established in the same manner as in example one.

(b) There is no minimum number of hours of FTD use required.

(3) Example Three.

(a) A sponsor in New York (in this example, a Part 142 certificate holder) establishes "satellite" training centers in Chicago and Moscow.

(b) The satellite function means that the Chicago and Moscow centers must operate under the New York center's certificate (in accordance with all of the New York center's

practices, procedures, and policies; e.g., instructor and/or technician training/checking requirements, record keeping, QMS program).

(c) All of the FTDs in the Chicago and Moscow centers could be dry-leased (i.e., the certificate holder does not have and use FAA-approved flight training programs for the FTDs in the Chicago and Moscow centers) because—

(i) Each FTD in the Chicago center and each FTD in the Moscow center is used at least once each 12-month period by another FAA certificate holder in that other certificate holder's FAA-approved flight training program for the helicopter (as described in § 60.7(d)(1)); or

(ii) A statement is obtained from a qualified pilot (having flown the helicopter, not the subject FTD or another FTD during the preceding 12-month period) stating that the performance and handling qualities of each FTD in the Chicago and Moscow centers represents the helicopter (as described in § 60.7(d)(2)).

End Information

7. Additional Responsibilities of the Sponsor (§ 60.9)

Begin Information

The phrase "as soon as practicable" in § 60.9(a) means without unnecessarily disrupting or delaying beyond a reasonable time the training, evaluation, or experience being conducted in the FTD.

End Information

8. FTD Use (§ 60.11).

Begin Information

No additional regulatory or informational material applies to § 60.11, FTD Use.

End Information

9. FTD Objective Data Requirements (§ 60.13)

Begin QPS Requirements

a. Flight test data used to validate FTD performance and handling qualities must have been gathered in accordance with a flight test program containing the following:

(1) A flight test plan consisting of:

(a) The maneuvers and procedures required for aircraft certification and simulation programming and validation.

(b) For each maneuver or procedure—

(i) The procedures and control input the flight test pilot and/or engineer used.

(ii) The atmospheric and environmental conditions.

(iii) The initial flight conditions.

(iv) The helicopter configuration, including weight and center of gravity.

(v) The data to be gathered.

(vi) All other information necessary to recreate the flight test conditions in the FTD.

(2) Appropriately qualified flight test personnel.

(3) Appropriate and sufficient data acquisition equipment or system(s), including appropriate data reduction and analysis methods and techniques, acceptable to the FAA's Aircraft Certification Service.

b. The data, regardless of source, must be presented:

(1) In a format that supports the FTD validation process;

(2) In a manner that is clearly readable and annotated correctly and completely;

(3) With resolution sufficient to determine compliance with the tolerances set forth in Attachment 2, Table D2A Appendix D;

(4) With any necessary guidance information provided; and

(5) Without alteration, adjustments, or bias. Data may be corrected to address known data calibration errors provided that an explanation of the methods used to correct the errors appears in the QTG. The corrected data may be re-scaled, digitized, or otherwise manipulated to fit the desired presentation.

c. After completion of any additional flight test, a flight test report must be submitted in support of the validation data. The report must contain sufficient data and rationale to support qualification of the FTD at the level requested.

d. As required by § 60.13(f), the sponsor must notify the NSPM when it becomes aware that an addition to or a revision of the flight related data or helicopter systems related data is available if this data is used to program and operate a qualified FTD. The data referred to in this sub-section is data used to validate the performance, handling qualities, or other characteristics of the aircraft, including data related to any relevant changes occurring after the type certification is issued. The sponsor must—

(1) Within 10 calendar days, notify the NSPM of the existence of this data; and

(a) Within 45 calendar days, notify the NSPM of—

(b) The schedule to incorporate this data into the FTD; or

(c) The reason for not incorporating this data into the FTD.

e. In those cases where the objective test results authorize a "snapshot test" or a "series of snapshot tests" results in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the "snapshot." The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

End QPS Requirements

Begin Information

f. The FTD sponsor is encouraged to maintain a liaison with the manufacturer of the aircraft being simulated (or with the holder of the aircraft type certificate for the aircraft being simulated if the manufacturer is no longer in business), and if appropriate, with the person having supplied the aircraft data package for the FTD in order to facilitate the notification described in this paragraph.

g. It is the intent of the NSPM that for all aircraft entering service, at a point well in

advance of preparation of the QTG, the sponsor should submit to the NSPM for approval, a descriptive document (see Appendix C of this part, Table C2D, Sample Validation Data Roadmap for Helicopters) containing the plan for acquiring the validation data, including data sources. This document should clearly identify sources of data for all required tests, a description of the validity of these data for a specific engine type and thrust rating configuration, and the revision levels of all avionics affecting the performance or flying qualities of the aircraft. Additionally, this document should provide other information such as the rationale or explanation for cases where data or data parameters are missing, instances where engineering simulation data are used, or where flight test methods require further explanations. It should also provide a brief narrative describing the cause and effect of any deviation from data requirements. The aircraft manufacturer may provide this document.

h. There is no requirement for any flight test data supplier to submit a flight test plan or program prior to gathering flight test data. However, the NSPM notes that inexperienced data gatherers often provide data that is irrelevant, improperly marked, or lacking adequate justification for selection. Other problems include inadequate information regarding initial conditions or test maneuvers. The NSPM has been forced to refuse these data submissions as validation data for an FTD evaluation. For this reason the NSPM recommends that any data supplier not previously experienced in this area review the data necessary for programming and for validating the performance of the FTD and discuss the flight test plan anticipated for acquiring such data with the NSPM well in advance of commencing the flight tests.

i. The NSPM will consider, on a case-by-case basis, whether to approve supplemental validation data derived from flight data recording systems such as a Quick Access Recorder or Flight Data Recorder.

End Information

10. Special Equipment and Personnel Requirements for Qualification of the FTD (§ 60.14).

Begin Information

a. In the event that the NSPM determines that special equipment or specifically qualified persons will be required to conduct an evaluation, the NSPM will make every attempt to notify the sponsor at least one (1) week, but in no case less than 72 hours, in advance of the evaluation. Examples of special equipment include flight control measurement devices, accelerometers, or oscilloscopes. Examples of specially qualified personnel include individuals specifically qualified to install or use any special equipment when its use is required.

b. Examples of a special evaluation include an evaluation conducted after an FTD is moved; at the request of the TPAA; or as a result of comments received from users of the

FTD that raise questions about the continued qualification or use of the FTD.

End Information

11. Initial (and Upgrade) Qualification Requirements (§ 60.15).

Begin QPS Requirement

a. In order to be qualified at a particular qualification level, the FTD must:

(1) Meet the general requirements listed in Attachment 1 of this appendix.

(2) Meet the objective testing requirements listed in Attachment 2 of this appendix (Level 4 FTDs do not require objective tests).

(3) Satisfactorily accomplish the subjective tests listed in Attachment 3 of this appendix.

b. The request described in § 60.15(a) must include all of the following:

(1) A statement that the FTD meets all of the applicable provisions of this part and all applicable provisions of the QPS.

(2) A confirmation that the sponsor will forward to the NSPM the statement described in § 60.15(b) in such time as to be received no later than 5 business days prior to the scheduled evaluation and may be forwarded to the NSPM via traditional or electronic means.

(3) Except for a Level 4 FTD, a QTG, acceptable to the NSPM, that includes all of the following:

(a) Objective data obtained from aircraft testing or another approved source.

(b) Correlating objective test results obtained from the performance of the FTD as prescribed in the appropriate QPS.

(c) The result of FTD subjective tests prescribed in the appropriate QPS.

(d) A description of the equipment necessary to perform the evaluation for initial qualification and the continuing qualification evaluations.

c. The QTG described in paragraph a(3) of this section must provide the documented proof of compliance with the FTD objective tests in Attachment 2, Table D2A of this appendix.

d. The QTG is prepared and submitted by the sponsor, or the sponsor's agent on behalf of the sponsor, to the NSPM for review and approval, and must include, for each objective test:

(1) Parameters, tolerances, and flight conditions.

(2) Pertinent and complete instructions for conducting automatic and manual tests.

(3) A means of comparing the FTD test results to the objective data.

(4) Any other information as necessary to assist in the evaluation of the test results.

(5) Other information appropriate to the qualification level of the FTD.

e. The QTG described in paragraphs (a)(3) and (b) of this section, must include the following:

(1) A QTG cover page with sponsor and FAA approval signature blocks (see Attachment 4, Figure D4C, of this appendix, for a sample QTG cover page).

(2) A continuing qualification evaluation requirements page. This page will be used by the NSPM to establish and record the frequency with which continuing

qualification evaluations must be conducted and any subsequent changes that may be determined by the NSPM in accordance with § 60.19. See Attachment 4, Figure D4G, of this appendix for a sample Continuing Qualification Evaluation Requirements page.

(3) An FTD information page that provides the information listed in this paragraph, if applicable (see Attachment 4, Figure D4B, of this appendix, for a sample FTD information page). For convertible FTDs, the sponsor must submit a separate page for each configuration of the FTD.

(a) The sponsor's FTD identification number or code.

(b) The helicopter model and series being simulated.

(c) The aerodynamic data revision number or reference.

(d) The source of the basic aerodynamic model and the aerodynamic coefficient data used to modify the basic model.

(e) The engine model(s) and its data revision number or reference.

(f) The flight control data revision number or reference.

(g) The flight management system identification and revision level.

(h) The FTD model and manufacturer.

(i) The date of FTD manufacture.

(j) The FTD computer identification.

(k) The visual system model and manufacturer, including display type.

(l) The motion system type and manufacturer, including degrees of freedom.

(4) A Table of Contents.

(5) A log of revisions and a list of effective pages.

(6) List of all relevant data references.

(7) A glossary of terms and symbols used (including sign conventions and units).

(8) Statements of Compliance and Capability (SOC) with certain requirements.

(9) Recording procedures or equipment required to accomplish the objective tests.

(10) The following information for each objective test designated in Attachment 2 of this appendix, as applicable to the qualification level sought:

(a) Name of the test.

(b) Objective of the test.

(c) Initial conditions.

(d) Manual test procedures.

(e) Automatic test procedures (if applicable).

(f) Method for evaluating FTD objective test results.

(g) List of all relevant parameters driven or constrained during the automatic test(s).

(h) List of all relevant parameters driven or constrained during the manual test(s).

(i) Tolerances for relevant parameters.

(j) Source of Validation Data (document and page number).

(k) Copy of the Validation Data (if located in a separate binder, a cross reference for the identification and page number for pertinent data location must be provided).

(l) FTD Objective Test Results as obtained by the sponsor. Each test result must reflect the date completed and must be clearly labeled as a product of the device being tested.

f. A convertible FTD is addressed as a separate FTD for each model and series helicopter to which it will be converted and

for the FAA qualification level sought. The NSPM will conduct an evaluation for each configuration. If a sponsor seeks qualification for two or more models of a helicopter type using a convertible FTD, the sponsor must provide a QTG for each helicopter model, or a QTG for the first helicopter model and a supplement to that QTG for each additional helicopter model. The NSPM will conduct evaluations for each helicopter model.

g. The form and manner of presentation of objective test results in the QTG must include the following:

(1) The sponsor's FTD test results must be recorded in a manner acceptable to the NSPM, that allows easy comparison of the FTD test results to the validation data (e.g., use of a multi-channel recorder, line printer, cross plotting, overlays, transparencies).

(2) FTD results must be labeled using terminology common to helicopter parameters as opposed to computer software identifications.

(3) Validation data documents included in a QTG may be photographically reduced only if such reduction will not alter the graphic scaling or cause difficulties in scale interpretation or resolution.

(4) Scaling on graphical presentations must provide the resolution necessary to evaluate the parameters shown in Attachment 2, Table D2A of this appendix.

(5) Tests involving time histories, data sheets (or transparencies thereof) and FTD test results must be clearly marked with appropriate reference points to ensure an accurate comparison between FTD and helicopter with respect to time. Time histories recorded via a line printer are to be clearly identified for cross-plotting on the helicopter data. Over-plots may not obscure the reference data.

h. The sponsor may elect to complete the QTG objective and subjective tests at the manufacturer's facility or at the sponsor's training facility. If the tests are conducted at the manufacturer's facility, the sponsor must repeat at least one-third of the tests at the sponsor's training facility in order to substantiate FTD performance. The QTG must be clearly annotated to indicate when and where each test was accomplished. Tests conducted at the manufacturer's facility and at the sponsor's training facility must be conducted after the FTD is assembled with systems and sub-systems functional and operating in an interactive manner. The test results must be submitted to the NSPM.

i. The sponsor must maintain a copy of the MQTG at the FTD location.

j. All FTDs for which the initial qualification is conducted after May 30, 2014, must have an electronic MQTG (eMQTG) including all objective data obtained from helicopter testing, or another approved source (reformatted or digitized), together with correlating objective test results obtained from the performance of the FTD (reformatted or digitized) as prescribed in this appendix. The eMQTG must also contain the general FTD performance or demonstration results (reformatted or digitized) prescribed in this appendix, and a description of the equipment necessary to perform the initial qualification evaluation and the continuing qualification evaluations.

The eMQTG must include the original validation data used to validate FTD performance and handling qualities in either the original digitized format from the data supplier or an electronic scan of the original time-history plots that were provided by the data supplier. A copy of the eMQTG must be provided to the NSPM.

k. All other FTDs (not covered in subparagraph "j") must have an electronic copy of the MQTG by and after May 30, 2014. An electronic copy of the MQTG must be provided to the NSPM. This may be provided by an electronic scan presented in a Portable Document File (PDF), or similar format acceptable to the NSPM.

l. During the initial (or upgrade) qualification evaluation conducted by the NSPM, the sponsor must also provide a person knowledgeable about the operation of the aircraft and the operation of the FTD.

End QPS Requirements

Begin Information

m. Only those FTDs that are sponsored by a certificate holder as defined in Appendix F of this part will be evaluated by the NSPM. However, other FTD evaluations may be conducted on a case-by-case basis as the Administrator deems appropriate, but only in accordance with applicable agreements.

n. The NSPM will conduct an evaluation for each configuration, and each FTD must be evaluated as completely as possible. To ensure a thorough and uniform evaluation, each FTD is subjected to the general FTD requirements in Attachment 1 of this appendix, the objective tests listed in Attachment 2 of this appendix, and the subjective tests listed in Attachment 3 of this appendix. The evaluations described herein will include, but not necessarily be limited to the following:

(1) Helicopter responses, including longitudinal and lateral-directional control responses (see Attachment 2 of this appendix).

(2) Performance in authorized portions of the simulated helicopter's operating envelope, to include tasks evaluated by the NSPM in the areas of surface operations, takeoff, climb, cruise, descent, approach and landing, as well as abnormal and emergency operations (see Attachment 2 of this appendix).

(3) Control checks (see Attachment 1 and Attachment 2 of this appendix).

(4) Flight deck configuration (see Attachment 1 of this appendix).

(5) Pilot, flight engineer, and instructor station functions checks (see Attachment 1 and Attachment 3 of this appendix).

(6) Helicopter systems and sub-systems (as appropriate) as compared to the helicopter simulated (see attachment 1 and attachment 3 of this appendix).

(7) FTD systems and sub-systems, including force cueing (motion), visual, and aural (sound) systems, as appropriate (see Attachment 1 and Attachment 2 of this appendix).

(8) Certain additional requirements, depending upon the qualification level sought, including equipment or

circumstances that may become hazardous to the occupants. The sponsor may be subject to Occupational Safety and Health Administration requirements.

o. The NSPM administers the objective and subjective tests, which include an examination of functions. The tests include a qualitative assessment of the FTD by an NSP pilot. The NSP evaluation team leader may assign other qualified personnel to assist in accomplishing the functions examination and/or the objective and subjective tests performed during an evaluation when required.

(1) Objective tests provide a basis for measuring and evaluating FTD performance and determining compliance with the requirements of this part.

(2) Subjective tests provide a basis for:

(a) Evaluating the capability of the FTD to perform over a typical utilization period;

(b) Determining that the FTD satisfactorily simulates each required task;

(c) Verifying correct operation of the FTD controls, instruments, and systems; and

(d) Demonstrating compliance with the requirements of this part.

p. The tolerances for the test parameters listed in Attachment 2 of this appendix reflect the range of tolerances acceptable to the NSPM for FTD validation and are not to be confused with design tolerances specified for FTD manufacture. In making decisions regarding tests and test results, the NSPM relies on the use of operational and engineering judgment in the application of data (including consideration of the way in which the flight test was flown and way the data was gathered and applied), data presentations, and the applicable tolerances for each test.

q. In addition to the scheduled continuing qualification evaluation, each FTD is subject to evaluations conducted by the NSPM at any time without prior notification to the sponsor. Such evaluations would be accomplished in a normal manner (i.e., requiring exclusive use of the FTD for the conduct of objective and subjective tests and an examination of functions) if the FTD is not being used for flight crewmember training, testing, or checking. However, if the FTD were being used, the evaluation would be conducted in a non-exclusive manner. This non-exclusive evaluation will be conducted by the FTD evaluator accompanying the check airman, instructor, Aircrew Program Designee (APD), or FAA inspector aboard the FTD along with the student(s) and observing the operation of the FTD during the training, testing, or checking activities.

r. Problems with objective test results are handled as follows:

(1) If a problem with an objective test result is detected by the NSP evaluation team during an evaluation, the test may be repeated or the QTG may be amended.

(2) If it is determined that the results of an objective test do not support the qualification level requested but do support a lower level, the NSPM may qualify the FTD at a lower level.

s. After an FTD is successfully evaluated, the NSPM issues an SOQ to the sponsor. The NSPM recommends the FTD to the TPAA, who will approve the FTD for use in a flight

training program. The SOQ will be issued at the satisfactory conclusion of the initial or continuing qualification evaluation and will list the tasks for which the FTD is qualified, referencing the tasks described in Table D1B in Attachment 1 of this appendix. However, it is the sponsor's responsibility to obtain TPAA approval prior to using the FTD in an FAA-approved flight training program.

t. Under normal circumstances, the NSPM establishes a date for the initial or upgrade evaluation within ten (10) working days after determining that a complete QTG is acceptable. Unusual circumstances may warrant establishing an evaluation date before this determination is made. A sponsor may schedule an evaluation date as early as 6 months in advance. However, there may be a delay of 45 days or more in rescheduling and completing the evaluation if the sponsor is unable to meet the scheduled date. See Attachment 4, of this appendix, Figure D4A, Sample Request for Initial, Upgrade, or Reinstatement Evaluation.

u. The numbering system used for objective test results in the QTG should closely follow the numbering system set out in Attachment 2, FTD Objective Tests, Table D2A of this appendix.

v. Contact the NSPM or visit the NSPM Web site for additional information regarding the preferred qualifications of pilots used to meet the requirements of § 60.15(d).

w. Examples of the exclusions for which the FTD might not have been subjectively tested by the sponsor or the NSPM and for which qualification might not be sought or granted, as described in § 60.15(g)(6), include approaches to and departures from slopes and pinnacles.

End Information

12. Additional Qualifications for Currently Qualified FTDs (§ 60.16)

Begin Information

No additional regulatory or informational material applies to § 60.16, Additional Qualifications for a Currently Qualified FTD.

End Information

13. Previously Qualified FTDs (§ 60.17)

Begin QPS Requirements

a. In instances where a sponsor plans to remove an FTD from active status for a period of less than two years, the following procedures apply:

(1) The NSPM must be notified in writing and the notification must include an estimate of the period that the FTD will be inactive.

(2) Continuing Qualification evaluations will not be scheduled during the inactive period.

(3) The NSPM will remove the FTD from the list of qualified FTDs on a mutually established date not later than the date on which the first missed continuing qualification evaluation would have been scheduled.

(4) Before the FTD is restored to qualified status, it must be evaluated by the NSPM.

The evaluation content and the time required to accomplish the evaluation is based on the number of continuing qualification evaluations and sponsor-conducted quarterly inspections missed during the period of inactivity.

(5) The sponsor must notify the NSPM of any changes to the original scheduled time out of service.

b. FTDs and replacement FTD systems qualified prior to May 30, 2008, are not required to meet the general FTD requirements, the objective test requirements, and the subjective test requirements of Attachments 1, 2, and 3, respectively, of this appendix as long as the FTD continues to meet the test requirements contained in the MQTG developed under the original qualification basis.

c. After (1 year after date of publication of the final rule in the **Federal Register**) each visual scene and airport model installed in and available for use in a qualified FTD must meet the requirements described in Attachment 3 of this appendix.

d. Simulators qualified prior to May 30, 2008, may be updated. If an evaluation is deemed appropriate or necessary by the NSPM after such an update, the evaluation will not require an evaluation to standards beyond those against which the simulator was originally qualified.

End QPS Requirements

Begin Information

e. Other certificate holders or persons desiring to use an FTD may contract with FTD sponsors to use FTDs previously qualified at a particular level for a helicopter type and approved for use within an FAA-approved flight training program. Such FTDs are not required to undergo an additional qualification process, except as described in § 60.16.

f. Each FTD user must obtain approval from the appropriate TPAA to use any FTD in an FAA-approved flight training program.

g. The intent of the requirement listed in § 60.17(b), for each FTD to have an SOQ within 6 years, is to have the availability of that statement (including the configuration list and the limitations to authorizations) to provide a complete picture of the FTD inventory regulated by the FAA. The issuance of the statement will not require any additional evaluation or require any adjustment to the evaluation basis for the FTD.

h. Downgrading of an FTD is a permanent change in qualification level and will necessitate the issuance of a revised SOQ to reflect the revised qualification level, as appropriate. If a temporary restriction is placed on an FTD because of a missing, malfunctioning, or inoperative component or on-going repairs, the restriction is not a permanent change in qualification level. Instead, the restriction is temporary and is removed when the reason for the restriction has been resolved.

i. It is not the intent of the NSPM to discourage the improvement of existing simulation (e.g., the "updating" of a control loading system, or the replacement of the IOS

with a more capable unit) by requiring the “updated” device to meet the qualification standards current at the time of the update. Depending on the extent of the update, the NSPM may require that the updated device be evaluated and may require that an evaluation include all or a portion of the elements of an initial evaluation. However, the standards against which the device would be evaluated are those that are found in the MQTG for that device.

j. The NSPM will determine the evaluation criteria for an FTD that has been removed from active status for a prolonged period. The criteria will be based on the number of continuing qualification evaluations and quarterly inspections missed during the period of inactivity. For example, if the FTD were out of service for a 1 year period, it would be necessary to complete the entire QTG, since all of the quarterly evaluations would have been missed. The NSPM will also consider how the FTD was stored, whether parts were removed from the FTD and whether the FTD was disassembled.

k. The FTD will normally be requalified using the FAA-approved MQTG and the criteria that was in effect prior to its removal from qualification. However, inactive periods of 2 years or more will require re-qualification under the standards in effect and current at the time of requalification.

End Information

14. Inspection, Continuing Qualification, Evaluation, and Maintenance Requirements (§ 60.19)

Begin QPS Requirement

a. The sponsor must conduct a minimum of four evenly spaced inspections throughout the year. The objective test sequence and content of each inspection in this sequence must be developed by the sponsor and must be acceptable to the NSPM.

b. The description of the functional preflight check must be contained in the sponsor's QMS.

c. Record “functional preflight” in the FTD discrepancy log book or other acceptable location, including any item found to be missing, malfunctioning, or inoperative.

d. During the continuing qualification evaluation conducted by the NSPM, the sponsor must also provide a person knowledgeable about the operation of the aircraft and the operation of the FTD.

End QPS Requirements

Begin Information

e. The sponsor's test sequence and the content of each quarterly inspection required in § 60.19(a)(1) should include a balance and a mix from the objective test requirement areas listed as follows:

- (1) Performance.
- (2) Handling qualities.
- (3) Motion system (where appropriate).
- (4) Visual system (where appropriate).
- (5) Sound system (where appropriate).
- (6) Other FTD systems.

f. If the NSP evaluator plans to accomplish specific tests during a normal continuing qualification evaluation that requires the use of special equipment or technicians, the sponsor will be notified as far in advance of the evaluation as practical; but not less than 72 hours. Examples of such tests include latencies and control sweeps.

g. The continuing qualification evaluations described in § 60.19(b) will normally require 4 hours of FTD time. However, flexibility is necessary to address abnormal situations or situations involving aircraft with additional levels of complexity (e.g., computer controlled aircraft). The sponsor should anticipate that some tests may require additional time. The continuing qualification evaluations will consist of the following:

(1) Review of the results of the quarterly inspections conducted by the sponsor since the last scheduled continuing qualification evaluation.

(2) A selection of approximately 8 to 15 objective tests from the MQTG that provide an adequate opportunity to evaluate the performance of the FTD. The tests chosen will be performed either automatically or manually and should be able to be conducted within approximately one-third (1/3) of the allotted FTD time.

(3) A subjective evaluation of the FTD to perform a representative sampling of the tasks set out in attachment 3 of this appendix. This portion of the evaluation should take approximately two-thirds (2/3) of the allotted FTD time.

(4) An examination of the functions of the FTD may include the motion system, visual system, sound system as applicable, instructor operating station, and the normal functions and simulated malfunctions of the simulated helicopter systems. This examination is normally accomplished simultaneously with the subjective evaluation requirements.

h. The requirement established in § 60.19(b)(4) regarding the frequency of NSPM-conducted continuing qualification evaluations for each FTD is typically 12 months. However, the establishment and satisfactory implementation of an approved QMS for a sponsor will provide a basis for adjusting the frequency of evaluations to exceed 12-month intervals.

End Information

15. Logging FTD Discrepancies (§ 60.20)

Begin Information

No additional regulatory or informational material applies to § 60.20. Logging FTD Discrepancies.

End Information

16. Interim Qualification of FTDs for New Helicopter Types or Models (§ 60.21)

Begin Information

No additional regulatory or informational material applies to § 60.21. Interim Qualification of FTDs for New Helicopter Types or Models.

End Information

17. Modifications to FTDs (§ 60.23)

Begin QPS Requirements

a. The notification described in § 60.23(c)(2) must include a complete description of the planned modification, with a description of the operational and engineering effect the proposed modification will have on the operation of the FTD and the results that are expected with the modification incorporated.

b. Prior to using the modified FTD:

(1) All the applicable objective tests completed with the modification incorporated, including any necessary updates to the MQTG (e.g., accomplishment of FSTD Directives) must be acceptable to the NSPM; and

(2) The sponsor must provide the NSPM with a statement signed by the MR that the factors listed in § 60.15(b) are addressed by the appropriate personnel as described in that section.

End QPS Requirements

Begin Information

c. FSTD Directives are considered modification of an FTD. See Attachment 4 of this appendix, Figure D4H for a sample index of effective FSTD Directives. See Attachment 6 of this appendix for a list of all effective FSTD Directives applicable to Helicopter FTDs.

End Information

18. Operation with Missing, Malfunctioning, or Inoperative Components (§ 60.25)

Begin Information

a. The sponsor's responsibility with respect to § 60.25(a) is satisfied when the sponsor fairly and accurately advises the user of the current status of an FTD, including any missing, malfunctioning, or inoperative (MMI) component(s).

b. It is the responsibility of the instructor, check airman, or representative of the administrator conducting training, testing, or checking to exercise reasonable and prudent judgment to determine if any MMI component is necessary for the satisfactory completion of a specific maneuver, procedure, or task.

c. If the 29th or 30th day of the 30-day period described in § 60.25(b) is on a Saturday, a Sunday, or a holiday, the FAA will extend the deadline until the next business day.

d. In accordance with the authorization described in § 60.25(b), the sponsor may develop a discrepancy prioritizing system to accomplish repairs based on the level of impact on the capability of the FTD. Repairs having a larger impact on the FTD's ability to provide the required training, evaluation, or flight experience will have a higher priority for repair or replacement.

End Information**19. Automatic Loss of Qualification and Procedures for Restoration of Qualification (§ 60.27)****Begin Information**

If the sponsor provides a plan for how the FTD will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FTD is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing that is required for requalification.

End Information**20. Other Losses of Qualification and Procedures for Restoration of Qualification (§ 60.29)****Begin Information**

If the sponsor provides a plan for how the FTD will be maintained during its out-of-service period (e.g., periodic exercise of mechanical, hydraulic, and electrical systems; routine replacement of hydraulic fluid; control of the environmental factors in which the FTD is to be maintained) there is a greater likelihood that the NSPM will be able to determine the amount of testing that is required for requalification.

End Information**21. Record Keeping and Reporting (§ 60.31)****Begin QPS Requirements**

a. FTD modifications can include hardware or software changes. For FTD modifications involving software programming changes, the record required by § 60.31(a)(2) must consist of the name of the aircraft system software, aerodynamic model, or engine model change, the date of the change, a summary of the change, and the reason for the change.

b. If a coded form for record keeping is used, it must provide for the preservation and retrieval of information with appropriate security or controls to prevent the inappropriate alteration of such records after the fact.

End Information**22. Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements (§ 60.33)****Begin Information**

No additional regulatory or informational material applies to § 60.33, Applications, Logbooks, Reports, and Records: Fraud, Falsification, or Incorrect Statements

23. [Reserved].**End Information****24. Levels of FTD****Begin Information**

a. The following is a general description of each level of FTD. Detailed standards and tests for the various levels of FTDs are fully defined in Attachments 1 through 3 of this appendix.

(1) Level 4. A Level 4 device is one that may have an open helicopter-specific flight deck area, or an enclosed helicopter-specific flight deck and at least one operating system. Air/ground logic is required (no aerodynamic programming required). All displays may be flat/LCD panel representations or actual representations of displays in the aircraft. All controls, switches, and knobs may be touch sensitive activation (not capable of manual manipulation of the flight controls) or may physically replicate the aircraft in control operation.

(2) Level 5. A Level 5 device is one that may have an open helicopter-specific flight deck area, or an enclosed helicopter-specific flight deck and a generic aerodynamic program with at least one operating system and control loading representative of the simulated helicopter. The control loading need only represent the helicopter at an approach speed and configuration. All displays may be flat/LCD panel representations or actual representations of displays in the aircraft. Primary and secondary flight controls (e.g., rudder, aileron, elevator, flaps, spoilers/speed brakes, engine controls, landing gear, nosewheel steering, trim, brakes) must be physical controls. All other controls, switches, and knobs may be touch sensitive activation.

(3) Level 6. A Level 6 device is one that has an enclosed helicopter-specific flight deck and aerodynamic program with all applicable helicopter systems operating and control loading that is representative of the simulated helicopter throughout its ground and flight envelope and significant sound representation. All displays may be flat/LCD panel representations or actual representations of displays in the aircraft, but all controls, switches, and knobs must physically replicate the aircraft in control operation.

(4) Level 7. A Level 7 device is one that has an enclosed helicopter-specific flight deck and aerodynamic program with all applicable helicopter systems operating and control loading that is representative of the simulated helicopter throughout its ground and flight envelope and significant sound representation. All displays may be flat/LCD panel representations or actual representations of displays in the aircraft, but all controls, switches, and knobs must physically replicate the aircraft in control operation. It also has a visual system that provides an out-of-the-flight deck view, providing cross-flight deck viewing (for both pilots simultaneously) of a field-of-view of at least 146° horizontally and 36° vertically as well as a vibration cueing system for

characteristic helicopter vibrations noted at the pilot station(s).

End Information**25. FTD Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA) (§ 60.37)****Begin Information**

No additional regulatory or informational material applies to § 60.37, FTD Qualification on the Basis of a Bilateral Aviation Safety Agreement (BASA).

End Information**Attachment 1 to Appendix D to Part 60—GENERAL FTD REQUIREMENTS****Begin QPS Requirements****1. Requirements**

a. Certain requirements included in this appendix must be supported with an SOC as defined in Appendix F, which may include objective and subjective tests. The requirements for SOC's are indicated in the "General FTD Requirements" column in Table D1A of this appendix.

b. Table D1A describes the requirements for the indicated level of FTD. Many devices include operational systems or functions that exceed the requirements outlined in this section. In any event, all systems will be tested and evaluated in accordance with this appendix to ensure proper operation.

End QPS Requirements**Begin Information****2. Discussion**

a. This attachment describes the general requirements for qualifying Level 4 through Level 7 FTDs. The sponsor should also consult the objectives tests in Attachment 2 of this appendix and the examination of functions and subjective tests listed in Attachment 3 of this appendix to determine the complete requirements for a specific level FTD.

b. The material contained in this attachment is divided into the following categories:

- (1) General Flight Deck Configuration.
- (2) Programming.
- (3) Equipment Operation.
- (4) Equipment and Facilities for Instructor/Evaluator Functions.
- (5) Motion System.
- (6) Visual System.
- (7) Sound System.

c. Table D1A provides the standards for the General FTD Requirements.

d. Table D1B provides the tasks that the sponsor will examine to determine whether the FTD satisfactorily meets the requirements for flight crew training, testing, and experience.

e. Table D1C provides the functions that an instructor/check airman must be able to control in the simulator.

f. It is not required that all of the tasks that appear on the List of Qualified Tasks (part of the SOQ) be accomplished during the initial or continuing qualification evaluation. **End Information**

TABLE D1A.—MINIMUM FTD REQUIREMENTS

QPS requirements						Information
Entry No.	General FTD requirements	FTD level				Notes
		4	5	6	7	
1. General Flight Deck Configuration.						
1.a.	The FTD must have a flight deck that is a replica of the helicopter, or set of helicopters simulated with controls, equipment, observable flight deck indicators, circuit breakers, and bulkheads properly located, functionally accurate and replicating the helicopter or set of helicopters. The direction of movement of controls and switches must be identical to that in the helicopter or set of helicopters. Crewmember seats must afford the capability for the occupant to be able to achieve the design “eye position.” Equipment for the operation of the flight deck windows must be included, but the actual windows need not be operable. Those circuit breakers that affect procedures or result in observable flight deck indications must be properly located and functionally accurate. Fire axes, extinguishers, landing gear pins, and spare light bulbs must be available, and may be represented in silhouette, in the flight simulator. This equipment must be present as near as practical to the original position			X	X	For FTD purposes, the flight deck consists of all that space forward of a cross section of the flight deck at the most extreme aft setting of the pilots’ seats including additional, required crewmember duty stations and those required bulkheads aft of the pilot seats. Bulkheads containing only items such as landing gear pin storage compartments, fire axes and extinguishers, spare light bulbs, and aircraft documents pouches are not considered essential and may be omitted. If omitted, these items, or the silhouettes of these items, may be placed on the wall of the simulator, or in any other location as near as practical to the original position of these items.
1.b.	The FTD must have equipment (i.e., instruments, panels, systems, circuit breakers, and controls) simulated sufficiently for the authorized training/checking events to be accomplished. The installed equipment, must be located in a spatially correct configuration, and may be in a flight deck or an open flight deck area. Those circuit breakers that affect procedures or result in observable flight deck indications must be properly located and functionally accurate. Additional equipment required for the authorized training and checking events must be available in the FTD but may be located in a suitable location as near as practical to the spatially correct position. Actuation of this equipment must replicate the appropriate function in the helicopter. Fire axes, landing gear pins, and any similar purpose instruments need only be represented in silhouette	X	X			
2. Programming.						
2.a.	The FTD must provide the proper effect of aerodynamic changes for the combinations of drag and thrust normally encountered in flight. This must include the effect of change in helicopter attitude, thrust, drag, altitude, temperature, and configuration. Levels 6 and 7 additionally require the effects of changes in gross weight and center of gravity.Level 5 requires only generic aerodynamic programming. An SOC is required		X	X	X	
2.b.	The FTD must have the computer (analog or digital) capability (i.e., capacity, accuracy, resolution, and dynamic response) needed to meet the qualification level sought. An SOC is required	X	X	X	X	

TABLE D1A.—MINIMUM FTD REQUIREMENTS—Continued

QPS requirements					Information	
Entry No.	General FTD requirements	FTD level				Notes
		4	5	6	7	
2.c.	Relative responses of the flight deck instruments must be measured by latency tests or transport delay tests, and may not exceed 150 milliseconds. The instruments must respond to abrupt input at the pilot's position within the allotted time, but not before the time that the helicopter or set of helicopters respond under the same conditions • Latency: The FTD instrument and, if applicable, the motion system and the visual system response must not be prior to that time when the helicopter responds and may respond up to 150 milliseconds after that time under the same conditions. • Transport Delay: As an alternative to the Latency requirement, a transport delay objective test may be used to demonstrate that the FTD system does not exceed the specified limit. The sponsor must measure all the delay encountered by a step signal migrating from the pilot's control through all the simulation software modules in the correct order, using a hand-shaking protocol, finally through the normal output interfaces to the instrument display and, if applicable, the motion system, and the visual system.		X	X	X	The intent is to verify that the FTD provides instrument cues that are, within the stated time delays, like the helicopter responses. For helicopter response, acceleration in the appropriate, corresponding rotational axis is preferred.

3. Equipment Operation.

3.a.	All relevant instrument indications involved in the simulation of the helicopter must automatically respond to control movement or external disturbances to the simulated helicopter or set of helicopters; e.g., turbulence or winds	A	X	X	X	
3.b.	Navigation equipment must be installed and operate within the tolerances applicable for the helicopter or set of helicopters. Levels 6 and 7 must also include communication equipment (inter-phone and air/ground) like that in the helicopter. Level 5 only needs that navigation equipment necessary to fly an instrument approach	A	X	X	X	
3.c.	Installed systems must simulate the applicable helicopter system operation both on the ground and in flight. At least one helicopter system must be represented. Systems must be operative to the extent that applicable normal, abnormal, and emergency operating procedures included in the sponsor's training programs can be accomplished. Levels 6 and 7 must simulate all applicable helicopter flight, navigation, and systems operation. Level 5 must have functional flight and navigational controls, displays, and instrumentation	A	X	X	X	
3.d.	The lighting environment for panels and instruments must be sufficient for the operation being conducted	X	X	X	X	Back-lighted panels and instruments may be installed but are not required.
3.e.	The FTD must provide control forces and control travel that correspond to the replicated helicopter or set of helicopters. Control forces must react in the same manner as in the helicopter or set of helicopters under the same flight conditions			X	X	
3.f.	The FTD must provide control forces and control travel of sufficient precision to manually fly an instrument approach. The control forces must react in the same manner as in the helicopter or set of helicopters under the same flight conditions		X			

4. Instructor or Evaluator Facilities.

TABLE D1A.—MINIMUM FTD REQUIREMENTS—Continued

QPS requirements						Information
Entry No.	General FTD requirements	FTD level				Notes
		4	5	6	7	
4.a.	In addition to the flight crewmember stations, suitable seating arrangements for an instructor/check airman and FAA Inspector must be available. These seats must provide adequate view of crewmember's panel(s)	X	X	X	X	These seats need not be a replica of an aircraft seat and may be as simple as an office chair placed in an appropriate position.
4.b.	The FTD must have instructor controls that permit activation of normal, abnormal, and emergency conditions, as appropriate. Once activated, proper system operation must result from system management by the crew and not require input from the instructor controls.	X	X	X	X	

5. Motion System

5.a.	A motion system may be installed in an FTD. If installed, the motion system operation must not be distracting. If a motion system is installed and additional training, testing, or checking credits are being sought, sensory cues must also be integrated. The motion system must respond to abrupt input at the pilot's position within the allotted time, but not before the time when the helicopter responds under the same conditions. The motion system must be measured by latency tests or transport delay tests and may not exceed 150 milliseconds. Instrument response must not occur prior to motion onset	X	X	X	X	
5.b.	The FTD must have at least a vibration cueing system for characteristic helicopter vibrations noted at the pilot station(s)				X	May be accomplished by a "seat shaker" or a bass speaker sufficient to provide the necessary cueing.

6. Visual System

6.a.	The FTD may have a visual system, if desired, although it is not required. If a visual system is installed, it must meet the following criteria:					
6.a.1.	The visual system must respond to abrupt input at the pilot's position. An SOC is required	X	X	X		
6.a.2.	The visual system must be at least a single channel, non-collimated display. An SOC is required	X	X	X		
6.a.3.	The visual system must provide at least a field-of-view of 18° vertical/24° horizontal for the pilot flying. An SOC is required	X	X	X		
6.a.4.	The visual system must provide for a maximum parallax of 10° per pilot. An SOC is required	X	X	X		
6.a.5.	The visual scene content may not be distracting. An SOC is required	X	X	X		
6.a.6.	The minimum distance from the pilot's eye position to the surface of a direct view display may not be less than the distance to any front panel instrument. An SOC is required	X	X	X		
6.a.7.	The visual system must provide for a minimum resolution of 5 arc-minutes for both computed and displayed pixel size. An SOC is required	X	X	X		

TABLE D1A.—MINIMUM FTD REQUIREMENTS—Continued

QPS requirements					Information	
Entry No.	General FTD requirements	FTD level				Notes
		4	5	6	7	
6.b.	If a visual system is installed and additional training, testing, or checking credits are being sought on the basis of having a visual system, a visual system meeting the standards set out for at least a Level A FFS (see Appendix A of this part) will be required. A “direct-view,” non-collimated visual system (with the other requirements for a Level A visual system met) may be considered satisfactory for those installations where the visual system design “eye point” is appropriately adjusted for each pilot’s position such that the parallax error is at or less than 10° simultaneously for each pilot. An SOC is required	X	X	X		
6.c.	The FTD must provide a continuous visual field-of-view of at least 146° horizontally and 36° vertically for both pilot seats, simultaneously. The minimum horizontal field-of-view coverage must be plus and minus one-half (½) of the minimum continuous field-of-view requirement, centered on the zero degree azimuth line relative to the aircraft fuselage. Additional horizontal field-of-view capability may be added at the sponsor’s discretion provided the minimum field-of-view is retained. Capability for a field-of-view in excess of these minima is not required for qualification at Level 7. However, where specific tasks require extended fields of view beyond the 146° by 36° (e.g., to accommodate the use of “chin windows” where the accommodation is either integral with or separate from the primary visual system display), then such extended fields of view must be provided. An SOC is required and must explain the geometry of the installation.				X Optimization of the vertical field-of-view may be considered with respect to the specific helicopter flight deck cut-off angle. When considering the installation/use of augmented fields of view, as described here, it will be the responsibility of the sponsor to meet with the NSPM to determine the training, testing, checking, or experience tasks for which the augmented field-of-view capability may be critical to that approval.	

7. Sound System

7.a.	The FTD must simulate significant flight deck sounds resulting from pilot actions that correspond to those heard in the helicopter			X	X	

Note: An “A” in the table indicates that the system, task, or procedure may be examined if the appropriate helicopter system or control is simulated in the FTD and is working properly.

TABLE D1B.—MINIMUM FTD REQUIREMENTS

QPS requirements						Information
Entry No.	Subjective requirements The FTD must be able to perform the tasks associated with the level of qualification sought.	FTD level				Notes
		4	5	6	7	
1. Preflight Procedures						
1.a.	Preflight Inspection (Flight Deck Only) switches, indicators, systems, and equipment.	A	A	X	X	
1.b.	APU/Engine start and run-up.					
1.b.1. ...	Normal start procedures	A	A	X	X	
1.b.2. ...	Alternate start procedures	A	A	X	X	
1.b.3. ...	Abnormal starts and shutdowns (hot start, hung start) ...	A	A	X	X	
1.c.	Taxiing—Ground				X	
1.d.	Taxiing—Hover				X	

TABLE D1B.—MINIMUM FTD REQUIREMENTS—Continued

QPS requirements						Information	
Entry No.	Subjective requirements The FTD must be able to perform the tasks associated with the level of qualification sought.	FTD level				Notes	
		4	5	6	7		
1.e.	Pre-takeoff Checks	A	A	X	X		
2. Takeoff and Departure Phase							
2.a.	Normal takeoff.						
2.a.1. ...	From ground				X		
2.a.2. ...	From hover				X		
2.a.3. ...	Running				X		
2.b.	Instrument			X	X		
2.c.	Powerplant Failure During Takeoff			X	X		
2.d.	Rejected Takeoff				X		
2.e.	Instrument Departure			X	X		
3. Climb							
3.a.	Normal			X	X		
3.b.	Obstacle clearance				X		
3.c.	Vertical			X	X		
3.d.	One engine inoperative			X	X		
4. In-flight Maneuvers							
4.a.	Turns (timed, normal, steep)		X	X	X		
4.b.	Powerplant Failure—Multiengine Helicopters			X	X		
4.c.	Powerplant Failure—Single-Engine Helicopters			X	X		
4.d.	Recovery From Unusual Attitudes				X		
4.e.	Settling with Power				X		
5. Instrument Procedures							
5.a.	Instrument Arrival			X	X		
5.b.	Holding			X	X		
5.c.	Precision Instrument Approach						
5.c.1. ...	Normal—All engines operating		X	X	X		
5.c.2. ...	Manually controlled—One or more engines inoperative			X	X		
5.d.	Non-precision Instrument Approach		X	X	X		
5.e.	Missed Approach.						
5.e.1. ...	All engines operating			X	X		
5.e.2. ...	One or more engines inoperative			X	X		
5.e.3. ...	Stability augmentation system failure			X	X		
6. Landings and Approaches to Landings							
6.a.	Visual Approaches (normal, steep, shallow)		X	X	X		
6.b.	Landings.						

TABLE D1B.—MINIMUM FTD REQUIREMENTS—Continued

QPS requirements						Information
Entry No.	Subjective requirements The FTD must be able to perform the tasks associated with the level of qualification sought.	FTD level				Notes
		4	5	6	7	
6.b.1. ...	Normal/crosswind.					
6.b.1.a.	Running				X	
6.b.1.b.	From Hover				X	
6.b.2. ...	One or more engines inoperative				X	
6.b.3. ...	Rejected Landing				X	
7. Normal and Abnormal Procedures						
7.a.	Powerplant	A	A	X	X	
7.b.	Fuel System	A	A	X	X	
7.c.	Electrical System	A	A	X	X	
7.d.	Hydraulic System	A	A	X	X	
7.e.	Environmental System(s)	A	A	X	X	
7.f.	Fire Detection and Extinguisher Systems	A	A	X	X	
7.g.	Navigation and Aviation Systems	A	A	X	X	
7.h.	Automatic Flight Control System, Electronic Flight Instrument System, and Related Subsystems.	A	A	X	X	
7.i.	Flight Control Systems	A	A	X	X	
7.j.	Anti-ice and Deice Systems	A	A	X	X	
7.k.	Aircraft and Personal Emergency Equipment	A	A	X	X	
7.l.	Special Missions tasks (e.g., Night Vision goggles, Forward Looking Infrared System, External Loads and as listed on the SOQ.).				X	
8. Emergency procedures (as applicable)						
8.a.	Emergency Descent			X	X	
8.b.	Inflight Fire and Smoke Removal			X	X	
8.c.	Emergency Evacuation			X	X	
8.d.	Ditching				X	
8.e.	Autorotative Landing				X	
8.f.	Retreating blade stall recovery				X	
8.g.	Mast bumping				X	
8.h.	Loss of tail rotor effectiveness			X	X	
9. Postflight Procedures						
9.a.	After-Landing Procedures	A	A	X	X	
9.b.	Parking and Securing					
9.b.1. ...	Rotor brake operation	A	A	X	X	
9.b.2. ...	Abnormal/emergency procedures	A	A	X	X	

Note: An "A" in the table indicates that the system, task, or procedure may be examined if the appropriate aircraft system or control is simulated in the FTD and is working properly.

TABLE D1C.—TABLE OF FTD SYSTEM TASKS

QPS requirements						Information	
Entry No.	Subjective requirements In order to be qualified at the FTD qualification level indicated, the FTD must be able to perform at least the tasks associate with that level of qualification.	FTD level				Notes	
		4	5	6	7		
1. Instructor Operating Station (IOS)							
1.a.	Power switch(es)	A	X	X	X		
1.b.	Helicopter conditions	A	A	X	X	e.g., GW, CG, Fuel loading, Systems, Ground. Crew.	
1.c.	Airports/Heliports/Helicopter Landing Areas	A	X	X	X	e.g., Selection, Surface, Presets, Lighting controls.	
1.d.	Environmental controls	A	X	X	X	e.g., Temp and Wind.	
1.e.	Helicopter system malfunctions (Insertion/deletion)	A	A	X	X		
1.f.	Locks, Freezes, and Repositioning (as appropriate)	A	X	X	X		
1.g.	Sound Controls. (On/off/adjustment)		X	X	X		
1.h.	Motion/Control Loading System, as appropriate. On/off/emergency stop		A	X	X		
2. Observer Seats/Stations							
2.a.	Position/Adjustment/Positive restraint system	A	X	X	X		

Note: An “A” in the table indicates that the system, task, or procedure may be examined if the appropriate simulator system or control is in the FTD and is working properly.

Attachment 2 to Appendix D to Part 60— Flight Training Device (FTD) Objective Tests

Begin Information

1. Discussion

a. If relevant winds are present in the objective data, the wind vector (magnitude and direction) should be noted as part of the data presentation, expressed in conventional terminology, and related to the runway being used for the test.

b. The format for numbering the objective tests in Appendix C of this part, Attachment 2, Table C2A, and the objective tests in Appendix D of this part, Attachment 2, Table D2A, is identical. However, each test required for FFSs is not necessarily required for FTDs, and each test required for FTDs is not necessarily required for FFSs. When a test number (or series of numbers) is not required, the term “Reserved” is used in the table at that location. Following this numbering format provides a degree of commonality between the two tables and substantially reduces the potential for confusion when referring to objective test numbers for either FFSs or FTDs.

c. A Level 4 FTD does not require objective tests and is not addressed in the following table.

End Information

Begin QPS Requirements

2. Test Requirements

a. The ground and flight tests required for qualification are listed in Table D2A

Objective Evaluation Tests. Computer generated FTD test results must be provided for each test except where an alternate test is specifically authorized by the NSPM. If a flight condition or operating condition is required for the test but does not apply to the helicopter being simulated or to the qualification level sought, it may be disregarded (e.g., engine out climb capability for a single-engine helicopter). Each test result is compared against the validation data described in § 60.13, and in Appendix B of this part. The results must be produced on an appropriate recording device acceptable to the NSPM and must include FTD number, date, time, conditions, tolerances, and appropriate dependent variables portrayed in comparison to the validation data. Time histories are required unless otherwise indicated in Table D2A. All results must be labeled using the tolerances and units given.

b. Table D2A in this attachment sets out the test results required, including the parameters, tolerances, and flight conditions for FTD validation. Tolerances are provided for the listed tests because mathematical modeling and acquisition and development of reference data are often inexact. All tolerances listed in the following tables are applied to FTD performance. When two tolerance values are given for a parameter, the less restrictive may be used unless otherwise indicated. In those cases where a tolerance is expressed only as a percentage, the tolerance percentage applies to the maximum value of that parameter within its normal operating range as measured from the neutral or zero position unless otherwise indicated.

c. Certain tests included in this attachment must be supported with an SOC. In Table

D2A, requirements for SOC are indicated in the “Test Details” column.

d. When operational or engineering judgment is used in making assessments for flight test data applications for FTD validity, such judgment must not be limited to a single parameter. For example, data that exhibit rapid variations of the measured parameters may require interpolations or a “best fit” data section. All relevant parameters related to a given maneuver or flight condition must be provided to allow overall interpretation. When it is difficult or impossible to match FTD to helicopter data throughout a time history, differences must be justified by providing a comparison of other related variables for the condition being assessed.

e. The FTD may not be programmed so that the mathematical modeling is correct only at the validation test points. Unless noted otherwise, tests must represent helicopter performance and handling qualities at operating weights and centers of gravity (CG) typical of normal operation. If a test is supported by aircraft data at one extreme weight or CG, another test supported by aircraft data at mid-conditions or as close as possible to the other extreme is necessary. Certain tests that are relevant only at one extreme CG or weight condition need not be repeated at the other extreme. The results of the tests for Level 6 are expected to be indicative of the device’s performance and handling qualities throughout all of the following:

- (1) The helicopter weight and CG envelope.
- (2) The operational envelope.
- (3) Varying atmospheric ambient and environmental conditions—including the extremes authorized for the respective helicopter or set of helicopters.

f. When comparing the parameters listed to those of the helicopter, sufficient data must also be provided to verify the correct flight condition and helicopter configuration changes. For example, to show that control force is within the parameters for a static stability test, data to show the correct airspeed, power, thrust or torque, helicopter configuration, altitude, and other appropriate datum identification parameters must also be given. If comparing short period dynamics, normal acceleration may be used to establish a match to the helicopter, but airspeed, altitude, control input, helicopter configuration, and other appropriate data must also be given. If comparing landing gear change dynamics, pitch, airspeed, and altitude may be used to establish a match to the helicopter, but landing gear position must also be provided. All airspeed values must be properly annotated (e.g., indicated versus calibrated). In addition, the same variables must be used for comparison (e.g., compare inches to inches rather than inches to centimeters).

g. The QTG provided by the sponsor must clearly describe how the FTD will be set up and operated for each test. Each FTD subsystem may be tested independently, but overall integrated testing of the FTD must be accomplished to assure that the total FTD system meets the prescribed standards. A manual test procedure with explicit and detailed steps for completing each test must also be provided.

h. For previously qualified FTDs, the tests and tolerances of this attachment may be used in subsequent continuing qualification evaluations for any given test if the sponsor has submitted a proposed MQTG revision to the NSPM and has received NSPM approval.

i. Tests of handling qualities must include validation of augmentation devices. FTDs for highly augmented helicopters will be validated both in the unaugmented configuration (or failure state with the maximum permitted degradation in handling qualities) and the augmented configuration. Where various levels of handling qualities result from failure states, validation of the effect of the failure is necessary. For those performance and static handling qualities tests where the primary concern is control position in the unaugmented configuration, unaugmented data are not required if the design of the system precludes any affect on control position. In those instances where the unaugmented helicopter response is divergent and non-repeatable, it may not be feasible to meet the specified tolerances. Alternative requirements for testing will be mutually agreed upon by the sponsor and the NSPM on a case-by-case basis.

j. Some tests will not be required for helicopters using helicopter hardware in the FTD flight deck (e.g., "helicopter modular controller"). These exceptions are noted in Section 2 "Handling Qualities" in Table D2A of this attachment. However, in these cases, the sponsor must provide a statement that the

helicopter hardware meets the appropriate manufacturer's specifications and the sponsor must have supporting information to that fact available for NSPM review.

k. In cases where light-class helicopters are being simulated, prior coordination with the NSPM on acceptable weight ranges is required. The terms "light," "medium," and "near maximum," may not be appropriate for the simulation of light-class helicopters.

End QPS Requirements

Begin Information

1. In those cases where the objective test results authorize a "snapshot test" or a "series of snapshot test" results in lieu of a time-history result, the sponsor or other data provider must ensure that a steady state condition exists at the instant of time captured by the "snapshot." The steady state condition must exist from 4 seconds prior to, through 1 second following, the instant of time captured by the snap shot.

m. Refer to AC 120-27, Aircraft Weight and Balance; and FAA-H-8083-1, Aircraft Weight and Balance Handbook, for more information.

End Information

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS

QPS requirements								Information	
Test		Tolerances	Flight conditions	Test details	FTD level			Notes	
Entry No.	Title				5	6	7		
1.	Performance								
1.a.	Engine Assessment.								
1.a.1.	Start Operations.								
1.a.1.a.	Engine start and acceleration (transient).	Light Off Time— ±10% or ±1 sec. Torque—±5% Rotor Speed— ±3% Fuel Flow— ±10% Gas Gener- ator Speed—±5% Power Turbine Speed—±5% Gas Turbine Temp.— ±30°C.	Ground with the Rotor Brake Used and Not Used.	Record each engine start from the initiation of the start sequence to steady state idle and from steady state idle to operating RPM.		X	X		
1.a.1.b.	Steady State Idle and Op- erating RPM conditions.	Torque—±3% Rotor Speed—±1.5% Fuel Flow—±5% Gas Generator Speed—±2% Power Turbine Speed—±2% Tur- bine Gas Temp.— ±20°C.	Ground	Record both steady state idle and oper- ating RPM conditions. May be a series of snapshot tests.	X	X	X		

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements							Information	
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
1.a.2.	Power Turbine Speed Trim.	±10% of total change of power turbine speed; or ±0.5% change of rotor speed.	Ground	Record engine response to trim system actuation in both directions.		X	X	
1.a.3.	Engine and Rotor Speed Governing.	Torque—±5% Rotor Speed—±1.5%.	Climb Descent	Record results using a step input to the collective. May be conducted concurrently with climb and descent performance tests.		X	X	
1.b.	Reserved.							
1.c.	Takeoff.							
1.c.1.	All Engines	Airspeed—±3 kt, Altitude—±20 ft (6.1 m) Torque—±3%, Rotor Speed—±1.5%, Vertical Velocity—±100 fpm (0.50 m/sec) or 10%, Pitch Attitude—±1.5°, Bank Attitude—±2°, Heading—±2°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Ground/Takeoff and Initial Segment of Climb.	Record results of takeoff flight path (running takeoff and takeoff from a hover). The criteria apply only to those segments at airspeeds above effective translational lift. Results must be recorded from the initiation of the takeoff to at least 200 ft (61 m) AGL.			X	
1.c.2. through 1.c.3.	Reserved.							
1.d.	Hover.							
	Performance	Torque—±3%, Pitch Attitude—±1.5°, Bank Attitude—±1.5°, Longitudinal Control Position—±5%, Lateral Control Position—±5%, Directional Control Position—±5%, Collective Control Position—±5%.	In Ground Effect (IGE); and Out of Ground Effect (OGE).	Record results for light and heavy gross weights. May be a series of snapshot tests.			X	
1.e.	Vertical Climb.							
	Performance	Vertical Velocity—±100 fpm (0.50 m/sec) or ±10%, Directional Control Position—±5%, Collective Control Position—±5%.	From OGE Hover.	Record results for light and heavy gross weights. May be a series of snapshot tests.			X	
1.f.	Level Flight.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
	Performance and Trimmed Flight Control Positions.	Torque—±3% Pitch Attitude—±1.5° Sideslip Angle—±2° Longitudinal Control Position—±5% Lateral Control Position—±5% Directional Control Position—±5% Collective Control Position—±5%.	Cruise (Augmentation On and Off).	Record results for two gross weight and CG combinations with varying trim speeds throughout the air-speed envelope. May be a series of snapshot tests.	X	X	X	This test validates performance at speeds above maximum endurance airspeed.
1.g.	Climb.							
	Performance and Trimmed Flight Control Positions.	Vertical Velocity—±100 fpm (61 m/sec) or ±10% Pitch Attitude—±1.5° Sideslip Angle—±2° Longitudinal Control Position—±5% Lateral Control Position—±5% Directional Control Position—±5% Collective Control Position—±5%.	All engines operating. One engine inoperative. Augmentation System(s) On and Off.	Record results for two gross weight and CG combinations. The data presented must be for normal climb power conditions. May be a series of snapshot tests.	X	X	X	
1.h.	Descent.							
1.h.1.	Descent Performance and Trimmed Flight Control Positions.	Torque—±3% Pitch Attitude—±1.5° Sideslip Angle—±2° Longitudinal Control Position—±5% Lateral Control Position—±5% Directional Control Position—±5% Collective Control Position—±5%.	At or near 1,000 fpm (5 m/sec) rate of descent (RoD) at normal approach speed. Augmentation System(s) On and Off.	Record results for two gross weight and CG combinations. May be a series of snapshot tests.	X	X	X	
1.h.2.	Autorotation Performance and Trimmed Flight Control Positions.	Pitch Attitude—±1.5° Sideslip Angle—±2° Longitudinal Control Position—±5% Lateral Control Position—±5% Directional Control Position—±5% Collective Control Position—±5%.	Steady descents. Augmentation System(s) On and Off.	Record results for two gross weight conditions. Data must be recorded for normal operating RPM. (Rotor speed tolerance applies only if collective control position is full down.) Data must be recorded for speeds from 50 kts, ±5 kts through at least maximum glide distance airspeed. May be a series of snapshot tests.	X	X	X	
1.i.	Autorotation.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
	Entry	Rotor Speed— $\pm 3\%$ Pitch Attitude $\pm 2^\circ$ Roll Attitude— $\pm 3^\circ$ Yaw Attitude— $\pm 5^\circ$ Airspeed— ± 5 kts. Vertical Velocity— ± 200 fpm (1.00 m/sec) or 10%.	Cruise; or Climb	Record results of a rapid throttle reduction to idle. If accomplished in cruise, results must be for the maximum range airspeed. If accomplished in climb, results must be for the maximum rate of climb airspeed at or near maximum continuous power.		X	X	
1.j.	Landing.							
1.j.1.	All Engines	Airspeed— ± 3 kts, Altitude— ± 20 ft (6.1 m) Torque— $\pm 3\%$, Rotor Speed— $\pm 1.5\%$, Pitch Attitude— $\pm 1.5^\circ$, Bank Attitude— $\pm 1.5^\circ$, Heading— $\pm 2^\circ$, Longitudinal Control Position— $\pm 10\%$, Lateral Control Position— $\pm 10\%$, Directional Control Position— $\pm 10\%$, Collective Control Position— $\pm 10\%$.	Approach	Record results of the approach and landing profile (running landing or approach to a hover). The criteria apply only to those segments at airspeeds above effective translational lift. Record the results from 200 ft AGL (61 m) to the landing or to where the hover is established prior to landing.			X	
1.j.2. through 1.j.3.	Reserved.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
1.j.4.	Autorotational Landing.	Torque—±3%, Rotor Speed—±3%, Vertical Velocity—±100 fpm (0.50 m/sec) or 10%, Pitch Attitude—±2°, Bank Attitude—±2°, Heading—±5°, Longitudinal Control Position—±10%, Lateral Control Position—±10%, Directional Control Position—±10%, Collective Control Position—±10%.	Landing	Record the results of an autorotational deceleration and landing from a stabilized autorotational descent, to touch down.			X	If flight test data containing all required parameters for a complete power-off landing is not available from the aircraft manufacturer for this test, and other qualified flight test personnel are not available to acquire this data, the sponsor must coordinate with the NSPM to determine if it would be appropriate to accept alternative testing means. Alternative approaches to this data acquisition that may be acceptable are: (1) A simulated autorotational flare and reduction of rate of descent (ROD) at altitude; or (2) a power-on termination following an autorotational approach and flare.
2.	Handling Qualities							
2.a.	Control System Mechanical Characteristics.	Contact the NSPM for clarification of any issue regarding helicopters with reversible controls.						
2.a.1.	Cyclic	Breakout—±0.25 lbs (0.112 daN) or 25%. Force—±1.0 lb (0.224 daN) or 10%.	Ground; Static conditions. Trim On and Off. Friction Off. Augmentation On and Off.	Record results for an uninterrupted control sweep to the stops. (This test does not apply if aircraft hardware modular controllers are used.).	X	X	X	
2.a.2.	Collective and Pedals.	Breakout—±0.5 lb (0.224 daN) or 25%. Force—±1.0 lb (0.224 daN) or 10%.	Ground; Static conditions. Trim On and Off. Friction Off. Augmentation On and Off.	Record results for an uninterrupted control sweep to the stops.	X	X	X	
2.a.3.	Brake Pedal Force vs. Position.	±5 lbs (2.224 daN) or 10%.	Ground; Static conditions.	.....	X	X	X	

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
2.a.4.	Trim System Rate (all applicable systems).	Rate—±10%	Ground; Static conditions. Trim On. Friction Off.	The tolerance applies to the recorded value of the trim rate.	X	X	X	
2.a.5.	Control Dynamics (all axes).	±10% of time for first zero crossing and ±10 (N+1)% of period thereafter. ±10% of amplitude of first overshoot. ±20% of amplitude of 2nd and subsequent overshoots greater than 5% of initial displacement. ±1 overshoot.	Hover/Cruise Trim On Friction Off.	Results must be recorded for a normal control displacement in both directions in each axis, using 25% to 50% of full throw.		X	X	Control Dynamics for irreversible control systems may be evaluated in a ground/static condition. Refer to paragraph 3 of this attachment for additional information. “N” is the sequential period of a full cycle of oscillation.
2.a.6.	Freeplay	±0.10 in. (±2.5 mm)	Ground; Static conditions.	Record and compare results for all controls.	X	X	X	
2.b.	Low Airspeed Handling Qualities.							
2.b.1.	Trimmed Flight Control Positions.	Torque ±3% Pitch Attitude ±1.5° Bank Attitude ±2° Longitudinal Control Position ±5% Lateral Control Position ±5% Directional Control Position ±5% Collective Control Position ±5%.	Translational Flight IGE—Sideward, rearward, and forward flight. Augmentation On and Off.	Record results for several airspeed increments to the translational airspeed limits and for 45 kts. forward airspeed. May be a series of snapshot tests.			X	
2.b.2.	Critical Azimuth	Torque ±3% Pitch Attitude ±1.5°, Bank Attitude ±2°, Longitudinal Control Position ±5%, Lateral Control Position ±5%, Directional Control Position ±5%, Collective Control Position ±5%.	Stationary Hover. Augmentation On and Off.	Record results for three relative wind directions (including the most critical case) in the critical quadrant. May be a series of snapshot tests.			X	
2.b.3.	Control Response.							
2.b.3.a.	Longitudinal	Pitch Rate—±10% or ±2°/sec. Pitch Attitude Change—±10% or 1.5°.	Hover. Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases. This test must be conducted in a hover, in ground effect, without entering translational flight.			X	This is a “short time” test.

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
2.b.3.b.	Lateral	Roll Rate— $\pm 10\%$ or $\pm 3^\circ/\text{sec}$. Roll Attitude Change— $\pm 10\%$ or $\pm 3^\circ$.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.			X	This is a “short time” test conducted in a hover, in ground effect, without entering translational flight, to provide better visual reference.
2.b.3.c.	Directional	Yaw Rate— $\pm 10\%$ or $\pm 2^\circ/\text{sec}$. Heading Change— $\pm 10\%$ or $\pm 2^\circ$.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases. This test must be conducted in a hover, in ground effect, without entering translational flight.			X	This is a “short time” test.
2.b.3.d.	Vertical	Normal Acceleration $\pm 0.1g$.	Hover Augmentation On and Off.	Record results for a step control input. The Off-axis response must show correct trend for unaugmented cases.			X	
2.c.	Longitudinal Handling Qualities.							
2.c.1.	Control Response.	Pitch Rate— $\pm 10\%$ or $\pm 2^\circ/\text{sec}$. Pitch Attitude Change— $\pm 10\%$ or $\pm 1.5^\circ$.	Cruise Augmentation On and Off.	Results must be recorded for two cruise airspeeds to include minimum power required speed. Record data for a step control input. The Off-axis response must show correct trend for unaugmented cases.	X	X	X	
2.c.2.	Static Stability ..	Longitudinal Control Position: $\pm 10\%$ of change from trim or ± 0.25 in. (6.3 mm) or Longitudinal Control Force: ± 0.5 lb. (0.223 daN) or $\pm 10\%$.	Cruise or Climb. Autorotation. Augmentation On and Off.	Record results for a minimum of two speeds on each side of the trim speed. May be a series of snapshot tests.	X	X	X	
2.c.3.	Dynamic Stability.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
2.c.3.a.	Long Term Response.	±10% of calculated period. ±10% of time to ½ or double amplitude, or ±0.02 of damping ratio. For non-periodic responses, the time history must be matched within ±3° pitch; and ±5 kts air-speed over a 20 sec period following release of the controls.	Cruise Augmentation On and Off.	Record results for three full cycles (6 overshoots after input completed) or that sufficient to determine time to ½ or double amplitude, whichever is less. For non-periodic responses, the test may be terminated prior to 20 sec if the test pilot determines that the results are becoming uncontrollably divergent. Displace the cyclic for one second or less to excite the test. The result will be either convergent or divergent and must be recorded. If this method fails to excite the test, displace the cyclic to the predetermined maximum desired pitch attitude and return to the original position. If this method is used, record the results.	X	X	X	The response for certain helicopters may be unrepeatable throughout the stated time. In these cases, the test should show at least that a divergence is identifiable. For example: Displacing the cyclic for a given time normally excites this test or until a given pitch attitude is achieved and then return the cyclic to the original position. For non-periodic responses, results should show the same convergent or divergent character as the flight test data.
2.c.3.b.	Short Term Response.	±1.5° Pitch or ±2°/sec. Pitch Rate. ±0.1 g Normal Acceleration.	Cruise or Climb. Augmentation On and Off.	Record results for at least two airspeeds.		X	X	A control doublet inserted at the natural frequency of the aircraft normally excites this test. However, while input doublets are preferred over pulse inputs for Augmentation-Off tests, for Augmentation-On cases, when the short term response exhibits 1st-order or dead-beat characteristics, longitudinal pulse inputs may produce a more coherent response.
2.c.4.	Maneuvering Stability.	Longitudinal Control Position—±10% of change from trim or ±0.25 in. (6.3 mm) or Longitudinal Control Forces—±0.5 lb. (0.223 daN) or ±10%.	Cruise or Climb. Augmentation On and Off.	Record results for at least two airspeeds at 30°–45° bank angle. The force may be shown as a cross plot for irreversible systems. May be a series of snapshot tests.		X	X	
2.d.	Lateral and Directional Handling Qualities.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
2.d.1.	Control Response.							
2.d.1.a.	Lateral	Roll Rate— $\pm 10\%$ or $\pm 3^\circ/\text{sec}$. Roll Attitude Change— $\pm 10\%$ or $\pm 3^\circ$.	Cruise Augmentation On and Off.	Record results for at least two airspeeds, including the speed at or near the minimum power required airspeed. Record results for a step control input. The Off-axis response must show correct trend for un-augmented cases.	X	X	X	
2.d.1.b.	Directional	Yaw Rate— $\pm 10\%$ or $\pm 2^\circ/\text{sec}$. Yaw Attitude Change— $\pm 10\%$ or $\pm 2^\circ$.	Cruise Augmentation On and Off.	Record data for at least two Airspeeds, including the speed at or near the minimum power required airspeed. Record results for a step control input. The Off-axis response must show correct trend for un-augmented cases.	X	X	X	
2.d.2.	Directional Static Stability.	Lateral Control Position— $\pm 10\%$ of change from trim or ± 0.25 in. (6.3 mm) or Lateral Control Force— ± 0.5 lb. (0.223 daN) or 10% . Roll Attitude— ± 1.5 Directional Control Position— $\pm 10\%$ of change from trim or ± 0.25 in. (6.3 mm) or Directional Control Force— ± 1 lb. (0.448 daN) or 10% . Longitudinal Control Position— $\pm 10\%$ of change from trim or ± 0.25 in. (6.3 mm). Vertical Velocity— ± 100 fpm (0.50m/sec) or 10% .	Cruise; or Climb (may use Descent instead of Climb if desired) Augmentation On and Off.	Record results for at least two sideslip angles on either side of the trim point. The force may be shown as a cross plot for irreversible systems. May be a series of snapshot tests.	X	X	X	This is a steady heading sideslip test at a fixed collective position.
2.d.3.	Dynamic Lateral and Directional Stability.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information	
Test		Tolerances	Flight conditions	Test details	FTD level			Notes	
Entry No.	Title				5	6	7		
2.d.3.a.	Lateral-Directional Oscillations.	±0.5 sec. or ±10% of period. ±10% of time to ½ or double amplitude or ±0.02 of damping ratio. ±20% or ±1 sec of time difference between peaks of bank and sideslip. For non-periodic responses, the time history must be matched within ±10 knots Airspeed; ±5°/s Roll Rate or ±5° Roll Attitude; ±4°/s Yaw Rate or ±4° Yaw Angle over a 20 sec period roll angle following release of the controls.	Cruise or Climb Augmentation On and Off.	Record results for at least two airspeeds. The test must be initiated with a cyclic or a pedal doublet input. Record results for six full cycles (12 overshoots after input completed) or that sufficient to determine time to ½ or double amplitude, whichever is less. The test may be terminated prior to 20 sec if the test pilot determines that the results are becoming uncontrollably divergent.	X	X	X		
2.d.3.b.	Spiral Stability ..	±2° or ±10% roll angle.	Cruise or Climb. Augmentation On and Off.	Record the results of a release from pedal only or cyclic only turns for 20 sec. Results must be recorded from turns in both directions. Terminate check at zero roll angle or when the test pilot determines that the attitude is becoming uncontrollably divergent.	X	X	X		
2.d.3.c.	Adverse/Proverse Yaw.	Correct Trend, ±2° transient sideslip angle.	Cruise or Climb. Augmentation On and Off.	Record the time history of initial entry into cyclic only turns, using only a moderate rate for cyclic input. Results must be recorded for turns in both directions.	X	X	X		
3.	Reserved								
4.	Visual System								
4.a.	Visual System Response Time: (Choose either test 4.a.1. or 4.a.2. to satisfy test 4.a., Visual System Response Time Test. This test is also sufficient for flight deck instrument response timing.)					....	....		
4.a.1.	Latency.								
		150 ms (or less) after helicopter response.	Takeoff, climb, and descent.	One test is required in each axis (pitch, roll and yaw) for each of the three conditions (take-off, cruise, and approach or landing).			X		
4.a.2.	Transport Delay.								

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
		150 ms (or less) after controller movement.	N/A	A separate test is required in each axis (pitch, roll, and yaw).			X	
4.b.	Field-of-view.							
4.b.1.	Reserved.							
4.b.2.	Continuous visual field-of-view.	Minimum continuous field-of-view providing 146° horizontal and 36° vertical field-of-view for each pilot simultaneously and any geometric error between the Image Generator eye point and the pilot eye point is 8° or less.	N/A	An SOC is required and must explain the geometry of the installation. Horizontal field-of-view must not be less than a total of 146° (including not less than 73° measured either side of the center of the design eye point). Additional horizontal field-of-view capability may be added at the sponsor's discretion provided the minimum field-of-view is retained. Vertical field-of-view: Not less than a total of 36° measured from the pilot's and co-pilot's eye point.			X	Horizontal field-of-view is centered on the zero degree azimuth line relative to the aircraft fuselage.
4.b.3.	Reserved.							
4.c.	Surface contrast ratio.	Not less than 5:1	N/A	The ratio is calculated by dividing the brightness level of the center, bright square (providing at least 2 foot-lamberts or 7 cd/m²) by the brightness level of any adjacent dark square.			X	Measurements may be made using a 1° spot photometer and a raster drawn test pattern filling the entire visual scene (all channels) with a test pattern of black and white squares, 5 per square, with a white square in the center of each channel. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
4.d.	Highlight brightness.	Not less than three (3) foot-lamberts (10 cd/m²).	N/A	Measure the brightness of the center white square while superimposing a highlight on that white square. The use of calligraphic capabilities to enhance the raster brightness is acceptable, but measuring light points is not acceptable.			X	Measurements may be made using a 1° spot photometer and a raster drawn test pattern filling the entire visual scene (all channels) with a test pattern of black and white squares, 5 per square, with a white square in the center of each channel.
4.e.	Surface resolution.	Not greater than two (2) arc minutes.	N/A	An SOC is required and must include the relevant calculations.			X	When the eye is positioned on a 3° glide slope at the slant range distances indicated with white runway markings on a black runway surface, the eye will subtend two (2) arc minutes: (1) A slant range of 6,876 ft with stripes 150 ft long and 16 ft wide, spaced 4 ft apart. (2) For Configuration A; a slant range of 5,157 feet with stripes 150 ft long and 12 ft wide, spaced 3 ft apart. (3) For Configuration B; a slant range of 9,884 feet, with stripes 150 ft long and 5.75 ft wide, spaced 5.75 ft apart.
4.f.	Light point size	Not greater than five (5) arc-minutes.	N/A	An SOC is required and must include the relevant calculations.			X	Light point size may be measured using a test pattern consisting of a centrally located single row of light points reduced in length until modulation is just discernible in each visual channel. A row of 48 lights will form a 4° angle or less.

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

Test		QPS requirements						Information
Entry No.	Title	Tolerances	Flight conditions	Test details	FTD level			Notes
					5	6	7	
4.g.	Light point contrast ratio.	.....	.....	.....				A 1° spot photometer may be used to measure a square of at least 1° filled with light points (where light point modulation is just discernible) and compare the results to the measured adjacent background. During contrast ratio testing, simulator aft-cab and flight deck ambient light levels should be zero.
4.g.1.	Reserved.							
4.g.2. ....	.....	Not less than 25:1 ...	N/A	An SOC is required and must include the relevant calculations.			X	
4.h.	Visual ground segment.							

TABLE D2A.—FLIGHT TRAINING DEVICE (FTD) OBJECTIVE TESTS—Continued

QPS requirements								Information
Test		Tolerances	Flight conditions	Test details	FTD level			Notes
Entry No.	Title				5	6	7	
		The visible segment in the simulator must be within 20% of the segment computed to be visible from the helicopter flight deck. The tolerance(s) may be applied at either end or at both ends of the displayed segment. However, lights and ground objects computed to be visible from the helicopter flight deck at the near end of the visible segment must be visible in the simulator.	Landing configuration, trimmed for appropriate airspeed, at 100 ft (30m) above the touchdown zone, on glide slope with an RVR value set at 1,200 ft (350m).	The QTG must contain relevant calculations and a drawing showing the data used to establish the helicopter location and the segment of the ground that is visible considering design eyepoint, helicopter attitude, flight deck cut-off angle, and a visibility of 1200 ft (350 m) RVR. Simulator performance must be measured against the QTG calculations. The data submitted must include at least the following: (1) Static helicopter dimensions as follows: (i) Horizontal and vertical distance from main landing gear (MLG) to glideslope reception antenna. (ii) Horizontal and vertical distance from MLG to pilot's eyepoint. (iii) Static flight deck cut-off angle. (2) Approach data as follows: (i) Identification of runway. (ii) Horizontal distance from runway threshold to glideslope intercept with runway. (iii) Glideslope angle. (iv) Helicopter pitch angle on approach. (3) Helicopter data for manual testing: (i) Gross weight. (ii) Helicopter configuration. (iii) Approach airspeed. If non-homogenous fog is used to obscure visibility, the vertical variation in horizontal visibility must be described and be included in the slant range visibility calculation used in the computations.			X	Pre-position for this test is encouraged, but may be achieved via manual or autopilot control to the desired position.
5.	Reserved							

Begin Information

3. Control Dynamics

a. The characteristics of a helicopter flight control system have a major effect on the handling qualities. A significant consideration in pilot acceptability of a helicopter is the "feel" provided through the flight deck controls. Considerable effort is expended on helicopter feel system design in order to deliver a system with which pilots will be comfortable and consider the helicopter desirable to fly. In order for an FTD to be representative, it too must present the pilot with the proper feel; that of the respective helicopter. Compliance with this requirement is determined by comparing a recording of the control feel dynamics of the FFS to actual helicopter measurements in the hover and cruise configurations.

(1) Recordings such as free response to an impulse or step function are classically used to estimate the dynamic properties of electromechanical systems. It is only possible to estimate the dynamic properties as a result of only being able to estimate true inputs and responses. Therefore, it is imperative that the best possible data be collected since close matching of the FTD control loading system to the helicopter systems is essential. Control feel dynamic tests are described in the Table of Objective Tests in this appendix. Where accomplished, the free response is measured after a step or pulse input is used to excite the system.

(2) For initial and upgrade evaluations, it is required that control dynamic characteristics be measured at and recorded directly from the flight deck controls. This procedure is usually accomplished by measuring the free response of the controls using a step or pulse input to excite the system. The procedure must be accomplished in hover, climb, cruise, and autorotation. For helicopters with irreversible control systems, measurements may be obtained on the ground. The procedure should be accomplished in the hover and cruise flight conditions and configurations. Proper pitot-static inputs (if appropriate) must be provided to represent airspeeds typical of those encountered in flight.

(3) It may be shown that for some helicopters, climb, cruise, and autorotation have like effects. Thus, some tests for one may suffice for some tests for another. If either or both considerations apply, engineering validation or helicopter

manufacturer rationale must be submitted as justification for ground tests or for eliminating a configuration. For FTDs requiring static and dynamic tests at the controls, special test fixtures will not be required during initial and upgrade evaluations if the sponsor's QTG shows both test fixture results and the results of an alternative approach, such as computer plots which were produced concurrently and show satisfactory agreement. Repeat of the alternative method during the initial evaluation satisfies this test requirement.

b. Control Dynamics Evaluations. The dynamic properties of control systems are often stated in terms of frequency, damping, and a number of other classical measurements which can be found in texts on control systems. In order to establish a consistent means of validating test results for FTD control loading, criteria are needed that will clearly define the interpretation of the measurements and the tolerances to be applied. Criteria are needed for both the underdamped system and the overdamped system, including the critically damped case. In the case of an underdamped system with very light damping, the system may be quantified in terms of frequency and damping. In critically damped or overdamped systems, the frequency and damping is not readily measured from a response time history. Therefore, some other measurement must be used.

(1) Tests to verify that control feel dynamics represent the helicopter must show that the dynamic damping cycles (free response of the control) match that of the helicopter within specified tolerances. The method of evaluating the response and the tolerance to be applied are described below for the underdamped and critically damped cases.

(a) Underdamped Response. Two measurements are required for the period, the time to first zero crossing (in case a rate limit is present) and the subsequent frequency of oscillation. It is necessary to measure cycles on an individual basis in case there are nonuniform periods in the response. Each period will be independently compared to the respective period of the helicopter control system and, consequently, will enjoy the full tolerance specified for that period.

(b) The damping tolerance will be applied to overshoots on an individual basis. Care must be taken when applying the tolerance to small overshoots since the significance of such overshoots becomes questionable. Only

those overshoots larger than 5 percent of the total initial displacement will be considered significant. The residual band, labeled $T(A_d)$ on Figure 1 of this attachment is ± 5 percent of the initial displacement amplitude, A_d , from the steady state value of the oscillation. Oscillations within the residual band are considered insignificant. When comparing simulator data to helicopter data, the process would begin by overlaying or aligning the simulator and helicopter steady state values and then comparing amplitudes of oscillation peaks, the time of the first zero crossing, and individual periods of oscillation. To be satisfactory, the simulator must show the same number of significant overshoots to within one when compared against the helicopter data. The procedure for evaluating the response is illustrated in Figure 1 of this attachment.

(c) Critically Damped and Overdamped Response. Due to the nature of critically damped responses (no overshoots), the time to reach 90 percent of the steady state (neutral point) value must be the same as the helicopter within ± 10 percent. The simulator response must be critically damped also. Figure 2 of this attachment illustrates the procedure.

(d) Special considerations. Control systems that exhibit characteristics other than classical overdamped or underdamped responses should meet specified tolerances. In addition, special consideration should be given to ensure that significant trends are maintained.

(2) Tolerances.

(a) The following summarizes the tolerances, "T" for underdamped systems, and "n" is the sequential period of a full cycle of oscillation. See Figure D2A of this attachment for an illustration of the referenced measurements.

$T(P_0) \pm 10\%$ of P_0

$T(P_1) \pm 20\%$ of P_1

$T(P_2) \pm 30\%$ of P_2

$T(P_n) \pm 10(n+1)\%$ of P_n

$T(A_n) \pm 10\%$ of A_1

$T(A_d) \pm 5\%$ of A_d = residual band

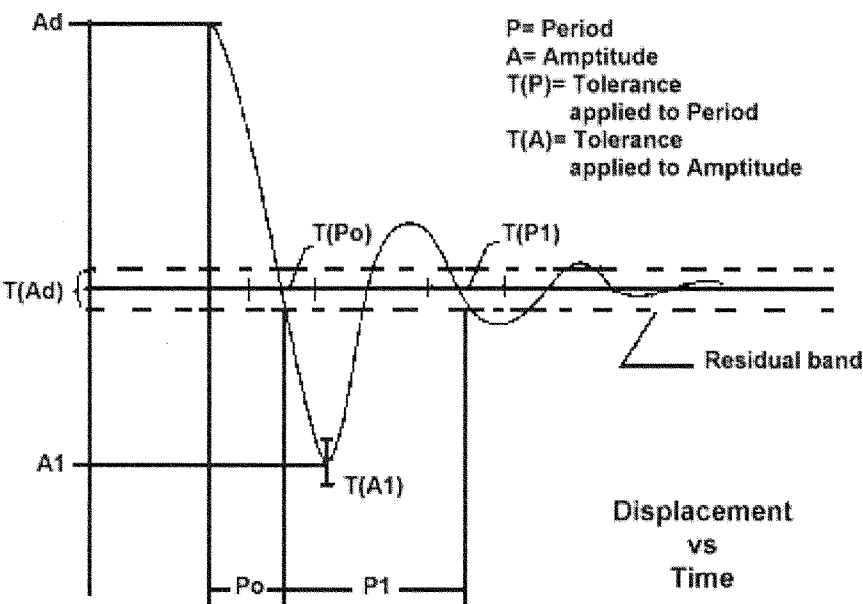
Significant overshoots First overshoot and ± 1 subsequent overshoots

(b) The following tolerance applies to critically damped and overdamped systems only. See Figure D2B for an illustration of the reference measurements:

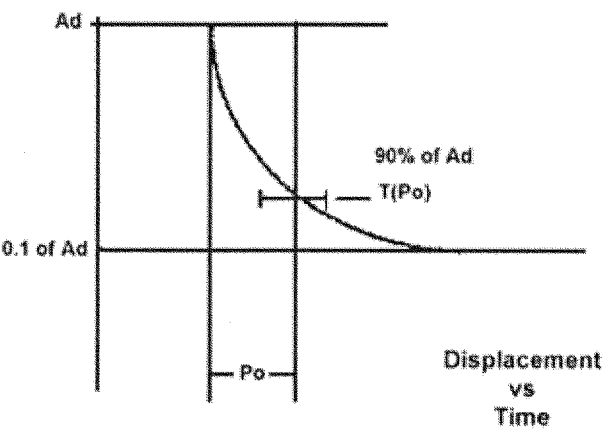
$T(P_0) \pm 10\%$ of P_0

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Attachment 2 to Appendix D to Part 60—
Figure D2A. Under-Damped Step Response



Attachment 2 to Appendix D to Part 60—
Figure D2B. Critically-Damped Step Response



End Information

Begin QPS Requirement

c. Alternative method for control dynamics evaluation.

(1) An alternative means for validating control dynamics for aircraft with hydraulically powered flight controls and artificial feel systems is by the measurement of control force and rate of movement. For each axis of pitch, roll, and yaw, the control must be forced to its maximum extreme position for the following distinct rates. These tests are conducted under normal flight and ground conditions.

(a) Static test—Slowly move the control so that a full sweep is achieved within 95–105 seconds. A full sweep is defined as movement of the controller from neutral to the stop, usually aft or right stop, then to the opposite stop, then to the neutral position.

(b) Slow dynamic test—Achieve a full sweep within 8–12 seconds.

(c) Fast dynamic test—Achieve a full sweep within 3–5 seconds.

Note: Dynamic sweeps may be limited to forces not exceeding 100 lbs. (44.5 daN).

(d) Tolerances.

(i) Static test; see Table D2A, Flight Training Device (FTD) Objective Tests, Entries 2.a.1., 2.a.2., and 2.a.3.

(ii) Dynamic test— ± 2 lbs (0.9 daN) or $\pm 10\%$ on dynamic increment above static test.

End QPS Requirement

Begin Information

d. The FAA is open to alternative means that are justified and appropriate to the application. For example, the method described here may not apply to all manufacturers' systems and certainly not to aircraft with reversible control systems. Each case is considered on its own merit on an ad hoc basis. If the FAA finds that alternative methods do not result in satisfactory performance, more conventionally accepted methods will have to be used.

4. For Additional Information on the Following Topics, Please Refer to Appendix C of This Part, Attachment 2, and the Indicated Paragraph Within That Attachment

- Additional Information About Flight Simulator Qualification for New or Derivative Helicopters, paragraph 8.
- Engineering Simulator Validation Data, paragraph 9.
- Validation Test Tolerances, paragraph 11.
- Validation Data Road Map, paragraph 12.
- Acceptance Guidelines for Alternative Avionics, paragraph 13.
- Transport Delay Testing, paragraph 15.
- Continuing Qualification Evaluation Validation Data Presentation, paragraph 16.

End Information

Attachment 3 to Appendix D to Part 60—FLIGHT TRAINING DEVICE (FTD) SUBJECTIVE EVALUATION

Begin QPS Requirements

1. Requirements

a. Except for special use airport models, all airport models required by this part must be representations of real-world, operational airports or representations of fictional airports and must meet the requirements set out in Tables D3B or D3C of this attachment, as appropriate.

b. If fictional airports are used, the sponsor must ensure that navigational aids and all appropriate maps, charts, and other navigational reference material for the fictional airports (and surrounding areas as necessary) are compatible, complete, and accurate with respect to the visual presentation and the airport model of this fictional airport. An SOC must be submitted that addresses navigation aid installation and performance and other criteria (including obstruction clearance protection) for all instrument approaches to the fictional airports that are available in the simulator. The SOC must reference and account for information in the terminal instrument procedures manual and the construction and availability of the required maps, charts, and other navigational material. This material must be clearly marked "for training purposes only."

c. When the simulator is being used by an instructor or evaluator for purposes of training, checking, or testing under this chapter, only airport models classified as Class I, Class II, or Class III may be used by the instructor or evaluator. Detailed descriptions/definitions of these classifications are found in Appendix F of this part.

d. When a person sponsors an FTD maintained by a person other than a U.S. certificate holder, the sponsor is accountable for that FTD originally meeting, and continuing to meet, the criteria under which it was originally qualified and the appropriate Part 60 criteria, including the visual scenes and airport models that may be used by instructors or evaluators for purposes of training, checking, or testing under this chapter.

e. Neither Class II nor Class III airport visual models are required to appear on the SOQ, and the method used for keeping instructors and evaluators apprised of the airport models that meet Class II or Class III requirements on any given simulator is at the option of the sponsor, but the method used must be available for review by the TPAA.

f. When an airport model represents a real world airport and a permanent change is made to that real world airport (e.g., a new runway, an extended taxiway, a new lighting system, a runway closure) without a written extension grant from the NSPM (described in paragraph 1.g., of this section), an update to that airport model must be made in accordance with the following time limits:

(1) For a new airport runway, a runway extension, a new airport taxiway, a taxiway extension, or a runway/taxiway closure—within 90 days of the opening for use of the new airport runway, runway extension, new airport taxiway, or taxiway extension; or within 90 days of the closure of the runway or taxiway.

(2) For a new or modified approach light system—within 45 days of the activation of the new or modified approach light system.

(3) For other facility or structural changes on the airport (e.g., new terminal, relocation of Air Traffic Control Tower)—within 180 days of the opening of the new or changed facility or structure.

g. If a sponsor desires an extension to the time limit for an update to a visual scene or airport model or has an objection to what must be updated in the specific airport model requirement, the sponsor must provide a written extension request to the NSPM stating the reason for the update delay and a proposed completion date or provide an explanation for the objection, explaining why the identified airport change will not have an impact on flight training, testing, or checking. A copy of this request or objection must also be sent to the POI/TCPM. The NSPM will send the official response to the sponsor and a copy to the POI/TCPM; however, if there is an objection, after consultation with the appropriate POI/TCPM regarding the training, testing, or checking impact, the NSPM will send the official response to the sponsor and a copy to the POI/TCPM.

h. Examples of situations that may warrant Class III model designation by the TPAA include the following:

(a) Training, testing, or checking on very low visibility operations, including SMGCS operations.

(b) Instrument operations training (including instrument takeoff, departure, arrival, approach, and missed approach training, testing, or checking) using—

(i) A specific model that has been geographically "moved" to a different location and aligned with an instrument procedure for another airport.

(ii) A model that does not match changes made at the real-world airport (or landing area for helicopters) being modeled.

(iii) A model generated with an "off-board" or an "on-board" model development tool (by providing proper latitude/longitude reference; correct runway or landing area orientation, length, width, marking, and lighting information; and appropriate adjacent taxiway location) to generate a facsimile of a real world airport or landing area.

These airport models may be accepted by the TPAA without individual observation provided the sponsor provides the TPAA with an acceptable description of the process for determining the acceptability of a specific airport model, outlines the conditions under which such an airport model may be used, and adequately describes what restrictions will be applied to each resulting airport or landing area model.

End QPS Requirements

Begin Information

2. Discussion

a. The subjective tests and the examination of functions provide a basis for evaluating the capability of the FTD to perform over a typical utilization period; determining that the FTD satisfactorily meets the appropriate training/testing/checking objectives and

competently simulates each required maneuver, procedure, or task; and verifying correct operation of the FTD controls, instruments, and systems. The items in the list of operations tasks are for FTD evaluation purposes only. They must not be used to limit or exceed the authorizations for use of a given level of FTD as found in the Practical Test Standards or as approved by the TPAA. All items in the following paragraphs are subject to an examination of function.

b. The List of Operations Tasks in Table D3A addressing pilot functions and maneuvers is divided by flight phases. All simulated helicopter systems functions will be assessed for normal and, where appropriate, alternate operations. Normal, abnormal, and emergency operations associated with a flight phase will be assessed during the evaluation of maneuvers or events within that flight phase.

c. Systems to be evaluated are listed separately under "Any Flight Phase" to

ensure appropriate attention to systems checks. Operational navigation systems (including inertial navigation systems, global positioning systems, or other long-range systems) and the associated electronic display systems will be evaluated if installed. The NSP pilot will include in his report to the TPAA, the effect of the system operation and any system limitation.

d. At the request of the TPAA, the NSP Pilot may assess the FTD for a special aspect of a sponsor's training program during the functions and subjective portion of an evaluation. Such an assessment may include a portion of a specific operation (e.g., a Line Oriented Flight Training (LOFT) scenario) or special emphasis items in the sponsor's training program. Unless directly related to a requirement for the qualification level, the results of such an evaluation would not necessarily affect the qualification of the FTD.

e. The FAA intends to allow the use of Class III airport models on a limited basis when the sponsor provides the TPAA (or other regulatory authority) an appropriate analysis of the skills, knowledge, and abilities (SKAs) necessary for competent performance of the tasks in which this particular media element is used. The analysis should describe the ability of the FTD/visual media to provide an adequate environment in which the required SKAs are satisfactorily performed and learned. The analysis should also include the specific media element, such as the visual scene or airport model. Additional sources of information on the conduct of task and capability analysis may be found on the FAA's Advanced Qualification Program (AQP) Web site at: http://www.faa.gov/education_research/training/aqp.

End Information

TABLE D3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
Tasks in this table are subject to evaluation if appropriate for the helicopter simulated as indicated in the SOQ Configuration List or a Level 7 FTD. Items not installed, not functional on the FTD, and not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.	
1. Preflight Procedures	
1.a.	Preflight Inspection (Flight Deck Only) switches, indicators, systems, and equipment.
1.b.	APU/Engine start and run-up.
1.b.1.	Normal start procedures.
1.b.2.	Alternate start procedures.
1.b.3.	Abnormal starts and shutdowns (hot start, hung start).
1.b.4.	Rotor engagement.
1.b.5.	System checks.
1.c.	Taxiing—Ground.
1.c.1.	Power required to taxi.
1.c.2.	Brake effectiveness.
1.c.3.	Ground handling.
1.c.4.	Abnormal/emergency procedures, for example:
1.c.4.a.	Brake system failure.
1.c.4.b.	Ground resonance.
1.c.4.c.	Other (listed on the SOQ).
1.d.	Taxiing—Hover.
1.d.1.	Takeoff to a hover.
1.d.2.	Instrument response.
1.d.2.a.	Engine instruments.
1.d.2.a.	Flight instruments.
1.d.3.	Hovering turns.

TABLE D3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
1.d.4.	Hover power checks.
1.d.4.a.	In ground effect (IGE).
1.d.4.b.	Out of ground effect (OGE).
1.d.5.	Crosswind/tailwind hover.
1.d.6.	Abnormal/emergency procedures:
1.d.6.a.	Engine failure.
1.d.6.b.	Fuel governing system failure.
1.d.6.c.	Settling with power (OGE).
1.d.6.d.	Stability augmentation system failure.
1.d.6.e.	Directional control malfunction (including Loss of Tail Rotor Effectiveness, LTE).
1.d.6.f.	Other (listed on the SOQ).
1.e.	Pre-takeoff Checks.
2. Takeoff and Departure Phase	
2.a.	Normal and Crosswind Takeoff.
2.a.1.	From ground.
2.a.2.	From hover.
2.a.3.	Running.
2.a.4.	Crosswind/tailwind.
2.a.5.	Maximum performance.
2.b.	Instrument.
2.c.	Powerplant Failure During Takeoff.
2.c.1.	Takeoff with engine failure after critical decision point (CDP).
2.d.	Rejected Takeoff.
2.e.	Instrument Departure.
2.f.	Other (listed on the SOQ).
3. Climb	
3.a.	Normal.
3.b.	Obstacle clearance.
3.c.	Vertical.
3.d.	One engine inoperative.
3.e.	Other (listed on the SOQ).
4. Inflight Maneuvers	
4.a.	Performance.
4.b.	Flying qualities.
4.c.	Turns.
4.c.1.	Timed.

TABLE D3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
4.c.2.	Normal.
4.c.3.	Steep.
4.d.	Accelerations and decelerations.
4.e.	High-speed vibrations.
4.f.	Abnormal/emergency procedures, for example:
4.f.1.	Engine fire.
4.f.2.	Engine failure.
4.f.2.a.	Powerplant Failure—Multiengine Helicopters.
4.f.2.b.	Powerplant Failure—Single-Engine Helicopters.
4.f.3.	Inflight engine shutdown (and restart, if applicable).
4.f.4.	Fuel governing system failures (e.g., FADEC malfunction).
4.f.5.	Directional control malfunction.
4.f.6.	Hydraulic failure.
4.f.7.	Stability augmentation system failure.
4.f.8.	Rotor vibrations.
4.f.9.	Recovery From Unusual Attitudes.
4.f.10.	Settling with Power.
4.g.	Other (listed on the SOQ).
5. Instrument Procedures	
5.a.	Instrument Arrival.
5.b.	Holding.
5.c.	Precision Instrument Approach.
5.c.1.	Normal—All engines operating.
5.c.2.	Manually controlled—One or more engines inoperative.
5.c.3.	Approach procedures:
5.c.3.a.	PAR.
5.c.3.b.	GPS.
5.c.3.c.	ILS.
5.c.3.c.1.	Manual (raw data).
5.c.3.c.2.	Autopilot * only.
5.c.3.c.3.	Flight director only.
5.c.3.c.4.	Autopilot * and flight director (if appropriate) coupled.
5.c.3.d.	Other (listed on the SOQ).
5.d.	Non-precision Instrument Approach.
5.d.1.	Normal—All engines operating.
5.d.2.	One or more engines inoperative.

TABLE D3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
5.d.3.	Approach procedures:
5.d.3.a.	NDB.
5.d.3.b.	VOR, RNAV, TACAN, GPS.
5.d.3.c.	ASR.
5.d.3.d.	Circling.
5.d.3.e.	Helicopter only.
5.d.3.f.	Other (listed on the SOQ).
5.e.	Missed Approach.
5.e.1.	All engines operating.
5.e.2.	One or more engines inoperative.
5.e.3.	Stability augmentation system failure.
5.e.4.	Other (listed on the SOQ).
6. Landings and Approaches to Landings	
6.a.	Visual Approaches.
6.a.1.	Normal.
6.a.2.	Steep.
6.a.3.	Shallow.
6.a.4.	Crosswind.
6.b.	Landings.
6.b.1.	Normal.
6.b.1.a.	Running.
6.b.1.b.	From Hover.
6.b.2.	Crosswind.
6.b.3.	Tailwind.
6.b.4.	One or more engines inoperative.
6.b.5.	Rejected Landing.
6.b.6.	Other (listed on the SOQ).
7. Normal and Abnormal Procedures (any phase of flight)	
7.a.	Helicopter and powerplant systems operation (as applicable).
7.a.1.	Anti-icing/deicing systems.
7.a.2.	Auxiliary powerplant.
7.a.3.	Communications.
7.a.4.	Electrical system.
7.a.5.	Environmental system.
7.a.6.	Fire detection and suppression.
7.a.7.	Flight control system.

TABLE D3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
7.a.8.	Fuel system.
7.a.9.	Engine oil system.
7.a.10.	Hydraulic system.
7.a.11.	Landing gear.
7.a.12.	Oxygen.
7.a.13.	Pneumatic.
7.a.14.	Powerplant.
7.a.15.	Flight control computers.
7.a.16.	Fly-by-wire controls.
7.a.17.	Stabilizer.
7.a.18.	Stability augmentation and control augmentation system(s).
7.a.19.	Other (listed on the SOQ).
7.b.	Flight management and guidance system (as applicable).
7.b.1.	Airborne radar.
7.b.2.	Automatic landing aids.
7.b.3.	Autopilot.*
7.b.4.	Collision avoidance system.
7.b.5.	Flight data displays.
7.b.6.	Flight management computers.
7.b.7.	Head-up displays.
7.b.8.	Navigation systems.
7.b.9.	Other (listed on the SOQ).
8. Emergency Procedures (as applicable)	
8.a.	Autorotative Landing.
8.b.	Air hazard avoidance.
8.c.	Ditching.
8.d.	Emergency evacuation.
8.e.	Inflight fire and smoke removal.
8.f.	Retreating blade stall recovery.
8.g.	Mast bumping.
8.h.	Loss of tail rotor effectiveness.
8.i.	Other (listed on the SOQ).
9. Postflight Procedures	
9.a.	After-Landing Procedures.
9.b.	Parking and Securing.
9.b.1.	Engine and systems operation.

TABLE D3A.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
9.b.2.	Parking brake operation.
9.b.3.	Rotor brake operation.
9.b.4.	Abnormal/emergency procedures.
10. Instructor Operating Station (IOS), as appropriate	
10.a.	Power Switch(es).
10.b.	Helicopter conditions.
10.b.1.	Gross weight, center of gravity, fuel loading and allocation, etc.
10.b.2.	Helicopter systems status.
10.b.3.	Ground crew functions (e.g., ext. power).
10.c.	Airports.
10.c.1.	Selection.
10.c.2.	Runway selection.
10.c.3.	Preset positions (e.g., ramp, over final approach fix).
10.d.	Environmental controls.
10.d.1.	Temperature.
10.d.2.	Climate conditions (e.g., ice, rain).
10.d.3.	Wind speed and direction.
10.e.	Helicopter system malfunctions.
10.e.1.	Insertion/deletion.
10.e.2.	Problem clear.
10.f.	Locks, Freezes, and Repositioning.
10.f.1.	Problem (all) freeze/release.
10.f.2.	Position (geographic) freeze/release.
10.f.3.	Repositioning (locations, freezes, and releases).
10.f.4.	Ground speed control.
10.g.	Sound Controls.
10.g.1.	On/off/adjustment.
10.h.	Control Loading System (as applicable).
10.h.1.	On/off/emergency stop.
10.i.	Observer Stations.
10.i.1.	Position.
10.i.2.	Adjustments.

* “Autopilot” means attitude retention mode of operation.

TABLE D3B.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS AIRPORT OR LANDING AREA CONTENT REQUIREMENTS FOR QUALIFICATION AT LEVEL 7 FTD

QPS requirements	
Entry No.	Operations tasks
This table specifies the minimum airport visual model content and functionality to qualify an FTD at the indicated level. This table applies only to the airport/helicopter landing area scenes required for FTD qualification.	
1.	Functional test content requirements for Level 7 FTDs. The following is the minimum airport/landing area model content requirement to satisfy visual capability tests, and provides suitable visual cues to allow completion of all functions and subjective tests described in this attachment for Level 7 FTDs.
1.a.	A minimum of one (1) representative airport and one (1) representative helicopter landing area model. The airport and the helicopter landing area may be contained within the same visual model. If this option is selected, the approach path to the airport runway(s) and the approach path to the helicopter landing area must be different. The model(s) used to meet the following requirements may be demonstrated at either a fictional or a real-world airport or helicopter landing area, but each must be acceptable to the sponsor's TPAA, selectable from the IOS, and listed on the SOQ.
1.b.	Fidelity of the Visual Scene. The fidelity of the visual scene must be sufficient for the aircrew to visually identify the airport and/or helicopter landing area; determine the position of the simulated helicopter within the visual scene; successfully accomplish take-offs, approaches, and landings; and maneuver around the airport and/or helicopter landing area on the ground, or hover taxi, as necessary.
1.b.1.	For each of the airport/helicopter landing areas described in 1.a., the FTD visual system must be able to provide at least the following:
1.b.1.a.	A night and twilight (dusk) environment.
1.b.1.b.	A daylight environment.
1.c.	Runways:
1.c.1.	Visible runway number.
1.c.2.	Runway threshold elevations and locations must be modeled to provide sufficient correlation with helicopter systems (e.g., altimeter).
1.c.3.	Runway surface and markings.
1.c.4.	Lighting for the runway in use including runway edge and centerline.
1.c.5.	Lighting, visual approach aid (VASI or PAPI) and approach lighting of appropriate colors.
1.c.6.	Taxiway lights.
1.d.	Helicopter landing area.
1.d.1.	Standard heliport designation ("H") marking, properly sized and oriented.
1.d.2.	Perimeter markings for the Touchdown and Lift-Off Area (TLOF) or the Final Approach and Takeoff Area (FATO), as appropriate.
1.d.3.	Perimeter lighting for the TLOF or the FATO areas, as appropriate.
1.d.4.	Appropriate markings and lighting to allow movement from the runway or helicopter landing area to another part of the landing facility.
2.	Visual scene management. The following is the minimum visual scene management requirements for a Level 7 FTD.
2.a.	Runway and helicopter landing area approach lighting must fade into view appropriately in accordance with the environmental conditions set in the FTD.
2.b.	The direction of strobe lights, approach lights, runway edge lights, visual landing aids, runway centerline lights, threshold lights, touchdown zone lights, and TLOF or FATO lights must be replicated.
3.	Visual feature recognition. The following are the minimum distances at which runway features must be visible. Distances are measured from runway threshold or a helicopter landing area to a helicopter aligned with the runway or helicopter landing area on an extended 3° glide-slope in simulated meteorological conditions. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing.
3.a.	For runways: Runway definition, strobe lights, approach lights, and edge lights from 5 sm (8 km) of the threshold.

TABLE D3B.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS AIRPORT OR LANDING AREA CONTENT REQUIREMENTS FOR QUALIFICATION AT LEVEL 7 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
3.b.	For runways: Centerline lights and taxiway definition from 3 sm (5 km).
3.c.	For runways: Visual Approach Aid lights (VASI or PAPI) from 5 sm (8 km) of the threshold.
3.d.	For runways: Runway threshold lights and touchdown zone from 2 sm (3 km).
3.e.	For runways and helicopter landing areas: Markings within range of landing lights for night/twilight scenes and the surface resolution test on daylight scenes, as required.
3.f.	For circling approaches: The runway of intended landing and associated lighting must fade into view in a non-distracting manner.
3.g.	For helicopter landing areas: Landing direction lights and raised FATO lights from 1 sm (1.5 km).
3.h.	For helicopter landing areas: Flush mounted FATO lights, TLOF lights, and the lighted windsock from 0.5 sm (750 m).
4.	Airport or Helicopter Landing Area Model Content. The following prescribes the minimum requirements for an airport/helicopter landing area visual model and identifies other aspects of the environment that must correspond with that model for a Level 7 FTD. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing. If all runways or landing areas in a visual model used to meet the requirements of this attachment are not designated as “in use,” then the “in use” runways/landing areas must be listed on the SOQ (e.g., KORD, Rwys 9R, 14L, 22R). Models of airports or helicopter landing areas with more than one runway or landing area must have all significant runways or landing areas not “in-use” visually depicted for airport/runway/landing area recognition purposes. The use of white or off white light strings that identify the runway or landing area for twilight and night scenes are acceptable for this requirement; and rectangular surface depictions are acceptable for daylight scenes. A visual system’s capabilities must be balanced between providing visual models with an accurate representation of the airport and a realistic representation of the surrounding environment. Each runway or helicopter landing area designated as an “in-use” runway or area must include the following detail that is developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material; however, this does not require that such models contain details that are beyond the design capability of the currently qualified visual system. Only one “primary” taxi route from parking to the runway end or helicopter takeoff/landing area will be required for each “in-use” runway or helicopter takeoff/landing area.
4.a.	The surface and markings for each “in-use” runway or helicopter landing area must include the following:
4.a.1.	For airports: Runway threshold markings, runway numbers, touchdown zone markings, fixed distance markings, runway edge markings, and runway centerline stripes.
4.a.2.	For helicopter landing areas: Markings for standard heliport identification (“H”) and TLOF, FATO, and safety areas.
4.b.	The lighting for each “in-use” runway or helicopter landing area must include the following:
4.b.1.	For airports: Runway approach, threshold, edge, end, centerline (if applicable), touchdown zone (if applicable), leadoff, and visual landing aid lights or light systems for that runway.
4.b.2.	For helicopter landing areas: Landing direction, raised and flush FATO, TLOF, windsock lighting.
4.c.	The taxiway surface and markings associated with each “in-use” runway or helicopter landing area must include the following:
4.c.1.	For airports: Taxiway edge, centerline (if appropriate), runway hold lines, and ILS critical area(s).
4.c.2.	For helicopter landing areas: Taxiways, taxi routes, and aprons.
4.d.	The taxiway lighting associated with each “in-use” runway or helicopter landing area must include the following:
4.d.1.	For airports: Taxiway edge, centerline (if appropriate), runway hold lines, ILS critical areas.
4.d.2.	For helicopter landing areas: Taxiways, taxi routes, and aprons.
4.d.3.	For airports: Taxiway lighting of correct color.
4.e.	Airport signage associated with each “in-use” runway or helicopter landing area must include the following:
4.e.1.	For airports: Signs for runway distance remaining, intersecting runway with taxiway, and intersecting taxiway with taxiway.
4.e.2.	For helicopter landing areas: As appropriate for the model used.
4.f.	Required visual model correlation with other aspects of the airport or helicopter landing environment simulation:

TABLE D3B.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS AIRPORT OR LANDING AREA CONTENT REQUIREMENTS FOR QUALIFICATION AT LEVEL 7 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
4.f.1.	The airport or helicopter landing area model must be properly aligned with the navigational aids that are associated with operations at the “in-use” runway or helicopter landing area.
4.f.2.	The simulation of runway or helicopter landing area contaminants must be correlated with the displayed runway surface and lighting, if applicable.
5.	Correlation with helicopter and associated equipment. The following are the minimum correlation comparisons that must be made for a Level 7 FTD.
5.a.	Visual system compatibility with aerodynamic programming.
5.b.	Visual cues to assess sink rate and depth perception during landings.
5.c.	Accurate portrayal of environment relating to FTD attitudes.
5.d.	The visual scene must correlate with integrated helicopter systems, where installed (e.g., terrain, traffic and weather avoidance systems and Head-up Guidance System (HGS)).
5.e.	Representative visual effects for each visible, own-ship, helicopter external light(s)—taxi and landing light lobes (including independent operation, if appropriate).
5.f.	The effect of rain removal devices.
6.	Scene quality. The following are the minimum scene quality tests that must be conducted for a Level 7 FTD.
6.a.	System light points must be free from distracting jitter, smearing and streaking.
6.b.	Demonstration of occulting through each channel of the system in an operational scene.
6.c.	Six discrete light step controls (0–5).
7.	Special weather representations, which include visibility and RVR, measured in terms of distance. Visibility/RVR checked at 2,000 ft (600 m) above the airport or helicopter landing area and at two heights below 2,000 ft with at least 500 ft of separation between the measurements. The measurements must be taken within a radius of 10 sm (16 km) from the airport or helicopter landing area.
7.a.	Effects of fog on airport lighting such as halos and defocus.
7.b.	Effect of own-ship lighting in reduced visibility, such as reflected glare, including landing lights, strobes, and beacons.
8.	Instructor control of the following: The following are the minimum instructor controls that must be available in a Level 7 FTD.
8.a.	Environmental effects: E.g., cloud base, cloud effects, cloud density, visibility in statute miles/kilometers and RVR in feet/meters.
8.b.	Airport or helicopter landing area selection.
8.c.	Airport or helicopter landing area lighting, including variable intensity.
8.d.	Dynamic effects including ground and flight traffic.
End QPS Requirement	
Begin Information	
9.	An example of being able to combine two airport models to achieve two “in-use” runways: One runway designated as the “in-use” runway in the first model of the airport, and the second runway designated as the “in-use” runway in the second model of the same airport. For example, the clearance is for the ILS approach to Runway 27, Circle to Land on Runway 18 right. Two airport visual models might be used: The first with Runway 27 designated as the “in use” runway for the approach to runway 27, and the second with Runway 18 Right designated as the “in use” runway. When the pilot breaks off the ILS approach to runway 27, the instructor may change to the second airport visual model in which runway 18 Right is designated as the “in use” runway, and the pilot would make a visual approach and landing. This process is acceptable to the FAA as long as the temporary interruption due to the visual model change is not distracting to the pilot.
10.	Sponsors are not required to provide every detail of a runway, but the detail that is provided should be correct within reasonable limits.
End Information	

TABLE D3C.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD VISUAL REQUIREMENTS ADDITIONAL VISUAL MODELS BEYOND MINIMUM REQUIRED FOR QUALIFICATION CLASS II AIRPORT OR HELICOPTER LANDING AREA MODELS

QPS requirements	
Entry No.	Operations tasks
This table specifies the minimum airport or helicopter landing area visual model content and functionality necessary to add visual models to an FTD's visual model library (i.e., beyond those necessary for qualification at the stated level) without the necessity of further involvement of the NSPM or TPAA.	
1.	Visual scene management. The following is the minimum visual scene management requirements.
1.a.	The installation and direction of the following lights must be replicated for the "in-use" surface:
1.a.1.	For "in-use" runways: Strobe lights, approach lights, runway edge lights, visual landing aids, runway centerline lights, threshold lights, and touchdown zone lights.
1.a.2.	For "in-use" helicopter landing areas: Ground level TLOF perimeter lights, elevated TLOF perimeter lights (if applicable), Optional TLOF lights (if applicable), ground FATO perimeter lights, elevated TLOF lights (if applicable), landing direction lights.
2.	Visual feature recognition. The following are the minimum distances at which runway or landing area features must be visible. Distances are measured from runway threshold or a helicopter landing area to an aircraft aligned with the runway or helicopter landing area on a 3° glide-slope from the aircraft to the touchdown point, in simulated meteorological conditions. For circling approaches, all tests apply to the runway used for the initial approach and to the runway of intended landing.
2.a.	For Runways.
2.a.1.	Strobe lights, approach lights, and edge lights from 5 sm (8 km) of the threshold.
2.a.2.	Centerline lights and taxiway definition from 3 sm (5 km).
2.a.3.	Visual Approach Aid lights (VASI or PAPI) from 5 sm (8 km) of the threshold.
2.a.4.	Threshold lights and touchdown zone lights from 2 sm (3 km).
2.a.5.	Markings within range of landing lights for night/twilight (dusk) scenes and as required by the surface resolution test on daylight scenes.
2.a.6.	For circling approaches, the runway of intended landing and associated lighting must fade into view in a non-distracting manner.
2.b.	For Helicopter landing areas.
2.b.1.	Landing direction lights and raised FATO lights from 2 sm (3 km).
2.b.2.	Flush mounted FATO lights, TOFL lights, and the lighted windsock from 1 sm (1500 m).
2.b.3.	Hover taxiway lighting (yellow/blue/yellow cylinders) from TOFL area.
2.b.4.	Markings within range of landing lights for night/twilight (dusk) scenes and as required by the surface resolution test on daylight scenes.
3.	Airport or Helicopter Landing Area Model Content. The following prescribes the minimum requirements for what must be provided in an airport visual model and identifies other aspects of the airport environment that must correspond with that model. The detail must be developed using airport pictures, construction drawings and maps, or other similar data, or developed in accordance with published regulatory material; however, this does not require that airport or helicopter landing area models contain details that are beyond the designed capability of the currently qualified visual system. For circling approaches, all requirements of this section apply to the runway used for the initial approach and to the runway of intended landing. Only one "primary" taxi route from parking to the runway end or helicopter takeoff/landing area will be required for each "in-use" runway or helicopter takeoff/landing area.
3.a.	The surface and markings for each "in-use" runway or helicopter landing area must include the following:
3.a.1.	For airports: Runway threshold markings, runway numbers, touchdown zone markings, fixed distance markings, runway edge markings, and runway centerline stripes.
3.a.2.	For helicopter landing areas: Standard heliport marking ("H"), TOFL, FATO, and safety areas.
3.b.	The lighting for each "in-use" runway or helicopter landing area must include the following:
3.b.1.	For airports: Runway approach, threshold, edge, end, centerline (if applicable), touchdown zone (if applicable), leadoff, and visual landing aid lights or light systems for that runway.
3.b.2.	For helicopter landing areas: Landing direction, raised and flush FATO, TOFL, windsock lighting.

TABLE D3C.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 7 FTD VISUAL REQUIREMENTS ADDITIONAL VISUAL MODELS BEYOND MINIMUM REQUIRED FOR QUALIFICATION CLASS II AIRPORT OR HELICOPTER LANDING AREA MODELS—Continued

QPS requirements	
Entry No.	Operations tasks
3.c.	The taxiway surface and markings associated with each “in-use” runway or helicopter landing area must include the following:
3.c.1.	For airports: Taxiway edge, centerline (if appropriate), runway hold lines, and ILS critical area(s).
3.c.2.	For helicopter landing areas: Taxiways, taxi routes, and aprons.
3.d.	The taxiway lighting associated with each “in-use” runway or helicopter landing area must include the following:
3.d.1.	For airports: Runway edge, centerline (if appropriate), runway hold lines, ILS critical areas.
3.d.2.	For helicopter landing areas: Taxiways, taxi routes, and aprons.
4.	Required visual model correlation with other aspects of the airport environment simulation. The following are the minimum visual model correlation tests that must be conducted for Level 7 FTD.
4.a.	The airport model must be properly aligned with the navigational aids that are associated with operations at the “in-use” runway.
4.b.	Slopes in runways, taxiways, and ramp areas, if depicted in the visual scene, must not cause distracting or unrealistic effects.
5.	Correlation with helicopter and associated equipment. The following are the minimum correlation comparisons that must be made.
5.a.	Visual system compatibility with aerodynamic programming.
5.b.	Accurate portrayal of environment relating to flight simulator attitudes.
5.c.	Visual cues to assess sink rate and depth perception during landings.
6.	Scene quality. The following are the minimum scene quality tests that must be conducted.
6.a.	Light points free from distracting jitter, smearing or streaking.
6.b.	Surfaces and textural cues free from apparent and distracting quantization (aliasing).
7.	Instructor controls of the following. The following are the minimum instructor controls that must be available.
7.a.	Environmental effects, e.g., cloud base (if used), cloud effects, cloud density, visibility in statute miles/kilometers and RVR in feet/meters.
7.b.	Airport/Heliport selection.
7.c.	Airport/Heliport lighting including variable intensity.
7.d.	Dynamic effects including ground and flight traffic.
End QPS Requirements	
Begin Information	
8.	Sponsors are not required to provide every detail of a runway or helicopter landing area, but the detail that is provided must be correct within the capabilities of the system.
End Information	

TABLE D3D.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD

QPS requirements	
Entry No.	Operations tasks
Tasks in this table are subject to evaluation if appropriate for the helicopter simulated as indicated in the SOQ Configuration List or for a Level 6 FTD. Items not installed or not functional on the FTD and not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.	

TABLE D3D.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
1. Preflight Procedures	
1.a.	Preflight Inspection (Flight Deck Only) switches, indicators, systems, and equipment.
1.b.	APU/Engine start and run-up.
1.b.1.	Normal start procedures.
1.b.2.	Alternate start procedures.
1.b.3.	Abnormal starts and shutdowns.
1.b.4.	Rotor engagement.
1.b.5.	System checks.
2. Takeoff and Departure Phase	
2.a.	Instrument.
2.b.	Takeoff with engine failure after critical decision point (CDP).
3. Climb	
3.a.	Normal.
3.b.	One engine inoperative.
4. Inflight Maneuvers	
4.a.	Performance.
4.b.	Flying qualities.
4.c.	Turns.
4.c.1.	Timed.
4.c.2.	Normal.
4.c.3.	Steep.
4.d.	Accelerations and decelerations.
4.e.	Abnormal/emergency procedures:
4.e.1.	Engine fire.
4.e.2.	Engine failure.
4.e.3.	In-flight engine shutdown (and restart, if applicable).
4.e.4.	Fuel governing system failures (e.g., FADEC malfunction).
4.e.5.	Directional control malfunction (restricted to the extent that the maneuver may not terminate in a landing).
4.e.6.	Hydraulic failure.
4.e.7.	Stability augmentation system failure.
5. Instrument Procedures	
5.a.	Holding.
5.b.	Precision Instrument Approach.
5.b.1.	All engines operating.
5.b.2.	One or more engines inoperative.
5.b.3.	Approach procedures:

TABLE D3D.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
5.b.4.	PAR.
5.b.5.	ILS.
5.b.6.	Manual (raw data).
5.b.7.	Flight director only.
5.b.8.	Autopilot* and flight director (if appropriate) coupled.
5.c.	Non-precision Instrument Approach.
5.c.	Normal—All engines operating.
5.c.	One or more engines inoperative.
5.c.	Approach procedures:
5.c.1.	NDB.
5.c.2.	VOR, RNAV, TACAN, GPS.
5.c.3.	ASR.
5.c.4.	Helicopter only.
5.d.	Missed Approach.
5.d.1.	All engines operating.
5.d.2.	One or more engines inoperative.
5.d.3.	Stability augmentation system failure.
6. Normal and Abnormal Procedures (any phase of flight)	
6.a.	Helicopter and powerplant systems operation (as applicable).
6.a.1.	Anti-icing/deicing systems.
6.a.2.	Auxiliary power-plant.
6.a.3.	Communications.
6.a.4.	Electrical system.
6.a.5.	Environmental system.
6.a.6.	Fire detection and suppression.
6.a.7.	Flight control system.
6.a.8.	Fuel system.
6.a.9.	Engine oil system.
6.a.10.	Hydraulic system.
6.a.11.	Landing gear.
6.a.12.	Oxygen.
6.a.13.	Pneumatic.
6.a.14.	Powerplant.
6.a.15.	Flight control computers.
6.a.16.	Stability augmentation and control augmentation system(s).
6.b.	Flight management and guidance system (as applicable).

TABLE D3D.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
6.b.1.	Airborne radar.
6.b.2.	Automatic landing aids.
6.b.3.	Autopilot.*
6.b.4.	Collision avoidance system.
6.b.5.	Flight data displays.
6.b.6.	Flight management computers.
6.b.7.	Navigation systems.
7. Postflight Procedures	
7.a.	Parking and Securing.
7.b.	Engine and systems operation.
7.c.	Parking brake operation.
7.d.	Rotor brake operation.
7.e.	Abnormal/emergency procedures.
8. Instructor Operating Station (IOS), as appropriate	
8.a.	Power Switch(es).
8.b.1.	Helicopter conditions.
8.b.2.	Gross weight, center of gravity, fuel loading and allocation, etc.
8.b.3.	Helicopter systems status.
8.b.4.	Ground crew functions (e.g., ext. power).
8.c.	Airports and landing areas.
8.c.1.	Number and selection.
8.c.2.	Runway or landing area selection.
8.c.3.	Preset positions (e.g., ramp, over FAF).
8.c.4.	Lighting controls.
8.d.	Environmental controls.
8.d.1	Temperature.
8.d.2.	Climate conditions (e.g., ice, rain).
8.d.3.	Wind speed and direction.
8.e.	Helicopter system malfunctions.
8.e.1.	Insertion/deletion.
8.e.2.	Problem clear.
8.f.	Locks, Freezes, and Repositioning.
8.f.1.	Problem (all) freeze/release.
8.f.2.	Position (geographic) freeze/release.
8.f.3.	Repositioning (locations, freezes, and releases).
8.f.4.	Ground speed control.

TABLE D3D.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 6 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
8.g.	Sound Controls. On/off/adjustment.
8.h.	Control Loading System (as applicable) On/off/emergency stop.
8.i.	Observer Stations.
8.i.1.	Position.
8.i.2.	Adjustments.

* “Autopilot” means attitude retention mode of operation.

TABLE D3E.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 5 FTD

QPS requirements	
Entry No.	Operations tasks

Tasks in this table are subject to evaluation if appropriate for the helicopter simulated as indicated in the SOQ Configuration List or for a Level 5 FTD. Items not installed or not functional on the FTD and not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.

1. Preflight Procedures

1.a.	Preflight Inspection (Flight Deck Only) switches, indicators, systems, and equipment.
1.b.	APU/Engine start and run-up.
1.b.1.	Normal start procedures.
1.b.2.	Alternate start procedures.
1.b.3.	Abnormal starts and shutdowns.

2. Climb

2.a.	Normal.

3. Inflight Maneuvers

3.a.	Performance.
3.b.	Turns, Normal.

4. Instrument Procedures

4.a.	Coupled instrument approach maneuvers (as applicable for the systems installed).

5. Normal and Abnormal Procedures (any phase of flight)

5.a.	Normal system operation (installed systems).
5.b.	Abnormal/Emergency system operation (installed systems).

6. Postflight Procedures

6.a.	Parking and Securing.
6.b.	Engine and systems operation.
6.c.	Parking brake operation.
6.d.	Rotor brake operation.
6.e.	Abnormal/emergency procedures.

7. Instructor Operating Station (IOS), as appropriate

7.a.	Power Switch(es).
7.b.	Preset positions (ground; air)

TABLE D3E.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 5 FTD—Continued

QPS requirements	
Entry No.	Operations tasks
7.c.	Helicopter system malfunctions.
7.c.1.	Insertion/deletion.
7.c.2.	Problem clear.
7.d.	Control Loading System (as applicable) On/off/emergency stop.
7.e.	Observer Stations.
7.e.1.	Position.
7.e.2.	Adjustments.

TABLE D3F.—TABLE OF FUNCTIONS AND SUBJECTIVE TESTS LEVEL 4 FTD

QPS requirements	
Entry No.	Operations tasks

Tasks in this table are subject to evaluation if appropriate for the helicopter simulated as indicated in the SOQ Configuration List or for a Level 4 FTD. Items not installed or not functional on the FTD and not appearing on the SOQ Configuration List, are not required to be listed as exceptions on the SOQ.

1. Preflight Procedures

1.a.	Preflight Inspection (Flight Deck Only) switches, indicators, systems, and equipment.
1.b.	APU/Engine start and run-up.
1.b.1.	Normal start procedures.
1.b.2.	Alternate start procedures.
1.b.3.	Abnormal starts and shutdowns.

2. Normal and Abnormal Procedures (any phase of flight)

2.a.	Normal system operation (installed systems).
2.b.	Abnormal/Emergency system operation (installed systems).

3. Postflight Procedures

3.a.	Parking and Securing.
3.b.	Engine and systems operation.
3.c.	Parking brake operation.

4. Instructor Operating Station (IOS), as appropriate

4.a.	Power Switch(es).
4.b.	Preset positions (ground; air)
4.c.	Helicopter system malfunctions.
4.c.1.	Insertion/deletion.
4.c.2.	Problem clear.

Attachment 4 to Appendix D to Part 60— Sample Documents	Figure A4C Sample Letter of Compliance	Figure D4H Sample Continuing
	Figure D4D Sample Qualification Test	Qualification Evaluation Requirements
	Guide Cover Page	Page
Table of Contents	Figure D4E Sample Statement of	Figure D4I Sample MQTG Index of Effective
Figure D4A Sample Letter, Request for	Qualification—Certificate	FTD Directives
Initial, Upgrade, or Reinstatement	Figure D4F Sample Statement of	
Evaluation	Qualification—Configuration List	BILLING CODE 4910-13-P
Figure D4B Attachment: FTD Information	Figure D4G Sample Statement of	
Form	Qualification—List of Qualified Tasks	

**Attachment 4 to Appendix D to Part 60—
Figure D4A – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
INFORMATION**

Date _____

Mr. Charles A. Spillner
Manager, National Simulator Program
Federal Aviation Administration
100 Hartsfield Centre Parkway, Suite 400
Atlanta, GA 30354

Dear Mr. Spillner:

RE: Request for Initial/Upgrade Evaluation Date

This is to advise you of our intent to request an (initial or upgrade) evaluation of our (FTD Manufacturer), (Aircraft Type/Level) Flight Training Device (FTD), (FAA ID Number, if previously qualified), located in (City, State) at the (Facility) on (Proposed Evaluation Date). (The proposed evaluation date shall not be more than 180 days following the date of this letter.) The FTD will be sponsored by (Name of Training Center/Air Carrier), FAA Designator (4 Letter Code). The FTD will be sponsored as follows; (Select One)

- ☐ The FTD will be used within the sponsor's FAA approved training program and placed on the sponsor's Training/Operations Specifications.
- ☐ The FTD will be used for dry lease only.

We agree to provide the formal request for the evaluation to your staff as follows: (check one)

- ☐ For QTG tests run at the factory, not later, than 45 days prior to the proposed evaluation date with the additional "1/3 on-site" tests provided not later than 14 days prior to the proposed evaluation date.
- ☐ For QTG tests run on-site, not later than 30 days prior to the proposed evaluation date.

We understand that the formal request will contain the following documents:

10. Sponsor's Letter of Request (*Company Compliance Letter*).
11. Principal Operations Inspector (POI) or Training Center Program Manager's (TCPM) endorsement.
12. Complete QTG.

If we are unable to meet the above requirements, we understand this may result in a significant delay, perhaps 45 days or more, in rescheduling and completing the evaluation.

(The sponsor should add additional comments as necessary).

Please contact (Name Telephone and Fax Number of Sponsor's Contact) to confirm the date for this initial evaluation. We understand a member of your National Simulator Program staff will respond to this request within 14 days.

A copy of this letter of intent has been provided to (Name), the Principal Operations Inspector (POI) and/or Training Center Program Manager (TCPM).

Sincerely,

Attachment: FTD Information Form
cc: POI/TCPM

**Attachment 4 to Appendix D to Part 60—
Figure D4B – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FSTD Information Form
INFORMATION**

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name: _____		FSTD Location: _____	
Address: _____		Physical Address: _____	
City: _____		City: _____	
State: _____		State: _____	
Country: _____		Country: _____	
ZIP: _____		ZIP: _____	
Manager _____			
Sponsor ID No: (Four Letter FAA Designator) _____		Nearest Airport: (Airport Designator) _____	
Type of Evaluation Requested: ☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series: _____			
Initial Qualification: (If Applicable)		Date: ____ Level ____ MM/DD/YYYY	
		Manufacturer's Identification or Serial Number _____	
Upgrade Qualification: (If Applicable)		Date: ____ Level ____ MM/DD/YYYY	
		☐ eMQTG	
Qualification Basis: _____		☐ A ☐ B ☐ Interim C ☐ C ☐ D	
		☐ 6 ☐ 7 ☐ Provisional Status	
Other Technical Information:			
FAA FSTD ID No: (If Applicable)		FSTD Manufacturer: _____	
Convertible FSTD: ☐ Yes:		Date of Manufacture: _____ MM/DD/YYYY	
Related FAA ID No. (If Applicable)		Sponsor FSTD ID No: _____	
Engine model(s) and data revision: _____		Source of aerodynamic model: _____	
FMS identification and revision level: _____		Source of aerodynamic coefficient data: _____	
Visual system manufacturer/model: _____		Aerodynamic data revision number: _____	
Flight control data revision: _____		Visual system display: _____	
Motion system manufacturer/type: _____		FSTD computer(s) identification: _____	
National Aviation Authority (NAA): (If Applicable)			
NAA FSTD ID No: _____		Last NAA Evaluation Date: _____	
NAA Qualification Level: _____			
NAA Qualification Basis: _____			
Visual System Manufacturer and Type: _____			
		FSTD Seats Available: _____	
		Motion System Manufacturer and Type: _____	

**Attachment 4 to Appendix D to Part 60—
Figure D4B – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FSTD Information Form**

INFORMATION

Aircraft Equipment:	Engine Type(s): _____ _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: ____ ☐ WX Radar ☐ Other: ____	Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: ____
Airport Models:	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator
Circle to Land:	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway
Visual Ground Segment	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway

Section 2. Supplementary Information

FAA Training Program Approval Authority:		☐ POI ☐ TCPM ☐ Other: _____	
Name:	_____	Office:	_____
Tel:	_____	Fax:	_____
Email:	_____		
FSTD Scheduling Person:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____
FSTD Technical Contact:			
Name:	_____		
Address 1:	_____	Address 2	_____
City:	_____	State:	_____
ZIP:	_____	Email:	_____
Tel:	_____	Fax:	_____

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training / Checks: (142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating - Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____
Proficiency Checks (135/121/142)	☐	_____
CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____

**Attachment 4 to Appendix D to Part 60—
Figure D4B – Sample Letter, Request for Initial, Upgrade, or Reinstatement Evaluation
Attachment: FSTD Information Form
INFORMATION**

CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

**Attachment 4 to Appendix D to Part 60—
Figure D4C – Sample Letter of Compliance
INFORMATION**

(Date)

Mr. (Name of Training Program Approval Authority):

(Name of FAA FSDO)

(Address)

(City/State/Zip)

Dear Mr. (Name of TPAA):

RE: Letter of Compliance

(Operator Sponsor Name) requests evaluation of our (Aircraft Type) FTD for Level () qualification. The (FTD Manufacturer Name) FTD with (Visual System Manufacturer Name/Model) system is fully defined on the FTD Information page of the accompanying Qualification Test Guide (QTG). We have completed the tests of the FTD and certify that it meets all applicable requirements of FAR parts 121, 125, or 135), and the guidance of (AC 120-40B or 14 CFR Part 60). Appropriate hardware and software configuration control procedures have been established. Our Pilot(s), (Name(s)), who are qualified on (Aircraft Type) aircraft have assessed the FTD and have found that it conforms to the (Operator/Sponsor) (Aircraft Type) flight deck configuration and that the simulated systems and subsystems function equivalently to those in the aircraft. The above named pilot(s) have also assessed the performance and the flying qualities of the FTD and find that it represents the respective aircraft.

(Added Comments may be placed here)

Sincerely,

(Sponsor Representative)

cc:

FAA, National Simulator Program

**Attachment 4 to Appendix D to Part 60—
Figure D4D – Sample Qualification Test Guide Cover Page**

INFORMATION

SPONSOR NAME

SPONSOR ADDRESS

FAA QUALIFICATION TEST GUIDE

(SPECIFIC HELICOPTER MODEL)

(*for example*)

(Vertiflite AB-320)

(FTD Identification Including Manufacturer, Serial Number, Visual System Used)

(FTD Level)

(Qualification Performance Standard Used)

(FTD Location)

FAA Initial Evaluation

Date: _____

(Sponsor)

Date: _____

Manager, National Simulator Program, FAA

Date: _____

Attachment 4 to Appendix D to Part 60—
Figure D4E – Sample Statement of Qualification - Certificate

INFORMATION

Federal Aviation Administration
National Simulator Program



Certificate of Qualification

This is to certify that representatives of the National Simulator Program
Completed an evaluation of the

Go-Fast Training Center
Vertiflite AB-320 Flight Training Device
FAA Identification Number 889

And found it to meet the standards set forth in
14 CFR Part 60, Appendix D
Qualification Performance Standards

The Master Qualification Test Guide and the attached
Configuration List and List of Qualified Tasks
Provide the Qualification Basis for this device to operate at
Level 6

Until April 30, 2010

Unless sooner rescinded or extended by the National Simulator Program Manager

March 15, 2009

(date)

C. Nordlie

(for the NSPM)

Attachment 4 to Appendix D to Part 60—
Figure D4F – Sample Statement of Qualification – Configuration List
INFORMATION

STATEMENT of QUALIFICATION CONFIGURATION LIST

Date: _____			
Section 1. FSTD Information and Characteristics			
Sponsor Name: _____		FSTD Location: _____	
Address: _____		Physical Address: _____	
City: _____		City: _____	
State: _____		State: _____	
Country: _____		Country: _____	
ZIP: _____		ZIP: _____	
Manager _____			
Sponsor ID No: (Four Letter FAA Designator) _____		Nearest Airport: (Airport Designator) _____	
Type of Evaluation Requested: _____			
☐ Initial ☐ Upgrade ☐ Continuing Qualification ☐ Special ☐ Reinstatement			
Aircraft Make/model/series: _____			
Initial Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	Manufacturer's Identification or Serial Number	_____
Upgrade Qualification: (If Applicable)	Date: _____ Level _____ MM/DD/YYYY	☐ eMQTG	
Qualification Basis: _____	☐ A	☐ B	☐ Interim C
	☐ 6	☐ 7	☐ C ☐ D
		☐ Provisional Status	
Other Technical Information:			
FAA FSTD ID No: (If Applicable)	_____	FSTD Manufacturer:	_____
Convertible FSTD:	☐ Yes:	Date of Manufacture:	_____
			MM/DD/YYYY
Related FAA ID No. (If Applicable)	_____	Sponsor FSTD ID No:	_____
Engine model(s) and data revision: _____	Source of aerodynamic model: _____		
FMS identification and revision level: _____	Source of aerodynamic coefficient data: _____		
Visual system manufacturer/model: _____	Aerodynamic data revision number: _____		
Flight control data revision: _____	Visual system display: _____		
Motion system manufacturer/type: _____	FSTD computer(s) identification: _____		
National Aviation Authority (NAA): (If Applicable)	_____		
NAA FSTD ID No:	_____	Last NAA Evaluation Date:	_____
NAA Qualification Level:	_____		
NAA Qualification Basis:	_____		

**Attachment 4 to Appendix D to Part 60—
Figure D4F – Sample Statement of Qualification – Configuration List
INFORMATION**

Visual System Manufacturer and Type: _____		FSTD Seats Available: _____	Motion System Manufacturer and Type: _____	
Aircraft Equipment: _____	Engine Type(s): _____	Flight Instrumentation: ☐ EFIS ☐ HUD ☐ HGS ☐ EFVS ☐ TCAS ☐ GPWS ☐ Plain View ☐ GPS ☐ FMS Type: _____ ☐ WX Radar ☐ Other: _____		Engine Instrumentation: ☐ EICAS ☐ FADEC ☐ Other: _____
Airport Models:				
	3.6.1 _____ Airport Designator	3.6.2 _____ Airport Designator	3.6.3 _____ Airport Designator	
Circle to Land:				
	3.7.1 _____ Airport Designator	3.7.2 _____ Approach	3.7.3 _____ Landing Runway	
Visual Ground Segment				
	3.8.1 _____ Airport Designator	3.8.2 _____ Approach	3.8.3 _____ Landing Runway	

Section 2. Supplementary Information

FAA Training Program Approval Authority: _____		☐ POI ☐ TCPM ☐ Other: _____	
Name: _____	Office: _____		_____
Tel: _____	Fax: _____		_____
Email: _____	_____		
FSTD Scheduling Person:			
Name: _____	_____		
Address 1: _____	Address 2: _____		_____
City: _____	State: _____		_____
ZIP: _____	Email: _____		_____
Tel: _____	Fax: _____		_____
FSTD Technical Contact:			
Name: _____	_____		
Address 1: _____	Address 2: _____		_____
City: _____	State: _____		_____
ZIP: _____	Email: _____		_____
Tel: _____	Fax: _____		_____

Section 3. Training, Testing and Checking Considerations

Area/Function/Maneuver	Requested	Remarks
Private Pilot - Training / Checks: (142)	☐	_____
Commercial Pilot - Training / Checks: (142)	☐	_____
Multi-Engine Rating - Training / Checks (142)	☐	_____
Instrument Rating - Training / Checks (142)	☐	_____
Type Rating - Training / Checks (135/121/142)	☐	_____
Proficiency Checks (135/121/142)	☐	_____

**Attachment 4 to Appendix D to Part 60—
Figure D4F – Sample Statement of Qualification – Configuration List
INFORMATION**

CAT I: (RVR 2400/1800 ft. DH200 ft)	☐	_____
CAT II: (RVR 1200 ft. DH 100 ft)	☐	_____
CAT III * (lowest minimum) _____ RVR _____ ft. * State CAT III (≤ 700 ft.), CAT IIIb (≤ 150 ft.), or CAT IIIc (0 ft.)	☐	_____
Circling Approach	☐	_____
Windshear Training:	☐	_____
Windshear Training IAW 121.409(d) (121 Turbojets Only)	☐	_____
Generic Unusual Attitudes and Recoveries within the Normal Flight Envelope	☐	_____
Specific Unusual Attitudes Recoveries	☐	_____
Auto-coupled Approach/Auto Go Around	☐	_____
Auto-land / Roll Out Guidance	☐	_____
TCAS/ACAS I / II	☐	_____
WX-Radar	☐	_____
HUD	☐	_____
HGS	☐	_____
EFVS	☐	_____
Future Air Navigation Systems	☐	_____
GPWS / EGPWS	☐	_____
ETOPS Capability	☐	_____
GPS	☐	_____
SMGCS	☐	_____
Helicopter Slope Landings	☐	_____
Helicopter External Load Operations	☐	_____
Helicopter Pinnacle Approach to Landings	☐	_____
Helicopter Night Vision Maneuvers	☐	_____
Helicopter Category A Takeoffs	☐	_____

Attachment 4 to Appendix D to Part 60—
Figure D4G – Sample Statement of Qualification – List of Qualified Tasks
INFORMATION

STATEMENT of QUALIFICATION
LIST of QUALIFIED TASKS

Go-Fast Training Center Vertiflite AB-320 -- Level C -- FAA ID# 888

**The FTD is qualified to perform all of the Maneuvers, Procedures, Tasks, and Functions
Listed in Appendix D, Attachment 1, Table D1B, Minimum FTD Requirements
In Effect on [mm/dd/yyyy] except for the following listed Tasks or Functions.**

(Example)

Excepted Tasks:

- 6.f.** Fire Detection and Extinguisher System.
- 7.d.** Ditching.

Excepted Simulator Systems:

Remote IOS

**Additional Qualified Tasks or Functions in addition to those listed in Appendix D,
Attachment 3, Table D1B, Minimum FTD Requirements.**

(None)

**Attachment 4 to Appendix A to Part 60—
Figure A4H – Sample Continuing Qualification Evaluation Requirements Page
INFORMATION**

Continuing qualification Evaluation Requirements <i>Completed at conclusion of Initial Evaluation</i>	
Continuing qualification Evaluations to be conducted each <u> (fill in) </u> months Allotting _____ hours of FTD time. Signed: _____ _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: <u> (month) </u> and <u> (month) </u> and <u> (month) </u> (enter or strike out, as appropriate) _____ Date

Revision: Based on (enter reasoning): _____ _____	
Continuing qualification Evaluations are to be conducted each <u> (fill in) </u> months. Allotting _____ hours. Signed: _____ _____ NSPM / Evaluation Team Leader	Continuing qualification evaluations are due as follows: <u> (month) </u> and <u> (month) </u> and <u> (month) </u> (enter or strike out, as appropriate) _____ Date

(Repeat as Necessary)

**Attachment 4 to Appendix D to Part 60—
Figure D4I – Sample MQTG Index of Effective FTD Directives
INFORMATION**

Index of Effective FSTD Directives Filed in this Section			
Number	Effective Date	Date of Notification	Details

Continue as Necessary....

**Appendix E to Part 60—Qualification
Performance Standards for Quality
Management Systems for Flight Simulation
Training Devices**

Begin QPS Requirements

a. Not later than May 30, 2010, each current sponsor of an FSTD must submit to the NSPM a proposed Quality Management System (QMS) program as described in this appendix. The NSPM will notify the sponsor of the acceptability of the program, including any required adjustments. Within 6 months of the notification of acceptability, the sponsor must implement the program, conduct internal audits, make required program adjustments as a result of any internal audit, and schedule the NSPM initial audit.

b. First-time FSTD sponsors must submit to the NSPM the proposed QMS program no later than 120 days before the initial FSTD evaluation. The NSPM will notify the sponsor of the acceptability of the program, including any required adjustments. Within 6 months of the notification of acceptability, the sponsor must implement the program, conduct internal audits, make required program adjustments as a result of any internal audit, and schedule the NSPM initial audit.

c. The Director of Operations for a Part 119 certificate holder, the Chief Instructor for a Part 141 certificate holder, or the equivalent for a Part 142 or Flight Engineer School

sponsor must designate a Management Representative (MR) who has the authority to establish and modify the sponsor's policies, practices, and procedures regarding the QMS program for the recurring qualification and the daily use of each FSTD.

d. The minimum content required for an acceptable QMS is found in Table E1. The policies, processes, or procedures described in this table must be maintained in a Quality Manual and will serve as the basis for the following:

- (1) The sponsor-conducted initial and recurring periodic assessments;
- (2) The NSPM-conducted initial and recurring periodic assessments; and
- (3) The continuing surveillance and analysis by the NSPM of the sponsor's performance and effectiveness in providing a satisfactory FSTD for use on a regular basis.

e. The sponsor must conduct assessments of its QMS program in segments. The segments will be established by the NSPM at the initial assessment, and the interval for the segment assessments will be every 6 months. The intervals for the segment assessments may be extended beyond 6 months as the QMS program matures, but will not be extended beyond 12 months. The entire QMS program must be assessed every 24 months.

f. The periodic assessments conducted by the NSPM will be conducted at intervals not less than once every 24 months, and include a comprehensive review of the QMS program. These reviews will be conducted more frequently if warranted.

End QPS Requirements

Begin Information

g. An example of a segment assessment—At the initial QMS assessment, the NSPM will divide the QMS program into segments (e.g., 6 separate segments). There must be an assessment of a certain number of segments every 6 months (i.e., segments 1 and 2 at the end of the first 6 month period; segments 3 and 4 at the end of the second 6 month period (or one year); and segments 5 and 6 at the end of the third 6 month period (or 18 months). As the program matures, the interval between assessments may be extended to 12 months (e.g., segments 1, 2, and 3 at the end of the first year; and segments 4, 5, and 6 at the end of the second year). In both cases, the entire QMS program is assessed at least every 24 months.

h. The following materials are presented to assist sponsors in preparing for an NSPM evaluation of the QMS program. The sample documents include:

(1) The NSPM desk assessment tool for initial evaluation of the required elements of a QMS program.

(2) The NSPM on-site assessment tool for initial and continuing evaluation of the required elements of a QMS program.

(3) An Element Assessment Table that describes the circumstances that exist to warrant a finding of "non-compliance," or "non-conformity"; "partial compliance," or

“partial conformity”; and “acceptable compliance,” or “acceptable conformity.”

(4) A sample Continuation Sheet for additional comments that may be added by the sponsor or the NSPM during a QMS evaluation.

(5) A sample Sponsor Checklist to assist the sponsor in verifying the elements that comprise the required QMS program.

(6) A table showing the essential functions, processes, and procedures that relate to the required QMS components and a cross-reference to each represented task.

i. Additional Information.

(1) In addition to specifically designated QMS evaluations, the NSPM will evaluate the sponsor's QMS program as part of regularly scheduled FSTD continuing qualification evaluations and no-notice FSTD evaluations, focusing in part on the effectiveness and viability of the QMS program and its contribution to the overall capability of the FSTD to meet the requirements of this part.

(2) The sponsor or MR may delegate duties associated with maintaining the qualification of the FSTD (e.g., corrective and preventive maintenance, scheduling and conducting tests or inspections, functional preflight checks) but retain the responsibility and authority for the day-to-day qualification of the FSTD. One person may serve as the sponsor or MR for more than one FSTD, but one FSTD may not have more than one sponsor or MR.

(3) A QMS program may be applicable to more than one certificate holder (e.g., part 119 and part 142 or two part 119 certificate holders) and an MR may work for more than one certificate holder (e.g., part 119 and part 142 or two part 119 certificate holders) as long as the sponsor's QMS program requirements and the MR requirements are met for each certificate holder.

(4) Standard Measurements for Flight Simulator Quality: A quality system based on FSTD performance will improve and maintain training quality. See http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/nsp/sqms/ for more information on measuring FSTD performance.

j. The FAA does not mandate a specific QMS program format, but an acceptable QMS program should contain the following:

(1) A Quality Policy. This is a formal written Quality Policy Statement that is a commitment by the sponsor outlining what the Quality System will achieve.

(2) A MR who has overall authority for monitoring the on-going qualification of assigned FSTDs to ensure that all FSTD qualification issues are resolved as required by this part. The MR should ensure that the QMS program is properly implemented and maintained, and should:

(a) Brief the sponsor's management on the qualification processes;

(b) Serve as the primary contact point for all matters between the sponsor and the NSPM regarding the qualification of the assigned FSTDs; and

(c) Oversee the day-to-day quality control.

(3) The system and processes outlined in the QMS should enable the sponsor to monitor compliance with all applicable regulations and ensure correct maintenance and performance of the FSTD in accordance with part 60.

(4) A QMS program and a statement acknowledging completion of a periodic review by the MR should include the following:

(a) A maintenance facility that provides suitable FSTD hardware and software tests and maintenance capability.

(b) A recording system in the form of a technical log in which defects, deferred defects, and development projects are listed, assigned and reviewed within a specified time period.

(c) Routine maintenance of the FSTD and performance of the QTG tests with adequate staffing to cover FSTD operating periods.

(d) A planned internal assessment schedule and a periodic review should be used to verify that corrective action was complete and effective. The assessor should have adequate knowledge of FSTDs and should be acceptable to the NSPM.

(5) The MR should receive Quality System training and brief other personnel on the procedures.

End Information

TABLE E1.—FSTD QUALITY MANAGEMENT SYSTEM

Entry No.	QPS requirement	Information (reference)
E1.1.	A QMS manual that prescribes the policies, processes, or procedures outlined in this table	§ 60.5(a).
E1.2.	A policy, process, or procedure specifying how the sponsor will identify deficiencies in the QMS	§ 60.5(b).
E1.3.	A policy, process, or procedure specifying how the sponsor will document how the QMS program will be changed to address deficiencies.	§ 60.5(b).
E1.4.	A policy, process, or procedure specifying how the sponsor will address proposed program changes (for programs that do not meet the minimum requirements as notified by the NSPM) to the NSPM and receive approval prior to their implementation.	§ 60.5(c).
E1.5.	A policy, process, or procedure specifying how the sponsor will document that at least one FSTD is used within the sponsor's FAA-approved flight training program for the aircraft or set of aircraft at least once within the 12-month period following the initial or upgrade evaluation conducted by the NSPM and at least once within each subsequent 12-month period thereafter.	§ 60.7(b)(5).
E1.6.	A policy, process, or procedure specifying how the sponsor will document that at least one FSTD is used within the sponsor's FAA-approved flight training program for the aircraft or set of aircraft at least once within the 12-month period following the first continuing qualification evaluation conducted by the NSP and at least once within each subsequent 12-month period thereafter.	§ 60.7(b)(6).
E1.7.	A policy, process, or procedure specifying how the sponsor will obtain an annual written statement from a qualified pilot (who has flown the subject aircraft or set of aircraft during the preceding 12-month period) that the performance and handling qualities of the subject FSTD represents the subject aircraft or set of aircraft (within the normal operating envelope). Required only if the subject FSTD is not used in the sponsor's FAA-approved flight training program for the aircraft or set of aircraft at least once within the preceding 12-month period.	§ 60.5(b)(7) and § 60.7(d)(2).
E1.8.	A policy, process, or procedure specifying how independent feedback (from persons recently completing training, evaluation, or obtaining flight experience; instructors and check airmen using the FSTD for training, evaluation, or flight experience sessions; and FSTD technicians and maintenance personnel) will be received and addressed by the sponsor regarding the FSTD and its operation.	§ 60.9(b)(1).

TABLE E1.—FSTD QUALITY MANAGEMENT SYSTEM—Continued

Entry No.	QPS requirement	Information (reference)
E1.9.	A policy, process, or procedure specifying how and where the FSTD SOQ will be posted, or accessed by an appropriate terminal or display, in or adjacent to the FSTD.	§ 60.9(b)(2).
E1.10.	A policy, process, or procedure specifying how the sponsor's management representative (MR) is selected and identified by name to the NSPM.	§ 60.9(c) and Appendix E, paragraph (d).
E1.11.	A policy, process, or procedure specifying the MR authority and responsibility for the following:	§ 60.9(c)(2), (3), and (4).
E1.11.a.	Monitoring the on-going qualification of assigned FSTDs to ensure all matters regarding FSTD qualification are completed as required by this part.	
E1.11.b.	Ensuring that the QMS is properly maintained by overseeing the QMS policies, practices, or procedures and modifying as necessary.	
E1.11.c.	Regularly briefing sponsor's management on the status of the on-going FSTD qualification program and the effectiveness and efficiency of the QMS.	
E1.11.d.	Serving as the primary contact point for all matters between the sponsor and the NSPM regarding the qualification of assigned FSTDs.	
E1.11.e.	Delegating the MR assigned duties to an individual at each of the sponsor's locations, as appropriate.	
E1.12.	A policy, process, or procedure specifying how the sponsor will:	§ 60.13; QPS Appendices A, B, C, and D.
E1.12.a.	Ensure that the data made available to the NSPM (the validation data package) includes the aircraft manufacturer's flight test data (or other data approved by the NSPM) and all relevant data developed after the type certificate was issued (e.g., data developed in response to an airworthiness directive) if the data results from a change in performance, handling qualities, functions, or other characteristics of the aircraft that must be considered for flight crewmember training, evaluation, or experience requirements.	
E1.12.b.	Notify the NSPM within 10 working days of becoming aware that an addition to or a revision of the flight related data or airplane systems related data is available if this data is used to program or operate a qualified FSTD.	
E1.12.c.	Maintain a liaison with the manufacturer of the aircraft being simulated (or with the holder of the aircraft type certificate for the aircraft being simulated if the manufacturer is no longer in business), and if appropriate, with the person who supplied the aircraft data package for the FFS for the purposes of receiving notification of data package changes.	
E1.13.	A policy, process, or procedure specifying how the sponsor will make available all special equipment and qualified personnel needed to conduct tests during initial, continuing qualification, or special evaluations.	§ 60.14.
E1.14.	A policy, process, or procedure specifying how the sponsor will submit to the NSPM a request to evaluate the FSTD for initial qualification at a specific level and simultaneously request the TPAA forward a concurring letter to the NSPM; including how the MR will use qualified personnel to confirm the following:	§ 60.15(a)–(d); § 60.15(b); § 60.15(b)(i); § 60.15(b)(ii); § 60.15(b)(iii).
E1.14.a.	That the performance and handling qualities of the FSTD represent those of the aircraft or set of aircraft within the normal operating envelope.	
E1.14.b.	The FSTD systems and sub-systems (including the simulated aircraft systems) functionally represent those in the aircraft or set of aircraft.	
E1.14.c.	The flight deck represents the configuration of the specific type or aircraft make, model, and series aircraft being simulated, as appropriate.	
E1.15.	A policy, process, or procedure specifying how the subjective and objective tests are completed at the sponsor's training facility for an initial evaluation.	§ 60.15(e).
E1.16.	A policy, process, or procedure specifying how the sponsor will update the QTG with the results of the FAA-witnessed tests and demonstrations together with the results of the objective tests and demonstrations after the NSPM completes the evaluation for initial qualification.	§ 60.15(h).

TABLE E1.—FSTD QUALITY MANAGEMENT SYSTEM—Continued

Entry No.	QPS requirement	Information (reference)
E1.17.	A policy, process, or procedure specifying how the sponsor will make the MQTG available to the NSPM upon request.	§ 60.15(i).
E1.18.	A policy, process, or procedure specifying how the sponsor will apply to the NSPM for additional qualification(s) to the SOQ.	§ 60.16(a); § 60.16(a)(1)(i); and § 60.16(a)(1)(ii).
E1.19.	A policy, process, or procedure specifying how the sponsor completes all required Attachment 2 objective tests each year in a minimum of four evenly spaced inspections as specified in the appropriate QPS.	§ 60.19(a)(1) QPS Appendices A, B, C, or D.
E1.20.	A policy, process, or procedure specifying how the sponsor completes and records a functional preflight check of the FSTD within the preceding 24 hours of FSTD use, including a description of the functional preflight.	§ 60.19(a)(2) QPS Appendices A, B, C, or D.
E1.21.	A policy, process, or procedure specifying how the sponsor schedules continuing qualification evaluations with the NSPM.	§ 60.19(b)(2).
E1.22.	A policy, process, or procedure specifying how the sponsor ensures that the FSTD has received a continuing qualification evaluation at the interval described in the MQTG.	§ 60.19(b)(5)–(6).
E1.23.	A policy, process, or procedure describing how discrepancies are recorded in the FSTD discrepancy log, including:	§ 60.19(c); § 60.19(c)(2)(i); § 60.19(c)(2)(ii).
E1.23.a.	A description of how the discrepancies are entered and maintained in the log until corrected.	
E1.23.b.	A description of the corrective action taken for each discrepancy, the identity of the individual taking the action, and the date that action is taken.	
E1.24.	A policy, process, or procedure specifying how the discrepancy log is kept in a form and manner acceptable to the Administrator and kept in or adjacent to the FSTD. (An electronic log that may be accessed by an appropriate terminal or display in or adjacent to the FSTD is satisfactory.)	§ 60.19(c)(2)(iii).
E1.25.	A policy, process, or procedure that requires each instructor, check airman, or representative of the Administrator conducting training, evaluation, or flight experience, and each person conducting the preflight inspection, who discovers a discrepancy, including any missing, malfunctioning, or inoperative components in the FSTD, to write or cause to be written a description of that discrepancy into the discrepancy log at the end of the FSTD preflight or FSTD use session.	§ 60.20.
E1.26.	A policy, process, or procedure specifying how the sponsor will apply for initial qualification based on the final aircraft data package approved by the aircraft manufacturer if operating an FSTD based on an interim qualification.	§ 60.21(c).
E1.27.	A policy, process, or procedure specifying how the sponsor determines whether an FSTD change qualifies as a modification as defined in § 60.23.	§ 60.23(a)(1)–(2).
E1.28.	A policy, process, or procedure specifying how the sponsor will ensure the FSTD is modified in accordance with any FSTD Directive regardless of the original qualification basis.	§ 60.23(b).
E1.29.	A policy, process, or procedure specifying how the sponsor will notify the NSPM and TPAA of their intent to use a modified FSTD and to ensure that the modified FSTD will not be used prior to:	§ 60.23(c)(1)(i), (ii), and (iv).
E1.29.a.	Twenty-one days since the sponsor notified the NSPM and the TPAA of the proposed modification and the sponsor has not received any response from either the NSPM or the TPAA; or	
E1.29.b.	Twenty-one days since the sponsor notified the NSPM and the TPAA of the proposed modification and one has approved the proposed modification and the other has not responded; or	
E1.29.c.	The FSTD successfully completing any evaluation the NSPM may require in accordance with the standards for an evaluation for initial qualification or any part thereof before the modified FSTD is placed in service.	
E1.30.	A policy, process, or procedure specifying how, after an FSTD modification is approved by the NSPM, the sponsor will:	§ 60.23(d)–(e).
E1.30.a.	Post an addendum to the SOQ until as the NSPM issues a permanent, updated SOQ.	
E1.30.b.	Update the MQTG with current objective test results and appropriate objective data for each affected objective test or other MQTG section affected by the modification.	

TABLE E1.—FSTD QUALITY MANAGEMENT SYSTEM—Continued

Entry No.	QPS requirement	Information (reference)
E1.30.c.	File in the MQTG the requirement from the NSPM to make the modification and the record of the modification completion.	
E1.31.	A policy, process, or procedure specifying how the sponsor will track the length of time a component has been missing, malfunctioning, or inoperative (MMI), including:	§ 60.25(b)–(c), and QPS Appendices A, B, C, or D.
E1.31.a.	How the sponsor will post a list of MMI components in or adjacent to the FSTD.	
E1.31.b.	How the sponsor will notify the NSPM if the MMI has not been repaired or replaced within 30 days.*	
E1.32.	A policy, process, or procedure specifying how the sponsor will notify the NSPM and how the sponsor will seek requalification of the FSTD if the FSTD is moved and reinstalled in a different location.	§ 60.27(a)(3).
E1.33.	A policy, process, or procedure specifying how the sponsor will maintain control of the following: (The sponsor must specify how these records are maintained in plain language form or in coded form; but if the coded form is used, the sponsor must specify how the preservation and retrieval of information will be conducted.)	§ 60.31.
E1.33.a.	The MQTG and each amendment.	
E1.33.b.	A record of all FSTD modifications required by this part since the issuance of the original SOQ.	
E1.33.c.	Results of the qualification evaluations (initial and each upgrade) since the issuance of the original SOQ.	
E1.33.d.	Results of the objective tests conducted in accordance with this part for a period of 2 years.	
E1.33.e.	Results of the previous three continuing qualification evaluations, or the continuing qualification evaluations from the previous 2 years, whichever covers a longer period.	
E1.33.f.	Comments obtained in accordance with § 60.9(b);	
E1.33.g.	A record of all discrepancies entered in the discrepancy log over the previous 2 years, including the following:	
E1.33.g.1.	A list of the components or equipment that were or are missing, malfunctioning, or inoperative.	
E1.33.g.2.	The action taken to correct the discrepancy.	
E1.33.g.3.	The date the corrective action was taken.	
E1.33.g.4.	The identity of the person determining that the discrepancy has been corrected.	

* Note: If the sponsor has an approved discrepancy prioritization system, this item is satisfied by describing how discrepancies are prioritized, what actions are taken, and how the sponsor will notify the NSPM if the MMI has not been repaired or replaced within the specified timeframe.

Appendix F to Part 60—Definitions and Abbreviations for Flight Simulation Training Devices

Begin Information

1. Some of the definitions presented below are repeated from the definitions found in 14 CFR part 1, as indicated parenthetically

End Information

Begin QPS Requirements

2. Definitions

1st Segment—the portion of the takeoff profile from liftoff to gear retraction.

2nd Segment—the portion of the takeoff profile from after gear retraction to initial flap/slat retraction.

3rd Segment—the portion of the takeoff profile after flap/slat retraction is complete.

Aircraft Data Package—a combination of the various types of data used to design,

program, manufacture, modify, and test the FSTD.

Airspeed—calibrated airspeed unless otherwise specified and expressed in terms of nautical miles per hour (knots).

Airport Model—

Class I. Whether modeling real world or fictional airports (or landing areas for helicopters), these airport models (or landing areas for helicopters) are those that meet the requirements of Table A3B or C3B, found in attachment 2 of Appendix A or C, as appropriate, are evaluated by the NSPM, and are listed on the SOQ.

Class II. Whether modeling real world or fictional airports (or landing areas for helicopters), these airport models (or landing areas for helicopters) are those models that are in excess of those used for simulator qualification at a specified level. The FSTD sponsor is responsible for determining that these models meet the requirements set out in Table A3C or C3C, found in attachment 2 of Appendix A or C, as appropriate.

Class III. This is a special class of airport model (or landing area for helicopters), used for specific purposes, and includes models that may be incomplete or inaccurate when viewed without restriction, but when appropriate limits are applied (e.g., “valid for use only in visibility conditions less than ½ statute mile or RVR2400 feet,” “valid for use only for approaches to Runway 22L and 22R”), those features that may be incomplete or inaccurate may not be able to be recognized as such by the crewmember being trained, tested, or checked. Class III airport models used for training, testing, or checking activities under this Chapter requires the certificate holder to submit to the TPAA an appropriate analysis of the skills, knowledge, and abilities necessary for competent performance of the task(s) in which this particular model is to be used, and requires TPAA acceptance of each Class III model.

Altitude—pressure altitude (meters or feet) unless specified otherwise.

Angle of Attack—the angle between the airplane longitudinal axis and the relative

wind vector projected onto the airplane plane of symmetry.

Automatic Testing—FSTD testing where all stimuli are under computer control.

Bank—the airplane attitude with respect to or around the longitudinal axis, or roll angle (degrees).

Breakout—the force required at the pilot's primary controls to achieve initial movement of the control position.

Certificate Holder—a person issued a certificate under parts 119, 141, or 142 of this chapter or a person holding an approved course of training for flight engineers in accordance with part 63 of this chapter.

Closed Loop Testing—a test method where the input stimuli are generated by controllers that drive the FSTD to follow a pre-defined target response.

Computer Controlled Aircraft—an aircraft where all pilot inputs to the control surfaces are transferred and augmented by computers.

Confined Area (helicopter operations)—an area where the flight of the helicopter is limited in some direction by terrain or the presence of natural or man-made obstructions (e.g., a clearing in the woods, a city street, or a road bordered by trees or power lines are regarded as confined areas).

Control Sweep—movement of the appropriate pilot controller from neutral to an extreme limit in one direction (Forward, Aft, Right, or Left), a continuous movement back through neutral to the opposite extreme position, and then a return to the neutral position.

Convertible FSTD—an FSTD in which hardware and software can be changed so that the FSTD becomes a replica of a different model, usually of the same type aircraft. The same FSTD platform, flight deck shell, motion system, visual system, computers, and peripheral equipment can be used in more than one simulation.

Critical Engine Parameter—the parameter that is the most accurate measure of propulsive force.

Deadband—the amount of movement of the input for a system for which there is no reaction in the output or state of the system observed.

Distance—the length of space between two points, expressed in terms of nautical miles unless otherwise specified.

Discrepancy—as used in this part, an aspect of the FSTD that is not correct with respect to the aircraft being simulated. This includes missing, malfunctioning, or inoperative components that are required to be present and operate correctly for training, evaluation, and experience functions to be creditable. It also includes errors in the documentation used to support the FSTD (e.g., MQTG errors, information missing from the MQTG, or required statements from appropriately qualified personnel).

Downgrade—a permanent change in the qualification level of an FSTD to a lower level.

Driven—a test method where the input stimulus or variable is positioned by automatic means, usually a computer input.

Electronic Copy of the MQTG—an electronic copy of the MQTG provided by an electronic scan presented in a format, acceptable to the NSPM.

Electronic Master Qualification Test Guide—an electronic version of the MQTG (eMQTG), where all objective data obtained from airplane testing, or another approved source, together with correlating objective test results obtained from the performance of the FSTD and a description of the equipment necessary to perform the evaluation for the initial and the continuing qualification evaluations is stored, archived, or presented in either reformatted or digitized electronic format.

Engine—as used in this part, the appliance or structure that supplies propulsive force for movement of the aircraft: i.e., The turbine engine for turbine powered aircraft; the turbine engine and propeller assembly for turbo-propeller powered aircraft; and the reciprocating engine and propeller assembly for reciprocating engine powered aircraft. For purposes of this part, engine failure is the failure of either the engine or propeller assembly to provide thrust higher than idle power thrust due to a failure of either the engine or the propeller assembly.

Evaluation—with respect to an individual, the checking, testing, or review associated with flight crewmember qualification, training, and certification under parts 61, 63, 121, or 135 of this chapter. With respect to an FSTD, the qualification activities for the device (e.g., the objective and subjective tests, the inspections, or the continuing qualification evaluations) associated with the requirements of this part.

Fictional Airport—a visual model of an airport that is a collection of “non-real world” terrain, instrument approach procedures, navigation aids, maps, and visual modeling detail sufficient to enable completion of an Airline Transport Pilot Certificate or Type Rating.

Flight Experience—recency of flight experience for landing credit purposes.

Flight Simulation Training Device (FSTD)—a full flight simulator (FFS) or a flight training device (FTD). (Part 1)

Flight Test Data—(a subset of objective data) aircraft data collected by the aircraft manufacturer or other acceptable data supplier during an aircraft flight test program.

Flight Training Device (FTD)—a replica of aircraft instruments, equipment, panels, and controls in an open flight deck area or an enclosed aircraft flight deck replica. It includes the equipment and computer programs necessary to represent aircraft (or set of aircraft) operations in ground and flight conditions having the full range of capabilities of the systems installed in the device as described in part 60 of this chapter and the qualification performance standard (QPS) for a specific FTD qualification level. (Part 1)

Free Response—the response of the FSTD after completion of a control input or disturbance.

Frozen—a test condition where one or more variables are held constant with time.

FSTD Approval—the extent to which an FSTD may be used by a certificate holder as authorized by the FAA.

FSTD Directive—a document issued by the FAA to an FSTD sponsor requiring a modification to the FSTD due to a safety-of-

flight issue and amending the qualification basis for the FSTD.

FSTD Latency—the additional time for the FSTD to respond to input that is beyond the response time of the aircraft.

FSTD Performance—the overall performance of the FSTD, including aircraft performance (e.g., thrust/drag relationships, climb, range) and flight and ground handling.

Full Flight Simulator (FFS)—a replica of a specific type, make, model, or series aircraft. It includes the equipment and computer programs necessary to represent aircraft operations in ground and flight conditions, a visual system providing an out-of-the-flight deck view, a system that provides cues at least equivalent to those of a three-degree-of-freedom motion system, and has the full range of capabilities of the systems installed in the device as described in part 60 of this chapter and the QPS for a specific FFS qualification level. (Part 1)

Gate Clutter—the static and moving ground traffic (e.g., other airplanes; tugs; power or baggage carts; fueling, catering, or cargo trucks; pedestrians) presented to pose a potential conflict with the simulated aircraft during ground operations around the point where the simulated airplane is to be parked between flights

Generic Airport Model—a Class III visual model that combines correct navigation aids for a real world airport with a visual model that does not depict that same airport.

Grandfathering—as used in this part, the practice of assigning a qualification basis for an FSTD based on the period of time during which a published set of standards governed the requirements for the initial and continuing qualification of FSTDs. Each FSTD manufactured during this specified period of time is “grandfathered” or held to the standards that were in effect during that time period. The grandfathered standards remain applicable to each FSTD manufactured during the stated time period regardless of any subsequent modification to those standards and regardless of the sponsor, as long as the FSTD remains qualified or is maintained in a non-qualified status in accordance with the specific requirements and time periods prescribed in this part.

Gross Weight—For objective test purposes:

Basic Operating Weight (BOW)—the empty weight of the aircraft plus the weight of the following: Normal oil quantity; lavatory servicing fluid; potable water; required crewmembers and their baggage; and emergency equipment.

Light Gross Weight—a weight chosen by the sponsor or data provider that is not more than 120% of the BOW of the aircraft being simulated or the minimum practical operating weight of the test aircraft.

Medium Gross Weight—a weight chosen by the sponsor or data provider that is within 10% of the average of the numerical values of the BOW and the maximum certificated gross weight.

Near Maximum Gross Weight—a weight chosen by the sponsor or data provider that is not less than the BOW of the aircraft being simulated plus 80% of the difference between the maximum certificated gross weight (either takeoff weight or landing

weight, as appropriate for the test) and the BOW.

Ground Effect—the change in aerodynamic characteristics due to the change in the airflow past the aircraft caused by the proximity of the earth's surface to the airplane.

Hands Off—a test maneuver conducted without pilot control inputs.

Hands On—a test maneuver conducted with pilot control inputs as required.

Heave—FSTD movement with respect to or along the vertical axis.

Height—the height above ground level (or AGL) expressed in meters or feet.

"In Use" Runway—as used in this part, the runway that is currently selected, able to be used for takeoffs and landings, and has the surface lighting and markings required by this part. Also known as the "active" runway.

Integrated Testing—testing of the FSTD so that all aircraft system models are active and contribute appropriately to the results. With integrated testing, none of the models used are substituted with models or other algorithms intended for testing only.

Irreversible Control System—a control system where movement of the control surface will not backdrive the pilot's control on the flight deck.

Locked—a test condition where one or more variables are held constant with time.

Manual Testing—FSTD testing conducted without computer inputs except for initial setup, and all modules of the simulation are active.

Master Qualification Test Guide (MQTG)—the FAA-approved Qualification Test Guide with the addition of the FAA-witnessed test results, applicable to each individual FSTD.

Medium—the normal operational weight for a given flight segment.

National Simulator Program Manager (NSPM)—the FAA manager responsible for the overall administration and direction of the National Simulator Program (NSP), or a person approved by that FAA manager.

Near Limiting Performance—the performance level the operating engine must be required to achieve to have sufficient power to land a helicopter after experiencing a single engine failure during takeoff of a multiengine helicopter. The operating engine must be required to operate within at least 5 percent of the maximum RPM or temperature limits of the gas turbine or power turbine, or operate within at least 5 percent of the maximum drive train torque limits. Near limiting performance is based on the existing combination of density altitude, temperature, and helicopter gross weight.

Nominal—the normal operating configuration, atmospheric conditions, and flight parameters for the specified flight segment.

Non-Normal Control—a term used in reference to Computer Controlled Aircraft. It is the state where one or more of the intended control, augmentation, or protection functions are not fully working. Note: Specific terms such as ALTERNATE, DIRECT, SECONDARY, or BACKUP may be used to define an actual level of degradation.

Normal Control—a term used in reference to Computer Controlled Aircraft. It is the

state where the intended control, augmentation, and protection functions are fully working.

Objective Data—quantitative data, acceptable to the NSPM, used to evaluate the FSTD.

Objective Test—a quantitative measurement and evaluation of FSTD performance.

Pitch—the airplane attitude with respect to, or around, the lateral axis expressed in degrees.

Power Lever Angle (PLA)—the angle of the pilot's primary engine control lever(s) on the flight deck. This may also be referred to as THROTTLE or POWER LEVER.

Predicted Data—estimations or extrapolations of existing flight test data or data from other simulation models using engineering analyses, engineering simulations, design data, or wind tunnel data.

Protection Functions—systems functions designed to protect an airplane from exceeding its flight maneuver limitations.

Pulse Input—a step input to a control followed by an immediate return to the initial position.

Qualification Level—the categorization of an FSTD established by the NSPM based on the FSTDs demonstrated technical and operational capabilities as prescribed in this part.

Qualification Performance Standard (QPS)—the collection of procedures and criteria used when conducting objective and subjective tests, to establish FSTD qualification levels. The QPS are published in the appendices to this part, as follows: Appendix A, for Airplane Simulators; Appendix B, for Airplane Flight Training Devices; Appendix C, for Helicopter Simulators; Appendix D, for Helicopter Flight Training Devices; Appendix E, for Quality Management Systems for Flight Simulation Training Devices; and Appendix F, for Definitions and Abbreviations for Flight Simulation Training Devices.

Qualification Test Guide (QTG)—the primary reference document used for evaluating an aircraft FSTD. It contains test results, statements of compliance and capability, the configuration of the aircraft simulated, and other information for the evaluator to assess the FSTD against the applicable regulatory criteria.

Quality Management System (QMS)—a flight simulation quality-systems that can be used for external quality-assurance purposes. It is designed to identify the processes needed, determine the sequence and interaction of the processes, determine criteria and methods required to ensure the effective operation and control of the processes, ensure the availability of information necessary to support the operation and monitoring of the processes, measure, monitor, and analyze the processes, and implement the actions necessary to achieve planned results.

Real-World Airport—as used in this part in reference to airport visual models, a computer generated visual depiction of an existing airport.

Representative—when used as an adjective in this part, typical, demonstrative, or

characteristic of, the feature being described. For example, "representative sampling of tests" means a sub-set of the complete set of all tests such that the sample includes one or more of the tests in each of the major categories, the results of which provide the evaluator with an overall understanding of the performance and handling characteristics of the FSTD.

Reversible Control System—a control system in which movement of the control surface will backdrive the pilot's control on the flight deck.

Roll—the airplane attitude with respect to, or around, the longitudinal axis expressed in degrees.

Set of Aircraft—aircraft that share similar handling and operating characteristics, similar operating envelopes, and have the same number and type of engines or powerplants.

Sideslip Angle—the angle between the relative wind vector and the airplane plane of symmetry. (Note: this definition replaces the current definition of "sideslip.")

Simulation Quality Management System (SQMS)—the elements of a quality management system for FSTD continuing qualification.

Snapshot—a presentation of one or more variables at a given instant of time.

Special Evaluation—an evaluation of the FSTD for purposes other than initial, upgrade, or continuing qualification. Circumstances that may require a special evaluation include movement of the FSTD to a different location, or an update to FSTD software or hardware that might affect performance or flying qualities.

Sponsor—a certificate holder who seeks or maintains FSTD qualification and is responsible for the prescribed actions as prescribed in this part and the QPS for the appropriate FSTD and qualification level.

Statement of Compliance and Capability (SOC)—a declaration that a specific requirement has been met and explaining how the requirement was met (e.g., gear modeling approach, coefficient of friction sources). The SOC must also describe the capability of the FSTD to meet the requirement, including references to sources of information for showing compliance, rationale to explain how the referenced material is used, mathematical equations and parameter values used, and conclusions reached.

Step Input—an abrupt control input held at a constant value.

Subjective Test—a qualitative assessment of the performance and operation of the FSTD.

Surge—FSTD movement with respect to or along the longitudinal axis.

Sway—FSTD movement with respect to or along the lateral axis.

T_f—Total time of the flare maneuver.

T_i—Total time from initial throttle movement until a 10% response of a critical engine parameter.

T_r—Total time from initial throttle movement to an increase of 90% of go around power or a decrease of 90% from maximum take-off power.

Time History—a presentation of the change of a variable with respect to time.

Training Program Approval Authority (TPAA)—a person authorized by the Administrator to approve the aircraft flight training program in which the FSTD will be used.

Training Restriction—a temporary condition where an FSTD with missing, malfunctioning, or inoperative (MMI) components may continue to be used at the qualification level indicated on its SOQ, but restricted from completing the tasks for which the correct function of the MMI component is required.

Transport Delay or “Throughput”—the total FSTD system processing time required for an input signal from a pilot primary flight control until motion system, visual system, or instrument response. It is the overall time delay incurred from signal input to output response. It does not include the characteristic delay of the airplane simulated.

Update—an improvement to or modernization of the quality or the accuracy of the FSTD without affecting the qualification level of the FSTD.

Upgrade—the improvement or enhancement of an FSTD for the purpose of achieving a higher qualification level.

Validation Data—objective data used to determine if the FSTD performance is within the tolerances prescribed in the QPS.

Validation Test—an objective test where FSTD parameters are compared to the relevant validation data to ensure that the FSTD performance is within the tolerances prescribed in the QPS.

Visual Data Base—a display that may include one or more airport models.

Visual System Response Time—the interval from a control input to the completion of the visual display scan of the first video field containing the resulting different information.

Yaw—the airplane attitude with respect to, or around, the vertical axis expressed in degrees.

3. Abbreviations

AFM Airplane Flight Manual.
AGL Above Ground Level (meters or feet).
AOA Angle of Attack (degrees).
APD Aircrew Program Designee.
CCA Computer Controlled Aircraft.
cd/m² candela/meter², 3.4263 candela/m² = 1 ft-Lambert.
CFR Code of Federal Regulations.
cm(s) centimeter, centimeters.

daN decaNewtons, one (1) decaNewton = 2.27 pounds.

deg(s) degree, degrees.

DOF Degrees-of-freedom.

eMQTG Electronic Master Qualification Test Guide.

EPR Engine Pressure Ratio.

FAA Federal Aviation Administration (U.S.).

FATO Final Approach and Take Off area
fpm feet per minute.

ft foot/feet, 1 foot = 0.304801 meters.

ft-Lambert foot-Lambert, 1 ft-Lambert = 3.4263 candela/m².

g Acceleration due to Gravity (meters or feet/sec²); 1g = 9.81 m/sec² or 32.2 feet/sec².

G/S Glideslope.

IATA International Airline Transport Association.

ICAO International Civil Aviation Organization.

IGE In ground effect.

ILS Instrument Landing System.

IOS Instructor Operating Station.

IQTG International Qualification Test Guide.

km Kilometers; 1 km = 0.62137 Statute Miles.

kPa KiloPascal (Kilo Newton/Meters²). 1 psi = 6.89476 kPa.

kts Knots calibrated airspeed unless otherwise specified, 1 knot = 0.5148 m/sec or 1.689 ft/sec.

lb(s) pound(s), one (1) pound = 0.44 decaNewton.

LDP Landing decision point.

MQTG Master Qualification Test Guide

M,m Meters, 1 Meter = 3.28083 feet.

Min(s) Minute, minutes.

MLG Main Landing Gear.

Mpa MegaPascals (1 psi = 6894.76 pascals).

ms millisecond(s).

N NORMAL CONTROL Used in reference to Computer Controlled Aircraft.

nm Nautical Mile(s) 1 Nautical Mile = 6,080 feet.

NN NON-NORMAL CONTROL Used in reference to Computer Controlled Aircraft.

N1 Low Pressure Rotor revolutions per minute, expressed in percent of maximum.

N2 High Pressure Rotor revolutions per minute, expressed in percent of maximum.

N3 High Pressure Rotor revolutions per minute, expressed in percent of maximum.

NSPM National Simulator Program Manager.

NWA Nosewheel Angle (degrees).

OGE Out of ground effect.

PAPI Precision Approach Path Indicator System.

Pf Impact or Feel Pressure, often expressed as “q.”

PLA Power Lever Angle.

PLF Power for Level Flight.

psi pounds per square inch.

QPS Qualification Performance Standard.

QTG Qualification Test Guide.

RAE Royal Aerospace Establishment.

R/C Rate of Climb (meters/sec or feet/min).

R/D Rate of Descent (meters/sec or feet/min).

REIL Runway End Identifier Lights.

RVR Runway Visual Range (meters or feet).

s second(s).

sec(s) second, seconds.

sm Statute Mile(s) 1 Statute Mile = 5,280 feet.

SMGCS Surface Movement Guidance and Control System.

SOC Statement of Compliance and Capability.

SOQ Statement of Qualification.

TIR Type Inspection Report.

TLOF Touchdown and Loft Off area.

T/O Takeoff.

VASI Visual Approach Slope Indicator System.

VGS Visual Ground Segment.

V₁ Decision speed.

V₂ Takeoff safety speed.

V_{mc} Minimum Control Speed.

V_{mca} Minimum Control Speed in the air.

V_{mcg} Minimum Control Speed on the ground.

V_{mcL} Minimum Control Speed—Landing.

V_{mu} The speed at which the last main landing gear leaves the ground.

V_R Rotate Speed.

V_S Stall Speed or minimum speed in the stall.

WAT Weight, Altitude, Temperature.

End QPS Requirements

Issued in Washington, DC, on April 17, 2008.

John M. Allen,

Acting Director Flight Standards Service.

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Federal Register

**Friday,
May 9, 2008**

Part III

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Part 412

**Medicare Program; Prospective Payment
System for Long-Term Care Hospitals RY
2009: Annual Payment Rate Updates,
Policy Changes, and Clarifications; and
Electronic Submission of Cost Reports:
Revision to Effective Date of Cost
Reporting Period; Final Rule**

- E. Standard Federal Rate for the 2009 LTCH PPS Rate Year
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- 2. Standard Federal Rate for the 2009 LTCH PPS Rate Year
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 - 1. Adjustment for Area Wage Levels
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3. Accounting Statement
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Regulations Text
Addendum

Table 1: Long-Term Care Hospital Wage
Index for Urban Areas for Discharges
Occurring From July 1, 2008 through
September 30, 2009

Table 2: Long-Term Care Hospital Wage
Index for Rural Areas for Discharges
Occurring from July 1, 2008 through
September 30, 2009

Table 3: FY 2008 MS-LTC-DRG Relative
Weights, Geometric Average Length of
Stay, Short-Stay Outlier Threshold and
IPPS-Comparable Threshold (for Short-
Stay Outlier Cases)

Acronyms

Because of the many terms to which we
refer by acronym in this rule, we are listing
the acronyms used and their corresponding
terms in alphabetical order below:

- 3M Health Information System
AHA American Hospital Association
AHIMA American Health Information
Management Association
ALOS Average length of stay
ALTHA Acute Long Term Hospital
Association
ASCA Administrative Simplification
Compliance Act of 2002 (Pub. L. 107-105)
BBA Balanced Budget Act of 1997 (Pub. L.
105-33)
BBRA Medicare, Medicaid, and SCHIP
[State Children's Health Insurance
Program] Balanced Budget Refinement Act
of 1999 (Pub. L. 106-113)
BIPA Medicare, Medicaid, and SCHIP [State
Children's Health Insurance Program]
Benefits Improvement and Protection Act
of 2000 (Pub. L. 106-554)
BLS Bureau of Labor Statistics
BN Budget neutrality
CBSA Core-based statistical area
CC Complications and comorbidities
CCR Cost-to-charge ratio
C&M Coordination and maintenance
CMI Case-mix index
CMS Centers for Medicare & Medicaid
Services
COLA Cost of living adjustment
COP Condition of participation
CPI Consumer Price Index
CY Calendar year
DSH Disproportionate share of low-income
patients
DRGs Diagnosis-related groups
ECI Employment Cost Index
FI Fiscal intermediary
FY Fiscal year
FFY Federal fiscal year
HCO High-cost outlier
HCRIS Hospital cost report information
system
HHA Home health agency
HHS (Department of) Health and Human
Services
HIPAA Health Insurance Portability and
Accountability Act (Pub. L. 104-191)
HIPC Health Information Policy Council
HwHs Hospitals within hospitals
ICD-9-CM International Classification of
Diseases, Ninth Revision, Clinical
Modification (codes)
IME Indirect medical education
I-O Input-Output
IPF Inpatient psychiatric facility
IPPS [Acute Care Hospital] Inpatient
Prospective Payment System
IRF Inpatient rehabilitation facility
LOS Length of stay
LTC-DRG Long-term care diagnosis-related
group
LTCH Long-term care hospital
MAC Medicare Administrative Contractor
MCE Medicare code editor
MDC Major diagnostic categories
MedPAC Medicare Payment Advisory
Commission
MedPAR Medicare provider analysis and
review
MMA Medicare Prescription Drug,
Improvement, and Modernization Act of
2003 (Pub. L. 108-173)
MMSEA Medicare, Medicaid, and SCHIP
Extension Act of 2007 (Pub. L. 110-173)
MSA Metropolitan statistical area
MS-DRG Medicare severity diagnosis-
related group
MS-LTC-DRG Medicare severity long-term
care diagnosis-related group
NAICS North American Industrial
Classification System
NALTH National Association of Long Term
Hospitals
NCHS National Center for Health Statistics
OACT [CMS'] Office of the Actuary
OBRA 86 Omnibus Budget Reconciliation
Act of 1986 (Pub. L. 99-509)
OMB Office of Management and Budget
OPM U.S. Office of Personnel Management
O.R. Operating room
OSCAR Online Survey Certification and
Reporting (System)
PIP Periodic interim payment
PLI Professional liability insurance
PMSA Primary metropolitan statistical area
PPI Producer Price Indexes
PPS Prospective payment system
PSF Provider specific file
QIO Quality Improvement Organization
(formerly Peer Review organization (PRO))
RIA Regulatory impact analysis
RPL Rehabilitation psychiatric long-term
care (hospital)
RTI Research Triangle Institute,
International
RY Rate year (begins July 1 and ends June
30)
SIC Standard industrial code
SNF Skilled nursing facility
SSO Short-stay outlier
TEFRA Tax Equity and Fiscal
Responsibility Act of 1982 (Pub. L. 97-248)
TEP Technical expert panel
UHDDS Uniform hospital discharge data set

I. Background of the LTCH PPS

A. Legislative and Regulatory Authority

Section 123 of the Medicare,
Medicaid, and SCHIP (State Children's
Health Insurance Program) Balanced
Budget Refinement Act of 1999 (BBRA)
(Pub. L. 106-113) as amended by
section 307(b) of the Medicare,
Medicaid, and SCHIP Benefits
Improvement and Protection Act of
2000 (BIPA) (Pub. L. 106-554) provides

for payment for both the operating and
capital-related costs of hospital
inpatient stays in long-term care
hospitals (LTCHs) under Medicare Part
A based on prospectively set rates. The
Medicare prospective payment system
(PPS) for LTCHs applies to hospitals
described in section 1886(d)(1)(B)(iv) of
the Social Security Act (the Act),
effective for cost reporting periods
beginning on or after October 1, 2002.

Section 1886(d)(1)(B)(iv)(I) of the Act
defines a LTCH as "a hospital which has
an average inpatient length of stay (as
determined by the Secretary) of greater
than 25 days." Section
1886(d)(1)(B)(iv)(II) of the Act also
provides an alternative definition of
LTCHs: Specifically, a hospital that first
received payment under section 1886(d)
of the Act in 1986 and has an average
inpatient length of stay (LOS) (as
determined by the Secretary of Health
and Human Services (the Secretary)) of
greater than 20 days and has 80 percent
or more of its annual Medicare inpatient
discharges with a principal diagnosis
that reflects a finding of neoplastic
disease in the 12-month cost reporting
period ending in fiscal year (FY) 1997.

Section 123 of the BBRA requires the
PPS for LTCHs to be a "per discharge"
system with a diagnosis-related group
(DRG) based patient classification
system that reflects the differences in
patient resources and costs in LTCHs.

Section 307(b)(1) of the BIPA, among
other things, mandates that the
Secretary shall examine, and may
provide for, adjustments to payments
under the LTCH PPS, including
adjustments to DRG weights, area wage
adjustments, geographic reclassification,
outliers, updates, and a disproportionate
share adjustment.

In the August 30, 2002 **Federal
Register**, we issued a final rule that
implemented the LTCH PPS authorized
under BBRA and BIPA (67 FR 55954).
This system uses information from
LTCH patient records to classify
patients into distinct MS-long-term care
diagnosis-related groups (MS-LTC-
DRGs) based on clinical characteristics
and expected resource needs. Payments
are calculated for each MS-LTC-DRG
and provisions are made for appropriate
payment adjustments. Payment rates
under the LTCH PPS are updated
annually and published in the **Federal
Register**.

The LTCH PPS replaced the
reasonable cost-based payment system
under the Tax Equity and Fiscal
Responsibility Act of 1982 (TEFRA)
(Pub. L. 97-248) for payments for
inpatient services provided by a LTCH
with a cost reporting period beginning
on or after October 1, 2002. (The

regulations implementing the TEFRA reasonable cost-based payment provisions are located at 42 CFR part 413.) With the implementation of the PPS for acute care hospitals authorized by the Social Security Amendments of 1983 (Pub. L. 98–21), which added section 1886(d) to the Act, certain hospitals, including LTCHs, were excluded from the PPS for acute care hospitals and were paid their reasonable costs for inpatient services subject to a per discharge limitation or target amount under the TEFRA system. For each cost reporting period, a hospital-specific ceiling on payments was determined by multiplying the hospital's updated target amount by the number of total current year Medicare discharges. (Generally, in this document when we refer to discharges, the intent is to describe Medicare discharges.) The August 30, 2002 final rule further details the payment policy under the TEFRA system (67 FR 55954).

In the August 30, 2002 final rule, we also presented an in-depth discussion of the LTCH PPS, including the patient classification system, relative weights, payment rates, additional payments, and the BN requirements mandated by section 123 of the BBRA. The same final rule that established regulations for the LTCH PPS under 42 CFR part 412, subpart O, also contained LTCH provisions related to covered inpatient services, limitation on charges to beneficiaries, medical review requirements, furnishing of inpatient hospital services directly or under arrangement, and reporting and recordkeeping requirements. We refer readers to the August 30, 2002 final rule for a comprehensive discussion of the research and data that supported the establishment of the LTCH PPS (67 FR 55954).

In the June 6, 2003 **Federal Register**, we published a final rule that set forth the FY 2004 annual update of the payment rates for the Medicare PPS for inpatient hospital services furnished by LTCHs (68 FR 34122). It also changed the annual period for which the payment rates are effective. The annual updated rates are now effective from July 1 through June 30 instead of from October 1 through September 30. We refer to the July through June time period as a “long-term care hospital rate year” (LTCH PPS rate year). In addition, we changed the publication schedule for the annual update to allow for an effective date of July 1. The payment amounts and factors used to determine the annual update of the LTCH PPS Federal rate are based on a LTCH PPS rate year. While the LTCH payment rate update is effective July 1, the annual

update of the DRG classifications and relative weights for LTCHs are linked to the annual adjustments of the acute care hospital inpatient DRGs and are effective each October 1.

The Medicare, Medicaid and SCHIP Extension Act of 2007 (MMSEA) (Pub. L. 110–173) that was enacted on December 29, 2007 has various effects on the LTCH PPS. The new law's provisions also have varying timeframes of applicability. First, we note that certain provisions of the MMSEA provided that Secretary shall not apply, for cost reporting periods beginning on or after the date of the enactment of the MMSEA (December 29, 2007) for a 3-year period: The extension of payment adjustments at § 412.534 to “grandfathered LTCHs” (a long term care hospital identified by the amendment made by section 4417(a) of Pub. L. 105–33); and the payment adjustment at § 412.536 to “freestanding” LTCHs. In addition, the new law provides that the Secretary shall not apply, for the 3-year period beginning on the date of enactment of the Act the revision to the SSO policy that was finalized in the rate year RY 2008 LTCH PPS final rule (72 FR 26904 and 26992) and the one-time adjustment to the payment rates provided for in § 412.523(d)(3). The statute also provides that the base rate for RY 2008 be the same as the base rate for RY 2007 (the revised base rate, however, does not apply to discharges occurring on or after July 1, 2007 and before April 1, 2008); for a 3-year moratorium (with specified exceptions) on the establishment of new LTCHs, LTCH satellites, and on the increase in the number of LTCH beds. The new law also revises in the threshold percentages for certain co-located LTCHs and LTCH satellites governed under § 412.534. Finally, the MMSEA provides for an expanded review of medical necessity for admission and continued stay at LTCHs. In this final rule, we are establishing the applicable Federal rates for RY 2009 consistent with section 1886(m)(2) of the Act as amended by MMSEA. We are also revising the regulations at § 412.523(d)(3) to change the methodology for the one-time budget neutrality adjustment and to comply with section 114(c)(4) of the MMSEA. Other policy revisions necessitated by the statutory changes of the MMSEA were addressed in separate rulemaking document and other provisions required by this new law will be addressed in the future.

B. Criteria for Classification as a LTCH

1. Classification as a LTCH

Under the existing regulations at § 412.23(e)(1) and (e)(2)(i), which implement section 1886(d)(1)(B)(iv)(I) of the Act, to qualify to be paid under the LTCH PPS, a hospital must have a provider agreement with Medicare and must have an average Medicare inpatient LOS of greater than 25 days. Alternatively, § 412.23(e)(2)(ii) states that for cost reporting periods beginning on or after August 5, 1997, a hospital that was first excluded from the PPS in 1986 and can demonstrate that at least 80 percent of its annual Medicare inpatient discharges in the 12-month cost reporting period ending in FY 1997 have a principal diagnosis that reflects a finding of neoplastic disease must have an average inpatient LOS for all patients, including both Medicare and non-Medicare inpatients, of greater than 20 days.

Section 412.23(e)(3) provides that, subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average Medicare inpatient LOS, specified under § 412.23(e)(2)(i) is calculated by dividing the total number of covered and noncovered days of stay for Medicare inpatients (less leave or pass days) by the number of total Medicare discharges for the hospital's most recent complete cost reporting period. Section 412.23 also provides that subject to the provisions of paragraphs (e)(3)(ii) through (e)(3)(iv) of this section, the average inpatient LOS specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period.

In the RY 2005 LTCH PPS final rule (69 FR 25674), we specified the procedure for calculating a hospital's inpatient average length of stay (ALOS) for purposes of classification as a LTCH. That is, if a patient's stay includes days of care furnished during two or more separate consecutive cost reporting periods, the total days of a patient's stay would be reported in the cost reporting period during which the patient is discharged (69 FR 25705). Therefore, we revised § 412.23(e)(3)(ii) to specify that, effective for cost reporting periods beginning on or after July 1, 2004, in calculating a hospital's ALOS, if the days of an inpatient stay involve days of care furnished during two or more separate consecutive cost reporting periods, the total number of days of the stay are considered to have occurred in

the cost reporting period during which the inpatient was discharged.

Fiscal intermediaries (FIs) verify that LTCHs meet the ALOS requirements. We note that the inpatient days of a patient who is admitted to a LTCH without any remaining Medicare days of coverage, regardless of the fact that the patient is a Medicare beneficiary, will not be included in the above calculation. Because Medicare would not be paying for any of the patient's treatment, data on the patient's stay would not be included in the Medicare claims processing systems. In order for both covered and noncovered days of a LTCH hospitalization to be included, a patient admitted to the LTCH must have at least 1 remaining benefit day (68 FR 34123).

The FI's determination of whether or not a hospital qualifies as an LTCH is based on the hospital's discharge data from the hospital's most recent complete cost reporting period as specified in § 412.23(e)(3) and is effective at the start of the hospital's next cost reporting period as specified in § 412.22(d). However, if the hospital does not meet the ALOS requirement as specified in § 412.23(e)(2)(i) or (ii), the hospital may provide the FI with data indicating a change in the ALOS by the same method for the period of at least 5 months of the immediately preceding 6-month period (69 FR 25676). Our interpretation of § 412.23(e)(3) was to allow hospitals to submit data using a period of at least 5 months of the most recent data from the immediately preceding 6-month period.

As we stated in the FY 2004 Hospital Inpatient Prospective Payment System (IPPS) final rule, published in the August 1, 2003, **Federal Register**, prior to the implementation of the LTCH PPS, we did rely on data from the most recently submitted cost report for purposes of calculating the ALOS (68 FR 45464). The calculation to determine whether an acute care hospital qualifies for LTCH status was based on total days and discharges for LTCH inpatients. However, with the implementation of the LTCH PPS, for the ALOS specified under § 412.23(e)(2)(i), we revised § 412.23(e)(3)(i) to only count total days and discharges for Medicare inpatients (67 FR 55970 through 55974). In addition, the ALOS specified under § 412.23(e)(2)(ii) is calculated by dividing the total number of days for all patients, including both Medicare and non-Medicare inpatients (less leave or pass days) by the number of total discharges for the hospital's most recent complete cost reporting period. As we discussed in the FY 2004 IPPS final rule, we are unable to capture the

necessary data from our existing cost reporting forms (68 FR 45464). Therefore, we notified FIs and LTCHs that until the cost reporting forms are revised, for purposes of calculating the ALOS, we will be relying upon census data extracted from Medicare Provider Analysis and Review (MedPAR) files that reflect each LTCH's cost reporting period (68 FR 45464). Requirements for hospitals seeking classification as LTCHs that have undergone a change in ownership, as described in § 489.18, are set forth in § 412.23(e)(3)(iv).

2. Hospitals Excluded From the LTCH PPS

The following hospitals are paid under special payment provisions, as described in § 412.22(c), and therefore, are not subject to the LTCH PPS rules:

- Veterans Administration hospitals.
- Hospitals that are reimbursed under State cost control systems approved under 42 CFR part 403.
- Hospitals that are reimbursed in accordance with demonstration projects authorized under section 402(a) of the Social Security Amendments of 1967 (Pub. L. 90-248) (42 U.S.C. 1395b-1) or section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92-603) (42 U.S.C. 1395b-1 (note)) (Statewide all-payer systems, subject to the rate-of-increase test at section 1814(b) of the Act).
- Nonparticipating hospitals furnishing emergency services to Medicare beneficiaries.

C. Transition Period for Implementation of the LTCH PPS

In the August 30, 2002, final rule (67 FR 55954), we provided for a 5-year transition period. During this 5-year transition period, a LTCH's total payment under the PPS was based on an increasing percentage of the Federal rate with a corresponding decrease in the percentage of the LTCH PPS payment that is based on reasonable cost concepts. However, effective for cost reporting periods beginning on or after October 1, 2006, total LTCH PPS payments are based on 100 percent of the Federal rate.

D. Limitation on Charges to Beneficiaries

In the August 30, 2002, final rule, we presented an in-depth discussion of beneficiary liability under the LTCH PPS (67 FR 55974 through 55975). In the RY 2005 LTCH PPS final rule (69 FR 25676), we clarified that the discussion of beneficiary liability in the August 30, 2002, final rule was not meant to establish rates or payments for, or define Medicare-eligible expenses. Under

§ 412.507, if the Medicare payment to the LTCH is the full LTC-DRG payment amount, as consistent with other established hospital prospective payment systems, a LTCH may not bill a Medicare beneficiary for more than the deductible and coinsurance amounts as specified under § 409.82, § 409.83, and § 409.87 and for items and services as specified under § 489.30(a). However, under the LTCH PPS, Medicare will only pay for days for which the beneficiary has coverage until the SSO threshold is exceeded. Therefore, if the Medicare payment was for a SSO case (§ 412.529) that was less than the full LTC-DRG payment amount because the beneficiary had insufficient remaining Medicare days, the LTCH could also charge the beneficiary for services delivered on those uncovered days (§ 412.507).

E. Administrative Simplification Compliance Act (ASCA) and Health Insurance Portability and Accountability Act (HIPAA) Compliance

Claims submitted to Medicare must comply with both the Administrative Simplification Compliance Act (ASCA) (Pub. L. 107-105), and Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Pub. L. 104-191). Section 3 of the ASCA requires that the Medicare Program deny payment under Part A or Part B for any expenses incurred for items or services "for which a claim is submitted other than in an electronic form specified by the Secretary." Section 1862(h) of the Act (as added by section 3(a) of the ASCA) provides that the Secretary shall waive such denial in two specific types of cases and may also waive such denial "in such unusual cases as the Secretary finds appropriate" (68 FR 48805). Section 3 of the ASCA operates in the context of the HIPAA regulations, which include, among other provisions, the transactions and code sets standards requirements codified as 45 CFR parts 160 and 162, subparts A and I through R (generally known as the Transactions Rule). The Transactions Rule requires covered entities, including covered health care providers, to conduct certain electronic healthcare transactions according to the applicable transactions and code sets standards.

II. Summary of the Provisions of This Final Rule

The RY 2009 proposed rule appeared in the **Federal Register** (73 FR 5342) on January 29, 2008. We received 18 timely items of correspondence on the proposed rule that we respond to in the appropriate sections of this final rule. We also received one comment that

addressed our policy on satellites of LTCHs that is beyond the scope of this regulation. Also beyond the scope of this regulation was a comment directed to our interpretation of the “25 percent threshold policy” revisions, one of the requirements specified in 114 of the MMSEA, provisions of which will be addressed in a future rulemaking.

In this final rule, we are revising the LTCH PPS payment rate update cycle and making other policy changes and clarifications. The following is a summary of the major areas that we are addressing in this final rule.

In section III. of this final rule, we discuss the LTCH PPS patient classification and the relative weights which are linked to the annual adjustments of the acute care hospital inpatient DRG system, and are based on the annual revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM) codes effective each October 1. In this section, we also summarize the severity adjusted MS-LTC-DRGs and the development of the relative weights for FY 2008 as established in the FY 2008 IPPS final rule with comment period as well as the proposed update to the MS-LTC-DRGs and relative weights for FY 2009 presented in the FY 2009 IPPS proposed rule.

In section IV.B. of this final rule, we are extending the rate year cycle for RY 2009 to a 15-month period, from July 1, 2008 through September 30, 2009. We will continue to have an update to the MS-LTC-DRG classifications and weights effective for October 1, 2008. We are consolidating the annual update to the payment rates and the update of the MS-LTC classifications and weights beginning October 1, 2009.

As discussed in section IV.E.2. of this final rule, we are establishing a 2.7 percent update to the LTCH PPS Federal rate for the 2009 LTCH PPS rate year based on the most recent market basket estimate for the 15-month 2009 LTCH PPS rate year and an adjustment to account for improvements in coding and documentation. Also in section IV. of this final rule, we discuss the prospective payment rate for RY 2009.

In section IV. D. of this final rule, we discuss the possible one-time adjustment to the Federal payment rate under § 412.523(d)(3). Consistent with section 114(c)(4) of MMSEA, we did not propose any adjustment under § 412.523(d)(3). However, at this time, we are revising the regulations to clarify the objectives of the possible one-time adjustment, to more precisely reflect the methodology, and to reflect the requirements of section 114(c)(4) of the MMSEA to the regulatory text.

In section V. of this final rule, we discuss the updates to the payment rates, including the revisions to the wage index, the labor-related share, the cost-of-living adjustment (COLA) factors, and the outlier threshold, for the 2009 LTCH PPS rate year.

In section VI. of this final rule, we discuss our on-going monitoring protocols under the LTCH PPS.

In section VIII. of this final rule, we discuss Research Triangle Institute’s (RTI) analysis relating to the development of LTCH patient-and facility-level criteria.

In section IX. of this final rule, we are finalizing the revision to the effective date of cost reporting periods for electronic submission of cost reports for certain entities.

In section XI. of this final rule, we analyze the impact of the changes established in this final rule on Medicare expenditures, Medicare-participating LTCHs, and Medicare beneficiaries.

III. Medicare Severity Long-Term Care Diagnosis-Related Group (MS-LTC-DRG) Classifications and Relative Weights

A. Background

Section 123 of the BBRA requires that the Secretary implement a PPS for LTCHs (that is, a per-discharge system with a DRG-based patient classification system reflecting the differences in patient resources and costs). Section 307(b)(1) of the BIPA modified the requirements of section 123 of the BBRA by requiring that the Secretary examine “the feasibility and the impact of basing payment under such a system (the LTCH PPS) on the use of existing (or refined) hospital DRGs that have been modified to account for different resource use of LTCH patients, as well as the use of the most recently available hospital discharge data.”

When the LTCH PPS was implemented for cost reporting periods beginning on or after October 1, 2002, we adopted the same DRG patient classification system (that is, the CMS DRGs) that was utilized at that time under the hospital inpatient prospective payment system (IPPS). As a component of the LTCH PPS, we refer to the patient classification system as the “LTC-DRGs.” As discussed in greater detail below, although the patient classification system used under both the LTCH PPS and the IPPS are the same, the relative weights are different. The established relative weight methodology and data used under the LTCH PPS result in LTC-DRG relative weights that reflect “the different

resource use of long-term care hospital patients consistent with the statute.”

As part of our efforts to better recognize severity of illness among patients, in the FY 2008 IPPS final rule with comment period (72 FR 47130), the Medicare Severity diagnosis related groups (MS-DRGs) and the Medicare Severity long-term care diagnosis related groups (MS-LTC-DRGs) were adopted for the IPPS and the LTCH PPS, respectively, effective October 1, 2007 (FY 2008). For a full description of the development and implementation of the MS-DRGs and MS-LTC-DRGs, see the FY 2008 IPPS final rule with comment period (72 FR 47141 through 47175 and 47277 through 47299). (We note that in that same final rule, we revised the regulations at § 412.503 to specify that for LTCH discharges occurring on or after October 1, 2007, when applying the provisions of this subpart for policy descriptions and payment calculations, all references to LTC-DRGs would be considered a reference to MS-LTC-DRGs. For the remainder of this section, we present the discussion in terms of the current MS-LTC-DRG patient classification unless specifically referring to the previous LTC-DRG patient classification system (that was in effect before October 1, 2007).) We believe the MS-DRGs (and by extension, the MS-LTC-DRGs) represent a substantial improvement over the previous CMS DRGs in their ability to differentiate cases based on severity of illness and resource consumption.

The MS-DRGs represent an increase in the number of DRGs by 207 (that is, from 538 to 745) (72 FR 47171). In addition to improving the DRG system’s recognition of severity of illness, we believe the MS-DRGs are responsive to the public comments that were made on the FY 2007 IPPS proposed rule with respect to how we should undertake further DRG reform. The MS-DRGs use the CMS DRGs as the starting point for revising the DRG system to better recognize resource complexity and severity of illness. We have generally retained all of the refinements and improvements that have been made to the base DRGs over the years that recognize the significant advancements in medical technology and changes to medical practice.

In accordance with section 123 of the BBRA as amended by section 307(b)(1) of the BIPA and § 412.515, we use information derived from LTCH PPS patient records to classify LTCH discharges into distinct MS-LTC-DRGs based on clinical characteristics and estimated resource needs. As stated above, the MS-LTC-DRGs used as the patient classification component of the

LTCH PPS correspond to the hospital inpatient MS-DRGs in the IPPS. We assign an appropriate weight to the MS-LTC-DRGs to account for the difference in resource use by patients exhibiting the case complexity and multiple medical problems characteristic of LTCHs.

In a departure from the IPPS, we use low-volume MS-LTC-DRGs (less than 25 LTCH cases) in determining the MS-LTC-DRG relative weights, since LTCHs do not typically treat the full range of diagnoses as do acute care hospitals. To manage the large number of low-volume MS-LTC-DRGs (all MS-LTC-DRGs with fewer than 25 LTCH cases), for purposes of determining the relative weights, we group low-volume MS-LTC-DRGs into 5 quintiles based on average charge per discharge. (A detailed discussion of the application of the Lewin Group "quintile" model that was used to develop the LTC-DRGs appears in the August 30, 2002, LTCH PPS final rule (67 FR 55978).) We also account for adjustments to payments for short-stay outlier (SSO) cases (that is, cases where the covered length of stay (LOS) at the LTCH is less than or equal to five-sixths of the geometric ALOS for the MS-LTC-DRG). Furthermore, we make adjustments to account for nonmonotonically increasing weights, when necessary (as described below in this section). That is, theoretically, cases under the MS LTC DRG system that are more severe require greater expenditure of medical care resources and will result in higher average charges. Therefore, in the three severity levels, weights should increase monotonically with severity, from the lowest to highest severity level.

B. Patient Classifications Into MS-LTC-DRGs

Generally, under the LTCH PPS, a Medicare payment is made at a predetermined specific rate for each discharge; that payment varies by the MS-LTC-DRG to which a beneficiary's stay is assigned. Cases are classified into MS-LTC-DRGs for payment based on the following six data elements:

- Principal diagnosis.
- Up to eight additional diagnoses.
- Up to six procedures performed.
- Age.
- Sex.
- Discharge status of the patient.

Upon the discharge of the patient from a LTCH, the LTCH must assign appropriate diagnosis and procedure codes from the most current version of the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD-9-CM). HIPAA Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162

require that no later than October 16, 2003, all covered entities must comply with the applicable requirements of subparts A and I through R of part 162. Among other requirements, those provisions direct covered entities to use the ASC X12N 837 Health Care Claim: Institutional, Volumes 1 and 2, version 4010, and the applicable standard medical data code sets for the institutional health care claim or equivalent encounter information transaction (see 45 CFR 162.1002 and 45 CFR 162.1102). For additional information on the ICD-9-CM Coding System, refer to the FY 2008 IPPS final rule with comment period (72 FR 47241 through 47243 and 47277 through 47281). We also refer readers to the detailed discussion on correct coding practices in the August 30, 2002, LTCH PPS final rule (67 FR 55981 through 55983). Additional coding instructions and examples are published in the *Coding Clinic for ICD-9-CM*.

Medicare contractors (that is, fiscal intermediaries (FIs), now called Medicare Administrative Contractors (MACs)) enter the clinical and demographic information into their claims processing systems and subject this information to a series of automated screening processes called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before assignment into a MS-LTC-DRG can be made. During this process, the following types of cases are selected for further development:

- Cases that are improperly coded. (For example, diagnoses are shown that are inappropriate, given the sex of the patient. Code 68.69, Other and unspecified radical abdominal hysterectomy, would be an inappropriate code for a male.)
- Cases including surgical procedures not covered under Medicare. (For example, organ transplant in a nonapproved transplant center.)
- Cases requiring more information. (For example, ICD-9-CM codes are required to be entered at their highest level of specificity. There are valid 3-digit, 4-digit, and 5-digit codes. That is, code 262, Other severe protein-calorie malnutrition, contains all appropriate digits, but if it is reported with either fewer or more than 3 digits, the claim will be rejected by the MCE as invalid.)

After screening through the MCE, each claim is classified into the appropriate MS-LTC-DRG by the Medicare LTCH GROUPEr software. The Medicare GROUPEr software, which is used under the LTCH PPS, is specialized computer software, and is the same GROUPEr software program used under the IPPS. The GROUPEr

software was developed as a means of classifying each case into a MS-LTC-DRG on the basis of diagnosis and procedure codes and other demographic information (age, sex, and discharge status). Following the MS-LTC-DRG assignment, the Medicare contractor (FI or MAC) determines the prospective payment amount by using the Medicare PRICER program, which accounts for hospital-specific adjustments. Under the LTCH PPS, we provide an opportunity for the LTCH to review the MS-LTC-DRG assignments made by the Medicare contractor and to submit additional information within a specified timeframe as specified in § 412.513(c).

The GROUPEr software is used both to classify past cases to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the MedPAR file. The data in this file are used to evaluate possible MS-DRG classification changes and to recalibrate the MS-DRG and MS-LTC-DRG relative weights during CMS' annual update under both the IPPS (§ 412.60(e)) and the LTCH PPS (§ 412.517), respectively. As discussed in greater detail in section III.D. of this preamble, with the implementation of section 503(a) of the MMA, there is the possibility that one feature of the GROUPEr software program may be updated twice during a Federal FY (FFY) (October 1 and April 1) as required by the statute for the IPPS (69 FR 48954 through 48957). The use of the ICD-9-CM code set is also compliant with the current requirements of the Transactions and Code Sets Standards regulations at 45 CFR parts 160 and 162, published in accordance with HIPAA.

C. Organization of the MS-LTC-DRGs

The MS-DRGs (used under the IPPS) and the MS-LTC-DRGs (used under the LTCH PPS) are based on the CMS DRG structure. As noted above in this section, we refer to the DRGs under the LTCH PPS as MS-LTC-DRGs although they are structurally identical to the DRGs used under the IPPS. The MS-DRGs are organized into 25 major diagnostic categories (MDCs), most of which are based on a particular organ system of the body; the remainder involve multiple organ systems (such as MDC 22, Burns). Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are assigned based on a surgical hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures by resource intensity. The

GROUPEr software program does not recognize all ICD-9-CM procedure codes as procedures affecting DRG assignment, that is, procedures which are not surgical (for example, EKG), or minor surgical procedures (for example, 86.11, Biopsy of skin and subcutaneous tissue).

In developing Version 25.0 of the GROUPEr program (the FY 2008 MS-DRGs), the diagnoses comprising the CC list were completely redefined. The revised CC list is primarily comprised of significant acute disease, acute exacerbations of significant chronic diseases, advanced or end stage chronic diseases, and chronic diseases associated with extensive debility. In general, most chronic diseases were not included on the revised CC list. For a patient with a chronic disease, a significant acute manifestation of the chronic disease was required to be present and coded for the patient to be assigned a CC.

In addition to the revision of the CC list, each CC was also categorized as a major CC (MCC) or a CC based on relative resource use. Approximately 12 percent of all diagnoses codes were classified as a major CC (MCC), 24 percent as a CC, and 64 percent as a non CC. Diagnoses closely associated with mortality (ventricular fibrillation, cardiac arrest, shock, and respiratory arrest) were assigned as an MCC if the patient lived but as a non CC if the patient died.

The MCC, CC, and non CC categorization was used to subdivide the surgical and medical DRGs into up to three levels, with a case being assigned to the most resource intensive level (for example, a case with two secondary diagnoses that are categorized as an MCC and a CC is assigned to the MCC level). To create the MS-DRGs (and by extension, the MS-LTC-DRGs) individual DRGs were subdivided into three, two, or one level, depending on the CC impact on resources used for those cases.

As noted above in this section, further information on the development and implementation of the MS-DRGs and MS-LTC-DRGs can be found in the FY 2008 IPPS final rule with comment period (72 FR 47138 through 47175 and 47277 through 47299).

D. Method for Updating the MS-LTC-DRG Classifications and Relative Weights

1. Background

Under the LTCH PPS, relative weights for each MS-LTC-DRG are a primary element used to account for the variations in cost per discharge and

resource utilization among the payment groups (that is, the MS-LTC-DRGs). To ensure that Medicare patients classified to each MS-LTC-DRG have access to an appropriate level of services and to encourage efficiency, each year based on the best available data, we calculate a relative weight for each MS-LTC-DRG that represents the resources needed by an average inpatient LTCH case in that MS-LTC-DRG. For example, cases in a MS-LTC-DRG with a relative weight of 2 will, on average, cost twice as much as cases in a MS-LTC-DRG with a relative weight of 1. Under § 412.517, the MS-LTC-DRG classifications and weighting factors (that is, relative weights) are adjusted annually to reflect changes in factors affecting the relative use of LTCH resources, including treatment patterns, technology and number of discharges.

In the June 6, 2003 LTCH PPS final rule (68 FR 34122 through 34125), we changed the LTCH PPS annual payment rate update cycle to be effective July 1 through June 30 instead of October 1 through September 30. In addition, because the patient classification system utilized under the LTCH PPS is the same DRG system that is used under the IPPS, in that same final rule, we explained that the annual update of the LTC-DRG classifications and relative weights will continue to remain linked to the annual reclassification and recalibration of the CMS DRGs used under the IPPS (as is the case with the MS-DRGs effective for discharges occurring on or after October 1, 2007 (see § 412.503)). Therefore, we specified that we will continue to update the LTC-DRG classifications and relative weights to be effective for discharges occurring on or after October 1 through September 30 each year. We further stated at that time that we will publish the annual proposed and final update of the LTC-DRGs in the same notice as the proposed and final update for the IPPS (69 FR 34125). (We note that in section IV.B. of this preamble, we are proposing to revise § 412.535 in order to consolidate the annual July 1 and October 1 LTCH PPS update cycles, so that beginning with FY 2010, both the annual update to the standard Federal rate (and other rate and policy changes) and the annual update to the MS-LTC-DRGs would be presented in a single **Federal Register** publication to be effective on October 1 each year.) Under existing § 412.535(b), the FY 2008 update of the LTCH PPS patient classification system and relative weights was presented in the FY 2008 IPPS final rule with comment (72 FR 47277 through 47299). For the reader's

benefit, we are providing a summary of the discussion presented in that final rule with comment in section III.D.2. of this preamble.

For FY 2008, the MS-LTC-DRG classifications and relative weights were updated based on LTCH data from the FY 2006 MedPAR file, which contained hospital bills data from the March 2007 update. The MS-LTC-DRG patient classification system for FY 2008 consists of 745 DRGs that formed the basis of the Version 25.0 GROUPEr program utilized under the LTCH PPS. The 745 MS-LTC-DRGs included two "error DRGs." As in the IPPS, we included two error DRGs in which cases that cannot be assigned to valid DRGs will be grouped. These two error DRGs are MS-LTC-DRG 998 (Principal Diagnosis Invalid as a Discharge Diagnosis) and MS-LTC-DRG 999 (Ungroupable). The other 743 MS-LTC-DRGs are the same DRGs used in the IPPS GROUPEr program for FY 2008 (Version 25.0).

In the past, the annual update to the CMS DRGs was based on the annual revisions to the ICD-9-CM codes and was effective each October 1. The ICD-9-CM coding update process was revised as discussed in greater detail in the FY 2005 IPPS final rule (69 FR 48953 through 48957). Specifically, section 503(a) of the MMA includes a requirement for updating diagnosis and procedure codes twice a year instead of the former process of annual updates on October 1 of each year. This requirement is included as part of the amendments to the Act relating to recognition of new medical technology under the IPPS. (For additional information on this provision, including its implementation and its impact on the LTCH PPS, refer to the FY 2005 IPPS final rule (69 FR 48953 through 48957) and the RY 2006 LTCH PPS final rule (70 FR 24172 through 24177).) As noted above in this section, with the implementation of section 503(a) of the MMA, there is the possibility that one feature of the GROUPEr software program may be updated twice during a FFY (October 1 and April 1) as required by the statute for the IPPS. Specifically, diagnosis and procedure codes for new medical technology may be created and added to existing DRGs in the middle of the FFY on April 1. No new MS-LTC-DRGs will be created or deleted. Consistent with our current practice, any changes to the MS-DRGs or relative weights will be made at the beginning of the next FFY (October 1). Therefore, there will not be any impact on MS-LTC-DRG payments under the LTCH PPS until the following October 1 (although the new ICD-9-CM diagnosis

and procedure codes would be recognized April 1).

As we explained in the FY 2008 IPPS final rule with comment period (72 FR 47277), annual changes to the ICD-9-CM codes historically were effective for discharges occurring on or after October 1 each year. Thus, the manual and electronic versions of the Grouper software, which are based on the ICD-9-CM codes, were also revised annually and effective for discharges occurring on or after October 1 each year. The patient classification system used under the LTCH PPS (MS-LTC-DRGs) is the same DRG patient classification system used under the IPPS, which historically had been updated annually and was effective for discharges occurring on or after October 1 through September 30 each year. We have also explained that since we do not publish a mid-year IPPS rule, we will assign any new diagnosis or procedure codes implemented on April 1 to the same DRG in which its predecessor code was assigned, so that there will be no impact on the DRG assignments until the following October 1. Any coding updates will be available through the Web sites provided in section II.G.10. of the preamble of the FY 2008 IPPS final rule with comment period (72 FR 47241 through 47243) and through the Coding Clinic for ICD-9-CM. Publishers and software vendors currently obtain code changes through these sources to update their code books and software system. If new codes are implemented on April 1, revised code books and software systems, including the Grouper software program, will be necessary because we must use current ICD-9-CM codes. Therefore, for purposes of the LTCH PPS, because each ICD-9-CM code must be included in the Grouper algorithm to classify each case into a MS-LTC-DRG, the Grouper software program used under the LTCH PPS would need to be revised to accommodate any new codes.

At the September 2007 ICD-9-CM C&M Committee meeting, there were no compelling requests for an April 1, 2008 implementation of new ICD-9-CM codes, and therefore, we expect that the next update to the ICD-9-CM coding system will not occur until October 1, 2008 (FY 2009). Therefore, we expect that the ICD-9-CM coding set implemented on October 1, 2007, will continue through September 30, 2008 (FY 2008). The next update to the MS-LTC-DRGs and relative weights for FY 2009 will be presented in the FY 2009 IPPS proposed and final rules.

2. FY 2008 MS-LTC-DRG Relative Weights

In accordance with § 412.523(c), we adjust the LTCH PPS standard Federal rate by the MS-LTC-DRG relative weights in determining payment to LTCHs for each case. Relative weights for each MS-LTC-DRG are a primary element used to account for the variations in cost per discharge and resource utilization among the payment groups as described in § 412.515. To ensure that Medicare patients who are classified to each MS-LTC-DRG have access to services and to encourage efficiency, we calculate a relative weight for each MS-LTC-DRG that represents the resources needed by an average inpatient LTCH case in that MS-LTC-DRG. For example, cases in a MS-LTC-DRG with a relative weight of 2 will, on average, cost twice as much as cases in a MS-LTC-DRG with a weight of 1.

As we discussed in the FY 2008 IPPS final rule with comment period (72 FR 47282), the MS-LTC-DRG relative weights effective under the LTCH PPS for Federal FY 2008 were calculated using the March 2007 update of FY 2006 MedPAR data which contains hospital bills received through March 31, 2007, and Version 25.0 of the Grouper software.

LTCHs often specialize in certain areas, such as ventilator-dependent patients and rehabilitation or wound care. Some case types (DRGs) may be treated, to a large extent, in hospitals that have relatively high or relatively low charges. Distribution of cases with relatively high (or low) charges in specific MS-LTC-DRGs has the potential to inappropriately distort the measure of average charges. To account for the fact that cases may not be randomly distributed across LTCHs, we use a hospital-specific relative value (HSRV) method to calculate relative weights. We believe this method removes this hospital-specific source of bias in measuring average charges. Specifically, we reduce the impact of the variation in charges across providers on any particular MS-LTC-DRG relative weight by converting each LTCH's charge for a case to a relative value based on that LTCH's average charge. (See the FY 2008 IPPS final rule with comment period for further information on the application of the HSRV methodology under the LTCH PPS (72 FR 47282).)

To account for MS-LTC-DRGs with low volume (that is, with fewer than 25 LTCH cases), we grouped those "low volume" MS-LTC-DRGs into 1 of 5 categories (quintiles) based on average charges for the purposes of determining

relative weights. Each of the low volume MS-LTC-DRGs grouped to a specific quintile received the same relative weight and ALOS using the formula applied to the regular MS-LTC-DRGs (25 or more cases). (See the FY 2008 IPPS final rule with comment period for further explanation of the development and composition of each of the 5 low volume quintiles for FY 2008 (72 FR 47283 through 47288).)

After grouping the cases in the appropriate MS-LTC-DRG, generally, we calculated the relative weights by first removing statistical outliers and cases with a LOS of 7 days or less. Next, we adjusted the number of cases remaining in each MS-LTC-DRG for the effect of SSO cases under § 412.529. The short-stay adjusted discharges and corresponding charges were used to calculate "relative adjusted weights" in each MS-LTC-DRG using the HSRV method. In determining the FY 2008 MS-LTC-DRG relative weights, we also made adjustments, as necessary, to adjust for nonmonotonicity for the severity levels within a specific base MS-LTC-DRG. (Refer to the FY 2008 IPPS final rule with comment period for further information on the treatment of severity levels and adjustments for nonmonotonically increasing relative weights for FY 2008 (72 FR 47282 through 47283 and 47293 through 47295).) Furthermore, we determined FY 2008 MS-LTC-DRG relative weights for the 185 MS-LTC-DRGs for which there were no LTCH cases in the database (that is, LTCH claims from the FY 2006 LTCH MedPAR files). (A list of the FY 2008 "no-volume" MS-LTC-DRGs and further explanation of their FY 2008 relative weight assignment can be found in the FY 2008 IPPS final rule with comment period (72 FR 47289 through 47293).)

In adopting the MS-LTC-DRGs beginning in FY 2008, we established a 2-year transition. Specifically, for FY 2008, the first year of the transition, 50 percent of the relative weight for a MS-LTC-DRG is based on the average LTC-DRG relative weight under Version 24.0 of the LTC-DRG Grouper. The remaining 50 percent of the relative weight is based on the MS-LTC-DRG relative weight under Version 25.0 of the MS-LTC-DRG Grouper. (See the FY 2008 IPPS final rule with comment period (72 FR 47295) for additional details on the methodology used to determine the transition blended MS-LTC-DRG relative weights for FY 2008.)

In the FY 2008 LTCH PPS final rule (72 FR 26882), under the broad authority conferred upon the Secretary under section 123 of Pub. L. 106-113 as amended by section 307(b) of Pub. L.

106–554 to develop the LTCH PPS, we established that beginning with the update for FY 2008, the annual update to the MS–LTC–DRG classifications and relative weights will be done in a budget neutral manner such that estimated aggregate LTCH PPS payments would be unaffected, that is, would be neither greater than nor less than the estimated aggregate LTCH PPS payments that would have been made without the MS–LTC–DRG classification and relative weight changes. Historically, we had not updated the LTC–DRGs in a budget neutral manner because we believed that past fluctuations in the relative weights were primarily due to changes in LTCH coding practices rather than changes in patient severity. In light of the most recently available LTCH claims data at that time, which indicated that LTCH claims data no longer appeared to significantly reflect changes in LTCH coding practices in response to the implementation of the LTCH PPS, we believed that, beginning with FY 2008, it is appropriate to update the MS–LTC–DRGs in a budget neutral manner (that is, so that estimated aggregate LTCH PPS payments will neither increase nor decrease). Accordingly, in that same final rule with comment period, we established under § 412.517(b) that the annual update to the MS–LTC–DRG classifications and relative weights be done in a budget neutral manner. (As noted above in section III.A. of this preamble, we revised the regulations at § 412.503 to specify that “MS–LTC–DRG” is used in place of “LTC–DRG” for discharges occurring on or after October 1, 2007.) Consistent with that provision, we updated the MS–LTC–DRG classifications and relative weights for FY 2008 based on the most recent available data and included a budget neutrality adjustment. For further details on the methodology and calculation of the FY 2008 MS–LTC–DRG budget neutrality factor, refer to the FY 2008 IPPS final rule with comment period (72 FR 47295 through 47296).

Table 11 of the Addendum to the FY 2008 IPPS final rule with comment period lists the MS–LTC–DRGs and their respective transition blended budget neutral relative weights, geometric mean LOS, “short-stay outlier threshold” (that is, five-sixths of the geometric mean LOS), and the “IPPS Comparable Threshold” (that is, the IPPS geometric average length of stay plus one standard deviation) for each MS–LTC–DRG for FY 2008 (see (72 FR 48143 through 48157), and the technical correction made in the October 10, 2007 correction notice (72 FR 57733), which

has been reprinted in Table 3 of the Addendum of this final rule for convenience).

As we noted previously in this section, there were no new ICD–9–CM code requests for an April 1, 2008 update. Therefore, Version 25.0 of the MS–DRG GROUPE software established in the FY 2008 IPPS final rule with comment period will continue to be effective until October 1, 2008. Moreover, the MS–LTC–DRGs and relative weights for FY 2008 established in Table 11 of that same IPPS final rule with comment period (78 FR 48143 through 48157) will continue to be effective until October 1, 2008 (just as they would have been even if there had been any new ICD–9–CM code requests for an April 1, 2008 update). We note that Table 11 was corrected in the FY 2008 IPPS correction notice that appeared in the October 10, 2007 **Federal Register** (72 FR 57733) and is hereinafter referred to as the second FY 2008 IPPS correction notice. Accordingly, Table 3 in the Addendum of this final rule lists the MS–LTC–DRGs and their respective relative weights, geometric ALOS and “Short-Stay Outlier Threshold” that we will continue to use for the period of July 1, 2008 through September 30, 2009. (As noted above, this table is the same as Table 11 of the Addendum to the FY 2008 IPPS final rule with comment period, including the technical correction made in the second FY 2008 IPPS correction notice (72 FR 57733), which has been reprinted in Table 3 of the Addendum of this final rule for the reader’s convenience.)

The next proposed update to the ICD–9–CM coding system was presented in the FY 2009 IPPS proposed rule (and there were no April 1, 2008 updates to the ICD–9–CM coding system). In addition, the proposed MS–DRGs and GROUPE for FY 2009 that would be used for the IPPS and the LTCH PPS, effective October 1, 2008, and the proposed update to the MS–LTC–DRG relative weights for FY 2009 were presented in the recently published IPPS FY 2009 proposed rule (see 73 FR 23590 through 23608). The proposed MS–LTC–DRGs and their respective proposed relative weights, geometric ALOS and “Short-Stay Outlier Threshold” that would be effective October 1, 2008 through September 30, 2009 are presented in Table 11 to the Addendum of the FY 2009 IPPS proposed rule (73 FR 23891 through 23905).

IV. Changes to the LTCH PPS Payment Rates and Other Changes for the 2009 LTCH PPS Rate Year

A. Overview of the Development of the Payment Rates

The LTCH PPS was effective beginning with a LTCH’s first cost reporting period beginning on or after October 1, 2002. Effective with that cost reporting period, LTCHs are paid, during a 5-year transition period, a total LTCH prospective payment that is comprised of an increasing proportion of the LTCH PPS Federal rate and a decreasing proportion based on reasonable cost-based principles, unless the hospital makes a one-time election to receive payment based on 100 percent of the Federal rate, as specified in § 412.533. New LTCHs (as defined at § 412.23(e)(4)) are paid based on 100 percent of the Federal rate, with no phase-in transition payments.

The basic methodology for determining LTCH PPS Federal prospective payment rates is set forth at § 412.515 through § 412.536. In this section, we discuss the factors that would be used to update the LTCH PPS standard Federal rate for the 2009 LTCH PPS rate year that would be effective for LTCH discharges occurring on or after July 1, 2008 through September 30, 2009. When we implemented the LTCH PPS in the August 30, 2002 LTCH PPS final rule (67 FR 56029 through 56031), we computed the LTCH PPS standard Federal payment rate for FY 2003 by updating the latest available (FY 1998 or FY 1999) Medicare inpatient operating and capital cost data, using the excluded hospital market basket.

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs be budget neutral for the initial year of implementation. Therefore, in calculating the standard Federal rate under § 412.523(d)(2), we set total estimated LTCH PPS payments equal to estimated payments that would have been made under the reasonable cost-based payment methodology had the LTCH PPS not been implemented. Section 307(a)(2) of the BIPA specified that the increases to the target amounts and the cap on the target amounts for LTCHs for FY 2002 provided for by section 307(a)(1) of the BIPA shall not be considered in the development and implementation of the LTCH PPS. Section 307(a)(2) of the BIPA also specified that enhanced bonus payments for LTCHs provided for by section 122 of BBRA were not to be taken into account in the development and implementation of the LTCH PPS.

Furthermore, as specified at § 412.523(d)(1), the initial standard

Federal rate was reduced by an adjustment factor to account for the estimated proportion of outlier payments under the LTCH PPS to total estimated LTCH PPS payments (8 percent). For further details on the development of the FY 2003 standard Federal rate, see the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037), and for subsequent updates to the LTCH PPS Federal rate, refer to the following final rules: RY 2004 LTCH PPS final rule (68 FR 34134 through 34140), RY 2005 LTCH PPS final rule (69 FR 25682 through 25684), RY 2006 LTCH PPS final rule (70 FR 24179 through 24180), RY 2007 LTCH PPS final rule (71 FR 27819 through 27827), and RY 2008 LTCH PPS final rule (72 FR 26870 through 27029).

B. Consolidation of the Annual Updates for Payment and MS-LTC-DRG Relative Weights to One Annual Update

In the August 30, 2002 final rule implementing the LTCH PPS, we established a schedule at § 412.535 for publishing information pertaining to the LTCH PPS. That schedule set a publication date of “on or before August 1 prior to the beginning of each Federal Fiscal Year (FFY),” which coincided with the statutorily mandated publication schedule for the IPPS (67 FR 55954). In the June 6, 2003 LTCH PPS final rule, we revised this schedule in § 412.535 to provide that

“(a) Information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of each long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(b) Information on the LTC-DRG classification and associated weighting factors is published on or before August 1 prior to the beginning of each Federal fiscal year.”

At the time, we explained that the LTC-DRG patient classifications used by the LTCH PPS for FY 2003 are based directly on the same version of DRGs used by the IPPS, that is, Grouper 20 (68 FR 34126). As discussed above in section III of this final rule, effective for LTCH PPS discharges occurring on or after October 1, 2007, all references to LTC-DRGs and DRGs in the existing regulations are understood to represent MS-LTC-DRGs. This is addressed in the regulations at § 412.503. Therefore, we did not make any changes to the timing for the annual update for LTC-DRG classifications and relative weights. The annual update to the DRG classifications and relative weights continues to be

published on a FFY cycle, as is the update of the acute care hospital IPPS DRG system. In changing the payment rate update schedule for the LTCH PPS, it was our intent to avoid concurrent publications of the annual updates for these two significant payment systems for purposes of administrative feasibility and efficiency. With this in mind, we changed the effective date for the annual update of the LTCH PPS payment rate from October 1 to July 1 of each year beginning with July 1, 2003. We believed this change would help use our limited resources effectively and facilitate a timely publication of both the IPPS and LTCH PPS proposed and final rules. Thus, currently the annual update of the LTCH PPS Federal rates does not coincide with the start of the FFY, but rather, are effective prior to the Federal FY.

In the RY 2009 LTCH PPS proposed rule (73 FR 5351 through 5352), we proposed a change to the current schedule for the annual updates of the LTCH PPS Federal payment rates to consolidate the rulemaking cycle for the annual update of the LTCH PPS. Under our proposed policy, the annual update to the LTCH PPS Federal payment rates along with the description of the methodology and data used to calculate these payment rates, and the annual updating of the MS-LTC-DRG classifications and associated weighting factors for LTCHs would occur on the same schedule and appear in the same publication. Therefore, under our proposed policy, the updates to the rates and the weights would both be effective on October 1 (on a Federal fiscal year schedule). Consequently, under this proposal the annual updates to the LTCH PPS Federal rates would no longer be published with a July 1 effective date.

We received several comments on our proposal to consolidate the annual payment rate and MS-LTC-DRG update schedules of the LTCH PPS to an October 1 through September 30 cycle, which are summarized below.

Comment: A large number of commenters, including MedPAC, agree with and strongly support our proposal to consolidate the LTCH rulemaking cycle to a single, annual rulemaking that corresponds with the IPPS annual update effective October 1 each year. In addition, many of these same commenters endorsed our proposal to extend the 2009 rate year by 3 months, allowing for a 15-month rate period (July 1, 2008 through September 30, 2009), rather than having a 3-month period followed by a 12-month rate year to transition from a July 1 to an October 1 update cycle. Commenters considered

this proposal to be a reasonable one, and that a 15-month rate year would create an appropriate transition to an October 1 update by allowing for stability in the LTCH PPS payment rates. Commenters noted that a 3-month rate year followed by a 12-month rate year would be unduly burdensome. We received no comments in opposition to our proposal to consolidate the LTCH rulemaking cycles. However, we received many comments on our proposed update to the Federal rate for the 15-month RY 2009. One commenter suggested that CMS should include an inflationary update to address the 3 additional months.

Although supportive of the proposal to consolidate the LTCH rulemaking cycles to be effective October 1, two commenters expressed concern that CMS had not provided a description of how this combined rulemaking would be accomplished. Other commenters believe that there could be confusion between LTCH PPS payment policy changes and IPPS payment policy changes if the annual rulemaking for the LTCH PPS were to be combined with the annual IPPS rulemaking. Consequently, these commenters recommended that the LTCH PPS rule be issued either separately from the IPPS rule or as a separate component within the IPPS rule to allow for easier accessibility and the ability to more accurately assess policy impacts on the LTCH PPS.

Response: We appreciate the positive responses to our proposal to consolidate the annual July 1 update for payment rates and the October 1 update for MS-LTC-DRG weights to a single annual update effective October 1, as well as the positive responses with regard to our proposal to extend the 2009 rate year for another 3 months; that is, from July 1, 2008 to September 30, 2009. We are finalizing these provisions in this final rule.

In response to several commenters' concerns that we had not provided sufficient details concerning the consolidation; that is, the manner in which we actually plan to produce the documents for the annual rulemaking for the LTCH PPS relative to the annual IPPS rulemaking, we are continuing to evaluate the commenters' suggestions concerning whether the LTCH PPS proposed and final rules should be included as part of the proposed and final IPPS publications or whether it would be more appropriate for there to be two separate publications—one for the proposed and final IPPS rules and the other for the proposed and final LTCH PPS rules. Any decision that we make must take into consideration many

factors, including administrative feasibility and budgetary impact, that would affect the development and production of the annual rulemaking for the LTCH PPS and the IPPS. We do want to emphasize, however, that if the decision is made to produce the LTCH PPS rulemaking and the IPPS rulemaking in the same "package," we would make every effort to clearly identify the LTCH PPS sections and differentiate those from the sections that only deal with the IPPS to avoid any confusion between LTCH PPS payment policy changes and IPPS payment policy changes. (We note that each of our regulations includes a title and a summary of its contents so the public can easily identify the material that applicable to LTCHs, including any material in a combined IPPS/LTCH PPS package. We also note that presently we publish the annual update to the MS-LTC-DRG classifications and relative weights as well as other payment policy changes to excluded IPPS hospitals (such as HwHs) in the IPPS proposed and final rules with no discernible confusion on the part of the public. Therefore, we believe the public would be able to easily recognize those portions of a combined package that pertain to the LTCH PPS.

In response to the commenter who suggested that we include an inflationary update to address the 3 additional months for purposes of the consolidation, we would note that this issue is discussed in the summary of the comments and responses on the proposed 15-month RY 2009 market basket estimate in section IV.C. of the preamble of this final rule. The summary of the comments and responses on our proposed update to the Federal rate for the 15-month RY 2009 can be found in section IV.E.2. of this preamble.

After reviewing the public comments, we are finalizing our proposal to change the current schedule for the annual updates of the LTCH PPS Federal payment rates in this final rule. We are consolidating the rulemaking cycle for the annual update of the LTCH PPS Federal payment rates and description of the methodology and data used to calculate these payment rates, with the annual updating of the MS-LTC-DRG classifications and associated weighting factors for LTCHs so that the updates to the rates and the weights would both be effective on October 1 each Federal fiscal year. Under this change, the annual updates to the LTCH PPS Federal rates would no longer be published with a July 1 effective date.

We believe that it is important to note that our revision to the existing

rulemaking cycle is a result of comments on prior rules, as well as recent input from the LTCH industry, as well as consideration of our resources. After further consideration of those comments and concerns, we agree that having the effective date of the annual update of the LTCH PPS Federal payment rates on July 1 of each year while retaining the October 1 effective date for updating LTC-DRG classifications and weights has proved both burdensome and time-consuming for all parties involved. We are aware that a consolidated update that we are finalizing will be resource intensive, but it will eliminate some duplicative resource use. For example, some of our resources used for the payment simulations that are used to estimate LTCH PPS payments for purposes of the respective impact analyses are duplicated for the annual LTCH PPS rate update and the annual MS-LTC-DRG update. Furthermore, the data used for LTCH PPS payment rate update impact analysis are also used in the annual MS-LTC-DRG. This consolidation of the rulemaking cycle will allow us to use the same information simultaneously for both these analyses. Moreover, we understand the concern that there are increased costs involved in updating the billing systems of LTCHs to accommodate two separate updates, one for the Federal rate and one for the DRG weights, in the same cost reporting period. We also considered the possibility that two separate updates could increase the potential for calculating payment errors under the LTCH PPS.

In order to revise the payment rate update to an October 1 through September 30 period, as proposed, we will extend the 2009 rate period to September 30, 2009 such that RY 2009 will be 15 months. This 15-month rate period will extend from July 1, 2008 through September 30, 2009. We believe that the additional 3 months to RY 2009 (July, August, and September) will provide for a smooth transition to a consolidated annual update for both the LTCH PPS payment rates and the LTCH PPS MS-LTC-DRG classifications and weighting factors. (When we developed this proposed policy, we considered the alternative of revising the payment rate update to an October 1 through September 30 period by shortening RY 2009 such that it would only be 3 months (that is, July 1, 2008 through September 30, 2008). We decided that this option would prove to be both burdensome and time consuming resulting in two payment rate changes

within a very short (3-month) period of time.)

After the 2009 rate period, the rate period for the LTCH PPS payment rate and other policy changes will be October 1 through September 30, and the annual update to the MS-LTC-DRG classifications and relative weights will continue to be effective on October 1. The October through September rate period will first begin on October 1, 2009, therefore, the next update to the LTCH PPS Federal rates after the 15-month RY 2009 will be for RY 2010. We note that, once the annual LTCH PPS rate update cycle moves to October 1 effective October 1, 2009, the LTCH PPS rate year will coincide with Federal FY beginning in 2010.

In this final rule, we are finalizing our proposed revisions to § 412.503 to redefine the LTCH PPS' rate year to mean October 1 through September 30, rather than from July 1 through June 30. We are also revising § 412.535 to reflect the change to the annual payment rate update cycle described above. The discussion of the 15-month market basket update for the 2009 rate year can be found below in sections IV.C.2. of this final rule.

C. LTCH PPS Market Basket

1. Overview of the Rehabilitation, Psychiatric and Long-Term Care (RPL) Market Basket

Historically, the Medicare program has used a market basket to account for price increases in the services furnished by providers. The market basket used for the LTCH PPS includes both operating and capital-related costs of LTCHs because the LTCH PPS uses a single payment rate for both operating and capital-related costs. The development of the initial LTCH PPS standard Federal rate for FY 2003, using the excluded hospital with capital market basket, is discussed in further detail in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56033).

In the August 30, 2002 final rule (67 FR 56016 through 56017 and 56030), which implemented the LTCH PPS, we established the use of the excluded hospital with capital market basket as the LTCH PPS market basket. The excluded hospital with capital market basket was also used to update the limits on LTCHs' operating costs for inflation under the TEFRA reasonable cost-based payment system. We explained that we believe the use of the excluded hospital with capital market basket to update LTCHs' costs for inflation was appropriate because the excluded hospital market basket (with a capital component) measures price

increases of the services furnished by excluded hospitals, including LTCHs. For further details on the development of the excluded hospital with capital market basket, see the RY 2004 LTCH PPS final rule (68 FR 34134 through 34137).

In the RY 2007 LTCH PPS final rule (71 FR 27810), we noted that based on our research, we did not develop a market basket specific to LTCH services. We are still unable to create a separate market basket specifically for LTCHs due to the small number of facilities and the limited amount of data that is reported (for instance, only approximately 15 percent of LTCHs reported contract labor cost data for 2002). In that same final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, we adopted the RPL market basket as the appropriate market basket of goods and services under the LTCH PPS for discharges occurring on or after July 1, 2006. Specifically, beginning with the 2007 LTCH PPS rate year, for the LTCH PPS, we adopted the use of the RPL market basket which is based on FY 2002 cost report data. We choose to use the FY 2002 Medicare cost report data because it was the most recent, relatively complete cost data for inpatient rehabilitation facilities (IRFs), inpatient psychiatric facilities (IPFs), and LTCHs available at the time of rebasing.

The RPL market basket is determined based on the operating and capital costs of IRFs, IPFs and LTCHs. All IRFs are currently paid under the IRF PPS Federal payment rate, all LTCHs are currently paid 100 percent of the standard Federal rate under the LTCH PPS, and most IPFs are transitioning to payment based on 100 percent of the Federal per diem payment amount under the IPF PPS. Payments to IPFs will be based exclusively on 100 percent of the Federal rate for cost reporting periods beginning on or after January 1, 2008. As we explained in that same final rule, we believe a market basket based on the data of IRFs, IPFs and LTCHs is appropriate to use under the LTCH PPS since it is the best available data that reflects the cost structures of LTCHs.

For further details on the development of the RPL market basket, including the methodology for determining the operating and capital portions of the RPL market basket, see the RY 2007 LTCH PPS final rule (71 FR 27810 through 27817).

2. Market Basket Estimate for the 2009 LTCH PPS Rate Year

As discussed in greater detail above in this section, for the 2009 LTCH PPS rate year, we are consolidating the current LTCH PPS rate year (payment rates and other policy changes) update and fiscal year MS-LTC-DRG update into one annual update cycle. Therefore, the next payment rate update cycle would be effective July 1, 2008 through September 30, 2009 extending the next rate year update by 3 months representing a 15-month period for the RY 2009 rate. Accordingly, for the 2009 LTCH PPS rate year, we proposed to use a 15-month (that is, July 1, 2008 through September 30, 2009) estimate of the RPL market basket based on the best available data.

Consistent with our historical practice, we estimate the RPL market basket update based on Global Insight, Inc.'s forecast using the most recent available data. Global Insight, Inc. is a nationally recognized economic and financial forecasting firm that contracts with CMS to forecast the components of CMS' market baskets. To determine a 15-month market basket update for RY 2009, as we discussed in the proposed rule, we calculate the 5-quarter moving average index level for July 1, 2008 through September 30, 2009 and the 4-quarter moving average index level for July 1, 2007 through June 30, 2008. The percent change in these two values represents the 15-month market basket update.

In the RY 2009 proposed rule (73 FR 5352), based on Global Insight's 4th quarter 2007 forecast with history through the 3rd quarter of 2007, we proposed a 15-month market basket estimate of 3.5 percent for the proposed 15-month 2009 LTCH PPS rate year. In that same proposed rule, we also proposed that if more recent data were available, we would use it to determine the RY 2009 market basket update in the final rule. Consistent with our historical practice to use the most recent estimate of the RPL market basket available for the final rule, the most recent estimate of the RPL market basket for July 1, 2008 through September 30, 2009, based on Global Insight's 1st quarter 2008 forecast with history through the 4th quarter of 2007, is 3.6 percent. As we proposed and as noted above, we determine this 15-month market basket update by calculating the 5-quarter moving average index level for July 1, 2008 through September 30, 2009 and the 4-quarter moving average index level for July 1, 2007 through June 30, 2008. The percent change in these two values represents the 15-month market basket update for

RY 2009. We note that, based on the most recent available data, if we were not consolidating the two annual LTCH PPS payment system updates by extending the 2009 LTCH PPS rate year by 3 months, the market basket estimate for a 12-month RY 2009 is 3.2 percent, based on the most recent estimate of the 12-month RPL market basket for July 1, 2008 through June 30, 2009. We determined this 12-month market basket estimate based on the method stated in the proposed rule (see 73 FR 5353).

Comment: We received one comment on the 15-month market basket estimate for RY 2009 that we presented in the proposed rule, which suggested that the proposed market basket update for RY 2009 does not include an inflationary update factor to address the additional 3 months that would result from the proposal to extend the 2009 rate year through September 30, 2009.

Response: We disagree with the comment that the proposed market basket update of 3.5 percent does not reflect the entire 15-month period. The proposed RY 2009 3.5 percent market basket estimate as well as the RY 2009 3.6 percent market basket estimate we are establishing in this final rule as based on the forecasted increase in the LTCH PPS market basket (that is, the RPL market basket) to account for projected inflation for the entire 15-month RY 2009, which includes the additional 3 months that results from extending RY 2009 to move the annual rate update period from July 1 to October 1. As discussed in the proposed rule (73 FR 5352) and as reiterated above, we determined the 15-month market basket by calculating two average index levels: (1) the 5-quarter moving average index level for July 1, 2008 through September 30, 2009; and (2) the 4-quarter moving average index level for July 1, 2007 through June 30, 2008. The percent change in these two values represents the 15-month market basket estimate. By including the 3-month period of July 1, 2009 through September 30, 2009 in the first average index level calculated, we are capturing inflationary pressures for these 3 months. In comparison, if we were calculating only a 12-month market basket estimate for the period July 1, 2008 through June 30, 2009, we instead would calculate the 4-quarter moving average index level for July 1, 2008 through June 30, 2009 and the 4-quarter moving average index level for July 1, 2007 through June 30, 2008. The percent change in these two values represents the 12-month market basket estimate. Therefore, after our review of the public comments, we are finalizing the 15-month RPL market basket update of 3.6

percent for RY 2009, based on Global Insight's 1st quarter 2008 forecast. The update to the standard Federal rate for RY 2009 is discussed below in section IV.E. of this preamble.

D. One-time Prospective Adjustment to the Standard Federal Rate

As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56027), consistent with the statutory requirement for budget neutrality in section 123(a)(1) of the BBRA, we estimated aggregate payments under the LTCH PPS for FY 2003 to be equal to the estimated aggregate payments that would be made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the budget neutrality calculations used the best available data at the time and necessarily reflected several assumptions including costs, inflation factors and intensity of services provided. In conducting our budget neutrality calculations, we took into account the statutory requirement that certain statutory provisions that affect the level of payments to LTCHs in years prior to the implementation of the LTCH PPS shall not be taken into account in the development and implementation of the LTCH PPS. Specifically, section 307(a)(2) of the BIPA requires that the increases to the target amounts and the increases to the cap on the target amounts for LTCHs provided for by section 307(a)(1) of the BIPA (as set forth in section 1886(b)(3)(J) of the Act) and the enhanced bonus payments for LTCHs provided for by section 122 of the BBRA (as set forth in section 1886(b)(2)(E) of the Act) are not to be taken into account in the development and implementation of the LTCH PPS.

We have been monitoring payment data in order to evaluate whether there is a significant difference between the payments estimated on the basis of the data available at the time of the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037) and payment estimates based on more complete data that have become available since that time. We indicated from the inception of the LTCH PPS that it was possible for the aggregate amount of actual payments in FY 2003 to be significantly higher or lower than the estimates on which the budget neutrality calculations were based to the extent that later, more complete data differ significantly from the data that were available at the time of the original calculations.

Section 123(a)(1) of the BBRA, as amended by section 307(b) of BIPA, provides broad authority to the Secretary in developing the LTCH PPS, including the authority for establishing

appropriate adjustments. Under this broad authority to make appropriate adjustments, we provided in § 412.523(d)(3) of the regulations, for the possibility of making a one-time prospective adjustment to the LTCH PPS rates by July 1, 2008, so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the LTCH PPS rates for future years.

In the RY 2009 LTCH PPS proposed rule (72 FR 5353), based on the best available data at that time, we estimated that total Medicare program payments for LTCH services over the next 5 LTCH PPS rate years would be \$4.67 billion for the 2009 LTCH PPS rate year; \$4.82 billion for the 2010 LTCH PPS rate year; \$5.06 billion for the 2011 LTCH PPS rate year; \$5.36 billion for the 2012 LTCH PPS rate year; and \$5.73 billion for the 2013 LTCH PPS rate year.

In this final rule, consistent with the methodology established in the August 30, 2002 final rule (67 FR 56036), and based on the most recent available data, for the readers benefit, we are providing an estimate of total Medicare program payments for LTCH services for the next 5 LTCH PPS rate years in Table I. These estimates take into account the effects of changes as a result of the recent Medicare, Medicaid, and SCHIP Extension Act of 2007.

TABLE I

LTCH PPS rate year	Estimated payments (\$ in billions)
2009	4.78
2010	4.99
2011	5.14
2012	5.36
2013	5.67

In accordance with the methodology established in the August 30, 2002 LTCH PPS final rule (67 FR 56027 through 56037), these estimates are based on the most recent available data. These estimates are also based on our estimate of LTCH PPS rate year payments to LTCHs using CMS' Office of the Actuary's (OACT) most recent estimate of the RPL market basket, which is based on information from Global Insight, Inc., of 3.2 percent for the 2009 LTCH PPS rate year, 2.9 percent for the 2010 LTCH PPS rate year, 3.0 percent for the 2011 LTCH PPS rate year, and 3.2 percent for the 2012 and 2013 LTCH PPS rate years. We note that while the provisions in the MMSEA are current law and OACT develops its spending projections based on existing policy, changes that are being adopted

in this final rule, are not considered to be existing policy and therefore, are not shown in Table I. We also considered OACT's most recent projections of changes in Medicare beneficiary enrollment of -0.3 percent in the 2009 LTCH PPS rate year, 0.2 percent in the 2010 LTCH PPS rate year, 0.5 percent in the 2011 LTCH PPS rate year, 1.5 percent in the 2012 LTCH PPS rate year and, 2.5 percent in the 2013 LTCH PPS rate year. It is important to note that, while we provide these estimates of future payments under the LTCH PPS in order to provide the public with a projected estimate of payments to LTCHs, these estimates will be neither the basis for determining whether the one-time budget neutrality adjustment available under § 412.523(d)(3) of the regulations should be proposed, nor are these estimates the basis for any of the policy changes adopted in this final rule. It is also important to note that any proposal regarding the one-time budget neutrality adjustment would be based solely on the data that would be available at the time of the proposal, rather than on projections of payments under LTCH PPS for future years.

In the August 30, 2002 LTCH PPS final rule implementing the LTCH PPS (67 FR 55954), we set forth the implementing regulations, based upon the broad authority granted to the Secretary, under section 123 of the BBRA (as amended by section 307(b) of the BIPA). Section 123(a)(1) of the BBRA required that the system "maintain budget neutrality." The statute requires the LTCH PPS to be budget neutral in FY 2003, so that estimated aggregate payments under the LTCH PPS for FY 2003 should be equal to the estimated aggregate payments that would be made if the LTCH PPS were not implemented for FY 2003. The methodology for determining the LTCH PPS standard Federal rate for FY 2003 that would "maintain budget neutrality" is described in considerable detail in the August 30, 2002 final rule (67 FR 56027 through 56037). As we discussed previously in this section, our methodology for estimating payments for the purposes of budget neutrality calculations used the best available data, and necessarily reflected assumptions in estimating aggregate payments that would be made if the LTCH PPS was not implemented. In the August 30, 2002 final rule, we also stated our intention to monitor LTCH PPS payment data to evaluate whether later data varied significantly from the data available at the time of the original budget neutrality calculations (for example, data related to inflation

factors, intensity of services provided, or behavioral response to the implementation of the LTCH PPS). To the extent the later data significantly differ from the data employed in the original calculations, the aggregate amount of payments during FY 2003 based on later data may be higher or lower than the estimates upon which the budget neutrality calculations were based. In that same final rule, the Secretary exercised his broad authority in establishing the LTCH PPS and provided for the possibility of a one-time prospective adjustment to the LTCH PPS rates by October 1, 2006, in § 412.523(d)(3). This deadline was revised to July 1, 2008, in the RY 2007 LTCH PPS final rule. As we discussed in the RY 2007 LTCH PPS final rule (71 FR 27842 through 27844), because the LTCH PPS was only recently implemented, sufficient new data had not yet been generated that would enable us to conduct a comprehensive reevaluation of our budget neutrality calculations. Therefore, in that same final rule, we did not implement the one-time adjustment provided under § 412.523(d)(3) so that the effect of any significant difference between actual payments and estimated payments for the first year of the LTCH PPS would not be perpetuated in the PPS rates for future years. However, we stated that we would continue to collect and interpret new data as it became available in order to determine whether we should propose such an adjustment in the future. Therefore, we revised § 412.523(d)(3) by changing the original October 1, 2006 deadline (established in the August 30, 2002 final rule that implemented the LTCH PPS) to July 1, 2008, to postpone the possible one-time adjustment due to the time lag in the availability of Medicare data upon which a proposed adjustment would be based. We noted that there is a lag time between the submission of claims data and cost report data, and the availability of that data in the MedPAR files and HCRIS, respectively. As also explained in that same final rule, we believed that postponing the deadline of the possible one-time prospective adjustment to the LTCH PPS rates provided for in § 412.523(d)(3) to July 1, 2008, would allow our decisions regarding a possible adjustment to be based on more complete and up-to-date data. It should be noted that, in the years following the initial implementation of the LTCH PPS, we have already adopted some revised policies and adjustments to LTCH PPS payment levels. However, none of these revised policies and payment adjustments have addressed the

intended purpose of the adjustment allowed under § 412.523(d)(3) of the regulations, to ensure that any significant difference between the original estimates and calculations based on more recent data are not perpetuated in the LTCH PPS rates for future years. For example, the adjustments that we have made to account for coding changes in excess of real severity increases in RY 2007 and RY 2008 were made to account for changes in coding behavior in the years following the implementation of the LTCH PPS, and not to address any issue regarding the budget neutrality calculations that were used to establish the base rate for the LTCH PPS.

Section 114(c)(4) of MMSEA provides that the "Secretary shall not, for the 3-year period beginning on the date of the enactment of this Act, make the one-time prospective adjustment to long-term care hospital prospective payment rates provided for in § 412.523(d)(3) of title 42, Code of Federal Regulations, or any similar provision." That provision delays the effective date of any one-time budget neutrality adjustment until no earlier than December 29, 2010. Therefore, we proposed to revise § 412.523(d)(3) of the regulations to conform with this requirement.

Comment: Several commenters supported the proposed change in § 412.523(d)(3) of regulations to conform with the requirements of section 114(c)(4) of MMSEA, delaying the effective date of any one-time budget neutrality adjustment until no earlier than December 29, 2010. A few commenters disagreed with the proposed change to § 412.523(d)(3) because it did not include a specific date after which time CMS would no longer be able to implement a one-time budget neutrality as is currently specified in the regulations (that is, July 1, 2008). These commenters believe that the lack of an "end date" in the proposed change to § 412.523(d)(3) leaves LTCHs in a perpetual state of uncertainty, and therefore, recommend that CMS should specify in the regulations a reasonable date beyond which this adjustment can be made.

Response: We appreciate the commenters support of the proposed change in § 412.523(d)(3) to conform with the requirements of section 114(c)(4) of MMSEA, delaying the effective date of any one-time budget neutrality adjustment until no earlier than December 29, 2010. We understand commenters' concerns and agree that it is reasonable to include a date by which the one-time budget neutrality adjustment must be implemented in order to provide predictability in LTCH

PPS payments. In taking into account the statutory requirement that any one-time budget neutrality adjustment can be effective no earlier than December 29, 2010, and that annual updates to the LTCH PPS will be effective October 1 each year (beginning October 1, 2009, as discussed above in section IV.B. of this preamble), we believe that October 1, 2012 would allow us sufficient time after the statutorily required 3-year delay to develop, propose and finalize any one-time budget neutrality adjustment. Therefore, we are revising the regulations at § 412.523(d)(3) to delay the effective date of any one-time budget neutrality adjustment so that any such adjustment would be made no earlier than December 29, 2010, and no later than October 1, 2012. We believe that this date will allow adequate time to consider any additional comments that may arise after the MMSEA 3-year delay concerning the potential methodology we presented in the RY 2009 proposed rule without postponing indefinitely into the future any proposal for making an adjustment.

Prior to the enactment of the MMSEA, we had developed a methodology for evaluating whether to propose a one-time budget neutrality adjustment under § 412.523(d)(3) of the regulations. In order to inform the public of our thinking, and to stimulate comments for our consideration during the 3-year delay in implementing any one-time budget neutrality adjustment under the law referenced above, we discussed our analysis and its results in the proposed rule (73 FR 5356 through 5360). Evaluating the appropriateness of a possible future proposal for a one-time prospective adjustment under § 412.523(d)(3) required a thorough review of the relevant LTCH data, as we discussed in the proposed rule. When we established the FY 2003 standard Federal rate in a budget neutral manner, we used the most recent LTCH cost data available at that time (that is, FY 1999 data), and trended that data forward to estimate what Medicare would have paid to LTCHs in FY 2003 under the TEFRA payment system if the PPS were not implemented for FY 2003 (67 FR 56033). We subsequently conducted a thorough review of the most recent relevant data and discussed those findings in the RY 2009 proposed rule. At the time we drafted the proposed rule, cost data from FY 2002, representing the final year LTCHs were paid under the TEFRA payment system, had become available. The cost report data for FY 2002 is comprised of a high proportion of settled and audited cost reports submitted by LTCHs. We also

have acquired payment data on the first year of the LTCH PPS (that is, FY 2003). On the basis of our review of these data sources, we developed a potential methodology for determining whether the one-time adjustment available under § 412.523(d)(3) of the regulations should be proposed. On the basis of this methodology, we also presented a potential method for computing an adjustment, if appropriate. Employing that methodology, our analysis indicated that a permanent budget neutrality adjustment factor of 0.9625 to the LTCH PPS standard Federal rate could be warranted. Consistent with the requirements of section 114(c)(4) of the recently enacted MMSEA, we did not propose any adjustment for the upcoming rate year. However, we invited public comment on the analysis which we presented in the proposed rule. We noted that we would consider these comments if and when we decide to propose an actual adjustment. We also noted that in the final rule, we would respond to any comments on the proposed changes to § 412.523(d)(3) of the regulations that would: (1) Specify the methodology for the one-time budget neutrality adjustment; and (2) implement the requirements of section 114(c)(4) of Pub. L. 110–173, in the final rule.

In order to determine whether a one-time budget neutrality adjustment could be warranted, it is necessary to estimate both aggregate payments under the LTCH PPS for FY 2003 and the estimated aggregate payments that would have been made under the TEFRA system in FY 2003 if the LTCH PPS were not implemented. While we know actual TEFRA payments to LTCHs for FY 2002, the last year of payment under that methodology, it is necessary to estimate what TEFRA payments would have been in FY 2003 if the new LTCH PPS had not been implemented. In developing the methodology for evaluating a one-time adjustment that we presented in the proposed rule, we considered whether we should employ actual FY 2003 costs to calculate estimated TEFRA payments for FY 2003 or employ costs for FY 2002 trended forward to FY 2003 as the basis for the calculation. We noted that basing the estimate on actual FY 2003 costs would avoid the need to employ any factor to update costs from FY 2002 to FY 2003. However, since FY 2003 was the first year of payment under the LTCH PPS, the cost experience of LTCHs in that year would reflect their response to the incentives provided by the new payment system, instead of reflecting behavior under the reasonable cost

payment system. Indeed, implementation of an LTCH PPS should directly affect the behavior of LTCHs, and therefore, the level of costs in LTCHs. One of the incentives of a PPS is to improve efficiency in the delivery of care, which generally results in decreased cost per discharge. For this reason, employing FY 2003 costs directly could be a poor basis for estimating payments that “would have been made if the LTCH PPS were not implemented.” We indicated in the proposed rule that trending forward for 1 year the costs incurred under the last year of the TEFRA payment system poses a smaller prospect for distortion than using costs incurred during the subsequent year, when the incentives faced by LTCHs to reduce costs could have had a significant effect. Therefore, we indicated that we believed it may be preferable to base our calculation of the estimated aggregate payments that would have been made if the LTCH PPS were not implemented (that is, estimated FY 2003 TEFRA payments) on FY 2002 costs, trended forward to FY 2003 using the excluded hospital with capital market basket. And we noted in this context that some representatives of LTCHs had expressed concern that employing FY 2003 costs directly would provide a poor basis upon which to estimate payments that “would have been made if the LTCH PPS were not implemented” for precisely the reasons we have just discussed. We also noted that basing the estimate of FY 2003 TEFRA payments on FY 2002 costs trended forward should satisfy these concerns.

In determining whether a one-time budget neutrality adjustment could be warranted, we believe the estimate of the payments that would have been made in FY 2003 under the TEFRA methodology should be compared to estimated payments under the new LTCH PPS in FY 2003. The most direct way to determine payments under the new LTCH PPS, of course, is simply to aggregate the actual payments calculated under the LTCH PPS methodology for the discharges that occurred during the first year of the LTCH PPS (FY 2003). However, that approach raises an issue of consistency in the use of data. The discharges for which we paid under the LTCH PPS during FY 2003 are obviously not the same as the discharges for which costs were incurred during the last year of payment under the TEFRA methodology, FY 2002. For the reasons that we have just discussed, we stated in the proposed rule that we believed that the best way to estimate the TEFRA

payments that would have been made to LTCHs during FY 2003 is to use inflated FY 2002 costs as a proxy for FY 2003 costs. Comparing actual FY 2003 LTCH PPS payments to FY 2003 TEFRA payments estimated on the basis of FY 2002 discharges would amount to a comparison between payments related to two different sets of discharges, potentially skewing the results. Therefore consistency suggests that, rather than comparing TEFRA payments based on FY 2002 costs updated to FY 2003, to aggregate LTCH PPS payments for discharges that actually occurred in FY 2003, it would be preferable to compare estimated TEFRA payments based on updated FY 2002 costs to the estimated payments that would have been made under LTCH PPS methodology in FY 2003 for those same FY 2002 discharges. In other words, we believe that the best approach would be to compare—

- Estimated aggregate FY 2003 TEFRA payments calculated on the basis of FY 2002 costs updated to FY 2003; to
- Estimated aggregate payments that would have been made in FY 2003 under the LTCH PPS methodology, by applying the FY 2003 LTCH payment rules to the discharges that occurred in FY 2002.

In this way, we would ensure that we are comparing the estimated FY 2003 TEFRA payments, which are based on updated costs incurred for FY 2002 discharges to the estimated PPS payments that would have been made for those same FY 2002 discharges under the new LTCH PPS payment methodology.

Therefore, in the absence of the MMSEA, we stated in the proposed rule that we would have proposed to employ the general methodology we have just described to determine: (1) Whether the one-time adjustment available under § 412.523(d)(3) of the regulations should be proposed for FY 2009, and (2) if such adjustment should be proposed, the actual proposed adjustment factor. In the proposed rule, we did propose to revise the current language of § 412.523(d)(3) of the regulations to conform more accurately reflect the purpose of providing for a possible one-time budget neutrality adjustment. At the time of the final LTCH PPS rule in 2002, we described the nature of the one-time adjustment in very general terms. Specifically, that section currently provides the following:

The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates on or before July 1, 2008 so that

the effect of any significant difference between actual payments and estimated payments for the first year of the long term care hospital prospective payment system is not perpetuated in the prospective payment rates for future years.

As we stated in the proposed rule, our policy objective in providing for this one-time budget neutrality adjustment has always been to ensure that computations based on the earlier, necessarily limited (but at that time best available) data available at the inception of the LTCH PPS would not be built permanently into the rates if data available at a later date could provide more accurate results. Prior to the thorough analysis we conducted in preparation for the RY 2009 proposed rule, we had believed that the appropriate method for meeting this policy objective involved comparing actual payment data from the first year of payment under the LTCH PPS to our earlier estimate of payments in the first year of the LTCH PPS. As we have just discussed, we determined that the most appropriate methodology for evaluating an adjustment to the original budget neutrality adjustment did not involve comparing the payments estimated in the original calculations against the “actual payments * * * for the first year,” strictly speaking. Rather, as we discussed in the proposed rule, we believe that it is more appropriate to compare payments in the first year under the LTCH PPS to what payments would have been under the prior TEFRA rules for that year based on the best available data. As a result, under the broad authority of section 123 of the BBRA, as amended by section 307(b) of BIPA, to make appropriate adjustments to the LTCH PPS, we proposed to revise § 412.523(d)(3) of the regulations. Furthermore, as discussed in the proposed rule, considerations of consistency and other factors suggest that the most appropriate comparison would employ an estimate of FY 2003 LTCH PPS payments based on discharges from FY 2002. The cost incurred by LTCHs for those discharges would also be the basis for the best estimate of what would have been paid in FY 2003 under the TEFRA system. As we have discussed previously, we also proposed to revise that section of the regulations to correspond with the requirements of section 114(c)(4) of the Medicare, Medicaid, and SCHIP Extension Act of 2007. Specifically, we proposed to revise § 412.523(d)(3) of the regulations to read as follows:

The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment

system rates no earlier than December 29, 2010, so that the effect of any significant difference between the data used in the original computations and more recent data to determine budget neutrality is not perpetuated in the prospective payment rates for future years.

Comment: One commenter objected to the proposed change in the regulation on the grounds that it does not truly reflect the methodology we discussed more clearly, especially since the proposed text of the regulation makes no mention of FY 2003, the first year of payments under the LTCH PPS. The commenter further objected that the phrases “data used in the original computations” and “more recent data to determine budget neutrality” in the proposed regulation text are imprecise.

Response: We do not agree that the phrases “data used in the original computations” and “more recent data to determine budget neutrality” in the proposed regulation text are imprecise. The meanings of these terms are fully explained in the detailed account presented in the preamble to the proposed rule (73 FR 5354 through 5360) of the methodology that we could employ in a proposal. We also clearly indicated in the preamble text that if we had proposed a one-time adjustment in the RY 2009 proposed rule, we would have used more recent data to estimate budget neutrality for the first year of the LTCH PPS, FY 2003. As we have also discussed, we indicated that we believe it is appropriate to use certain data elements from FY 2002, specifically FY 2002 TEFRA costs and FY 2002 LTCH discharges, as the most effective and consistent way to estimate budget neutrality for FY 2003 while avoiding the potentially distorting effects of factors such as behavioral changes in the first year of the new payment system. However, we often avoid specifying precise data elements and other details of methodology in regulations text, and instead provide for the regulations to reflect in general but accurate terms the methodology to be employed. (Instead, we typically include a discussion of specific data elements and complex details of our methodology in the preamble where we can flesh out in greater detail the nuances of our policies.) The current regulations text is not consistent with the methodology we had developed as the best means to evaluate whether to propose an adjustment. Our proposed regulation text captured the concepts in general, but more accurate, terms. In response to this comment we are, however, revising the proposed regulation text to specify that the estimates of budget neutrality do indeed

pertain to FY 2003, the first year of the LTCH PPS. As also discussed above, we are also revising the proposed regulations text to include a specific end date after which CMS would no longer consider implementing a one-time budget neutrality adjustment (that is, on or before October 1, 2012). In addition, the structure of the regulations text we are finalizing would work if we ultimately proposed to use FY 2002 data to estimate FY 2003 payments or if we would propose to use FY 2003 data. The final regulation text that we are adopting in this final rule will therefore read:

The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates no earlier than December 29, 2010 and by no later than October 1, 2012, so that the effect of any significant difference between the data used in the original computations of budget neutrality for FY 2003 and more recent data to determine budget neutrality for FY 2003 is not perpetuated in the prospective payment rates for future years.

Comment: Two commenters alleged that we had failed to provide data supporting the proposal of making a one-time prospective adjustment to the LTCH rates no earlier than December 29, 2010. The commenters added that, without the ability to review the applicable data, the public cannot provide meaningful comment on this aspect of the proposed rule.

Response: We did not actually propose to make a one-time prospective adjustment to the LTCH rates under § 412.523(d)(3) in the proposed rule. As noted above, in the proposed rule we presented a potential methodology for determining whether the one-time adjustment available under § 412.523(d)(3), could be warranted if we presented our analysis based on employing that method, and invited public comment on that analysis indicating that we would take such comments into account “if and when we decide to propose an actual adjustment” (see 73 FR 5354 and 5360). We did, however, propose to revise the regulations to provide that such an adjustment will not be made prior to December 29, 2010, as required by the MMSEA. We also described the potential methodology that we had developed prior to the passage of the MMSEA and revised the regulations text to be more consistent with the purpose of a one-time budget neutrality adjustment.

We do not agree that the data we used in developing our estimate of a potential adjustment presented in the proposed

rule has been unavailable to commenters. We clearly identified our data sources in the proposed rule, for example, cost report data from the Hospital Cost Reporting Information System for FYs 1999 through 2003, and FY 2002 LTCH MedPAR data (see 73 FR 5357 and 5359). We also described in great detail how we employed those data, including assumptions and adjustments that were necessary in developing a reasonable estimate. These data are readily available through our standard data request procedures that can be obtained by communication with our Office of Information Services (OIS). Information about obtaining MedPAR files and other Medicare data files is posted on the CMS Web page at: <http://www.cms.hhs.gov/FilesForOrderGenInfo/>. Furthermore, we point out that other commenters were able to employ these and similar data sources to comment on the methodology that we discussed (in fact, one commenter commissioned an entire report on the "Assessment of the Proposed One-time Adjustment for Long Term Care Hospitals"). Therefore, we disagree that the public lack the necessary data to provide meaningful comment on that informational aspect of the proposed rule.

Our revision to § 412.523(d)(3) of the regulations would continue to provide that the Secretary may make a one-time adjustment to the LTCH PPS rates in order to ensure that any "significant" difference is not perpetuated in the LTCH PPS rates for future years. The regulation does not specifically define what constitutes a significant difference for this purpose. In the absence of section 114(c)(4) of the MMSEA, we would have proposed to consider as "significant" any difference greater than or equal to a 0.25 percentage point difference between the original budget neutrality calculations and budget neutrality calculations based on the more recent data now available. This threshold avoids making an adjustment to account for very minor deviations between earlier and later estimates of budget neutrality. It is also consistent with thresholds that we have employed for similar purposes in prospective payment systems. For example, under the capital IPPS, we make a forecast error correction in the framework used to update the capital Federal rate if a previous forecast of input prices varies by at least a 0.25 percentage point from actual input price changes (72 FR 47425). We do not believe that we should treat differences greater than or equal to 0.25 percent as not "significant," since the effect of any

difference will be magnified as the rates are updated each year.

As discussed previously, absent the requirement of section 114(c)(4) of the Medicare, Medicaid and SCHIP Extension Act of 2007, we would have proposed to use FY 2002 LTCH costs as a basis for estimating FY 2003 LTCH TEFRA payments in evaluating whether to propose a one-time prospective adjustment under § 412.523(d)(3). We also would have proposed to update the FY 2002 costs for inflation to FY 2003 by our Office of the Actuary's current estimate of the actual increase in the excluded hospital market basket from FY 2002 to FY 2003 of 4.2 percent. This updated amount would serve as the proxy for actual FY 2003 TEFRA costs in the proposed budget neutrality computation for purposes of § 412.523(d)(3). We estimated FY 2003 LTCH TEFRA payments using a methodology that is similar in concept to the methodology we used to estimate FY 2003 LTCH total payments under the TEFRA system when we determined the initial standard Federal rate in the August 30, 2002 final rule (67 FR 56030 through 56033). We also made modifications to the methodology we initially used to estimate FY 2003 LTCH TEFRA payments because we are using data from a later period, as discussed in greater detail below. In general, we estimated total payments under the TEFRA payment system using the following steps:

- Estimate each LTCH's payment per discharge for inpatient operating costs under the TEFRA system for FY 2003;
- Estimate each LTCH's payment per discharge for capital-related costs for FY 2003; and
- Sum each LTCH's estimated operating and capital payment per case to determine its estimated total FY 2003 TEFRA payment system payment per discharge. In the proposed rule, we discussed each of these steps in detail (73 FR 5356–5359).

Once we have estimated total TEFRA payments as the sum of each LTCH's estimated operating and capital payment per case, it is also necessary to estimate FY 2003 payments under the LTCH PPS. We also discussed the method for making this estimate in the proposed rule (73 FR 5359 through 5360). As the discussion in the proposed rule indicated, our analysis suggests that an adjustment of 3.75 percent to the standard Federal rate may have been warranted. We expect to address the issue again when it is closer to the time section 114(c)(4) of the MMSEA permits us to implement a one-time adjustment under § 412.523(d)(3). In the meantime, we received a number

of comments on the methodology that we have described. We also received a number of comments addressing the merits of implementing any one-time budget neutrality adjustment. As we stated in the proposed rule (73 FR 5360), we will take these comments into account prior to proceeding with any proposal for a one-time budget neutrality adjustment on or after December 29, 2010, and we will consider them at the time when we develop such a proposal.

E. Standard Federal Rate for the 2008 LTCH PPS Rate Year

1. Background

At § 412.523(c)(3)(ii) of the regulations, for LTCH PPS rate years beginning RY 2004 through RY 2006, we updated the standard Federal rate by a rate increase factor to adjust for the most recent estimate of the increases in prices of an appropriate market basket of goods and services for LTCHs. We established the policy of annually updating the standard Federal rate because at that time we believed that was the most appropriate method for updating the LTCH PPS standard Federal rate annually for years after FY 2003. When we moved the date of the annual update of the LTCH PPS from October 1 to July 1 in the RY 2004 LTCH PPS final rule (68 FR 34138), we revised § 412.523(c)(3) to specify that for LTCH PPS rate years beginning on or after July 1, 2003, the annual update to the standard Federal rate for the LTCH PPS would be equal to the previous rate year's Federal rate updated by the most recent estimate of increases in the appropriate market basket of goods and services included in covered inpatient LTCH services. At that time, we believed that was the most appropriate method for updating the LTCH PPS standard Federal rate annually for years after RY 2004.

In the RY 2007 LTCH PPS final rule (71 FR 27818), we explained that rather than solely using the most recent estimate of the LTCH PPS market basket as the basis of the update factor for the Federal rate for RY 2007, we believed that based on our ongoing monitoring activity, it was appropriate to adjust the Federal rate to account for the changes in coding practices (rather than patient severity). We established at § 412.523(c)(3)(iii) of the regulations that the update to the standard Federal rate for the 2007 LTCH PPS rate year was zero percent. This was based on the most recent estimate of the LTCH PPS market basket at the time which was offset by an adjustment to account for changes in case-mix in prior periods

due to changes in coding practices rather than increased patient severity in FY 2004. Therefore, effective from July 1, 2006 through June 30, 2007, the standard rate was \$38,086.04 (71 FR 27818).

For the following year, we also considered changes in coding practices rather than patient severity in establishing the update to the Federal rate for the 2008 LTCH PPS rate year. In the RY 2008 final rule (72 FR 26887 through 27890), we adjusted the Federal rate based on the most recent estimate of market basket (3.2 percent) and an adjustment to account for changes in coding practices (2.49 percent) in FY 2005. Accordingly, we established at § 412.523(c)(3)(iv) that the update to the standard Federal rate for RY 2008 was 0.71 percent. Consequently, in the RY 2008 final rule, we established the LTCH PPS standard Federal rate, effective from July 1, 2007 through June 30, 2008, of \$38,356.45 (see 72 FR 26890).

In the RY 2009 proposed rule, we mentioned that the newly enacted MMSEA contained a provision addressing the standard Federal rate for RY 2008 (73 FR 5360 through 5362). Specifically, section 114(e)(1) of Pub. L. 110–173 adds a new subsection 1886(m)(2) of the Act, which provides that the base rate for RY 2008 “shall be the same as the base rate for hospital discharges occurring during the rate year ending in 2007.” In addition, section 114(e)(2) of Pub. L. 110–173 indicates that section 1886(m)(2) of the Act “shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008” (that is, the first 9 months of RY 2008). We noted that the statute uses the term “base rate,” which is an undefined term in both section 1886(m) of the Act and in 42 CFR Part 412, subpart O. As we explained in the LTCH PPS RY 2009 proposed rule (73 FR 5361), we are interpreting that term to be the standard Federal rate because we believe Congress meant to eliminate the 0.71 percent update from the RY 2008 standard Federal rate. Under this interpretation, the standard Federal rate for RY 2008 would be the same as the standard Federal rate for RY 2007, that is, the 0.71 percent update finalized in the RY 2008 LTCH PPS final rule would be reversed. Therefore, we believe that the term “base rate” used in section 114(e)(1) of MMSEA refers to the standard Federal rate. In subsequent sections of this preamble, we are using the term “standard Federal rate” instead of “base rate” when referencing the provision in section 114(e)(1) of MMSEA in order to avoid further confusion.

Furthermore, we believe section 114(e) of the MMSEA specifically revises the standard Federal rate for RY 2008. Specifically, section 114(e)(1) of MMSEA provides that under the new section 1886(m)(2) to the Act, the standard Federal rate for RY 2008 shall be the same as the standard Federal rate for RY 2007. The standard Federal rate for RY 2007 was \$38,086.04 (71 FR 27818). Section 114(e)(2) of MMSEA delays the application of the revised standard Federal rate of section 114(e)(1). Specifically, section 114(e)(2) of the MMSEA states that the revised standard Federal rate of section 114(e)(1) “shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008.” Therefore, under the above interpretation, we believe it is appropriate that LTCH payments for discharges occurring on or after July 1, 2007 through March 31, 2008, will continue to include an adjustment of 0.71 percent which was included in the standard Federal rate that was in effect when the MMSEA was enacted on December 29, 2007. Also, we believe it is appropriate for discharges occurring on or after April 1, 2008 through June 30, 2008, to be paid based on the revised RY 2008 standard Federal rate of \$38,086.04, while payments for discharges occurring from July 1, 2007 through March 31, 2008 will be determined based on the rate that had been used prior to the enactment of the MMSEA (\$38,356.45).

2. Standard Federal Rate for the 2009 LTCH PPS Rate Year

As discussed above, the MMSEA revises the standard Federal rate for RY 2008 to \$38,086.04 (the same as the standard Federal rate for 2007) while specifying that this rate “shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008” (that is, the first 9 months of RY 2008). In the proposed rule, consistent with our historical practice, we proposed to update the standard Federal rate from the previous year (that is, the standard Federal rate for RY 2008, which the MMSEA has revised to \$38,086.04) to determine the standard Federal rate for RY 2009. Under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, we proposed an annual update to the standard Federal rate for the 15-month 2009 rate year based on the most recent LTCH PPS market basket estimate of 3.5 percent (based on the best available data at that time) and an adjustment of 0.9 percent to account for the increase in case-mix in a prior period (FY 2006) that resulted

from changes in coding practices rather than an increase in patient severity.

As we discussed in greater detail in the RY 2007 and RY 2008 LTCH PPS final rules (71 FR 27819 through 27827 and 72 FR 26887 through 26890, respectively), while we continue to believe that an update to the LTCH PPS standard Federal rate should be based on the most recent estimate of the LTCH PPS market basket, we believe it is appropriate that the standard Federal rate be offset by an adjustment to account for any changes in coding practices that do not reflect increased patient severity. Such an adjustment protects the integrity of the Medicare Trust Funds by ensuring that the LTCH PPS payment rates better reflect the true costs of treating LTCH patients (71 FR 27819 through 27827).

We continue to believe that an update to the LTCH PPS standard Federal rate year should be based on the most recent estimate of the LTCH PPS market basket, and, if appropriate, an adjustment to account for changes in coding practices that do not reflect increased patient severity. Furthermore, as we discussed in the RY 2009 proposed rule (73 FR 5362), we did not finalize the proposed case-mix budget neutrality factor for the adoption of the severity adjusted MS–LTC–DRG patient classification system to the FY 2008 MS–LTC–DRG relative weights in the FY 2008 IPPS final rule. Rather, we noted that consistent with past LTCH payment policy, we would continue to monitor LTCHs and we could propose to make adjustments when updating the standard Federal rate in the future, to account for improvements in coding and documentation that do not reflect any real changes in case mix during these years that we are implementing MS–LTC–DRGs.

As we discussed in the RY 2009 proposed rule, in determining the proposed update to the standard Federal rate for the 2009 LTCH PPS rate year, we performed a case-mix index (CMI) analysis using the most recent available LTCH claims data (FY 2006 MedPAR files) and estimated the observed CMI change for FY 2006 to be 1.9 percent (based on the most recent available LTCH case-mix data from FY 2005 compared to FY 2006). As discussed in the RY 2009 proposed rule (73 FR 5362), we continue to believe it is appropriate to utilize the estimate of real CMI increase of 1.0 percent, based on the well-established RAND study referred to in the RY 2008 final rule, as the proxy for the portion of the observed 1.9 percent CMI increase from FY 2005 to FY 2006 that represents real CMI changes for use in determining the RY

2009 Federal rate update. Accordingly, we proposed that 0.9 percent ($1.9 - 1.0 = 0.9$) of the observed 1.9 percent CMI increase from FY 2005 to FY 2006 reflects CMI increase that is due to changes in coding practices rather than patient severity.

The following is a summary of the comments received and our responses.

Comment: A number of commenters disputed CMS' interpretation of the MMSEA provision in section 114(e)(1) which specifies that "for discharges occurring during the rate year ending in 2008 for a hospital, the base rate for such discharges for the hospital shall be the same as the base rate for discharges for the hospital occurring during the rate year ending in 2007." That is, while CMS believes Congress intended to revise the standard Federal rate for RY 2008 to be the same as the standard Federal rate for RY 2007, a number of commenters asserted that the language in this provision indicates that the RY 2007 standard Federal rate is to be applied only to "discharges occurring during the rate year ending in 2008." Furthermore, the commenters believed section 114(e)(2) of the MMSEA limits the application of the "lower" rate specified in section 114(e)(1) such that this "lower" rate does not apply to "discharges occurring on or after July 1, 2007, and before April 1, 2008" thereby limiting the application of this "lower" rate to just 3-months of RY 2008. That is, the commenters stated that the language Congress used neither explicitly revises the RY 2008 standard Federal rate, nor does it otherwise specifically grant CMS the authority to update the RY 2009 standard Federal rate based on the rate specified in this provision of the MMSEA. One commenter stated: "There is no basis to assume that Congress seeks to reduce LTCH payments for years to come through Section 114(e)(2). The three-month freeze on the standard rate is a distinct act of Congress that should not be applied beyond the end of RY 2008." Several commenters characterized CMS' proposal to update the RY 2008 standard Federal rate based on the MMSEA revised rate of \$38,086.04 as "arbitrary and capricious." The commenters also believed implementation of the proposed update on the lower rate of \$38,086.04 would produce a "retroactive effect" and is tantamount to "retroactive rule making."

Commenters protested the proposed RY 2009 update on the grounds that since "CMS actually provided no increase in the Federal rate for RY 2007, and now proposes to ignore any update for RY 2008, the newly proposed 2.6

percent increase to the RY 2009 rate is actually an increase to the standard Federal rate that was in effect on July 1, 2006, a full two years prior to the beginning of RY 2009." Furthermore, the commenters urged CMS to apply the full market basket to a higher rate, that is, the RY 2008 standard Federal rate that had been finalized in the RY 2008 final rule (\$38,356.45), rather than to the MMSEA revised RY 2008 standard Federal rate of \$38,086.04.

Response: We disagree with the commenters that updating the RY 2008 standard Federal rate based on the MMSEA revised RY 2008 standard Federal rate of \$38,086.04 is "arbitrary and capricious." For the reasons discussed in detail below, we continue to believe that our proposed (and final) approach for calculating the RY 2009 standard Federal rate is appropriate, and consistent with a plain reading of the statute, Congressional intent, and our historic methodology for calculating the standard Federal rate.

Section 114(e)(1) of MMSEA adds section 1886(m)(2) to the Act which specifies the standard Federal rate for RY 2008. Specifically, section 1886(m)(2) provides that "for discharges occurring during the rate year ending in 2008 for a hospital, the base rate for such discharges for the hospital shall be the same as the base rate for discharges for the hospital occurring during the rate year ending in 2007." Section 1886(m)(2) of the Act on its face explicitly provides for a single revised RY 2008 standard Federal rate. With respect to section 114(e)(2) of MMSEA, this section provides that section 1886(m)(2) of the Act shall not apply to discharges occurring on or after July 1, 2007 and before April 1, 2008. When read in conjunction, we believe sections 1886(m)(2) of the Act and 114(e)(2) of MMSEA provide that the revised RY 2008 standard Federal rate (which is the same as the RY 2007 standard Federal rate) is the standard Federal rate for all of RY 2008; however, for payment purposes, discharges occurring on or after July 1, 2007, and before April 1, 2008 simply will not be paid based on that revised RY 2008 standard Federal rate.

In contrast to the commenters' belief that section 114(e)(2) limits the reduced standard Federal rate in section 1886(m)(2) to a 3-month period (that is, the part of RY 2008 not included in "on or after July 1, 2007, and before April 1, 2008"), this section actually provides that the standard Federal rate specified in section 1886(m)(2) "shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008." To the extent the MMSEA directs the revised

standard Federal rate in section 1886(m)(2) shall not apply during a specified period, it also necessarily means that the standard Federal rate in section 1886(m)(2) would otherwise apply for the entire RY 2008. We note that to the extent Congress intended to only revise the standard Federal rate for the last 3 months of RY 2008, it could have easily drafted § 1886(m)(2) to state this. Moreover, Congress could have amended the Act to provide for two separate standard Federal rates for RY 2008, just as it has similarly done in the past with updates. For example, in at least one other PPS (for example, home health), Congress split the updates during a single year and revised the statute in a manner to specifically provide for the split updates. Therefore, contrary to the commenters' assertion, we believe a plain reading of the statute indicates that Congress intended that the standard Federal rate for the long-term care hospital prospective payment system rate year beginning July 1, 2007 and ending June 30, 2008 (that is, RY 2008) is the same as the standard Federal rate for the previous long-term care hospital prospective payment system rate year updated by zero percent (that is, the same as the standard Federal rate for RY 2007).

In addition, Congress is aware that we determine the standard Federal rate for a given year by taking the standard Federal rate from the previous year and updating it. Since Congress did not expressly direct us to deviate from that historical practice, the natural presumption is that we would take the revised RY 2008 standard Federal rate specified in section 1886(m)(2) and update it in order to calculate the RY 2009 standard Federal rate. Furthermore, since our proposed calculation of the RY 2009 standard Federal rate is consistent with our long-standing practice of calculating the standard Federal rate, we do not believe that our methodology for calculating the RY 2009 standard Federal rate is arbitrary or capricious. In response to the comment that the MMSEA did not specifically grant CMS the authority to update the RY 2009 standard Federal rate based on the revised RY 2008 standard Federal rate specified in the MMSEA, we note that such a grant was unnecessary. This is because Congress had already conferred broad discretionary authority to the Secretary under section 307(b)(1) of Public Law 106-554 (also referenced under new 1886(m)(1) of the Act) to provide for appropriate adjustment to the LTCH PPS, including updates.

We also disagree with commenters that the proposed RY 2009 standard

Federal rate would produce a retroactive effect and is tantamount to retroactive rulemaking. We note that the RY 2009 standard Federal rate will be prospectively applied to discharges beginning on July 1, 2008. That is, while our update for RY 2009 removed the benefit of the RY 2008 update of 0.71 percent that had been finalized in the RY 2008 final rule, it can hardly be considered to have a “retroactive effect” since the proposed (and final) update will not result in recoupment of any payments made for RY 2008.

Comment: Commenters also disagreed with the magnitude of the proposed 0.9 percent adjustment to account for coding and documentation changes that occurred between FY 2005 and FY 2006 that did not reflect increased patient severity. Specifically, with respect to our calculation of the apparent increase in case-mix (apparent increase equals observed increase minus real increase), some commenters disagreed with our use of 1 percent as a proxy for the real increase in case-mix for LTCHs based on a study of acute-care hospitals conducted by RAND using data from 1987 to 1988. Several commenters stated that data from the RAND study do not provide sufficient justification for the adjustment and that more current, relevant data are required for sufficient justification. Specifically, several commenters stated that the 20 year old RAND study was not a valid source of information on real case-mix growth in LTCHs because the study focused on short-term acute-care hospitals, and that data from the RAND study is outdated and should not be relied upon. Some commenters stated that due to the age of the RAND study, it would not capture real case-mix growth that may have occurred in the intervening period as a result of changes in health care delivery patterns, increases in the prevalence of chronic conditions, or changes in the specialty mix of LTCHs. Specifically, they stated that there are legitimate reasons to support that “real” case-mix has indeed increased above the level estimated by the RAND study in the ensuing years. For example, they believe that factors such as longer life expectancy of beneficiaries, the migration of less sick and younger Medicare beneficiaries to Medicare Advantage, changes in the specialty mix of LTCHs, and generally, increasing proportions of beneficiaries that are suffering from multiple chronic diseases, all would contribute to a higher “real” case-mix than the estimate provided by the RAND study. In addition, one commenter believed that use of the RAND data was not consistent

with CMS audit requirements concerning hospitals’ use of data from a contemporaneous time period for cost allocation. In addition, instead of relying on an estimate of real case-mix growth from the RAND study, some commenters believed that CMS should assume that all observed case-mix growth is real or should use observed case-mix growth adjusted to remove any providers with atypical case-mix changes as a proxy for real case-mix growth.

MedPAC in its comments on the proposed rule stated that it believes CMS is justified in making adjustments to payments to take into account case-mix increases resulting from changes in coding practices. However, MedPAC expressed concern that it was difficult to know whether the RAND study findings reflected current growth in real case-mix for LTCHs, and urged CMS to pursue more up-to-date information for future adjustments. In their comments, MedPAC also noted that in their March 2008 report they had recommended a lower update than the one CMS had proposed even after the adjustment for the apparent increase in case-mix.

Response: In the RY 2009 proposed rule, consistent with our previous methodology, we proposed to use the RAND study estimate of 1 percent as the proxy for the real case-mix change to determine the “apparent” case-mix change (which based on FY 2006 LTCH claims data is 0.9 percent). While the case-mix parameters from the RAND study are based on IPPS data for acute-care hospitals, we believe they are an appropriate proxy for real case-mix growth in LTCHs due to similarities between LTCHs and acute-care hospitals. The types of patients treated by LTCHs are similar to the types of patients treated in IPPS acute-care hospital step-down units. As described in more detail in the RY 2009 LTCH PPS proposed rule (73 FR 5374 to 5376), we contracted with Research Triangle Institute, International (RTI) for a study evaluating the feasibility of developing patient and facility level characteristics for LTCHs that could distinguish LTCH patients from those treated in other hospitals. Results from the RTI study, including findings from technical expert panels, indicate that patients treated in LTCHs and IPPS acute-care hospital step-down units are very similar. In addition, as we have discussed in many previous LTCH PPS proposed and final rules, acute-care hospitals paid under the IPPS and LTCHs paid under the LTCH PPS have much in common. Hospitals paid under both systems are required to meet the same certification criteria set forth in section 1861(e) of the

Act to participate as a hospital in the Medicare program. LTCHs are certified as acute-care hospitals but are classified as LTCHs for payment purposes solely because such hospitals generally have an inpatient ALOS of greater than 25 days (as set forth in section 1886(d)(1)(B)(iv)(I) of the Act). Furthermore, the LTCH PPS uses the same patient classification system that is used under the IPPS. Although there have been some modifications over time, the CMS-DRG system in place in IPPS hospitals during the time of the RAND study is generally the same base DRG system used in LTCHs between 2005 and 2006. In addition, several LTCH PPS payment policies, such as the area wage adjustment (§ 412.525(c)), COLA for Alaska and Hawaii (§ 412.525(b)), and high cost outlier (HCO) policy (§ 412.525(a)) are modeled after similar IPPS policies. In summary, due to the similarities between LTCH hospitals and acute-care hospitals, including similarity in the patients treated by LTCHs and acute-care step-down units, we believe it is appropriate to use the RAND study of real case-mix growth in acute-care hospitals as a proxy for real case-mix growth in LTCHs.

Furthermore, although the data in the RAND study are not new, we continue to believe it is the best information available at this time to provide a proxy for real case-mix growth in LTCHs throughout this response. The methodology used by the RAND study to identify the real increase versus apparent increase in case-mix was very rigorous, involving chart abstraction data, claims data, and sophisticated statistical analyses. In the RY 2008 LTCH PPS proposed rule, we solicited comments on other data sources that could be used to determine a proxy for real LTCH PPS case-mix change besides the RAND study. While some commenters on the RY 2008 and RY 2009 proposed rules stated that we should assume all case-mix growth is real or we should use the observed case-mix increase adjusted to eliminate any provider with atypical case-mix changes as a proxy for real case-mix growth, the commenters did not provide any data justifying these assertions and we did not receive any comments providing an alternative data source on real case-mix growth for LTCHs. With regard to the comments that the RAND study would not reflect real case-mix growth that may have occurred in the time period after the RAND study (for example due to changes in health care delivery patterns, increases in the prevalence of chronic conditions, aging of the

population, or changes in the specialty mix of LTCHs), we note that before, during, and after the time period examined by the RAND study, there are likely to be various factors driving real increases in case-mix. At this time, we are not aware of any data demonstrating that the factors contributing to increased case-mix in the time period after the RAND study would lead to faster growth in real case-mix between FY 2005 and FY 2006 than the factors contributing to real case-mix growth in the time period examined by the RAND study (FY 1987 to FY 1988). Accordingly, we continue to believe that it is appropriate to use the RAND study, which was based on rigorous analytical and statistical methods, as a proxy for real case-mix growth in LTCHs in this RY 2009 LTCH PPS final rule, as we did in the RY 2008 final rule.

With respect to the comment that use of the RAND data is not consistent with CMS requirements for hospitals to use contemporaneous data for cost allocation as part of the cost reporting process, the timeframes applicable to hospitals for compiling their cost report data are not relevant to the timeframes used to establish the LTCH PPS payment rates and the update to the LTCH PPS Federal rate. Although CMS uses hospitals' cost reporting data as part of its calculation of the LTCH PPS rates, the hospital cost reporting process and the process CMS uses to establish PPS rates are separate processes, governed by different requirements. The LTCH PPS is a per discharge payment system based on prospectively set rates. To establish payment rates, we use the most recently available claims data and cost report data; however, like other prospective payment systems, there are time lags in the data available to establish the prospective payment rates. Typically, the LTCH PPS payment rates are established based on claims data from 2 years prior and cost report data from 3 to 4 years prior. We also consistently use the most recent available data to determine the appropriate annual update factor. Accordingly, for this final rule we used the most recent available data, including the most recent estimate of the RPL market basket for July 1, 2008 through September 30, 2009 and the case-mix data from FY 2006, to establish the 2.7 percent update factor for RY 2009. Furthermore, as discussed above, we believe the RAND study represents the best information on real case-mix increases available at this time.

For all of the reasons discussed previously, we believe it is appropriate in calculating the RY 2009 update to continue to use 1 percent as a proxy for

real case-mix growth in LTCHs based on the RAND study, as we did for the RY 2008 update. Accordingly, since the observed CMI change for FY 2006 is estimated at 1.9 percent (based on the most recent available LTCH case-mix data from FY 2006 as compared to FY 2005), accounting for the real CMI change of 1.0 percent, we estimate that 0.9 percent ($1.9 - 1.0 = 0.9$) of that increase reflects CMI increase that is due to changes in coding practices (rather than patient severity).

Finally, we agree with MedPAC that it would be beneficial to pursue more recent information on real case-mix growth in LTCHs for the future, particularly since we recently changed patient classification systems. As discussed in the FY 2009 IPPS proposed rule (73 FR 23541 and 23542), we are currently developing plans to evaluate case-mix growth in acute-care IPPS hospitals under the MS-DRG system. In conjunction with these efforts, we intend to examine case-mix growth in LTCHs under the MS-LTC-DRG system and re-examine the issue of real case-mix growth in LTCHs.

Comment: Some commenters stated that it is inappropriate to use the lower end (1.0 percent) of the range of real case-mix growth (1.0 percent to 1.4 percent) from the RAND study. These commenters indicated that consistency with the IPPS policy was not sufficient justification for adopting 1 percent, rather than 1.4 percent, as a proxy.

Response: As discussed in more detail above, LTCH hospitals paid under the LTCH PPS have much in common with acute care hospitals paid under the IPPS, including being required to meet the same Medicare certification criteria, being paid under the same patient classification system, and having several LTCH PPS payment policies modeled after similar IPPS policies. In addition, as discussed previously, results from RTI's research indicates that patients treated by LTCHs are very similar to patients treated in IPPS acute care hospital step down units. In the RY 2008 final rule we adopted the more conservative 1.0 percent (rather than the 1.4 percent) as a proxy for real CMI growth because it is consistent with what is used under the IPPS and we believed the similarities between LTCHs and acute care hospitals are significant as explained previously. For a more detailed discussion on the 1.0 percent for real CMI increase utilized in the IPPS, see the FY 2007 IPPS final rule (71 FR 48156 through 48158), and the FY 1994 IPPS proposed rule (58 FR 30444). In the RY 2008 proposed rule, we solicited comments on other data sources that could be used to determine

a proxy for real LTCH PPS case-mix change besides the RAND study. While, as discussed above, some commenters on the RY 2008 and RY 2009 proposed rules asserted that we should assume real case-mix is equal to observed case-mix or we should use the observed case-mix increase adjusted to eliminate any provider with atypical case-mix changes as a proxy for the real case-mix increase, the commenters did not provide any data justifying these assertions and, we did not receive any comments providing an alternative data source on real case-mix growth for LTCHs. Lacking any data to the contrary and for the reasons discussed above and in the previous responses, we continue to believe that similarities between LTCHs and acute care hospitals justify using the same proxy from the RAND study for real case-mix growth. Thus, as proposed, we are adopting the 1.0 percent proxy for real case-mix growth for LTCHs that is currently used under the IPPS for acute care hospitals.

Comment: Some commenters stated that there was little potential for the case-mix of LTCHs to increase as a result of changes in coding practices. Some commenters believed that in establishing a policy of annually updating the LTC-DRGs (now the MS-LTC-DRGs) and relative weights in a budget neutral manner, the RY 2008 LTCH PPS final rule and FY 2008 IPPS final rule indicated that growth in apparent case-mix was no longer a concern, and thus these commenters believed there is no reason for an adjustment for an apparent increase in case-mix in RY 2009. These commenters stated that CMS' continued use of an adjustment for "apparent" case-mix increases is inconsistent with CMS' rationale in implementing budget neutral MS-LTC-DRG relative weights.

Other commenters stated that most LTCH patients fall into high case-mix payment categories already or are paid outside of the LTCH payment system due to outlier status, and thus any case-mix changes are more likely to be real than the result of coding improvements. A few commenters also questioned the need for an adjustment for apparent increases in case-mix with the adoption of MS-LTC-DRGs, and asked how could " * * * behavioral offset [of 0.9 percent] be suggested when the new system [that is, the MS-LTC-DRGs] was specifically designed to stratify acuity across DRGs?"

Response: In response to the commenters that question why we have proposed, at this time, a 0.9 percent adjustment to account for case-mix changes due to improved documentation and coding that are not

due to increased patient acuity, when we have just adopted the MS-LTC-DRGs, we note that the proposed 0.9 percent adjustment is to account for case-mix changes in coding that occurred in FY 2006, a year prior to the adoption of the MS-LTC-DRGs. With respect to the comments asserting that there is little potential for apparent case-mix increases because most LTCH patients fall into high case-mix payment categories or receive outlier payments, we disagree. While in FY 2006 the potential for apparent increases in case-mix due to shifts within base DRGs may have been limited to the extent that a substantial portion of LTCH patients were already in an LTC-DRG with a CC rather than an LTC-DRG without a CC, we believe there was still potential for apparent increases in case-mix due to shifts across base DRGs. In addition, only a small portion of LTCH PPS cases receive high cost outlier payments, and thus we believe the existence of high cost outliers has little impact on the potential for apparent case-mix increases.

We also disagree with comments suggesting that our proposal to adjust for apparent CMI growth is inconsistent with CMS' rationale for implementing the MS-LTC-DRG relative weights in a budget neutral manner. Specifically, in the RY 2008 LTCH PPS proposed and final rules, we explained that we considered whether to establish a policy of making annual changes to the LTC-DRG classifications and recalibrating the LTC-DRG relative weights in a budget neutral manner. Previously, we had not implemented the annual changes to the LTC-DRG classifications and the recalibration of the LTC-DRG relative weights in a budget neutral manner because we believed that past fluctuations in the LTC-DRG relative weights were primarily due to changes in LTCH coding practices and we believed that changes in the LTCH PPS payment rates, including the LTCH relative weights, should accurately reflect changes in LTCHs' true cost of care. Therefore, prior to RY 2008, we did not update the LTC-DRGs in a budget neutral manner because we did not want to build apparent CMI changes permanently into the LTCH PPS payment rates. In the RY 2008 LTCH PPS final rule, we stated that an analysis of the most recent available LTCH claims data show a steady decrease in the observed growth in the case-mix index from year to year since FY 2003 (the observed case-mix change between FY 2003 and FY 2004 is 6.75 percent, between FY 2004 and FY 2005 is 3.49 percent, and between FY 2005 and FY

2006 is estimated to be 1.9 percent). With the substantial decline in observed case-mix growth between FY 2004 and FY 2006 noted above, we indicated that we believed the most recent available LTCH claims data (FY 2006) supports our belief that observed case-mix growth was now primarily the result of real increases and that changes in LTCH coding practices that resulted in fluctuations in the LTC-DRG relative weights appeared to be stabilizing. Therefore, we believe it appropriate to establish a policy of making annual changes to the LTC-DRG classifications and recalibrating the LTC-DRG relative weights in a budget neutral manner since budget neutrality would provide stability and predictability in LTCH PPS payments.

While we believed apparent case-mix growth declined substantially between FY 2004 and FY 2006, the RY 2008 LTCH PPS final rule reflects our belief that apparent CMI growth has not been eliminated entirely. We weighed the benefits of predictability and stability of payment against the fact that claims data reflect changes due to apparent CMI growth. As a result, we believed that the advantages of budget neutrality discussed previously outweighed any disadvantages such as the potential for fluctuations in the relative weights from apparent increases in case-mix. Furthermore, the adoption of budget neutral MS-LTC-DRG relative weights does not preclude the need for CMS to adjust for any apparent case-mix increase that CMS identifies through our ongoing monitoring of the LTCH payment system. While we would not expect the growth in apparent case-mix in FY 2006 to be as large as observed in the early years of the LTCH PPS, since hospitals have had more experience under this DRG-based payment system, we have no reason to believe that the potential for apparent case-mix growth has been eliminated entirely since with any DRG system there can be potential for apparent changes in case-mix. Consequently, we continue to believe it is appropriate to calculate the observed increase in case-mix, and identify the portion that is the result of an apparent increase, in order to prevent payment increases that do not reflect real increases in the severity of illness.

In addition, we believe that the adoption of the MS-LTC-DRGs in FY 2008, which better take into account severity of illness in Medicare payment rates, is likely to encourage LTCHs to improve their documentation and coding of patient diagnoses and is likely to result in further apparent increases in case-mix in the future, as discussed in more detail in the FY 2008 IPPS final

rule (72 FR 47297 to 47298). As discussed in the FY 2008 IPPS final rule (72 FR 47298 through 47299), since we have established this mechanism to adjust LTCH payments to account for the effect of changes in coding and documentation in a prior period which is based on actual LTCH data, we would continue to monitor the LTCH payment system and should we detect an "apparent" case-mix increase due to the adoption of the MS-LTC-DRG classification system, we would propose appropriate adjustments to account for that case-mix increase that is not due to increased patient severity. Also, as discussed in the FY 2008 IPPS final rule, if CMS is able to estimate an appropriate adjustment factor applicable to LTCHs, CMS would propose an adjustment factor to LTCHs to account prospectively for coding and documentation changes.

Comment: Some commenters believe CMS has strayed from the basic purpose of the market basket update which is to account for the expected increase in prices for the upcoming year. The commenters portrayed the proposed 2.6 percent update factor for RY 2009 as an "inappropriate" and "unwarranted" reduced market basket update and has questioned CMS' authority to implement anything other than the full RPL market basket update to account for price inflation. The commenter further contends that CMS' reasoning for reducing the market basket update to account for "apparent" case mix increase in a previous period is not a factor that has anything to do with the function of the market basket. Instead of finalizing the update as proposed in the RY 2009 proposed rule, the majority of commenters strongly recommended that CMS apply an update based solely on the most recent estimate of the RPL market basket without an adjustment for case mix changes that are not due to increased patient severity. In contrast, MedPAC reiterated its recommendation included in its March 2008 Report to the Congress, suggesting the Secretary consider a lower update factor (than the 2.6 percent that was proposed).

Response: Section 123 of the BBRA, as amended by section 307(b) of the BIPA, provides that the Secretary may specify appropriate adjustments to the long-term care hospital payment system, including updates. This broad discretionary authority includes our ability to make adjustments in determining the annual update to the Federal rate for case-mix changes resulting from coding changes that do not reflect real change in case-mix regardless of whether such adjustment is for anticipated case-mix changes or

case-mix changes that occurred in a previous time period. We note that in previous years, we have determined the annual update to the LTCH PPS standard Federal rate based on two elements: (1) A positive adjustment to account for the LTCH PPS market basket estimate in full, and (2) a negative adjustment to account for case-mix changes in a prior period that were not due to increased patient severity. Specifically, the adjustments for coding and documentation changes implemented in the RY 2007 and RY 2008 final rules were based on actual LTCH case-mix data from FY 2004 and FY 2005, respectively (71 FR 27820 through 27822 and 72 FR 26887 through 26890). Based upon a CMI analysis using the most recent available LTCH claims data (FY 2006 MedPAR files), we continue to believe that within the observed case-mix change for FY 2006, there remains some portion of "apparent" case-mix change.

As stated above, and as we discussed in the proposed rule, our proposed update for RY 2009 included the full increase of the 15-month RPL market basket estimate based on the best available data at the time (which was 3.5 percent). Therefore, our proposed (and final) update factor does account for the expected increase in prices for the upcoming year (RY 2009). However, the full market basket increase is not the only factor used in determining the proposed update for RY 2009. As discussed above, consistent with our historical practice and the Secretary's broad discretionary authority to determine appropriate updates under the LTCH PPS, in addition to proposing to use the most recent estimate of the full RPL market basket increase, we proposed an adjustment to account for case-mix changes that were not due to increased patient severity from a prior period in determining the proposed update for RY 2009.

In this final rule, as we proposed, we are using the most recent available 15-month RPL market basket estimate, which for the final rule is 3.6 percent as discussed above in section IV.C. of this preamble. As also discussed in this section, we are finalizing the proposed -0.9 percent adjustment to account for the increase in case-mix in the prior period (FY 2006) that resulted from changes in coding practices rather than increased patient severity. Therefore, in this final rule, to update the standard Federal rate for RY 2009 in accordance with our established process, we are finalizing an update factor of 2.7 percent which is calculated based on two elements: (1) A positive adjustment of 3.6 percent to account for the most

recent RPL market basket estimate in full, and (2) a negative adjustment of 0.9 percent to account for case-mix changes that were not due to increased patient severity. We note that in commenting on the proposed rule, MedPAC reiterated its recommendation included in its March 2008 Report to the Congress, suggesting the Secretary consider a lower update for LTCHs for RY 2009. In the March 2008 Report to Congress (page 231), the Commission recommended that the Secretary update LTCH payments by the LTCH PPS market basket index (that is, the RPL Market basket) less the Commission's adjustment for productivity growth (1.5 percent). Under the market basket estimates available at that time, MedPAC's recommendation would be to update the LTCH PPS payment rates by 1.6 percent.

Comment: Some commenters believed there is no regulatory basis for CMS to adjust the market basket update to account for the apparent increase in case-mix for a previous year and that such an adjustment is inconsistent with the purpose of a market basket adjustment. One commenter also stated that making a case-mix adjustment to future payments to account for past payments violates the philosophy of a prospective payment system, and is inconsistent with other policies such as not correcting the market basket when the final data on the market basket for a specific time period turns out to be different from the estimate used as the basis of the update. Another commenter believed that it was inappropriate to make an adjustment for the apparent increase in case-mix that occurred during the 12 months from FY 2005 to FY 2006 when the final rule is covering a 15-month rate year.

Response: Section 123 of the BBRA as amended by section 307(b) of the BIPA conferred upon the Secretary broad discretion to determine the standard rate and make appropriate adjustments to the system. We note that while § 412.523(c)(3) specifies the update to the standard Federal rate for each year since the implementation of the LTCH PPS in FY 2003 (that is, RYs 2004 through RY 2008), neither the statute nor the current regulations specifically require that the Secretary automatically apply a market basket increase to prospective years although we have done this in prior years, and are doing so in this final rule.

As we discussed in greater detail in the RY 2007 LTCH PPS final rule (71 FR 27819 through 27827), while we continue to believe that an update to the LTCH PPS Federal rate year should be based on the most recent estimate of the

LTCH PPS market basket, we believe it appropriate that the rate update also reflect an adjustment to account for changes in coding practices that do not reflect increased patient severity. Such an adjustment protects the integrity of the Medicare Trust Funds by ensuring that the LTCH PPS payment rates better reflect the true costs of treating LTCH patients (71 FR 27798 through 27820). Therefore, in determining the RY 2009 update to the LTCH PPS Federal rate, we believe it is appropriate to apply an adjustment to eliminate the effect of coding or classification changes in a prior period (FY 2006) that do not reflect real changes in LTCHs' case-mix, for the reasons discussed above. As was the case when we determined the RY 2007 and RY 2008 update factors, this adjustment is necessary to account for improved coding (rather than increased patient severity) in prior years.

In addition, we do not agree with the comment that this adjustment is inconsistent with the philosophy of prospective payment system. This adjustment does not alter the fundamental aspect of the LTCH PPS, which is to make payment for a DRG based on a predetermined, fixed amount. Furthermore, the adjustment, while based on retrospective analysis of claims data, is applied prospectively to the LTCH PPS rates. Also, with respect to the commenter's concern that the adjustment for apparent increases in case-mix that occurred in a prior period is different from policies in other areas such as not adjusting the payment rates to reflect retrospective revisions to the market basket estimates, we note that there are numerous principles that we try to balance simultaneously when making policy decisions. Among these principles are appropriate payment, predictability, averaging, beneficiary access to appropriate care, and equity. With regard to the adjustment for the apparent increase in case-mix, given the potential for apparent increases in case-mix to lead to substantial inappropriate increases in payments over time without a corresponding increase in the severity of illness (or costs), we believe on balance it is in the best interest of the Medicare trust fund to make such an adjustment. With regard to an adjustment for revisions in the market basket estimates, given the typically small size of these market basket revisions, in the interest of predictable payments we have not made such an adjustment.

With respect to the appropriateness of applying the adjustment to a 15-month rate year, the adjustment is included permanently in the rate and thus the result would be the same regardless of

whether RY 2009 is a 12-month or 15-month rate year. This is because the adjustments that we have made in prior years (that is, in RYs 2007 and 2008) and the adjustment we are making this year (in RY 2009) are cumulative.

Therefore, in this final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA to include appropriate adjustments, including updates, in the establishment of the LTCH PPS, we are revising § 412.523(c)(3), to specify that, for discharges occurring on or after July 1, 2008 and on or before September 30, 2009, the standard Federal rate for RY 2008 will be updated by 2.7 percent, which is based on the most recent market basket estimate (3.6 percent) and an adjustment for the apparent increase in case-mix (0.9 percent) due to changes in coding practice rather than an increase in patient severity, as discussed in more detail subsequently. We note that the 2.7 percent update for RY 2009 that we are establishing in this final rule is higher than the 1.6 percent update recommended by MedPAC in their March 2008 report. While MedPAC's update recommendation was based on a 12-month rate year, we believe that if MedPAC were to revise its update recommendation for a 15-month rate year, its recommended update would still in all likelihood be lower than the update being adopted in this final rule due to the formula MedPAC used to calculate its update recommendation (that is, the market basket increase minus MedPAC's 1.5 percent estimate of productivity growth).

Comment: Commenters claim that the cumulative effect of our changes to the LTCH PPS over the last few years has reduced LTCH margins significantly. Some commenters asserted that high profit margins had been one justification given in prior years' regulations for the adjustment in the update to account for case-mix increases that reflected changes in coding practices. The commenters pointed to the MedPAC March 2008 report which estimated negative margins of between -1.4 percent to -0.4 percent in 2008, and these commenters stated that an adjustment for the apparent increase in case-mix is not appropriate this year given the estimated negative margins.

Response: OACT's most recent estimate of LTCH inpatient Medicare margins is for FY 2006 (9.9 percent). While the 2006 margins appear to be substantial, we believe the 2006 margin estimates are unlikely to reflect the impact of the payment system changes that have occurred over the last two years, in particular those occurring in

RY 2007 and RY 2008. Making estimates of the impact of recent payment system changes such as recalibrating the relative weights in 2007, adjusting for coding improvements, reducing aggregate payments for outliers, making changes to reimbursement for patients with the shortest length of stay (that is, short-stay outliers), and the "25 percent rule." MedPAC projected that margins will be between -1.4 percent and -0.4 percent for FY 2008. Given this analysis, MedPAC indicated in its March 2008 report that "LTCHs may not be able to accommodate growth in the cost of caring for Medicare beneficiaries in 2009 without an increase in the base rate." However, MedPAC's March 2008 report recommended an update of 1.6 percent for RY 2009 based on the market basket adjusted for MedPAC's estimate of productivity growth. The update that we are adopting in this final rule of 2.7 percent (which includes the 0.9 percent adjustment for the apparent increase in case-mix) is higher than the update proposed in the RY 2009 LTCH PPS proposed rule (2.6 percent) and higher than the update recommended by MedPAC in its March 2008 report (1.6 percent). As noted previously, while the update recommended by MedPAC was based on a 12-month rate year, we believe that if MedPAC were to revise its update recommendation for a 15-month rate year, it would still in all likelihood be lower than the update being adopted in this final rule. Therefore, we do not believe it can be concluded from MedPAC's margin projections and update recommendation that the 2.7 percent update established in this final rule, which is based on the most recent estimate of the market basket increase and an adjustment for the apparent increase in case-mix, is inadequate since MedPAC's update recommendation (which was issued contemporaneously with their margin analysis) is lower than the 2.7 percent update established in this final rule. Furthermore, we note that most of the reductions cited by the commenters and considered by MedPAC in their margin analysis were implemented by CMS in RY 2007 and RY 2008 and were reversed (for three years) by section 114 of the MMSEA. Therefore, we expect margins would be higher than projected taking into account these changes.

As more data become available, we intend to continue to monitor LTCHs' margins. In the past, we have observed that LTCHs have adapted to our regulatory changes by modifying their business model to maximize profitability while operating under the new changes. For example, when we

implemented the 25 percent (or applicable percentage) threshold payment adjustment in FY 2005 for co-located LTCHs and satellites, we are aware that LTCHs shifted emphasis from developing co-located facilities to developing freestanding LTCHs. Thus, we believe LTCHs are likely to continue to respond to the payment changes in ways that mitigate the impact on their profitability.

Comment: One commenter recommended that CMS provide a full market basket update for all cases that are not paid on a full MS-LTC-DRG basis such as cases paid under the short stay outlier (SSO) policy or the 25 percent rule, stating that hospitals have no "practical opportunity for upcoding" such cases.

Response: Even for cases that will be paid on a full MS-LTC-DRG basis in RY 2009, we are providing a full market basket adjustment (3.6 percent), which is combined with an adjustment for the apparent increase in case-mix in a prior period (-0.9 percent), to yield a combined update of 2.7 percent. With respect to cases that are not paid on a full MS-LTC-DRG basis, we believe it is appropriate to apply the adjustment for apparent case-mix, where applicable, for several reasons. Under current law, SSO cases are paid the lower of 100 percent of estimated costs of the case; 120 percent of the MS-LTC-DRG per diem multiplied by the covered LOS of the case; the Federal prospective payment for the MS-LTC-DRG; or a blend of 120% of the LTC-DRG per diem amount and an amount that is comparable to what the case would be paid under the IPPS (computed as a per diem). The majority of SSO cases are not impacted by the market basket update or the adjustment for the apparent increase in case-mix because they are paid based on the estimated cost of the case which is determined by multiplying the covered charges for the case by the LTCH's CCR. For those SSO cases paid under the other payment options, we believe it is appropriate to apply the adjustment for the apparent increase in case-mix. The purpose of doing so is to adjust for apparent increases in case-mix that occurred under the LTCH PPS in a prior period (FY 2006). Whether there is potential for future apparent increases in case-mix in RY 2009 for these cases is not relevant to this adjustment because this adjustment is for a prior period. Nevertheless, we disagree with the commenter's assertion that there is no potential for an apparent increase in case-mix for SSO cases paid under the 2nd and 4th options in the SSO payment formula described above because these options are based on

DRGs. The payment amount for those cases is dependent on the MS-LTC-DRG to which the patient is assigned. In other words, the MS-LTC-DRG per diem amount, which is a component of the 2nd and 4th options in the SSO payment formula as described above, is computed based on the MS-LTC-DRG to which the case is grouped. Similarly, with respect to the 25 percent rule, notwithstanding the changes made to it by MMSEA, the payment amounts calculated under this policy are dependent upon the MS-LTC-DRG to which the case is assigned. As with any DRG system there is potential for apparent changes in case-mix because there can be shifts within or across base DRGs. Accordingly, for the reasons discussed above, we are not adopting the commenter's suggestion to apply the full market basket update without an adjustment for the apparent increase in case-mix that occurred in FY 2006 to all cases that are not paid on a full MS-LTC-DRG basis.

In summary, as we proposed, we are establishing an update to the standard Federal Rate for RY 2009 based on the most recent estimate of the full LTCH PPS market basket estimate which went up to 3.6 percent (as discussed above in section IV.C.2. of this preamble) and an adjustment to account for the increase in case-mix in the prior period (FY 2006) that resulted from changes in coding practices of -0.9 percent. Therefore, the update factor to the standard Federal rate for RY 2009 is 2.7 percent ($3.6 - 0.9 = 2.7$). That is, under the broad authority conferred upon the Secretary under the BBRA and the BIPA, we specify under § 412.523(c)(3)(v), that, for discharges occurring on or after July 1, 2008, and on or before September 30, 2009, the standard Federal rate from the previous year would be updated by 2.7 percent. In determining the standard Federal rate for RY 2009, we applied the 2.7 percent update to the RY 2008 standard Federal rate of \$38,086.04, which is the same standard Federal rate applicable for discharges occurring during RY 2007, consistent with section 1886(m)(2) of the Act. Consequently, we are establishing a standard Federal rate for RY 2009 of \$39,114.36, which will be effective for LTCH discharges occurring on or after July 1, 2008, and through September 30, 2009. We note that the President's FY 2009 budget proposal includes the provision that would provide for a zero percent update to the Federal rate for 2009 through 2011, and then would reduce the market basket update to the Federal rate by 0.65 percent in each year thereafter.

F. Calculation of LTCH Prospective Payments for the 2009 LTCH PPS Rate Year

1. Adjustment for Area Wage Levels

a. Background

Under the authority of section 123 of the BBRA as amended by section 307(b) of the BIPA, we established an adjustment to the LTCH PPS Federal rate to account for differences in LTCH area wage levels at § 412.525(c). The labor-related share of the LTCH PPS Federal rate, currently estimated by the FY 2002-based RPL market basket (as discussed in greater detail in section IV.C.1. of this preamble), is adjusted to account for geographic differences in area wage levels by applying the applicable LTCH PPS wage index. The applicable LTCH PPS wage index is computed using wage data from inpatient acute care hospitals without regard to reclassification under sections 1886(d)(8) or 1886(d)(10) of the Act.

As we discussed in the August 30, 2002, LTCH PPS final rule (67 FR 56015), when the LTCH PPS was implemented, we established a 5-year transition to the full wage adjustment. The wage index adjustment was completely phased-in beginning with cost reporting periods beginning in FY 2007. Therefore, for cost reporting periods beginning on or after October 1, 2006, the applicable LTCH wage index values are the full (five-fifths) LTCH PPS wage index values calculated based on acute-care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. For additional information on the phase-in of the wage index adjustment under the LTCH PPS, refer to the August 30, 2002, LTCH PPS final rule (67 FR 56017 through 56019) and the RY 2008 LTCH PPS final rule (72 FR 26891).

b. Updates to the Geographic Classifications/Labor Market Area Definitions

(1) Background

As discussed in the August 30, 2002, LTCH PPS final rule, which implemented the LTCH PPS (67 FR 56015 through 56019), in establishing an adjustment for area wage levels under § 412.525(c), the labor-related portion of a LTCH's Federal prospective payment is adjusted by using an appropriate wage index based on the labor market area in which the LTCH is located. In the RY 2006 LTCH PPS final rule (70 FR 24184 through 24185), in regulations at § 412.525(c), we revised the labor market area definitions used under the LTCH PPS effective for

discharges occurring on or after July 1, 2005, based on the Office of Management and Budget's (OMB's) Core Based Statistical Area (CBSA) designations based on 2000 Census data. We made this revision because we believe that those new CBSA-based labor market area definitions will ensure that the LTCH PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. As set forth in existing § 412.525(c)(2), a LTCH's wage index is determined based on the location of the LTCH in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C). An urban area under the LTCH PPS is currently defined at § 412.64(b)(1)(ii)(A) and (B). Under § 412.64(b)(1)(ii)(C), a rural area is defined as any area outside of an urban area.

We note that these are the same CBSA-based designations implemented for acute care hospitals under the IPPS at § 412.64(b) effective October 1, 2004, (69 FR 49026 through 49034). For further discussion of the labor market area (geographic classification) definitions currently used under the LTCH PPS, see the RY 2006 LTCH PPS final rule (70 FR 24182 through 24191).

(2) Update to the CBSA-Based Labor Market Area Definitions

On December 18, 2006, OMB announced the inclusion of two new CBSAs and the revision of designations for six areas (OMB Bulletin No. 07-01). This OMB bulletin is available on the OMB Web site at <http://www.whitehouse.gov/omb/bulletins/fy2007/b07-01.pdf>. The two new CBSAs outlined in this bulletin are as follows:

- Lake Havasu-Kingman, Arizona (CBSA code 29420). This CBSA comes from Mohave County, Arizona.
- Palm Coast, Florida (CBSA code 37380). This CBSA comes from Flagler County, Florida.

The six revised CBSA designations outlined in this bulletin are as follows:

- Mauldin, South Carolina, and Easley, South Carolina, qualify as new principal cities of the Greenville-Mauldin-Easley, South Carolina CBSA (CBSA code 24860).
- Conway, Arkansas, qualifies as a new principal city of the Little Rock-North Little Rock-Conway, Arkansas CBSA (CBSA code 30780).
- Goleta, California, qualifies as a new principal city of the Santa Barbara-Santa Maria-Goleta, California CBSA (CBSA code 42060).
- Franklin, Tennessee, qualifies as a new principal city of the Nashville-

Davidson-Murfreesboro-Franklin, Tennessee CBSA (CBSA code 34980).

- Fort Pierce, Florida, no longer qualifies as a principal city of the Port St. Lucie-Fort Pierce, Florida CBSA; the new designation is Port St. Lucie, Florida CBSA (CBSA code 38940).

- Essex County, Massachusetts Metropolitan Division, was renamed as the Peabody, Massachusetts Metropolitan Division, which changed the CBSA code from 21604 to 37764.

We note that these six revised CBSA designations made in OMB Bulletin No. 07-01 do not change the composition (constituent counties) of the affected CBSAs; they only revise the CBSA titles (and the CBSA code for the CBSA that consists of Essex County, MA).

We noted in the RY 2009 LTCH PPS proposed rule that we are currently not aware of any LTCHs located in the two new proposed CBSAs (that is, proposed CBSA 29420 and proposed CBSA 37380), and the six proposed revisions to the CBSA designations would only revise the CBSA titles (and the CBSA code for the CBSA that consists of Essex Co., MA). We also noted that these proposed revisions to the CBSA-based designations were adopted under the IPPS effective beginning October 1, 2007, (72 FR 47308 through 47309).

We received no comments on the two new CBSAs and the revision of designations for six areas (based on OMB Bulletin No. 07-01) that were presented in the RY 2009 LTCH PPS proposed rule (73 FR 5363). In this final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA, as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, as we proposed, we are applying these changes to the current CBSA-based labor market area definitions and geographic classifications used under the LTCH PPS effective for discharges occurring on or after July 1, 2008. We believe these revisions to the LTCH PPS CBSA-based labor market area definitions, which are based on the most recent available data, will ensure that the LTCH PPS wage index adjustment most appropriately accounts for and reflects the relative hospital wage levels in the geographic area of the hospital as compared to the national average hospital wage level. Accordingly, the RY 2009 LTCH PPS wage index values presented in Tables 1 and 2 in the Addendum of this final rule reflect the revisions to the CBSA-based labor market area definitions described above.

(3) Clarification of New England Deemed Counties

As we did in the proposed rule, we are also taking this opportunity to address the change in the treatment of “New England deemed counties” (that is, those counties in New England listed in § 412.64(b)(1)(ii)(B) that were deemed to be parts of urban areas under section 601(g) of the Social Security Amendments of 1983) that was made in the FY 2008 IPPS final rule with comment period. These counties include the following: Litchfield County, Connecticut; York County, Maine; Sagadahoc County, Maine; Merrimack County, New Hampshire; and Newport County, Rhode Island. Of these five “New England deemed counties,” three (York County, Sagadahoc County, and Newport County) are also included in metropolitan statistical areas defined by OMB and are considered urban under both the current IPPS and LTCH PPS labor market area definitions in § 412.64(b)(1)(ii)(A) (they will also be urban under the conforming changes to § 412.503 that we are making in this final rule). The remaining two, Litchfield County and Merrimack County, are *geographically* located in areas that are considered rural under the current IPPS (and LTCH PPS) labor market area definitions (however, they have been previously deemed urban under the IPPS in certain circumstances as discussed below).

In the FY 2008 IPPS final rule with comment period (72 FR 47337 through 47338), § 412.64(b)(1)(ii)(B) was revised such that the two “New England deemed counties” that are still considered rural by OMB (Litchfield County, CT and Merrimack County, NH) are no longer considered urban effective for discharges occurring on or after October 1, 2007, and therefore, are considered rural in accordance with § 412.64(b)(1)(ii)(C). However, for purposes of payment under the IPPS, acute-care *hospitals* located within those areas are treated as being reclassified to their deemed urban area effective for discharges occurring on or after October 1, 2007 (see 72 FR 47337 through 47338). (We note that the LTCH PPS does not provide for such geographic reclassification (67 FR 56019 through 56020)). Also in the FY 2008 IPPS final rule with comment period (72 FR 47338), we explained that we have limited this policy change for the “New England deemed counties” only to IPPS hospitals, and any change to non-IPPS provider wage indices would be addressed in the respective payment system rules. Accordingly, as stated

above and as we did in the proposed rule, we are taking this opportunity to clarify the treatment of “New England deemed counties” under the LTCH PPS in this final rule.

As discussed above, under existing § 412.525(c)(2), a LTCH's wage index is determined based on the location of the LTCH in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C). Under existing § 412.525(c)(2), an urban area under the LTCH PPS is currently defined at § 412.64(b)(1)(ii)(A) and (B), and a rural area is defined as any area outside of an urban area in § 412.64(b)(1)(ii)(C).

Historical changes to the labor market area/geographic classifications and annual updates to the wage index values under the LTCH PPS have been made effective July 1 each year. When we established the most recent LTCH PPS payment rate update, effective for LTCH discharges occurring on or after July 1, 2007 through June 30, 2008, we considered the “New England deemed counties” (including Litchfield County, CT and Merrimack County, NH) as urban for RY 2008 (in accordance with the definitions of urban and rural stated in the RY 2008 LTCH PPS final rule (72 FR 26891) and as evidenced by the inclusion of Litchfield County as one of the constituent counties of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT), and the inclusion of Merrimack county as one of the constituent counties of urban CBSA 31700 (Manchester-Nashua, NH)). (See 72 FR 27004 and 27008, respectively).

As noted above, existing § 412.525(c)(2) indicates that the terms “rural” and “urban” as areas are defined according to the definitions of those terms in § 412.64(b)(1)(ii)(A) through (C). As Litchfield County, CT and Merrimack County, NH would be considered rural areas in accordance with our regulations at (§ 412.525(c)(2), these two counties will be “rural” under the LTCH PPS effective with the next update of the LTCH PPS payment rates, which will be July 1, 2008 (Under the LTCH PPS effective for discharges on or after July 1, 2008, Litchfield County, CT and Merrimack County, NH are not urban under § 412.64(b)(1)(ii)(A–B) and therefore are rural under § 412.64(b)(1)(ii)(C) in the regulations). We note that Litchfield and Merrimack Counties will also be rural under our revision to § 412.503, discussed in greater detail below, that incorporates the existing definitions of “urban” and “rural” areas. Therefore, Litchfield County, CT and Merrimack County, NH will be considered “rural” effective for LTCH PPS discharges occurring on or after July 1, 2008, and will no longer be

considered as being part of urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively. We note that currently we are not aware of any LTCHs located in either Litchfield County, CT or Merrimack County, NH. We also note that this policy is consistent with our policy of not taking into account IPPS geographic reclassifications in determining payments under the LTCH PPS. In addition, as discussed above, in this section, effective for discharges on or after July 1, 2008, § 412.64(b)(1)(ii)(B) is no longer applicable under the LTCH PPS. We note that we received no comments on this clarification.

(4) Codification of the Definitions of Urban and Rural Under 42 CFR Part 412 Subpart O

Under the current regulations at § 412.525(c), the labor-related portion of the LTCH PPS Federal rate is adjusted to account for geographical differences in the area wage levels using an appropriate wage index to reflect the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area) of the hospital compared to the national average level of hospital wages and wage-related costs annually. Currently, the application of the wage index under existing § 412.525(c)(2) is made on the basis of the location of the facility in an urban or rural area as defined in § 412.64(b)(1)(ii)(A) through (C) (in 42 CFR part 412 subpart D).

In light of the regulatory construct discussed above where existing § 412.525(c) indicated that the terms “rural area” and “urban area” as defined according to the definitions of those terms” under the IPPS in 42 CFR part 412 subpart D, in the proposed rule, we explained that we believe it may be administratively simpler to have the LTCH PPS urban and rural labor market area definitions self-contained in (§ 412.503) 42 CFR part 412 subpart O rather than cross-referring to the definitions of urban and rural in the IPPS regulations in 42 CFR part 412, subpart D. We also noted that this approach is similar to the change we made in § 412.525(a) for high cost outliers and § 412.529 for short-stay outliers in the FY 2007 IPPS final rule when we embedded within Subpart O the regulatory provisions concerning the determination of cost-to-charge ratios (CCRs) and the reconciliation of outlier payments (71 FR 48115 through 48122). Therefore, in the proposed rule (72 FR 5364), under the broad authority of section 123 of the BBRA as amended by section 307(b) of BIPA we proposed to

codify in § 412.503 the definitions for “urban area” and “rural area.” We stated that the proposed definitions for “urban area” and “rural area” in § 412.503 would incorporate the provisions of § 412.62(f)(1)(ii) and (f)(1)(iii) as well as § 412.64(b)(1)(ii)(A) through (C) in the regulations. Furthermore, we also explained that the definition of “urban area” at § 412.64(b)(1)(ii)(B) is no longer applicable under the LTCH PPS effective for discharges occurring on or after July 1, 2008 (as explained above in section IV.F.1.b.3.), and therefore, the only remaining definition of “urban area” will be that of a Metropolitan Statistical Area (MSA) as defined by the Executive Office of Management and Budget. Thus, we omitted the language of § 412.64(b)(1)(ii)(B) from the proposed definition of “urban area” that would be applicable to discharges occurring on or after July 1, 2008 in proposed § 412.503. We, however, included the language from § 412.64(b)(1)(ii)(A) in the proposed definition of “urban area” in the regulations that would be applicable to discharges occurring on or after July 1, 2008 in proposed § 412.503. For the reason just described, we explained that the proposed definitions of “urban” and “rural” that would be effective for discharges occurring on or after July 1, 2008 (in subparagraph (3) in both the proposed definition of “rural area” and the proposed definition of “urban area”) vary slightly from the wording in the current regulations at § 412.64(b)(1)(ii)(A) through (C); however, substantively the definitions are the same. We believe that the slight difference in the wording of proposed § 412.503 more precisely conveys the treatment of New England deemed counties under the LTCH PPS, as discussed above. As a conforming change, we also proposed to replace the cross-references to § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A) through (C) of the regulations in existing § 412.525(c) with references to the proposed definitions of “urban area” and “rural area” at § 412.503. Therefore, in the proposed rule, we also proposed to revise § 412.525(c) to specify that the application of the LTCH PPS wage index would be made on the basis of the location of the LTCH in an urban or rural area as defined in proposed § 412.503.

We received no comments on our proposal to codify the definitions of urban and rural under 42 CFR part 412 subpart O in § 412.503 or our proposal to replace the cross-references to the definitions of urban and rural set forth

under 42 CFR part 412 subpart D in existing § 412.525(c) with references to the proposed definitions of “urban area” and “rural area” at § 412.503.

Accordingly, in this final rule, under the broad authority of section 123 of the BBRA as amended by section 307(b) of BIPA, as proposed, we are codifying the definitions for “urban area” and “rural area” in § 412.503 for the reasons discussed above. As proposed, the definitions for “urban area” and “rural area” in § 412.503 incorporate the provisions of § 412.62(f)(1)(ii) and (f)(1)(iii) as well as § 412.64(b)(1)(ii)(A) through (C). However, as discussed above, since the definition of “urban area” at § 412.64(b)(1)(ii)(B) is no longer applicable under the LTCH PPS effective for discharges occurring on or after July 1, 2008, the only remaining definition of “urban area” will be that of a Metropolitan Statistical Area (MSA) as defined by the Executive Office of Management and Budget. Thus, we omitted the language of § 412.64(b)(1)(ii)(B) from the definition of “urban area” that will be applicable to discharges occurring on or after July 1, 2008 in § 412.503. However, we included the language from § 412.64(b)(1)(ii)(A) in the definition of “urban area” that will be applicable to discharges occurring on or after July 1, 2008 in proposed § 412.503.

Additionally, as proposed, as a conforming change, we are revising existing § 412.525(c) by replacing the cross-references to § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A) through (C) with references to the newly added definitions of “urban area” and “rural area” at § 412.503. Therefore, in this final rule, we are also revising § 412.525(c) to specify that the application of the LTCH PPS wage index would be made on the basis of the location of the LTCH in an urban or rural area as defined in § 412.503. As discussed in section VI.G.3. of this final rule, we are also making conforming changes to the regulations governing short-stay outlier payments (at § 412.529) and the special payment provisions for co-located LTCHs (at § 412.534) and free-standing LTCHs (at § 412.536), which refer to the definition of urban and rural under the LTCH PPS. We note that, as proposed, this revision to § 412.525(c) includes the deletion of existing subparagraphs (1) and (2) since the newly added definitions of “urban area” and “rural area” at § 412.503 contain the definitions for the respective time periods covered in existing § 412.525(c)(1) and (2).

c. Labor-Related Share

In the August 30, 2002 LTCH PPS final rule (67 FR 56016), we established a labor-related share of 72.885 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all other labor-intensive services) and capital costs of the excluded hospital with capital market basket based on FY 1992 data. We did not revise the labor-related share in RYs 2004 through 2006 while we conducted further analysis to determine the most appropriate methodology and data for determining the labor-related share under the LTCH PPS (70 FR 24182). After our research into the labor-related share methodology was completed, we revised the labor-related share under the LTCH PPS in the RY 2007 final rule (71 FR 27829). Specifically, beginning in RY 2007, we established a labor-related share based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, postal services, and all other labor-intensive services) and capital costs of the RPL market basket based on FY 2002 data, as it is the best available data that reflect the cost structure of LTCHs.

Consistent with our historical practice, the labor-related share currently used under the LTCH PPS is determined by identifying the national average proportion of operating costs and capital costs that are related to, influenced by, or vary with the local labor market. Accordingly, in the RY 2008 LTCH PPS final rule (72 FR 26892), we updated the LTCH PPS labor-related share to 75.788 percent based on the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the RPL market basket based on FY 2002 data from the first quarter of 2007 forecast.

In the proposed rule (73 FR 5364 through 5366), under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, consistent with our historical practice of determining the labor-related share, we proposed to revise the LTCH PPS labor-related share from 75.788 percent to 75.920 percent based on the sum of the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the FY 2002-based RPL market basket from the

fourth quarter of 2007 forecast. Consistent with our proposal to consolidate the annual LTCH PPS updates by proposing to extend RY 2009 by 3 months, we proposed to use the 15-month RY 2009 RPL market basket to determine the proposed labor-related share for RY 2009. Furthermore, we proposed to use the FY 2002-based RPL market basket costs based on data from the fourth quarter of 2007 forecast to determine the labor-related share for the LTCH PPS during RY 2009, that is, effective for discharges occurring on or after July 1, 2008 and through September 30, 2009, because at that time it was the most recent available data. We note that in the proposed rule, we inadvertently indicated the proposed labor related share would be effective occurring on or after July 1, 2008 and before September 30, 2009 (73 FR 5365), when we meant to say through September 30, 2009 which is consistent with the time period for RY 2009. Consistent with our historical practice of using the best data available, we also proposed that if more recent data are available to determine the labor-related share of the RPL market basket, we would use it for determining the RY 2009 LTCH PPS labor-related share in the final rule.

We received no comments on the proposed labor related share for RY 2009. As discussed in section IV.C.2. of this preamble, we now have data from the 1st quarter of 2008 forecast (with history through the 4th quarter of 2007) available for determining the labor-related share of the FY 2002-based RPL market basket. Based on this more recent data, in this final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of the BIPA, consistent with our historical practice of determining the labor-related share by identifying the national average proportion of operating costs and capital costs that are related to, influenced by, or varies with the local labor market, we are revising the LTCH PPS labor-related share from 75.788 percent to 75.662 percent based on the sum of the relative importance of the labor-related share of operating costs (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) and capital costs of the FY 2002-based RPL market basket from the first quarter of 2008 forecast, as shown in Table II.

In this final rule, for RY 2009, we are using the FY 2002-based RPL market basket costs based on data from the first quarter of 2008 forecast to determine the labor-related share for the LTCH PPS for RY 2009 effective for discharges occurring on or after July 1, 2008 and

through September 30, 2009, as this is the most recent available data. The labor-related share for RY 2009 LTCH PPS continues to be determined as the sum of the relative importance of each labor-related cost category, and reflects the different rates of price change for these cost categories between the base year (FY 2002) and the (15-month) 2009 LTCH PPS rate year. As discussed in greater detail above in section IV.B. of this final rule, we are moving the LTCH PPS annual payment rate year beginning July 1st to a rate year beginning October 1st and will have a 15-month rate year for 2009 that is, July 1, 2008 through September 30, 2009. Accordingly, we are using the 15-month RY 2009 RPL market basket, discussed above, to determine the labor-related share for RY 2009 in this final rule. Based on the most recent available data, the sum of the relative importance for the 2009 LTCH PPS rate year for operating costs (wages and salaries, employee benefits, professional fees, and labor-intensive services) will be 71.719, as shown in Table II. The portion of capital that is influenced by the local labor market for this final rule, as was proposed, is still estimated to be 46 percent, which is the same percentage used when we established the current labor-related share in the RY 2008 LTCH PPS final rule. Based on the most recent available data, the relative importance for capital will be 8.572 percent of the FY 2002-based RPL market basket for the 2009 LTCH PPS rate year. As proposed, we are multiplying the estimated portion of capital influenced by the local labor market (46 percent) by the relative importance for capital (8.572 percent) to determine the labor-related share of capital for the 2009 LTCH PPS rate year. The result is 3.943 percent (0.46×8.572 percent), which we add to the 71.719 percent for the operating cost amount to determine the total labor-related share for the 2009 LTCH PPS rate year. Thus, based on the latest available data, we are establishing a labor-related share of 75.662 percent (71.719 percent + 3.943 percent) under the LTCH PPS for the 2009 LTCH PPS rate year. As noted above in this section, the labor-related share in this final rule is determined using the same methodology as employed in calculating the current LTCH labor-related share (72 FR 26892) and the labor-related shares used under the IRF PPS and IPF PPS, which also use the RPL market basket.

Table II shows the 2008 LTCH PPS rate year relative importance labor-related share of the FY 2002-based RPL market basket (established in the RY 2008 LTCH PPS final rule) and the 2009

LTCH PPS rate year relative importance RPL market basket (established in this labor-related share of the FY 2002-based final rule).

TABLE II.—RY 2008 LABOR-RELATED SHARE RELATIVE IMPORTANCE AND RY 2009 LABOR-RELATED SHARE RELATIVE IMPORTANCE OF THE FY 2002-BASED RPL MARKET BASKET

Cost category	RY 2008 relative importance *	RY 2009 relative importance
Wages and Salaries	52.588	52.663
Employee Benefits	14.127	14.024
Professional fees	2.907	2.895
All other labor intensive services**	2.145	2.137
Subtotal	71.767	71.719
Labor share of capital costs	4.021	3.943
Total Labor-related share	75.788	75.662

* As established in the RY 2008 LTCH PPS final rule (72 FR 26892).

** Other labor intensive services includes landscaping services, services to buildings, detective and protective services, repair services, laundry services, advertising, auto parking and repairs, physical fitness facilities, and other government enterprises.

d. Wage Index Data

Historically, under the LTCH PPS, we have established LTCH PPS wage index values calculated from acute care IPPS hospital wage data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act. As we discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56019), since hospitals that are excluded from the IPPS are not required to provide wage-related information on the Medicare cost report. Therefore, we would need to establish instructions for the collection of this LTCH data as well as develop some type of application and determination process before a geographic reclassification adjustment under the LTCH PPS could be implemented. Thus, the wage adjustment established under the LTCH PPS is based on a LTCH's actual location without regard to the urban or rural designation of any related or affiliated provider. Acute care hospital inpatient wage index data are also used to establish the wage index adjustment used in other Medicare PPSs, such as the IRF PPS, IPF PPS, HHA PPS, and SNF PPS.

In the RY 2008 LTCH PPS final rule (72 FR 26893), we established LTCH PPS wage index values for the RY 2008 calculated from the same data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2003 that was used to compute the FY 2007 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act because that was the best available data at that time. The LTCH PPS wage index values applicable for discharges occurring on or after July 1, 2007

through June 30, 2008 are shown in Table I (for urban areas) and Table 2 (for rural areas) in the Addendum to the RY 2008 LTCH PPS final rule (72 FR 26996 through 27019).

In the proposed rule (72 FR 5366), under the broad authority conferred upon the Secretary by section 123 of the BBRA, as amended by section 307(b) of BIPA, to determine appropriate adjustments under the LTCH PPS, we proposed to use the same data collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2004 that was used to compute the FY 2008 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act to determine the applicable wage index values under the LTCH PPS in RY 2009 because these data (FY 2004) are the most recent complete data available at that time. We proposed to continue to use IPPS wage data as a proxy to determine the proposed LTCH wage index values for RY 2009 because both LTCHs and acute-care hospitals are required to meet the same certification criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program and they both compete in the same labor markets, and therefore, experience similar wage-related costs. We also noted that the IPPS wage data used to determine the proposed RY 2009 LTCH wage index values reflected our policy adopted under the IPPS beginning in FY 2008 that apportions the wage data for multi-campus hospitals' located in different labor market areas (CBSAs) to each CBSA where the campuses are located (For additional information see the FY 2008 IPPS final rule with comment (72

FR 47317 through 47320)). We also explained that the proposed RY 2009 LTCH PPS wage index values were computed consistent with the urban and rural geographic classifications (labor market areas) discussed in that same proposed rule and consistent with pre-reclassified IPPS wage index policy (that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments under the LTCH PPS). The proposed RY 2009 wage index values also reflected our proposals, (which are discussed below), to establish wage index values in urban and rural areas in which there are no IPPS wage data from which to compute a wage index value under our methodology described above. (Additional details on this proposal, which we are finalizing without modification in this final rule, are discussed below or can be found in the RY 2009 proposed rule (73 FR 5366).) We received no comments on our proposal to update the wage index values based on the most recent available data or our proposed methodology for computing the RY 2009 LTCH PPS wage index.

In this final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA, as amended by section 307(b) of BIPA, to determine appropriate adjustments under the LTCH PPS, as proposed, we are using the same data (collected from cost reports submitted by hospitals for cost reporting periods beginning during FY 2004) used to compute the FY 2008 acute care hospital inpatient wage index data without taking into account geographic reclassification under sections 1886(d)(8) and (d)(10) of the Act to determine the applicable wage index values under the LTCH PPS in RY

2009 because these data (FY 2004) are the most recent complete data. (For information on the data used to compute the FY 2008 IPPS wage index refer to the FY 2008 IPPS final rule with comment period (72 FR 47308 through 47309, 47315)). As we explained in the proposed rule, we continue to use IPPS wage data as a proxy to determine the proposed LTCH wage index values for RY 2009 because both LTCHs and acute-care hospitals are required to meet the same certification criteria set forth in section 1861(e) of the Act to participate as a hospital in the Medicare program and they both compete in the same labor markets, and therefore, experience similar wage-related costs. As also discussed in the proposed rule, we note that the IPPS wage data used to determine the RY 2009 LTCH wage index values reflects our policy adopted under the IPPS beginning in FY 2008 that apportions the wage data for multicampus hospitals' located in different labor market areas (CBSAs) to each CBSA where the campuses are located (For additional information see the FY 2008 IPPS final rule with comment period (72 FR 47317 through 47320)). For the RY 2009 LTCH PPS wage index, which is computed from IPPS wage data submitted by hospitals for cost reporting periods beginning in FY 2004 (just like comparable to the FY 2008 IPPS wage index), we allocated salaries and hours to the campuses of two multicampus hospitals with campuses that are located in different labor areas, one in Massachusetts and another in Illinois. Thus, the RY 2009 LTCH PPS wage index values for the following CBSAs are affected by this policy: Boston-Quincy, MA (CBSA 14484), Providence-New Bedford-Falls River, RI-MA (CBSA 39300), Chicago-Naperville-Joliet, IL (CBSA 16974) and Lake County-Kenosha County, IL-WI (CBSA 29404) (refer to Table 1 in the Addendum of this final rule). As proposed, the RY 2009 LTCH PPS wage index values presented in this final rule were computed consistent with the urban and rural geographic classifications (labor market areas) discussed above in section IV.F.1.b. of this final rule and consistent with pre-reclassified IPPS wage index policy, that is, our historical policy of not taking into account IPPS geographic reclassifications in determining payments under the LTCH PPS. Specifically, we note (as we did in the proposed rule) that the wage data of the IPPS hospitals located in Litchfield county, CT, and Merrimack county, NH, were included in the calculation of the RY 2009 LTCH PPS statewide rural

wage index values for Connecticut and New Hampshire, respectively (rather than urban CBSA 25540 (Hartford-West Hartford-East Hartford, CT) and urban CBSA 31700 (Manchester-Nashua, NH), respectively). In addition, the RY 2009 wage index reflects the policy, which is discussed in greater detail below, we are establishing to determine wage index values in urban and rural areas in which there are no IPPS wage data from which to compute a wage index value under our methodology described above. As noted above, the RY 2009 LTCH PPS wage index values in this final rule were computed from the same FY2004 acute care hospital inpatient wage data that were used to compute the FY 2008 wage index currently used under the IPPS.

Also, as proposed in the RY 2009 proposed rule (73 FR 5366 through 5368), we are establishing a policy for determining LTCH PPS wage index values for labor market areas in which there is no IPPS hospital wage data from which to compute a wage index value under our methodology described above. In the RY 2009 proposed rule, we explained that currently, there are no LTCHs located in labor areas where there is no IPPS hospital wage data (or IPPS hospitals). However, we believed it was appropriate to establish a methodology for determining LTCH PPS wage index values for these areas in the event that in the future a LTCH should open in one of those areas. Thus, any LTCH that would open in an area in which there is no IPPS wage data for which to compute a wage index based on our established methodology would have a wage index value assigned to them for determining their LTCH PPS payments. Consistent with the proposed rule, in this final rule we are adopting the policy which provides that each year we will determine a wage index value for any area in which there is no IPPS wage data based on the methodologies described below. These policies for determining LTCH PPS wage index values for areas with no IPPS hospital wage data are consistent with the policies that have been established under other Medicare post-acute care PPSs, such as SNF and HHA, as well as the IPPS.

Specifically, as proposed, we are establishing a policy for determining a LTCH PPS wage index value for urban CBSAs with no IPPS wage data by using an average of all of the urban areas within the State to serve as a reasonable proxy for determining the LTCH PPS wage index for an urban area without specific IPPS hospital wage index data. We believe that an average of all of the urban areas within the State would be a reasonable proxy for determining the

LTCH PPS wage index for an urban area in the State with no wage data because it is based on pre-reclassified IPPS wage data, it is easy to evaluate, and it uses the most geographically similar relative wage-related costs data available. (Our rationale for using pre-reclassified IPPS wage data is discussed above in the beginning of this section.) As proposed, we are also establishing a policy for determining a LTCH PPS wage index value for rural areas with no IPPS wage data using the unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties of the State to serve as a reasonable proxy in determining the LTCH PPS wage index for a rural area without specific IPPS hospital wage index data. For this purpose, as proposed, we are defining "contiguous" as sharing a border. As explained, in the proposed rule, we are not able to apply an averaging in rural areas with no wage data similar to what we are doing for urban areas with no wage data because there is no rural hospital data available for averaging on a state-wide basis. We believe that using an unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties of the State is a reasonable proxy for determining the wage index for rural areas in a State with no wage data because it is based on pre-reclassified IPPS wage data, it is easy to evaluate, and it uses the most geographically similar relative wage-related costs data available. (Our rationale for using pre-reclassified IPPS wage data is discussed above in the beginning of this section.) In addition, as IPPS wage data is dynamic, it is possible that areas without IPPS wage data may vary in the future, and each year we would determine a wage index value for any area in which there is no IPPS wage data based on our methodologies. Additional details on our proposals on setting the LTCH PPS wage indices, which we are finalizing without modification in this final rule, are discussed below or can be found in the RY 2009 proposed rule (73 FR 5367).

Comment: We received no comments opposing and a few comments in support of our proposed methodology for setting LTCH PPS wage indices for areas where there are no IPPS wage data. These commenters noted that although it would be unlikely that a LTCH would operate in an area without an acute care IPPS hospital to supply wage data, as IPPS hospitals are a common referral source, the commenters agreed that it is practical to prepare for this unlikely scenario, and

find our proposed methodology to be reasonable.

Response: We appreciate the commenters' support of our proposals to establish LTCH PPS wage index values for areas where there are no IPPS wage data. As noted above, currently, there are no LTCHs located in labor areas where there is no IPPS hospital wage data (or IPPS hospitals), however, we believe it is appropriate to establish a methodology for determining LTCH PPS wage index values for these areas in the event that in the future a LTCH should open in one of those areas. Thus, any LTCH that would open in an area in which there is no IPPS wage data for which to compute a wage index based on our established methodology would have a wage index value assigned to them for determining their LTCH PPS payments.

In this final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, we are finalizing our proposal to establish a policy for determining LTCH PPS wage index values for labor market areas in which there is no IPPS hospital wage data from which to compute a wage index value under our methodology described above. Under this policy, each year we would determine a wage index value for any area in which there is no IPPS wage data based on the methodologies described below. As IPPS hospitals may open or close at any time, the number of areas without any IPPS wage data may change from year to year, and even when an IPPS hospital does open in an area where there are currently no IPPS hospitals, because there is a lag-time between the time a hospital opens or becomes an IPPS provider and when the hospital's cost report wage data are available to include in calculating the area wage index (72 FR 47323), we believe it is appropriate to establish a methodology for determining LTCH PPS wage index values for these areas, if necessary. We note that our policies for determining LTCH PPS wage index values for areas with no IPPS hospital wage data are consistent with the policies that have been established under other Medicare post-acute care PPSs, such as SNF and HHA, as well as the IPPS.

The first situation for which we are establishing a policy for determining a LTCH PPS wage index value is for urban CBSAs with no IPPS wage data. Consistent with the policy established under other PPSs, such as the HHA (70 FR 40795 and 71 FR 65892 through 65893), as proposed, we are establishing

a methodology of using an average of all of the urban areas within the State to serve as a reasonable proxy for determining the LTCH PPS wage index for an urban area without specific IPPS hospital wage index data. As we explained in the proposed rule, we believe that an average of all of the urban areas within the State would be a reasonable proxy for determining the LTCH PPS wage index for an urban area in the State with no wage data because it is based on pre-reclassified IPPS wage data, it is easy to evaluate, and it uses the most geographically similar relative wage-related costs data available.

In this final rule, based on the FY 2004 IPPS wage data that we are using to determine the RY 2009 LTCH PPS wage index, which is discussed above, there is no IPPS wage data for the urban area of Hinesville-Fort Stewart, GA (CBSA 25980). (As we noted in the proposed rule, as IPPS wage data is dynamic, it is possible that urban areas without IPPS wage data will vary in the future.) Consistent with our policy for determining a LTCH PPS wage index value for urban areas with no IPPS wage data (discussed above), in this final rule, we calculated the wage index value for RY 2009 for CBSA 25980 as the average of the wage index values for all of the other urban areas within the State of Georgia (that is, CBSAs 10500, 12020, 12060, 12260, 15260, 16860, 17980, 19140, 23580, 31420, 40660, 42340, 46660 and 47580) (refer to Table 1 of the Addendum of this final rule). (As noted above, there are currently no LTCHs located in CBSA 25980). As discussed in the proposed rule, we believe that this policy could be readily applied to other urban CBSAs (besides CBSA 25980) that lack IPPS wage data. However, as proposed, we may re-examine the application of this policy should a similar situation arise in the future.

The other situation for which we are establishing a policy for determining a LTCH PPS wage index value is for rural areas with no IPPS wage data. Consistent with the policy established under other PPSs, such as the HHA (71 FR 65905 through 65906) and the IPPS (72 FR 47323 through 47324), as proposed, we are establishing a policy of using the unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties of the State to serve as a reasonable proxy in determining the LTCH PPS wage index for a rural area without specific IPPS hospital wage index data. For this purpose, we define "contiguous" as sharing a border. As we explained in the proposed rule, we are not able to apply a similar averaging in rural areas with

no wage data as we did above for urban areas with no wage data because there is no rural hospital data available for averaging on a state-wide basis. We believe that using an unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties of the State is a reasonable proxy for determining the wage index for rural areas in a State with no wage data because it is based on pre-reclassified IPPS wage data, it is easy to evaluate, and it uses the most geographically similar relative wage-related costs data available.

In this final rule, based on the FY 2004 IPPS data that we are using to determine the RY 2009 LTCH PPS wage index, which is discussed above, rural Massachusetts (CBSA code 11) does not have any IPPS wage data. (As noted in the proposed rule, as IPPS wage data is dynamic, it is possible that rural areas without IPPS wage data will vary in the future.) Consistent with our policy for determining a LTCH PPS wage index value for rural areas with no IPPS hospital wage data (described above), in this final rule, we determined the wage index value for RY 2009 for rural Massachusetts by computing the unweighted average of the wage indices from all of the CBSAs that are contiguous to the rural counties in that State. Specifically, in the case of Massachusetts, the entire rural area consists of Dukes and Nantucket counties. As discussed in our proposal, we determined that the borders of Dukes and Nantucket counties are "contiguous" with Barnstable County, MA, and Bristol County, MA. Therefore, the RY 2009 LTCH PPS wage index value for rural Massachusetts is computed as the unweighted average of the RY 2009 wage indexes for Barnstable county and Bristol county (refer to Tables 1 and 2 of the Addendum of this final rule). (As noted above, there are currently no LTCHs located in rural Massachusetts.) We discussed in the proposed rule, we believe that this policy could be readily applied to other rural areas (besides Massachusetts) that lack IPPS wage data (possibly due to acute-care hospitals converting to a different provider type that does not submit the appropriate wage data). However, we may re-examine the application of this policy should a similar situation arise in the future.

The RY 2009 LTCH wage index values that will be applicable for LTCH discharges occurring on or after July 1, 2008 through September 30, 2009, are presented in Table 1 (for urban areas) and Table 2 (for rural areas) in the Addendum of this final rule. As

discussed in greater detail above in section IV.B. of this preamble, we are moving the LTCH PPS annual payment rate update cycle from July 1 to October 1 and will have a 15-month rate year for 2009 (that is, July 1, 2008 through September 30, 2009). Therefore, as proposed, the next proposed update to the LTCH wage index values will be effective for discharges occurring on or after October 1, 2009 (FY 2010). In addition, as noted above, the wage index adjustment under the LTCH PPS was completely phased in beginning with cost reporting periods beginning in FY 2007 (that is, for cost reporting periods beginning on or after October 1, 2006). Therefore, for LTCH PPS discharges occurring during RY 2009, the labor related portion of the standard Federal rate is adjusted by the applicable full (five fifths) proposed RY 2009 LTCH PPS wage index value, which are shown in Tables 1 and 2 of the Addendum to this final rule).

2. Adjustment for Cost-of-Living in Alaska and Hawaii

In the August 30, 2002 final rule (67 FR 56022), we established, under

§ 412.525(b), a cost of living adjustment (COLA) for LTCHs located in Alaska and Hawaii to account for the higher costs incurred in those States. In the RY 2008 LTCH PPS final rule (72 FR 26894), for RY 2008, we established a COLA to payments for LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the appropriate factor listed in Table III of that same final rule.

Similarly, in the RY 2009 LTCH PPS proposed rule (73 FR 5368), under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, for RY 2009 we proposed to apply a COLA to payments to LTCHs located in Alaska and Hawaii by multiplying the proposed standard Federal payment rate by the proposed factors listed below in Table III because they were the most recent available data at that time. These proposed factors were obtained from the U.S. Office of Personnel Management (OPM) and are currently also used under the IPPS (72 FR 47422). In addition, we proposed

that if OPM releases revised COLA factors before March 1, 2008, we would use the revised factors for the development of LTCH PPS payments for RY 2009 and publish those revised COLA factors in the final rule.

We received no comments on our proposed COLA for LTCHs located in Alaska and Hawaii for RY 2009. We note that as of March 1, 2008, OPM did not revise the COLA factors we proposed for RY 2009 in the proposed rule. Accordingly, in this final rule, under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA to determine appropriate adjustments under the LTCH PPS, in this final rule, as proposed, we are establishing that for RY 2009 we will make a COLA to payments to LTCHs located in Alaska and Hawaii by multiplying the standard Federal payment rate by the factors listed below in Table III because they are the most recent available data at this time.

TABLE III.—COST-OF-LIVING ADJUSTMENT FACTORS FOR ALASKA AND HAWAII HOSPITALS FOR THE 2009 LTCH PPS RATE YEAR

Alaska:	
City of Anchorage and 80-kilometer (50-mile) radius by road	1.24
City of Fairbanks and 80-kilometer (50-mile) radius by road	1.24
City of Juneau and 80-kilometer (50-mile) radius by road	1.24
All other areas of Alaska	1.25
Hawaii:	
City and County of Honolulu	1.25
County of Hawaii	1.17
County of Kauai	1.25
County of Maui and County of Kalawao	1.25

3. Adjustment for High-Cost Outliers (HCOs)

a. Background

Under the broad authority conferred upon the Secretary by section 123 of the BBRA as amended by section 307(b) of BIPA, in the regulations at § 412.525(a), we established an adjustment for additional payments for outlier cases that have extraordinarily high costs relative to the costs of most discharges. We refer to these cases as high cost outliers (HCOs). Providing additional payments for outliers strongly improves the accuracy of the LTCH PPS in determining resource costs at the patient and hospital level. These additional payments reduce the financial losses that would otherwise be incurred when treating patients who require more costly care and, therefore, reduce the incentives to underserve these patients.

We set the outlier threshold before the beginning of the applicable rate year so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. Outlier payments under the LTCH PPS are determined consistent with the instructions issued for the IPPS outlier policy.

Under § 412.525(a) in the regulations (in conjunction with the revised definition of “LTC-DRG” at § 412.503), we make outlier payments for any discharges if the estimated cost of a case exceeds the adjusted LTCH PPS payment for the MS-LTC-DRG plus a fixed-loss amount. Specifically, in accordance with § 412.525(a)(3) (in conjunction with the revised definition of “LTC-DRG” at § 412.503), we pay outlier cases 80 percent of the difference between the estimated cost of the patient case and the outlier threshold,

which is the sum of the adjusted Federal prospective payment for the MS-LTC-DRG and the fixed-loss amount. The fixed-loss amount is the amount used to limit the loss that a hospital will incur under the outlier policy for a case with unusually high costs. This results in Medicare and the LTCH sharing financial risk in the treatment of extraordinarily costly cases. Under the LTCH PPS HCO policy, the LTCH's loss is limited to the fixed-loss amount and a fixed percentage (currently 80 percent) of costs above the outlier threshold (MS-LTC-DRG payment plus the fixed-loss amount). The fixed percentage of costs is called the marginal cost factor. We calculate the estimated cost of a case by multiplying the Medicare allowable covered charge by the overall hospital cost-to-charge ratio (CCR).

Under the LTCH PPS, we determine a fixed-loss amount, that is, the maximum

loss that a LTCH can incur under the LTCH PPS for a case with unusually high costs before the LTCH will receive any additional payments. We calculate the fixed-loss amount by estimating aggregate payments with and without an outlier policy. The fixed-loss amount will result in estimated total outlier payments being projected to be equal to 8 percent of projected total LTCH PPS payments. Currently, MedPAR claims data and CCRs based on data from the most recent provider specific file (PSF) (or from the applicable Statewide average CCR if a LTCH's CCR data are faulty or unavailable) are used to establish a fixed-loss threshold amount under the LTCH PPS.

b. Cost-to-Charge Ratios (CCRs)

The following is a discussion of cost-to-charge ratios (CCRs) used in determining payments for high cost and short-stay outlier cases under the LTCH PPS, at § 412.525(a) and § 412.529, respectively. Although this section is specific to HCO cases, because CCRs and the policies and methodologies pertaining to them are used in determining payments for both high cost and short-stay outlier (SSO) cases (as explained below), we are discussing the determination of CCRs under the LTCH PPS for both of these type of cases simultaneously. In section IV.G. of this final rule, which discusses SSO cases, we refer the reader to this section of the preamble for a complete discussion on the determination of CCRs.

In determining both HCO payments (at § 412.525(a)) and SSO payments (at § 412.529), we calculate the estimated cost of the case by multiplying the LTCH's overall CCR by the Medicare allowable charges for the case. In general, we use the LTCH's overall CCR, which is computed based on either the most recently settled cost report or the most recent tentatively settled cost report, whichever is from the latest cost reporting period, in accordance with § 412.525(a)(4)(iv)(B) and § 412.529(c)(4)(iv)(B) for HCOs and SSOs, respectively. (We note that in some instances we use an alternative CCR, such as the statewide average CCR in accordance with the regulations at § 412.525(a)(4)(iv)(C) and § 412.529(c)(4)(iv)(C), or a CCR that is specified by CMS or that is requested by the hospital under the provisions of the regulations at § 412.525(a)(4)(iv)(A) and § 412.529(c)(4)(iv)(A).) Under the LTCH PPS, a single prospective payment per discharge is made for both inpatient operating and capital-related costs. Therefore, we compute a single "overall" or "total" LTCH-specific CCR based on the sum of LTCH operating

and capital costs (as described in Chapter 3, section 150.24, of the Medicare Claims Processing Manual (CMS Pub. 100-4)) as compared to total charges. Specifically, a LTCH's CCR is calculated by dividing a LTCH's total Medicare costs (That is, the sum of its operating and capital inpatient routine and ancillary costs) by its total Medicare charges (that is, the sum of its operating and capital inpatient routine and ancillary charges).

Generally, a LTCH is assigned the applicable statewide average CCR if, among other things, a LTCH's CCR is found to be in excess of the applicable maximum CCR threshold (that is, the LTCH CCR ceiling). This is because CCRs above this threshold are most likely due to faulty data reporting or entry, and, therefore, CCRs based on erroneous data should not be used to identify and make payments for outlier cases. Thus, under our established policy, generally, if a LTCH's calculated CCR is above the applicable ceiling, the applicable LTCH PPS statewide average CCR is assigned to the LTCH instead of the CCR computed from its most recent (settled or tentatively settled) cost report data.

In the FY 2008 IPPS final rule with comment period, in accordance with § 412.525(a)(4)(iv)(C)(2) for high-cost outliers and § 412.529(c)(4)(iv)(C)(2) for short-stay outliers, using our established methodology for determining the LTCH total CCR ceiling, based on IPPS total CCR data from the March 2007 update to the Provider-Specific File (PSF), we established a total CCR ceiling of 1.284 under the LTCH PPS effective October 1, 2007 through September 30, 2008. We also note that in the FY 2009 IPPS proposed rule (73 FR 23681), using our established methodology for determining the LTCH total CCR ceiling, based on IPPS total CCR data from the December 2007 update of the PSF, we proposed a total CCR ceiling of 1.262 under the LTCH PPS that would be effective October 1, 2008 through September 30, 2009. In that same proposed rule, we also proposed that if more recent data were available, we would use it to establish a total CCR ceiling under the LTCH PPS for FY 2009 in the FY 2009 IPPS final rule. (For further detail on our methodology for annually determining the LTCH total CCR ceiling, we refer readers to the FY 2007 IPPS final rule (71 FR 48119 through 48121) and the FY 2008 IPPS final rule with comment period (72 FR 47403 through 47404).)

Our general methodology established for determining the statewide average CCRs used under the LTCH PPS is similar to our established methodology

for determining the LTCH total CCR ceiling (described above) since it is based on "total" IPPS CCR data. Under the LTCH PPS HCO policy at § 412.525(a)(4)(iv)(C) and the SSO policy at § 412.529(c)(4)(iv)(C), the fiscal intermediary (FI) may use a statewide average CCR, which is established annually by CMS, if it is unable to determine an accurate CCR for a LTCH in one of the following circumstances: (1) New LTCHs that have not yet submitted their first Medicare cost report (for this purpose, consistent with current policy, a new LTCH is defined as an entity that has not accepted assignment of an existing hospital's provider agreement in accordance with § 489.18); (2) LTCHs whose CCR is in excess of the LTCH CCR ceiling (as discussed above); and (3) other LTCHs for whom data with which to calculate a CCR are not available (for example, missing or faulty data). (Other sources of data that the FI may consider in determining a LTCH's CCR include data from a different cost reporting period for the LTCH, data from the cost reporting period preceding the period in which the hospital began to be paid as a LTCH (that is, the period of at least 6 months that it was paid as a short-term acute care hospital), or data from other comparable LTCHs, such as LTCHs in the same chain or in the same region.)

In Table 8C of the Addendum the FY 2008 IPPS final rule with comment period (72 FR 48127), in accordance with the regulations at § 412.525(a)(4)(iv)(C) for HCOs and § 412.529(c)(4)(iv)(C) for SSO, using our established methodology for determining the LTCH statewide average CCRs, based on using the most recent complete IPPS total CCR data from the March 2007 update of the PSF, we established the LTCH PPS statewide average total CCRs for urban and rural hospitals effective for discharges occurring on or after October 1, 2007, and before October 1, 2008. We note that in the FY 2009 IPPS proposed rule (73 FR 23681), using our established methodology for determining the LTCH statewide average CCRs, based on the most recent complete IPPS total CCR data from the December 2007 update of the PSF, we proposed LTCH PPS statewide average total CCRs for urban and rural hospitals that would be effective for discharges occurring on or after October 1, 2008, and through September 30, 2009, in Table 8C of the Addendum to that proposed rule (73 FR 23874). In that same proposed rule, we also proposed that if more recent data were available, we would use it to establish LTCH PPS statewide average

total CCRs for urban and rural hospitals for FY 2009 in the FY 2009 IPPS final rule. (For further detail on our methodology for annually determining the LTCH urban and rural statewide average CCRs, we refer readers to the FY 2007 IPPS final rule (71 FR 48119 through 48121) and FY 2008 IPPS final rule with comment period (72 FR 47403 through 47404).)

We note, under the LTCH PPS high cost outlier policy at § 412.525(a)(4)(iv)(D) and the LTCH PPS SSO policy at § 412.529(c)(4)(iv)(D), the payments for high cost outlier and SSO cases, respectively, are subject to reconciliation. Specifically, any reconciliation of outlier payments is based on the CCR calculated based on a ratio of costs to charges computed from the relevant cost report and charge data determined at the time the cost report coinciding with the discharge is settled. For additional information, refer to the RY 2008 LTCH PPS final rule (72 FR 26899 through 26900).

c. Establishment of the RY 2009 Fixed-Loss Amount

When we implemented the LTCH PPS, as discussed in the August 30, 2002 LTCH PPS final rule (67 FR 56022 through 56026), under the broad authority of section 123 of the BBRA as amended by section 307(b) of BIPA, we established a fixed-loss amount so that total estimated outlier payments are projected to equal 8 percent of total estimated payments under the LTCH PPS. To determine the fixed-loss amount, we estimate outlier payments and total LTCH PPS payments for each case using claims data from the MedPAR files. Specifically, to determine the outlier payment for each case, we estimate the cost of the case by multiplying the Medicare covered charges from the claim by the LTCH's hospital specific CCR. Under § 412.525(a)(3) (in conjunction with the revised definition of "LTC-DRG" at § 412.503), if the estimated cost of the case exceeds the outlier threshold (the sum of the adjusted Federal prospective payment for the MS-LTC-DRG and the fixed-loss amount), we pay an outlier payment equal to 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal prospective payment for the MS-LTC-DRG and the fixed-loss amount).

In the RY 2008 LTCH PPS final rule (72 FR 26898), we used claims data from the December 2006 update of the FY 2006 MedPAR files and CCRs from the December 2006 update of the PSF, as those were the best available data at that time, to calculate a fixed-loss amount

that would result in estimated outlier payments projected to be equal to 8 percent of total estimated payments for the 2008 LTCH PPS rate year. We believe that CCRs from the PSF are the best available CCR data for determining estimated LTCH PPS payments for a given LTCH PPS rate year because they are the most recently available CCRs actually used to make LTCH PPS payments.

We also discussed in the RY 2008 LTCH PPS rate year final rule (72 FR 26898), we calculated a single fixed-loss amount for the 2008 LTCH PPS rate year based on the version 24.0 of the GROUPER, which was the version in effect as of the beginning of the LTCH PPS rate year (that is, July 1, 2007 for the 2008 LTCH PPS rate year). In addition, we applied the outlier policy in the regulations at § 412.525(a) in determining the fixed-loss amount for the 2008 LTCH PPS rate year; that is, we assigned the applicable Statewide average CCR only to LTCHs whose CCRs exceeded the ceiling. Accordingly, we used the FY 2007 LTCH PPS total CCR ceiling of 1.321 (72 FR 26898). As noted in that same final rule, in determining the fixed-loss amount for the 2008 LTCH PPS rate year using the CCRs from the PSF, there were no LTCHs with missing CCRs or with CCRs in excess of the current ceiling and, therefore, there was no need for us to independently assign the applicable Statewide average CCR to any LTCHs in determining the fixed-loss amount for the 2008 LTCH PPS rate year (as this may have already been done by the FI in the PSF in accordance with the established policy).

Accordingly, in the RY 2008 final rule (72 FR 26898), as amended by the RY 2008 correction notice (72 FR 36613), we established a fixed-loss amount of \$20,738 for the 2008 LTCH PPS rate year. In the recently issued interim final rule with comment that implements certain provisions of section 114 of the MMSEA, including the revision to the standard Federal rate for RY 2008, we revised the fixed-loss amount to \$20,707 for discharges occurring on or after April 1, 2008 through June 30, 2008. Thus, we pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH PPS payment for the MS-LTC-DRG and the applicable RY 2008 fixed-loss amount).

In the RY 2009 proposed rule, for the 2009 LTCH PPS rate year, we used the March 2006 update of the FY 2006 MedPAR claims data to determine a proposed fixed-loss amount that would result in estimated outlier payments projected to be equal to 8 percent of

total estimated payments, based on the policies described in that proposed rule, because those data were the most recent complete LTCH data available.

Consistent with our historical practice of using the best data available, we also proposed that if more recent LTCH claims data become available, we would use it for determining the fixed-loss amount for the 2009 LTCH PPS rate year in the final rule. In the proposed rule, as also noted previously, we proposed to determine the RY 2009 fixed-loss amount based on the version of the GROUPER that would be in effect as of the beginning of the 2009 LTCH PPS rate year (July 1, 2008), that is, Version 25.0 of the GROUPER (as established in the FY 2008 IPPS final rule (72 FR 47278)).

Additionally, in the proposed rule, we used CCRs from the July 2007 update of the PSF for determining the proposed fixed-loss amount for the 2009 LTCH PPS rate year as they were the most recent complete available data at that time. Consistent with our historical practice of using the best data available, we also proposed that if more recent CCR data were available, we would use it for determining the fixed-loss amount for the 2009 LTCH PPS rate year in the final rule. Furthermore, in determining the proposed fixed-loss amount for the 2009 LTCH PPS rate year, we used the current FY 2008 applicable LTCH "total" CCR ceiling of 1.284 and LTCH Statewide average "total" CCRs established in the FY 2008 IPPS final rule (72 FR 47404 and 48126 through 48127) such that the current applicable Statewide average CCR would be assigned if, among other things, a LTCH's CCR exceeded the current ceiling (1.284).

Therefore, based on the data and policies described in the proposed rule, under the broad authority of section 123(a)(1) of the BBRA and section 307(b)(1) of BIPA, in this final rule, we are establishing a fixed-loss amount of \$22,960 for the 2009 LTCH PPS rate year. Thus, we pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted proposed Federal LTCH payment for the MS-LTC-DRG and the fixed-loss amount of \$22,960).

Comment: A few commenters expressed concern that we made an error in computing the proposed fixed-loss amount by not incorporating the changes to LTCH PPS payments provided for by the MMSEA, such as the modification to the payment formula for short-stay outlier (SSO) cases at § 412.529 and to the payment adjustments to LTCH discharges that

were admitted from specific referring hospitals and that exceed various percentage thresholds at §§ 412.534 and 412.536 (often referred to as the “25-percent rule”) that were current law. These commenters expected that because these MMSEA provisions would increase LTCH PPS payments in RY 2009, the fixed-loss amount for RY 2009 should either decrease from the current RY 2008 amount or be lower than the proposed fixed-loss amount (holding all other factors constant). The commenters believed that because total estimated RY 2009 LTCH PPS payments that include the effect of these MMSEA provisions would increase over the original estimate of RY 2009 LTCH PPS payments, the 8 percent outlier target that is based on total estimated payments would also increase in size, and therefore, the fixed-loss amount for RY 2009 should decrease in order to increase estimated high cost outlier payments so as to meet the 8 percent target. Several commenters also stated that they believe that, because we are projecting that estimated LTCH PPS payments would increase in RY 2009 as compared to RY 2008, the fixed-loss amount for RY 2009 should decrease relative to the RY 2008 fixed-loss amount. Therefore, these commenters recommended that the calculation of the fixed-loss amount for RY 2009 be revised to take into account all the known policy changes that would affect LTCH PPS payments in RY 2009, including those mandated by the MMSEA, as to not establish a fixed-loss amount that would result in “underpayment” to LTCHs. A few other commenters opposed the proposed increase to the fixed-loss amount since such an increase would result in fewer cases qualifying for an additional high cost outlier payment. One commenter remarked that the proposed “modest increase” in the fixed-loss amount is “acceptable,” but asserted that LTCHs with very high case-mix indexes would be impacted more than LTCHs with low case-mix indexes. Another commenter stated that the proposed increase to the fixed-loss amount failed to consider the acuity of patients and is based only on mathematics. The commenter added that the proposed increase to the fixed-loss amount would further increase LTCHs’ loss on these cases before they qualify for an additional payment as HCOs. The commenter recommended that if CMS believes an increase to the fixed-loss amount is warranted, then any increase to the fixed-loss amount should be limited to an annual inflationary increase.

Response: We disagree with the commenters that we erred in the computation of the proposed fixed-loss amount by not incorporating all of the known policy changes that would affect LTCH PPS payments in RY 2009. In addition to including the proposed changes to the rates and factor for RY 2009 included in the proposed rule, such as the proposed 2.6 percent RY 2009 Federal rate, we did in fact include those provisions of the MMSEA that would affect RY 2009 LTCH PPS payments. Specifically, our payment model for estimating RY 2009 LTCH PPS payments, used in both the proposed rule and in this final rule, incorporated the modification to the payment formula for SSO cases, such that in RY 2009 LTCH payments for SSO cases would be the lesser of 100 percent of the estimated cost of the case; 120 percent of the MS–LTC–DRG specific per diem amount for each covered day; the full LTC–DRG payment; or a blend of the 120 percent of the MS–LTC–DRG specific per diem amount and an amount comparable to the IPPS per diem amount (capped at the full IPPS comparable amount). With respect to the “25-percent rule,” historically in estimating LTCH PPS payments for purposes of determining the fixed-loss amount (and for the impact analysis, as we discuss in section XI. of this final rule), we have not included an estimated change in payments due to the payment adjustments to LTCH discharges that were admitted from specific referring hospitals and that exceed various percentage thresholds at §§ 412.534 and 412.536. We are not aware of any instances where the FI has made any adjustments to LTCHs’ payments under this policy. Consequently, we believe that LTCHs have modified their admission practices such that they have not become subject to those payment adjustments, and therefore, no estimated payment adjustments under these provisions are reflected in our payment model. Therefore, as the commenters recommended, in calculating both the proposed RY 2009 fixed-loss amount and the RY 2009 fixed-loss amount established in this final rule, we have taken into account all the known policy changes that would affect LTCH PPS payments in RY 2009, including those mandated by the MMSEA.

Generally, we would agree with the commenters that an estimated increase in LTCH PPS payments alone, holding all other factors constant, should result in a decrease in the fixed-loss amount from the current fixed-loss amount. However, the commenters have not

considered other factors that affect the computation of the fixed-loss amount. Specifically, as discussed in the proposed rule and as discussed below in this section, we used the best available LTCH claims data from the MedPAR files and CCRs from the PSF to estimate total LTCH PPS payments and to estimate the costs of each case, as well as the payment rates, factors and policies that would be in effect during the applicable time period, in determining a fixed-loss amount that would result in estimated outlier payments that would be equal to 8 percent of total estimated payments. In computing the current fixed-loss amount for RY 2008, as noted above, we used claims data from the December 2006 update of the FY 2006 MedPAR files and CCRs from the December 2006 update of the PSF, as that was the best available data at that time. We also used Version 24.0 (FY 2007) of the GROUPER software and the FY 2007 LTC–DRG relative weights to determine the RY 2008 fixed-loss amount as this was the version that was in effect as of the beginning of RY 2008 (July 1, 2007). In the proposed rule, in computing the proposed fixed-loss amount for RY 2009 that would result in estimated outlier payments that would be equal to 8 percent of total estimated payments, we used LTCH claims data from the March 2006 update of the FY 2006 MedPAR files and CCRs from the July 2007 update of the PSF as they were the most recent complete available data at that time. We also used Version 25.0 (FY 2008) of the GROUPER software and the FY 2008 MS–LTC–DRG relative weights to determine the proposed RY 2009 fixed-loss amount as this would be the version that would be in effect as of the beginning of RY 2009 (July 1, 2008). As we have discussed throughout this section, in order to determine a fixed-loss amount that would result in estimated high cost outlier payments that would be equal to 8 percent of total estimated payments, it is necessary to use the best available payment rates, factors and policy information upon which to compute those payment estimates, and therefore, it would be inappropriate to “hold all other factors constant” when determining the fixed-loss amount. Furthermore, based on the most recent available data and payment model described above, we currently project that estimated RY 2008 high cost outlier payments are approximately 8.2 percent of estimated total RY 2008 LTCH PPS payments. Maintaining the fixed-loss amount at the current level would result in HCO payment that exceed the current regulatory

requirement that estimated HCO payments would be projected to equal 8 percent of estimated total LTCH PPS payments. Therefore, based on more recent data, it appears that the current RY 2008 fixed-loss amount may be too low since estimated HCO payments are slightly higher than the 8 percent target. For these reasons, we disagree with commenters that just because we are projecting an estimated increase in LTCH PPS payments in RY 2009 as compared to RY 2008, the fixed-loss amount for RY 2009 should decrease relative to the RY 2008 fixed-loss amount or should be lower than the proposed RY 2009 fixed-loss amount.

We acknowledge that an increase to the fixed-loss amount will increase a LTCH's "loss" on a specific case before it qualifies for an additional payment a HCO, as noted by one commenter; however, as we explained in the RY 2007 LTCH PPS final rule (71 FR 27836), because a relatively higher fixed-loss amount identifies fewer cases as HCO cases (since the amount that the estimated cost of the case must exceed before the case qualifies as a HCO case is higher), such a policy better identifies LTCH patients that are unusually costly cases. The intent of the HCO policy is to provide an additional payment to LTCH cases that have unusually high costs. We would remind commenters that if we would not increase the fixed-loss amount, HCO payments would represent significantly more than 8 percent of estimated total LTCH PPS payments. Furthermore, as also discussed in the same RY 2007 final rule, HCO payments are budget neutral and are funded by prospectively reducing the non-outlier PPS payment rates by projected total outlier payments. The higher the outlier target, the greater the (prospective) reduction to the base payment that would need to be applied to the standard Federal rate in order to maintain budget neutrality. Moreover in the proposed rule (73 FR 5371), we discussed the possibility of adjusting the existing 8 percent outlier target or 80 percent marginal cost factor under the LTCH PPS HCO policy and explained our reasons for not proposing to make any changes to those components of the LTCH PPS HCO policy at that time. However, we stated that we continue to be interested in any comments that would support revisiting the analysis that was used to establish the existing 8 percent outlier target and the existing 80 percent marginal cost factor, using the most recent available data to evaluate whether any changes to the current HCO policy should be made, and therefore, may result in a smaller

increase (or even a decrease) in the fixed-loss amount for RY 2009. We received no comments in response to this solicitation or in response to our decision not to propose changes to the existing 8 percent outlier target and the existing 80 percent marginal cost factor. Therefore, for the reasons cited previously in this response, we continue to believe that it is appropriate to increase the fixed-loss amount in order to maintain estimated HCO payments at the projected 8 percent of total estimated payments. Such a policy continues to appropriately identify cases that are HCO cases (that is, cases with an unusually high cost). Because maintaining an 8 percent outlier target necessitates an increase to the fixed-loss amount based on our payment simulations, we are not adopting the commenter's suggestion to limit any increase to the fixed-loss to an annual inflationary increase, such as the most recent estimate of the LTCH PPS market basket because that would result in estimated outlier payments in excess of 8 percent of estimated total LTCH PPS payments.

We appreciate the commenters' acceptance of the proposed increase to the fixed-loss amount; however, we disagree that the increase would have a disproportionate impact on LTCHs with very high case-mix indexes as compared to LTCHs with low case-mix indexes. Rather we believe that LTCHs with high and low case mix indexes would be impacted similarly by the change in the fixed loss amount. High cost outlier payments are made to LTCHs when the estimated costs of a case exceed the adjusted MS-LTC-DRG payment amount by more than the fixed-loss amount, with the additional outlier payment equaling 80 percent of that difference as provided in § 412.525(a) (in conjunction with § 412.503). Cases in MS-LTC-DRGs with higher relative weights (higher case-mix) receive higher adjusted MS-LTC-DRG payments than cases in MS-LTC-DRGs with lower relative weights (lower case-mix). With differences in case-mix already accounted for in the adjusted MS-LTC-DRG payment amounts that are part of the formula for determining high cost outlier payments, LTCHs with higher or lower case-mix are treated similarly in terms of how much costs must exceed the adjusted MS-LTC-DRG payment amount by in order to receive additional high cost outlier payments. In addition, as we discussed in the RY 2007 final rule (71 FR 27835), LTCHs could have a relatively high case-mix index, but have few or no HCO cases since a "high" case-mix index is an indication

of the level of intensity of the types of patients treated at a LTCH and not necessarily an indication of treating unusually high cost cases.

In summary, we believe that an increase to the fixed-loss amount for RY 2009 is appropriate. We are using the same methodology that we proposed to use in the RY 2009 proposed rule to calculate the fixed-loss amount for RY 2009 in this final rule (using updated data and the policies established in this final rule, as described below) in order to maintain estimated HCO payments at the projected 8 percent of total estimated LTCH PPS payments. Consistent with our historical practice of using the best data available as we proposed, in this final rule, in determining the fixed-loss amount for RY 2009, we used the most recent available LTCH claims data and CCR data, as well as all the known policy changes that would affect LTCH PPS payments in RY 2009, including those mandated by the MMSEA and those established in this final rule. Specifically, in this final rule, for the 2009 LTCH PPS rate year, we used LTCH claims data from the December 2007 update of the FY 2007 MedPAR files to determine a fixed-loss amount that would result in estimated outlier payments projected to be equal to 8 percent of total estimated payments in RY 2009, based on the policies described in this final rule (including those established in section 114 of the MMSEA as discussed above), because these data are the most recent complete LTCH data currently available. As noted above, as proposed, we determined the RY 2009 fixed-loss amount based on the version of the GROUPER that will be in effect as of the beginning of the 2009 LTCH PPS rate year (July 1, 2008), that is, Version 25.0 of the GROUPER (as established in the FY 2008 IPPS final rule (72 FR 47278)). Additionally, in this final rule, we used CCRs from the January 2008 update of the PSF for determining the RY 2009 fixed-loss amount as they are the most recent complete data currently available. Furthermore, as proposed, in determining the RY 2009 fixed-loss amount, we used the current FY 2008 applicable LTCH "total" CCR ceiling of 1.284 and LTCH Statewide average "total" CCRs established in the FY 2008 IPPS final rule (72 FR 47404 and 48126 through 48127) such that the current applicable Statewide average CCR would be assigned if, among other things, a LTCH's CCR exceeded the current ceiling (1.284). As was the case when we determined the proposed RY 2009 fixed-loss amount in the proposed

rule, in determining the RY 2009 fixed-loss amount using the CCRs from the PSF, there was no need for us to independently assign the applicable Statewide average CCR to any LTCHs (as this may have already been done by the FI or MAC in the PSF in accordance with our established policy). (Currently, the applicable FY 2008 LTCH Statewide average CCRs can be found in Table 8C of the FY 2008 IPPS final rule (72 FR 48126 through 48127).)

In this final rule, based on the data and policies described in this final rule (including those established in section 114 of the MMSEA as discussed above), under the broad authority of section 123(a)(1) of the BBRA and section 307(b)(1) of BIPA, we are establishing a fixed-loss amount of \$22,960 for the 2009 LTCH PPS rate year. Thus, we will to pay an outlier case 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the adjusted Federal LTCH payment for the MS–LTC–DRG and the fixed-loss amount of \$22,960).

We note that the final fixed-loss amount for RY 2009 is somewhat higher than the proposed RY 2009 fixed-loss amount of \$21,199 and the current fixed-loss amount of \$20,738. As discussed in greater detail above, based on the most recent available LTCH data to estimate the cost of each LTCH case and estimated total LTCH PPS payments, this increase in the fixed-loss amount is appropriate and necessary to maintain the requirement that estimated outlier payments would be projected to be equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.525(a). As stated above, based on the most recent available data we estimate that the current fixed-loss amount may be too low as our payment models project that RY 2008 HCO payments are estimated to equal 8.2 percent of total estimated LTCH PPS payments. As we discussed in the proposed rule (73 FR 5371), maintaining the fixed-loss amount at the current level would result in HCO payments above the current regulatory requirement that estimated outlier payments would be projected to equal 8 percent of estimated total LTCH PPS payments. Based on the regression analysis that was performed when we implemented the LTCH PPS (August 30, 2002 final rule (67 FR 56022 through 56027)), we established the outlier target at 8 percent of estimated total LTCH PPS payments to allow us to achieve a balance between the “conflicting considerations of the need to protect hospitals with costly cases, while maintaining incentives to improve overall efficiency” (67 FR 56024). That

regression analysis also showed that additional increments of outlier payments over 8 percent (that is, raising the outlier target to a larger percentage than 8 percent) would reduce financial risk, but by successively smaller amounts. Outlier payments are budget neutral, and therefore, outlier payments are funded by prospectively reducing the non-outlier PPS payment rates by projected total outlier payments. The higher the outlier target, the greater the (prospective) reduction to the base payment would need to be applied to the Federal rate to maintain budget neutrality.

As an alternative to proposing to lower the fixed-loss amount for RY 2009, in the proposed rule (73 FR 5371), we discussed adjusting the marginal cost factor (that is, the percentage that Medicare will pay of the estimated cost of a case that exceeds the sum of the adjusted Federal prospective payment for the MS–LTC–DRG and the fixed-loss amount for LTCH PPS outlier cases as specified in § 412.525(a)(3) (in conjunction with the revised definition of “LTC–DRG” at § 412.503), which is currently equal to 80 percent, as a means of ensuring that estimated outlier payments would be projected to equal 8 percent of estimated total LTCH PPS payments. When we initially established the 80 percent marginal cost factor in the August 30, 2002 final rule (67 FR 56022 through 56027), we explained that our analysis of payment-to-cost ratios for HCO cases showed that a marginal cost factor of 80 percent appropriately addresses outlier cases that are significantly more expensive than nonoutlier cases, while simultaneously maintaining the integrity of the LTCH PPS.

In proposing increases to the fixed-loss amount for RY 2007, RY 2008 and RY 2009 (71 FR 27834; 72 FR 4799 through 4800; and 73 FR 5371, respectively), we solicited comments on whether we should revisit the regression analysis discussed above in this section that was used to establish the existing 8 percent outlier target and 80 percent marginal cost factor, using the most recent available data to evaluate whether the current outlier target of 8 percent or the 80 percent marginal cost factor should be adjusted, and therefore, could have resulted in less of an increase in the fixed-loss amount for RY 2007 and RY 2008, respectively. In response to this solicitation in the RY 2007 proposed rule (as summarized in the RY 2007 LTCH PPS final rule (71 FR 27834 through 27835)), several commenters opposed any option that would allow us to revisit the regression analysis that was used to establish the

existing 80 percent marginal cost factor and existing outlier target of 8 percent. The commenters stated their belief that the LTCH PPS is still in its early stages and further changes to the 80 percent marginal cost factor or 8 percent outlier target would result in instability to the system. The commenters cautioned against making any premature changes to the factors affecting HCO payments to LTCHs, particularly the marginal cost factor and outlier target established by regulation when the LTCH PPS was implemented. Also, the commenters agreed that keeping the marginal cost factor at 80 percent and the outlier pool at 8 percent better identifies LTCH patients that are unusually costly cases, and that this policy appropriately addresses outlier cases that are significantly more expensive than non-outlier cases. Similarly, as summarized in the RY 2008 final rule (72 FR 26897 through 26899), we received no comments in support of revisiting the regression analysis discussed above that was used to establish the existing 8 percent outlier target and 80 percent marginal cost factor, using the most recent available data to evaluate whether the current outlier target of 8 percent or the 80 percent marginal cost factor should be adjusted in response to our solicitation on this issue. As noted above, we received no response to this solicitation in the RY 2009 proposed rule.

In response to these comments, we agreed with the commenters that, based on the regression analysis done for the implementation of the LTCH PPS (August 30, 2002; 68 FR 56022 through 56027), a marginal cost factor of 80 percent and a outlier target of 8 percent adequately identifies LTCH patients that are unusually costly cases, and that such a policy appropriately addresses LTCH HCO cases that are significantly more expensive than non-outlier cases, which is consistent with our intent of the LTCH HCO policy as stated when we implemented the LTCH PPS in the August 30, 2002 final rule (67 FR 56025). Therefore, as supported by many commenters, in both the RY 2007 final rule (71 FR 27834) and the RY 2008 final rule (72 FR 26897 through 26899), we did not revisit the regression analysis that was used to establish the existing 80 percent marginal cost factor and existing outlier target of 8 percent, and therefore, did not make any changes to the marginal cost factor or outlier target in either of those final rules.

Although increasing the fixed-loss amount from \$20,738 to \$22,960 based on the latest available data and all known policy changes that would affect LTCH PPS payments in RY 2009,

including those mandated by the MMSEA and those established in this final rule, will increase the amount of the “loss” that LTCH must incur under the LTCH PPS for a case with unusually high costs before the LTCH would receive any additional Medicare payments, as we discussed above and as we explained in greater detail in the RY 2006 LTCH PPS final rule (70 FR 24195 through 24196), we continue to believe that the existing 8 percent outlier target and 80 percent marginal cost factor continue to adequately maintain the LTCHs’ share of the financial risk in treating the most costly patients and ensure the efficient delivery of services. Accordingly, we are not adjusting the existing 8 percent outlier target or 80 percent marginal cost factor under the LTCH PPS HCO policy at this time.

For the reasons described above, we believe the final fixed-loss amount of \$22,960 will appropriately identify unusually costly LTCH cases while maintaining the integrity of the LTCH PPS. Therefore, under the broad authority of section 123(a)(1) of the BBRA and section 307(b)(1) of BIPA, we are establishing a fixed-loss amount of \$22,960 based on the best available LTCH data and all of the known policy changes that would affect LTCH PPS payments in RY 2009, including those mandated by the MMSEA and those established in this final rule, because we believe an increase in the fixed-loss amount is appropriate and necessary to maintain estimated outlier payments which are projected to be equal to 8 percent of estimated total LTCH PPS payments, as required under § 412.525(a).

d. Application of Outlier Policy to Short-Stay Outlier (SSO) Cases

As we discussed in the August 30, 2002 final rule (67 FR 56026), under some rare circumstances, a LTCH discharge could qualify as a SSO case (as defined in the regulations at § 412.529 in conjunction with the regulations at § 412.503 and discussed in section IV.G. of this preamble) and also as a HCO case. In this scenario, a patient could be hospitalized for less than five-sixths of the geometric ALOS for the specific MS–LTC–DRG, and yet incur extraordinarily high treatment costs. If the costs exceeded the high cost outlier threshold (that is, the SSO payment plus the fixed-loss amount), the discharge is eligible for payment as a HCO. Thus, for a SSO case in the 2009 LTCH PPS rate year, the HCO payment would be 80 percent of the difference between the estimated cost of the case and the outlier threshold (the sum of the proposed fixed-loss amount of \$22,960

and the amount paid under the SSO policy as specified in § 412.529).

4. Other Payment Adjustments

Section 123(a)(1) of the BBRA, as amended by section 307(b) of BIPA, granted the Secretary broad authority to determine appropriate adjustments under the LTCH PPS, including whether (and how) to provide for adjustments to reflect variations in the necessary costs of treatment among LTCHs. In developing the LTCH PPS payment methodology, we conducted extensive regression analyses of the relationship between LTCH costs (including both operating and capital-related costs per case) and several factors that may affect costs such as the percent of Medicaid patients treated, the percent of Supplemental Security Income (SSI) patients treated, the hospital’s geographic location, and training residents in approved medical education programs (67 FR 56014). The appropriateness of potential payment adjustments were evaluated based upon whether including each adjustment increased the accuracy of payments to LTCHs.

In the August 30, 2002 LTCH PPS final rule, we detailed the extensive data analysis performed by our contractor, 3M Health Information Systems (3M) and our resulting decisions to implement a COLA for LTCHs in Alaska and Hawaii (§ 412.525(b)) and an adjustment to account for geographical differences in area wage levels (§ 412.525(c)). In addition, we discussed the extensive data analyses that led to the decision not to implement adjustments for geographic reclassification, rural location, the treatment of a disproportionate share of low-income patients (DSH), or indirect medical education (IME) costs. We also noted that we would continue to collect data and revisit these determinations as additional data became available. (For more detailed information, see 67 FR 56014 through 56027.)

When we implemented the LTCH PPS for FY 2003, we provided for a 5-year transition period (§ 412.533), to allow LTCHs time to adjust to the new payment system (67 FR 56038). For cost reporting periods beginning on or after October 1, 2006, the final year of the 5-year transition, LTCHs are paid based on 100 percent of the Federal rate.

We continued to collect and interpret new data as they became available to determine if these data support proposing any additional payment adjustments. In both the RY 2007 and the RY 2008 LTCH PPS final rules, we stated that we believed that it was appropriate to wait for the conclusion of

the 5-year transition to 100 percent of the Federal rate under the LTCH PPS to maximize the availability of data that reflected LTCH behavior in response to the implementation of the LTCH PPS. The availability of this data would allow us to conduct a comprehensive reevaluation of payment adjustments under the LTCH PPS. (See the RY 2007 and RY 2008 LTCH PPS final rules (71 FR 27839) and (72 FR 26900), respectively.)

Therefore, in the RY 2009 LTCH PPS proposed rule, we indicated that we had 3M perform data analyses similar to those conducted at the inception of the LTCH PPS for FY 2003. 3M evaluated LTCH data from the most recent cost report files in our HCRIS database (updated through June 30, 2007) for providers’ cost reports beginning during fiscal years 2004 through 2006 (73 FR 5371 through 5372). At that time, we stated that we believe that in the 5 years since the start of the LTCH PPS, there has been sufficient new data generated to allow for a comprehensive reevaluation of the appropriateness of payment adjustments such as geographic reclassification, rural location, DSH, and IME under the LTCH PPS at this time.

In the RY 2009 LTCH PPS proposed rule, we stated that our most recent data analysis which is based on the comprehensive data analysis by 3M (referenced above), indicates that proposing payment adjustments for geographic reclassification, rural location, DSH, or indirect medical education (IME) costs would not improve the accuracy of payments to LTCHs (73 FR 3772). (3M’s “Report on LTCH Payment Methodology Review and Results” is posted on our Web site at http://www.cms.hhs.gov/LongTermCareHospitalPPS/08_download.asp#TopOfPage. We also noted that we believed that these analyses confirm our initial determinations as we developed the LTCH PPS regarding the applicability of PPS payment adjustments. Therefore, we did not propose to adopt any additional payment adjustments such as geographic reclassification, rural location, DSH, or IME, as features of the LTCH PPS. Finalized policies for the RY 2009 wage index adjustment and the COLA were discussed in sections IV.D.1 and 2. of this final rule, respectively. Furthermore, now that the 5-year transition to the LTCH PPS was completed, we noted that we had collected data that reflects LTCH behavior in response to the implementation of the LTCH PPS. We believe that our above described analyses of LTCH PPS data do not

support the adoption of any additional payment adjustments. We further stated that we believe that since 3M's recent analyses confirm policy determinations that had been in place since the implementation of the LTCH PPS for FY 2003, that annual data analyses related to potential payment adjustments for geographic reclassification, rural location, DSH or IME would not be necessary barring significant transformations in the nature of the LTCH universe or substantial changes in Medicare payment outcomes that warrant additional evaluation.

Comment: One commenter requested that we consider applying a payment adjustment under the LTCH PPS to account for increased provider costs at LTCHs for dialysis patients. Specifically, the commenter suggested that we adopt the IPPS policy of providing additional payments to LTCHs if 10 percent or more of the hospital's annual Medicare discharges are dialysis patients. Alternatively, the commenter suggested that a new MS-DRG be added to recognize the increase in LTCH resources utilized by a patient requiring dialysis. The commenter also states that Medicare payments presently do not take into account resources used for providing higher intensity wound care that does not require surgical intervention. The commenter suggests that Medicare undertake a study to determine whether the MS-DRG system captures the resource intensity necessary for treating this group of patients.

Response: When we were designing the payment system for LTCHs, we evaluated the policies and payment adjustments that are features of the PPS for inpatient acute care hospitals (IPPS) and our contractor, 3M Health Information Systems conducted comprehensive analyses of CMS data to determine which elements were appropriate for adoption in the projected LTCH PPS. It was apparent from these analyses that even though LTCHs are certified as acute care hospitals and further, that in many communities, patients that could otherwise be treated in LTCHs are treated in acute care hospitals as high cost outliers, that there are differences between the hospitals' systems that should result in different payment features. One of these features was the ESRD payment add-on. Under the IPPS, additional payments are made for patients with ESRD who receive dialysis treatment during an inpatient hospital stay unless the principal diagnosis (which determines the Major Diagnostic Category to which a case is assigned) is one of three diagnosis-related groups

(MS-DRGs) directly related to kidney disease. An IPPS hospital is eligible for the additional payment if ESRD beneficiaries, excluding discharges classified into the three MS-DRGs directly related to kidney disease, constitute at least 10 percent of the hospital's total Medicare discharges. Furthermore, in order for such a case to count towards the threshold percentage, the patient must be certified as an end stage renal dialysis (ESRD) patient, that is, the patient must have applied and been approved for this program. (The specifics of this payment adjustment are set forth at § 412.104.) The reason for this is that the number of patients requiring ESRD treatment in all of the acute care hospitals in the country over the course of any year (other than in those three MS-DRGs referenced above), represent a small fraction of acute care hospital cases. Therefore, the costs for treating that small number of cases would not be substantially reflected in the averaging methodology that we use to determine the relative payment for each MS-DRG. If an acute care hospital, for example, treats a patient with a broken leg who also needs dialysis, costs of the dialysis treatment for that patient would not have a significant impact on the averaging process of costs for all broken leg cases nationwide, and would not be factored into the DRG payment for that case to that acute care hospital. We have established the ESRD add-on because we believed that if more than 10 percent of such a hospital's discharges during a cost reporting period presented such a scenario, this additional payment would ensure that the acute care hospital was adequately compensated by Medicare for providing total medial treatment for such patients.

In response to the commenter's suggestion that we adopt a similar policy under the LTCH PPS, we continue to believe that applying this payment adjustment to LTCHs would be inappropriate. LTCHs typically treat very sick patients with a number of serious secondary illnesses (multicomorbidities) that require hospital-level care for, on average, greater than 25 days for any one spell of illness. We believe that given the patient population treated at LTCHs, a higher proportion of LTCH patients would require dialysis than would be treated at an acute care hospital and paid for under the IPPS. Although the LTCH PPS uses the same patient classification system as is used by the IPPS, the relative weights assigned to the MS-LTC-DRGs under the LTCH PPS, are based on LTCH cases which reflect "differences in patient resource

use and costs," in LTCHs as mandated by the Balanced Budget Refinement Act (BBRA) of 1999, the initial enabling statute for the establishment of the LTCH PPS. A patient-classification system using relative weights, such as the DRG-based system used by both the IPPS and the LTCH PPS, determines the amount that Medicare pays for particular types of cases, based on the hospital resources employed in treating such cases as compared to the resources utilized in treating other types of cases and assigns all cases numerical values, called "relative weights". Data, such as charges, used to measure hospital resource use for each MS-LTC-DRG are captured on patient claims which Medicare uses in the annual update of the relative weights. Accordingly, we believe that the additional resources associated with renal dialysis treatments are included in the data used to set the MS-LTC-DRG relative weights each year.

The BBRA also required that total estimated payments under the LTCH PPS, established at the outset of the LTCH PPS for cost reporting periods beginning on or after October 1, 2002, was to be budget neutral to what Medicare would have paid under the then-existing reasonable-cost based TEFRA payment system had the LTCH PPS not been implemented. All patient treatment costs reflected in the LTCH cost data under the TEFRA payment system were included in our calculation of the base standard Federal rate that was established for FY 2003. Since FY2003, the standard Federal Rate has been updated annually (48 FR 39746 and 67 FR 55957). Accordingly, we believe that since renal dialysis treatments were among treatments offered at LTCHs prior to the beginning of the LTCH PPS (for cost reporting periods beginning on or after October 1, 2002), that the costs of such treatments would have been included in the base standard Federal rate, which is the foundation of the current standard Federal rate (and the RY 2009 standard Federal rate).

Given the typical profile of the Medicare beneficiary receiving treatment in LTCHs, dialysis is not an uncommon treatment so we believe that the costs associated with ESRD as a secondary diagnoses or comorbidity are both reflected in the setting of the standard Federal payment rate and also are reasonably reflected in the annual update of the MS-LTC-DRG weights based on the resources used in treating cases that are grouped into specific MS-LTC-DRGs (see 67 FR 55984 through 55995 and 72 FR 47277). Therefore, we believe our payments for specific cases

under the LTCH PPS include the higher costs associated with dialysis treatments for patients in LTCHs without any additional add-on. Furthermore, an additional feature of the LTCH PPS is that Medicare will make outlier payments for unusually costly patients, including those with ESRD, if the costs for treating any patient exceed a specified threshold. Consequently, at this time, we do not believe that an additional ESRD adjustment is either appropriate or necessary under the LTCH PPS.

The commenters alternatively suggested the addition of an additional MS-DRG that would recognize the higher resource use of dialysis patients. When we developed the MS-DRGs for use beginning October 1, 2007, we reduced the existing CMS DRGs down to the base DRGs, then applied the five specific criteria upon which we would evaluate the instances under which we would then subdivide those base DRGs into subgroups based on the severity of the cases. Therefore, this alternative had already been considered and rejected, as the base DRG did not meet all of the criteria required to make additional subgroups. These criteria are listed in the FY 2008 IPPS final rule (72 FR 47169). Therefore, we will not create additional MS-LTC-DRGs reflecting dialysis treatments for FY 2009.

Regarding the commenter's concern that Medicare does not recognize the hospital resources utilized in treating higher intensity wounds not requiring surgery, we note that Medicare payments are based on data gathered from LTCH cost reports and LTCH Medicare claims and we believe, therefore, that the LTCH PPS payments which are based upon this data reflect the reported resource use (that is, charges and costs) of delivering care to Medicare beneficiaries at LTCHs including treatment for higher intensity wounds not requiring surgery. However, we also note that MS-LTC-DRG system is not static but is rather a dynamic mechanism which is responsive to changes in medical resource use. If, for example, new and more costly treatment modalities became available for a particular MS-LTC-DRG, that result in increased hospital costs, such increased costs would eventually be reflected in increased MS-LTC-DRG relative weights in the future (typically there is about a 2-year lag in the claims data used to set the relative weights). Similarly, should treatment modalities result in decreased treatment costs, we would expect the relative weights for those MS-LTC-DRGs affected by this change to decrease. Additionally, as noted above, we would also remind the

commenter that under the LTCH PPS, if the costs for treating any patient exceed a specified threshold the case could qualify for high cost outlier payments. For the same reasons noted previously in this paragraph, we also believe it is unnecessary to undertake a study on such wound patients.

We would also remind the commenter that Medicare payment under a PPS is based on a system of averages, so that some Medicare payments may exceed hospital costs for a particular case which would then offset other cases where the Medicare payments were less than the hospital costs. With this model in mind, and available data on LTCH costs and industry margins and growth since the start of the LTCH PPS for cost reporting periods beginning on or after October 1, 2002, we believe that, in general, our Medicare payment policies under the LTCH PPS have been and continue to be appropriate and reasonable.

5. Technical Correction to the Budget Neutrality Requirement at § 412.523(d)(2)

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs be budget neutral for the initial year of implementation. Furthermore, under section 307(a)(2) of the BIPA, the increases to the target amounts and the cap on the target amounts for LTCHs provided for by section 307(a)(1) of BIPA (as set forth in section 1886(b)(3)(J) of the Act), and the enhanced bonus payments for LTCHs provided for by section 122 of BBRA (as set forth in section 1886(b)(2)(E) of the Act) were not to be taken into account in the development and implementation of the LTCH PPS. Therefore, when we implemented the LTCH PPS, in the August 30, 2002 final rule (67 FR 56052), we established a budget neutrality requirement at § 412.523(d)(2) for calculating the standard Federal rate for FY 2003 such that estimated aggregate LTCH PPS payments were estimated to be equal to estimated payments that would have been made to LTCHs under the reasonable cost-based payment methodology had the PPS for LTCHs not been implemented, and, to implement section 307(a)(2) of the BIPA, we excluded the effects of sections 1886(b)(2) and (b)(3) of the Act.

We proposed a technical correction to existing § 412.523(d)(2) that would more precisely describe the provisions of sections 1886(b)(2) and (b)(3) of the Act that were not taken into account when determining the standard Federal rate under § 412.523(d). The current regulatory language at § 412.523(d)(2) cites the general sections of the Act

which contain the specific provisions set forth in § 307(a)(2) of Public Law 106-554 that the Secretary is required to not take into account in developing the PPS. We believe that it is clearer and more precise to cite the specific subparagraphs the Secretary did not take into account rather than to cite the general sections of the Act of which such subparagraphs are a part. In order to mitigate any confusion that may be caused by existing regulations, we proposed to make a technical correction at § 412.523(d)(2). Specifically, we proposed to revise § 412.523(d)(2) to state that the effects of section 1886(b)(2)(E) of the Act (enhanced bonus payments for LTCHs, as described above) and section 1886(b)(3)(J) of the Act (increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs, as described above) were excluded in the development of the FY 2003 LTCH PPS standard Federal rate. This technical correction would make the regulatory language consistent with section 307(a)(2) of BBRA and consistent with the methodology we used to determine the LTCH PPS standard Federal rate under § 412.523, and it is not a change in policy. (Accordingly, no adjustments to the LTCH PPS standard Federal rate computed under § 412.523(d) were proposed in conjunction with this proposed technical correction to § 412.523(d)(2).)

We received no comments on this proposed technical correction. Therefore, for the reasons described above, in this final rule, as we proposed, we are revising § 412.523(d)(2) to state that the effects of section 1886(b)(2)(E) of the Act (enhanced bonus payments for LTCHs) and section 1886(b)(3)(J) of the Act (increases to the hospital-specific target amounts and the cap on the target amounts for LTCHs) were excluded in the development of the FY 2003 LTCH PPS standard Federal rate.

G. Conforming Changes

Various regulations throughout 42 CFR Part 412 Subpart O indicate that the terms "urban area" and "rural area" are defined according to the definitions of "urban area" and "rural area" found in 42 CFR Part 412 Subpart D (the IPPS regulations). Specifically, §§ 412.525(c), 412.529(d)(4)(ii)(B) and (d)(4)(iii)(B), 412.534(d)(1), (f)(2)(ii), and (f)(3)(ii), and 412.536(c)(1), (e)(2)(ii), and (e)(3)(ii) of Subpart O refer to the definitions of "urban area" and "rural area" in either § 412.62(f)(1)(ii) and (f)(1)(iii) or § 412.64(b)(1)(ii)(A)-(C) in 42 CFR Part 412 Subpart D. As discussed above in section IV.F.1.b.(4). of this preamble, we believe that it is administratively

simpler to define the terms “urban area” and “rural area” in § 412.503 rather than cross-referencing the definitions of “urban area” and “rural area” in § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A) through (C). Consequently, as we proposed, we are adding definitions for “urban area” and “rural area” in § 412.503 which will incorporate the provisions of § 412.62(f)(1)(ii) and (f)(1)(iii) as well as § 412.64(b)(1)(ii)(A) through (C). In the proposed rule (73 FR 5372), because we proposed to define “urban area” and “rural area” in § 412.503, we proposed to replace the citations to the definitions of “urban area” and “rural area” at § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A) through (C) which are found in the existing regulations at §§ 412.525(c), 412.529(d)(4)(ii)(B) and (d)(4)(iii)(B), 412.534(d)(1), (f)(2)(ii), and (f)(3)(ii), and 412.536(c)(1), (e)(2)(ii), and (e)(3)(ii) with references to § 412.503.

We received no comments on this proposed conforming change. Accordingly, in this final rule, as proposed, we are revising the above-described references. Specifically, we are replacing the citations to the

definitions of “urban area” and “rural area” at § 412.62(f)(1)(ii) and § 412.62(f)(1)(iii) and § 412.64(b)(1)(ii)(A)–(C) in the existing regulations at §§ 412.525(c), 412.529(d)(4)(ii)(B) and (d)(4)(iii)(B), 412.534(d)(1), (f)(2)(ii), and (f)(3)(ii), and 412.536(c)(1), (e)(2)(ii), and (e)(3)(ii) with references to § 412.503.

V. Computing the Adjusted Federal Prospective Payments for the 2009 LTCH PPS Rate Year

In accordance with § 412.525 and as discussed in section IV.F.1. of this final rule, the standard Federal rate is adjusted to account for differences in area wages by multiplying the labor-related share of the standard Federal rate by the appropriate LTCH PPS wage index (as shown in Tables 1 and 2 of the Addendum of this final rule). The standard Federal rate is also adjusted to account for the higher costs of hospitals in Alaska and Hawaii by multiplying the nonlabor-related share of the standard Federal rate by the appropriate cost-of-living factor (shown in Table III in section IV.F.2 of this preamble). In this final rule, we are establishing a standard Federal rate for the 2009 LTCH PPS rate year of \$39,114.36 as discussed in section IV.E.2. of this preamble. We

illustrate the methodology to adjust the Federal prospective payments for the 2009 LTCH PPS rate year in the following example:

Example: During the 2009 LTCH PPS rate year, a Medicare patient is in a LTCH located in Chicago, Illinois (CBSA 16974). The full LTCH PPS wage index value for CBSA 16974 is 1.0715 (see Table 1 in the Addendum of this final rule). The Medicare patient is classified into MS–LTC–DRG 28 (Spinal Procedures with MCC), which has a current relative weight of 1.1417 (see Table 3 of the Addendum of this final rule).

To calculate the LTCH's total adjusted Federal prospective payment for this Medicare patient, we compute the wage-adjusted Federal prospective payment amount by multiplying the unadjusted standard Federal rate (\$39,114.36) by the labor-related share (75.662 percent) and the wage index value (1.0715). This wage-adjusted amount is then added to the nonlabor-related portion of the unadjusted standard Federal rate (24.338 percent; adjusted for cost of living, if applicable) to determine the adjusted Federal rate, which is then multiplied by the MS–LTC–DRG relative weight (1.1417) to calculate the total adjusted Federal prospective payment for the 2009 LTCH PPS rate year (\$47,072.73). Table IV illustrates the components of the calculations in this example.

TABLE IV

Unadjusted Standard Federal Prospective Payment Rate	\$39,114.36
Labor-Related Share	× 0.75662
Labor-Related Portion of the Federal Rate	= \$29,594.71
Wage Index (CBSA 16974)	× 1.0715
Wage-Adjusted Labor Share of Federal Rate	= \$31,710.73
Nonlabor-Related Portion of the Federal Rate (\$39,114.36 × 0.24338)	+ \$9,519.65
Adjusted Federal Rate Amount	= \$41,230.38
MS–LTC–DRG 9 Relative Weight	× 1.1417
Total Adjusted Federal Prospective Payment	= \$47,072.73

VI. Monitoring

In the August 30, 2002 final rule (67 FR 56014), we described an on-going monitoring component to the new LTCH PPS. Specifically, we discussed on-going analysis of the various policies that we believe would provide equitable payment for stays that reflect less than the full course of treatment and reduce the incentives for inappropriate admissions, transfers, or premature discharges of patients that are present in a discharge-based PPS. As a result of our data analysis, we have revisited a number of our original policies and have identified behaviors by certain LTCHs that lead to inappropriate Medicare payments.

In the RY 2009 proposed rule, we summarized policy initiatives that we have issued as a result of our ongoing

monitoring program (73 FR 5373 through 5374).

We did not propose any new payment adjustments in the RY 2009 proposed rule resulting from our monitoring activity, but we continue to pursue our ongoing monitoring program that involves the CMS Office of Research and Development (ORDI), existing QIO monitoring, monitoring by Medicare contractors (that is, FIs or MACs), and studies described in the RY 2006 LTCH PPS final rule (70 FR 24211).

VII. Method of Payment

Under § 412.513, a Medicare LTCH patient is classified into a MS–LTC–DRG based on the principal diagnosis, up to eight additional (secondary) diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The MS–LTC–DRG is used to

determine the Federal prospective payment that the LTCH will receive for the Medicare-covered Part A services the LTCH furnished during the Medicare patient's stay. Under § 412.541(a), the payment is based on the submission of the discharge bill. The discharge bill also provides data to allow for reclassifying the stay from payment at the full MS–LTC–DRG rate to payment for a case as a SSO (under § 412.529) or as an interrupted stay (under § 412.531), or to determine if the case will qualify for a HCO payment (under § 412.525(a)).

Accordingly, the ICD–9–CM codes and other information used to determine if an adjustment to the full MS–LTC–DRG payment is necessary (for example, LOS or interrupted stay status) are recorded by the LTCH on the Medicare patient's discharge bill and submitted to

the Medicare FI for processing. The payment represents payment in full, under § 412.521(b), for inpatient operating and capital-related costs, but not for the costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthesiologists or the costs of photocopying and mailing medical records requested by a Quality Improvement Organization (QIO), which are costs paid outside the LTCH PPS.

As under the previous reasonable cost-based payment system, under § 412.541(b), a LTCH may elect to be paid using the periodic interim payment (PIP) method described in § 413.64(h), based on the estimated prospective payment for the year, and may be eligible to receive accelerated payments as described in § 413.64(g). We exclude HCO payments that are paid upon submission of a discharge bill from the PIP amounts. In addition, Part A costs that are not paid for under the LTCH PPS, including Medicare costs of an approved medical education program, bad debts, blood clotting factors, anesthesia services by hospital-employed nonphysician anesthesiologists and the costs of photocopying and mailing medical records requested by a QIO, are subject to the interim payment provisions as specified in § 412.541(c).

Under § 412.541(d), LTCHs with unusually long lengths of stay that are not receiving payment under the PIP method may bill on an interim basis (60 days after an admission and at intervals of at least 60 days after the date of the first interim bill) and this should include any HCO payment determined as of the last day for which the services have been billed.

VIII. RTI's Research

With the recommendations of MedPAC's June 2004 Report to Congress as a point of departure, we awarded a contract to Research Triangle Institute, International (RTI) at the start of FY 2005 for a comprehensive evaluation of the feasibility of developing patient and facility level characteristics for LTCHs that could distinguish LTCH patients from those treated in other hospitals.

In the RY 2009 LTCH PPS proposed rule, we included a description of RTI's research, as well as two technical expert panels (TEPs) held during 2007 (73 FR 5374 through 5376). We also noted that we had posted the reports on both Phase I and Phase II of RTI's research on our Web site at http://www.cms.hhs.gov/LongTermCareHospitalPPS/02a_RTIReports.asp#TopOfPage.

Although we did not propose any policy initiatives in the RY 2009 LTCH

PPS proposed rule as a result of RTI's research, we received 10 comments on their work. We will pass these comments on to RTI and we have instructed RTI researchers to consider these concerns as they proceed with Phase III of their report.

We would also note that MedPAC's comment on our several policies that were proposed in our RY 2009 LTCH PPS proposed rule (addressed elsewhere in this preamble) included a section focusing on one significant aspect of our contract with RTI for an evaluation of the feasibility of developing patient and facility-level criteria for LTCHs. Since this contract was developed and awarded as a result of MedPAC's recommendations in its June 2004 Report to Congress (p. 120) as noted above, we believe that it is appropriate to include the following update to their initial analysis:

The types of cases treated by LTCHs can be (and are) treated in other settings, particularly in step-down units of many acute-care hospitals. Therefore, it is not possible (nor desirable) to develop criteria defining patients who can be cared for exclusively in LTCHs. Rather, CMS should seek to define the *level of care* typically furnished in LTCHs, step-down units of many acute-care hospitals, and some specialized skilled nursing facilities (SNFs) and inpatient rehabilitation facilities (IRFs).

The Commission's entire comment is posted on the MedPAC Web site at http://www.medpac.gov/documents/03242008_LTCH_comment_DK.pdf.

In addition, we wish to take this opportunity to discuss recent developments in the related area of value-based purchasing (VBP). VBP ties payment to performance through the use of incentives based on measures of quality and cost of care. The implementation of VBP is rapidly transforming CMS from being a passive payer of claims to an active purchaser of higher quality, more efficient health care for Medicare beneficiaries. Our VBP initiatives include hospital pay for reporting (the Reporting Hospital Quality Data for the Annual Payment Update Program), physician pay for reporting (the Physician Quality Reporting Initiative), home health pay for reporting, the Hospital VBP Plan Report to Congress, and various VBP demonstration programs across payment settings, including the Premier Hospital Quality Incentive Demonstration and the Physician Group Practice Demonstration.

The preventable hospital-acquired conditions payment provision for IPPS hospitals is another of CMS's value-based purchasing initiatives. The principle behind the hospital-acquired

conditions payment provision (Medicare not paying more for hospital-acquired conditions) could be applied to all types of hospitals and Medicare payment systems for other settings of care. Section 1886(d)(4)(D) of the Act required the Secretary to select, for IPPS hospital payment purposes, hospital-acquired conditions that: (a) Are high cost, high volume, or both; (b) are assigned to a higher-paying Medicare severity diagnosis-related group (MS-DRG) when present as a secondary diagnosis; and (c) could reasonably have been prevented through the application of evidence-based guidelines. Beginning October 1, 2008, Medicare can no longer assign an inpatient hospital discharge to a higher-paying MS-DRG if a selected hospital-acquired condition was not present on admission. That is, the case will be paid as though the secondary diagnosis was not present (Medicare will continue to assign a discharge to a higher-paying MS-DRG in those instances where the selected condition was, in fact, present on admission).

The broad principle articulated in the hospital-acquired conditions payment provision could be expanded to hospitals other than IPPS hospitals, such as long-term care hospitals. Alignment of incentives across all Medicare payment systems is an important goal for CMS' VBP initiatives. Consequently, we are taking this opportunity to open the discussion of the applicability of the hospital-acquired conditions payment provision to long-term care hospitals with stakeholders in the provider community as well as with the general public as we advance in our fight against hospital-acquired conditions in all types of hospitals.

IX. Electronic Submission of Cost Reports: Revision to Effective Date of Cost Reporting Period

A. Background

In the August 22, 2003, **Federal Register** (68 FR 50717), we published the "Electronic Submission of Cost Reports" final rule requiring all hospices, organ procurement organizations (OPOs), rural health clinics (RHCs), Federally qualified health centers (FQHCs), and community mental health centers (CMHCs) to submit Medicare cost reports in a standardized electronic format. This requirement was effective for cost reporting periods ending on or after December 31, 2004.

Section 902 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) amended section 1871(a) of the Act and

requires the Secretary, in consultation with the Director of the Office of Management and Budget, to establish and publish timelines for the publication of Medicare final regulations based on the previous publication of a Medicare proposed or interim final regulation. Section 902 of the MMA also states that the timelines for these regulations may vary but shall not exceed 3 years after publication of the preceding proposed or interim final regulation except under exceptional circumstances.

This final rule finalizes provisions set forth in the May 25, 2005 interim final rule with comment period. In addition, this final rule has been published within 3 years of the interim final rule with comment period. Therefore, we believe that the final rule is in accordance with the Congress' intent to ensure timely publication of final regulations.

B. Provisions of the Interim Final Rule with Comment Period

In the May 27, 2005, **Federal Register** (70 FR 30640 through 30643), we published the "Electronic Submission of Cost Reports: Revision to Effective Date of Cost Reporting Period" interim final rule with comment period revising the existing effective date for submission of electronic cost reports for OPOs, RHCs, FQHCs, and CMHCs from cost reporting periods ending on or after December 31, 2004, to cost reporting periods ending on or after March 31, 2005.

As stated in the May 27, 2005, interim final with comment period, hospices and End-Stage Renal Disease (ESRD) facilities continue to be subject to the electronic filing requirements as referenced in the August 23, 2003, final rule as software for these provider types is available. Therefore, all hospices and ESRD facilities are still required to submit standardized electronic cost reports for cost reporting periods ending on or after December 31, 2004.

C. Analysis of and Responses to Public Comments

We received two public comments in response to the May 27, 2005, interim final rule with comment period. One comment was outside the scope of this rule because it dealt with physical therapy and will not be addressed. The other comment agreed with our proposed change.

D. Provisions of the Final Regulations

We are finalizing the provisions of the May 27, 2005, interim final rule with comment period without change. Since the provisions of § 413.24 are already codified and there are no revisions, we are not republishing the regulation text for § 413.24 in this final rule.

X. Collection of Information Requirements

This document contains the regulation text associated with CMS–1393–F. The associated regulation text does not contain any information collection requirements; consequently,

it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). However, we are republishing the information collection requirements associated with CMS–1199–F. The requirements referenced and discussed below pertain to 42 CFR 413.24 and are currently approved by OMB.

Currently § 413.24 requires hospitals, to submit cost reports in a standardized electronic format for cost reporting periods beginning on or after October 1, 1989. SNFs, and HHAs must submit cost reports in a standardized electronic format for cost reporting periods ending on or after December 31, 1996. Hospices, ESRD facilities, OPOS, RHCs, FQHCs and CMHCs must submit cost reports in a standardized electronic format for cost reporting periods ending on or after December 31, 2004. These reporting requirements are currently approved as described below.

This interim final rule revises the dates by which OPOs, RHCs, FQHCs, and CMHCs must submit cost reports in a standardized electronic format. Under the revised requirements OPOs, RHCs, FQHCs, and CMHCs must now submit cost reports in a standardized electronic format for cost reporting periods ending on or after March 31, 2005, rather than December 31, 2004. This change does not impose any new burden.

As noted above, while all the above reporting requirements are subject to the PRA, they are currently approved under the following OMB control numbers.

Provider type	OMB control No.	Expiration date
Hospital	0938–0050	05/31/2008
Hospice Program	0938–0758	01/31/2008
Renal Dialysis Facility	0938–0236	08/31/2010
Federally Qualified Health Center	0938–0107	06/30/2008
Home Health Agency	0938–0022	08/31/2010
End Stage Renal Disease Networks	0938–0657	12/31/2009
Skilled Nursing Facility	0938–0463	06/30/2010
Organ Procurement Organization/Histocompatibility Laboratories	0938–0102	08/31/2008

We have submitted a copy of this final rule to OMB for its review of the aforementioned information collection requirements.

XI. Regulatory Impact Analysis

A. RY 2009 LTCH PPS Final Rule

1. Introduction

We have examined the impacts of this final rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the

Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Act, the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4), and Executive Order 13132.

a. Executive Order 12866

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select

regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any one year). In the impact analysis, we are using the rates, factors and policies presented in this final rule, including updated wage index values, and the best available claims and CCR

data to estimate the change in payments for the 2009 LTCH PPS rate year. As stated in section IV.E. of this preamble, section 114(e)(1) of the MMSEA revises the standard Federal rate for RY 2008 by providing that “for discharges occurring during the rate year ending in 2008 for a hospital, the base rate for such discharges for the hospital shall be the same as the base rate for 2007” (in other words, the standard Federal rate for RY 2008 is the same as the standard Federal rate for RY 2007). Also, section 114(e)(2) of the MMSEA provides that the revised standard Federal rate for RY 2008 “shall not apply to discharges occurring on or after July 1, 2007, and before April 1, 2008” (that is, the first 9 months of RY 2008). As noted in section IV.E. of this preamble, the standard Federal rate for RY 2007 was \$38,086.04. Accordingly, the standard Federal rate for RY 2008 is \$38,086.04. As discussed in section IV.E. of this preamble, consistent with our historical practice, we updated the standard Federal rate for RY 2008 by 2.7 percent in order to establish the RY 2009 standard Federal rate at \$39,114.36. Furthermore, we note that section 114(c)(3) of MMSEA requires a 3-year suspension of our application of the revisions to the SSO policy at § 412.529(c)(3)(i) that was finalized in the RY 2008 final rule. Both of these revisions to RY 2008 LTCH PPS payments (that is, sections 114(c)(3) and (e)(1) through (2) of MMSEA) affect the modeling of payments in this impact analysis, which we discussed in greater detail in section XVI.B.3. of this final rule. Based on the best available data for the 391 LTCHs in our database, we estimate that the update to the standard Federal rate for RY 2009 (discussed in section IV.E. of the preamble of this final rule) and the changes to the area wage adjustment (discussed in section IV.F.1. of the preamble of this final rule) for the 2009 LTCH PPS rate year, in addition to an estimated increase in SSO payments and a slight increase in HCO payments (as discussed in greater detail below) will result in an increase in estimated payments from the 2008 LTCH PPS rate year of approximately \$110 million (or about 2.5 percent). Based on the 391 LTCHs in our database, we estimate RY 2008 LTCH PPS payments to be approximately \$4.36 billion and RY 2009 LTCH PPS payments to be approximately \$4.47 billion. Because the combined distributional effects and estimated changes to the Medicare program payments would be greater than \$100 million, this final rule is considered a major economic rule, as defined in this section. We note the approximately

\$110 million for the projected increase in estimated aggregate LTCH PPS payments resulting from the provisions presented in this final rule does not reflect changes in LTCH admissions or case-mix intensity in estimated LTCH PPS payments, which would also affect overall payment changes.

We note that the average combined effect of the standard Federal rate and area wage adjustment changes on estimated aggregate payments cannot be computed by simply adding up the estimated averages in columns 6 and 7 of Table V because each of those two columns are intended to show the isolated impact of the respective change (that is, the change to the standard Federal rate or the change to the area wage adjustment) on estimated payments for RY 2009 as compared to RY 2008, and the interactive effects resulting from both the change to the standard Federal rate and change to the area wage adjustment (and estimated changes to the HCO and SSO payments) are not accounted for in the modeling of estimated payments to produce the percent change in each of these columns. However, the change in estimated SSO and HCO payments, and the interactive effects of all changes are taken into account in the modeling of estimated payments for RY 2009 as compared to RY 2008 in Column 8 of Table V.

Notwithstanding this limitation in comparing the various columns in Table V, the difference between the projected increase in payments per discharge from RY 2008 to RY 2009 for all changes of 2.5 percent (column 8) and the sum of the projected increase due to the change to the standard Federal rate (1.9 percent in column 6) and the change due to the area wage adjustment (–0.1 percent in column 7) is mostly attributable to the effect of the estimated increase in payments for SSO cases and the estimated slight estimated increase in payments for HCO cases in RY 2009 as compared to RY 2008. That is, in calculating the estimated increase in payments from RY 2008 to RY 2009 for SSO and HCO cases, we increased estimated costs by the applicable market basket (approximately 3.2 percent). We note that, SSO cases comprise approximately 16 percent of estimated total LTCH PPS payments and HCO cases comprise approximately 8 percent of estimated total LTCH PPS payments. The majority of the payments for SSO cases (over 60 percent) are based on the estimated cost of the case.

While the effects of the estimated increase in SSO and HCO payments and the change to the standard Federal rate are projected to increase estimated

payments per discharge from RY 2008 to RY 2009, the changes to the area wage adjustment from RY 2008 to RY 2009 are expected to result in a small decrease of 0.1 percent in estimated aggregate LTCH PPS payments from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year (see column 7 of Table V). As discussed in section IV.F.1. of this rule, we are updating the wage index values for RY 2009 based on the most recent available data. In addition, we are slightly decreasing the labor-related share from 75.788 percent to 75.662 percent under the LTCH PPS for RY 2009 based on the most recent available data on the relative importance of the labor-related share of operating and capital costs of the market basket applicable to the LTCH PPS (also discussed in section IV.F.1. of this final rule).

b. Regulatory Flexibility Act (RFA)

The RFA requires agencies to analyze options for regulatory relief of small entities. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6.5 million to \$31.5 million in any 1 year. For further information, see the Small Business Administration’s regulation at 70 FR 72577, December 6, 2005. Individuals and States are not included in the definition of a small entity. Because we lack data on individual hospital receipts, we cannot determine the number of small proprietary LTCHs. Therefore, we assume that all LTCHs are considered small entities for the purpose of the analysis that follows. Medicare FIs are not considered to be small entities. The Secretary certifies that this final rule would not have a significant economic impact on a substantial number of small entities.

Currently, our database of 391 LTCHs includes the data for 85 non-profit (voluntary ownership control) LTCHs and 273 proprietary LTCHs. Of the remaining 33 LTCHs, 16 LTCHs are Government-owned and operated and the ownership type of the other 17 LTCHs is unknown (as shown in Table V). The impact of the payment rate and policy changes for the 2009 LTCH PPS rate year (including the update to the standard Federal rate and the changes to the area wage adjustment) is discussed in section XVI.B.4.c. of this final rule.

As we discuss in detail throughout the preamble of this final rule, based on the most recent available LTCH data, we believe that the provisions of this final

rule would result in an increase in estimated aggregate LTCH PPS payments and that the resulting LTCH PPS payment amounts result in appropriate Medicare payments.

The impact analysis of the payment rate and policy changes in Table V shows that estimated payments per discharge are expected to increase approximately 2.5 percent, on average, for all LTCHs from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year. The projected 2.5 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year is attributable to the change to the rate, the area wage adjustment (discussed in section IV.F.1. of this final rule), and estimated increases in SSO and HCO payments (as discussed in greater detail below). As Table V shows, the change in just the standard Federal rate is projected to result in an estimated average increase of 1.9 percent in estimated payments per discharge from RY 2008 to RY 2009, on average, for all LTCHs, while just the changes to the area wage adjustment are projected to result in an estimated decrease of 0.1 percent, on average, for all LTCHs (columns 6 and 7 of Table V, respectively). A thorough discussion of the regulatory impact analysis for the changes presented in this final rule can be found below in section XI.A.3.c. of this final rule.

c. Impact on Rural Hospitals

For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. As shown in Table V, we are projecting a 2.0 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year for rural LTCHs that would primarily result from the changes presented in this final rule (that is, the update to the standard Federal rate discussed in section IV.E. of the preamble of this final rule and the changes to the area wage adjustment as discussed in section IV.F.1. of the preamble of this final rule) based on the data of the 25 rural LTCHs in our database of 391 LTCHs for which complete data were available.

As shown in Table V, the estimated increase in estimated LTCH PPS payments from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year for rural LTCHs is primarily due to the update to the standard Federal rate (as discussed in greater detail in section IV.E. of the preamble of this final rule) and the change in the

area wage adjustment (as discussed in greater detail in section V.F.1. of the preamble of this final rule) in conjunction with the estimated increased payments for SSO cases and a slight estimated increase in payments to HCO cases (as discussed below in section XI.A. 2.c. of this final rule). We believe that the changes to the area wage adjustment presented in this final rule (that is, the use of updated wage data and the change in the labor-related share) will result in accurate and appropriate LTCH PPS payments in RY 2009 since they are based on the most recent available data. Such updated data appropriately reflect national differences in area wage levels and identifies the portion of the standard Federal rate that should be adjusted to account for such differences in area wages, thereby resulting in accurate and appropriate LTCH PPS payments.

d. Unfunded Mandates

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any one year of \$100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately \$130 million. This final rule would not mandate any requirements for State, local, or tribal governments, nor would it result in expenditures by the private sector of \$130 million or more in any 1 year.

e. Federalism

Executive Order 13132 establishes certain requirements that an agency must meet when it publishes a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications.

We have examined this final rule under the criteria set forth in Executive Order 13132 and have determined that this final rule will not have any significant impact on the rights, roles, and responsibilities of State, local, or tribal governments or preempt State law, based on the 16 State and local LTCHs (that is, Government ownership type) in our database of 391 LTCHs for which data were available.

f. Alternatives Considered

In the preamble of this final rule, we are setting forth the annual update to the payment rates for the LTCH PPS for RY 2009. In this preamble, we specify the statutory authority for the provisions that are presented, identify those

policies where discretion has been exercised, and present rationale for our decisions as well as alternatives that were considered, and address comments on suggested alternatives from commenters (where relevant).

2. Anticipated Effects of Payment Rate Changes

We discuss the impact of the changes to the payment rates, factors, and other payment rate policies presented in the preamble of this final rule in terms of their estimated fiscal impact on the Medicare budget and on LTCHs.

a. Budgetary Impact

Section 123(a)(1) of the BBRA requires that the PPS developed for LTCHs “maintain budget neutrality.” We believe that the statute’s mandate for budget neutrality applies only to the first year of the implementation of the LTCH PPS (that is, FY 2003). Therefore, in calculating the FY 2003 standard Federal rate under § 412.523(d)(2), we set total estimated payments for FY 2003 under the LTCH PPS so that estimated aggregate payments under the LTCH PPS are estimated to equal the amount that would have been paid if the LTCH PPS had not been implemented.

b. Impact on Providers

The basic methodology for determining a per discharge LTCH PPS payment is set forth in § 412.515 through § 412.536. In addition to the basic MS–LTC–DRG payment (standard Federal rate multiplied by the MS–LTC–DRG relative weight), we make adjustments for differences in area wage levels, COLA for Alaska and Hawaii, and SSOs. Furthermore, LTCHs may also receive HCO payments for those cases that qualify based on the threshold established each rate year.

To understand the impact of the changes to the LTCH PPS payments discussed in section IV. of this final rule on different categories of LTCHs for the 2009 LTCH PPS rate year, it is necessary to estimate payments per discharge for the 2008 LTCH PPS rate year using the rates, factors and policies established in the RY 2008 LTCH PPS final rule (72 FR 26870 through 27029), the RY 2008 LTCH PPS correction notice (72 FR 36613 through 36616) and the applicable sections of MMSEA (as described in greater detail below in section XI.A.2.c. of this final rule). It is also necessary to estimate the payments per discharge that will be made under the LTCH PPS rates, factors and policies for the 2009 LTCH PPS rate year (as discussed in the preamble of this final rule). These estimates of RY 2008 and RY 2009 LTCH PPS payments are based

on the best available LTCH claims data and other factors such as the application of inflation factors to estimate costs for SSO and HCO cases in each year. We also evaluated the change in estimated 2008 LTCH PPS rate year payments to estimated 2009 LTCH PPS rate year payments (on a per discharge basis) for each category of LTCHs.

Hospital groups were based on characteristics provided in the OSCAR data, FY 2004 through FY 2006 cost report data in HCRIS, and PSF data. Hospitals with incomplete characteristics were grouped into the “unknown” category. Hospital groups include the following:

- Location: Large Urban/Other Urban/Rural.
- Participation date.
- Ownership control.
- Census region.
- Bed size.

To estimate the impacts of the payment rates and policy changes among the various categories of existing providers, we used LTCH cases from the FY 2007 MedPAR file to estimate payments for RY 2008 and to estimate payments for RY 2009 for 391 LTCHs. While currently there are just under 400 LTCHs, the most recent growth is predominantly in for-profit LTCHs that provide respiratory and ventilator-dependent patient care. We believe that the discharges from the FY 2007 MedPAR data for the 391 LTCHs in our database, which includes 273 proprietary LTCHs, provide sufficient representation in the MS-LTC-DRGs containing discharges for patients who received LTCH care for the most commonly treated LTCH patients’ diagnoses.

c. Calculation of Prospective Payments

For purposes of this impact analysis, to estimate per discharge payments under the LTCH PPS, we simulated payments on a case-by-case basis using LTCH claims from the FY 2007 MedPAR files. In the impact analysis for the proposed rule, for modeling estimated LTCH PPS payments for both RY 2008 and RY 2009, we had applied the RY 2008 standard Federal rate (that is, \$38,086.04) provided for by section 114(e) of MMSEA, and the SSO policy provided for by section 114(c)(3) of the MMSEA (that is, excluding the revisions to the SSO policy at § 412.529(c)(3)(i) of the regulations). Although we were aware at the time that the effective date for the change in the SSO policy during RY 2008 in the MMSEA is December 29, 2007, and that discharges occurring on or after July 1, 2007 and before April 1, 2008 are not paid under the RY 2008 standard Federal rate in 1886(m)(2) of

the Act, nonetheless, for purposes of that impact analysis in the proposed rule, we applied both the MMSEA revised SSO policy and MMSEA revised standard Federal rate for all of RY 2008 in the estimation of RY 2008 LTCH PPS payments. Similarly, in modeling LTCH PPS payments in the proposed rule to project the average change in estimated payments per discharge from RY 2008 to RY 2009 due to the change in the standard Federal rate, rather than using the RY 2008 standard Federal rate finalized in the RY 2008 final rule, we compared the MMSEA revised RY 2008 standard Federal rate (that is, \$38,086.04), to the proposed RY 2009 standard Federal rate of \$39,076.28 (that is, \$38,086.04 updated by the proposed 2.6 percent update factor, as discussed in the RY 2009 proposed rule (73 FR 5361 through 5362)) in order to estimate the effect of proposing to update the standard Federal rate by 2.6 percent. As we discussed in the RY 2009 proposed rule (73 FR 5379), we took this approach for the impact analysis in the proposed rule since for the last 3 months of the 2008 LTCH PPS rate year (that is, April 2008 through June 2008), which is the 3-month period immediately preceding the start of the 2009 LTCH PPS rate year, LTCH discharges are paid under the RY 2008 standard Federal rate and SSO policy established by section 114 of the MMSEA. However, we received a comment on the impact analysis of the proposed rule.

Comment: A commenter disagreed with our methodology for projecting RY 2008 estimated payments as if the MMSEA provisions on the SSO policy and RY 2008 standard Federal rate (that is, sections 114(c)(3) and 114(c)(1) of the MMSEA) had been in effect for all of RY 2008. The commenter believed that we were overstating the projected increase in estimated payments for RY 2009 in the proposed rule because we did not fully account for the MMSEA provisions that affect the projection of RY 2008 estimated payments. The commenter suggested that we fully account for the MMSEA changes to the standard Federal rate for 2008, the SSO payment policy, and the “25 percent rule” at 42 CFR 412.534 and 412.536, in our impact analysis.

Response: Regarding the “25 percent rule” at 42 CFR 412.534 and 412.536, we note that historically, we have not included this policy in our impact analysis. We are not aware of any instances where the FI has made any adjustments under this policy. Consequently, our impact analysis does not include any effect on estimated payments for RY 2008 or RY 2009 due to the “25 percent rule” at 42 CFR

412.534 and 412.536. With respect to commenters’ suggestion that we model payments for the MMSEA changes according to the timeframes set forth in the MMSEA, instead of our approach in which we projected RY 2008 payments as if discharges during all of the RY 2008 were paid under the MMSEA revised standard Federal rate and MMSEA revised SSO policy for all of RY 2008 we agree that our approach may have resulted in slightly overstating the estimate of the change in payments from RY 2008 to RY 2009 in the proposed rule. Therefore, to address this concern, we modified the impact analysis for this final rule. Specifically, for purposes of the impact analysis in this final rule, rather than applying the MMSEA revised SSO policy and MMSEA revised RY 2008 standard Federal rate to discharges for all of RY 2008 in the estimation of RY 2008 LTCH PPS payments, we accounted for the effect on LTCH payments as a result of the MMSEA changes to these two policies during RY 2008. That is, for the first 9 months of RY 2008 (July 1, 2007 through March 31, 2008), estimated LTCH payments for LTCH discharges were determined based on the “higher” rate of \$38,356.45, while for the last 3 months of RY 2008 (April 1, 2008 through June 30, 2008), estimated LTCH payments for LTCH discharges were determined based on the “lower” MMSEA revised RY 2008 standard Federal rate of \$38,086.04. Additionally, we modeled estimated RY 2008 LTCH PPS payments by incorporating the change to the SSO policy, which excludes the revisions to the SSO policy at § 412.529(c)(3)(i), that occurred midyear in RY 2008 in accordance with the MMSEA. (Additional information on section 114 of the MMSEA can be found at section I.A. of this final rule.)

Furthermore, in modeling estimated LTCH PPS payments for both RY 2008 and RY 2009 in this impact analysis, we applied the RY 2008 and RY 2009 adjustments for area wage differences (as described in section IV.F.1. of the preamble of this final rule), and the COLA for Alaska and Hawaii (as described in section IV.F.2. of the preamble of this final rule). Specifically, we adjusted for area wage differences for estimated 2008 LTCH PPS rate year payments using the current LTCH PPS labor-related share of 75.788 percent (72 FR 26892), the wage index values established in the Tables 1 and 2 of the Addendum of the RY 2008 final rule (72 FR 26996 through 27019) and the COLA factors established in Table III of the preamble of the RY 2008 final rule (72 FR 26894). Similarly, we adjusted for

area wage differences for estimated 2009 LTCH PPS rate year payments using the LTCH PPS labor-related share of 75.662 percent (see section IV.D.1.c. of this final rule), the wage index values presented in the Tables 1 and 2 of the Addendum of this final rule and the COLA factors established in Table III of the preamble of this final rule.

As discussed above, we also accounted for the payment policy for SSOs. We also estimated additional payments that would be made for HCOs (as described in section IV.F.3. of this final rule). In modeling payments for SSO and HCO cases in RY 2008, we applied an inflation factor of 1.025 percent (determined by OACT) to the estimated costs of each case determined from the charges reported on the claims in the FY 2007 MedPAR files and the best available CCRs from the January 2008 update of the PSF. In modeling payments for SSO and HCO cases in RY 2009, we applied an inflation factor of 1.058 (determined by OACT) to the estimated costs of each case determined from the charges reported on the claims in the FY 2007 MedPAR files and the best available CCRs from the January 2008 update of the PSF. As noted in section IV.F.4. of this final rule, we are

not making adjustments for rural location, geographic reclassification, indirect medical education costs, or a DSH payment for the treatment of low-income patients because our most recent data analysis that reflects LTCH behavior subsequent to the implementation of the LTCH PPS indicates that payment adjustments for geographic reclassification, rural location, DSH, or indirect medical education costs would not improve the accuracy of payments made under the LTCH PPS to LTCHs. (See Section IV.F.4. of this final rule.).

These impacts reflect the estimated “losses” or “gains” among the various classifications of LTCHs from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year based on the payment rates and policy changes presented in this final rule. Table V illustrates the estimated aggregate impact of the LTCH PPS among various classifications of LTCHs.

- The first column, LTCH Classification, identifies the type of LTCH.
- The second column lists the number of LTCHs of each classification type.

- The third column identifies the number of LTCH cases.
- The fourth column shows the estimated payment per discharge for the 2008 LTCH PPS rate year (as described above).
- The fifth column shows the estimated payment per discharge for the 2009 LTCH PPS rate year (as described above).
- The sixth column shows the percentage change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for changes to the standard Federal rate (as discussed in section IV.E. of the preamble of this final rule).
- The seventh column shows the percentage change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for changes to the area wage adjustment at § 412.525(c) (as discussed in section IV.F.1. of the preamble of this final rule).
- The eighth column shows the percentage change in estimated payments per discharge from the 2008 LTCH PPS rate year (column 4) to the 2009 LTCH PPS rate year (column 5) for all changes.

TABLE V.—IMPACT OF PAYMENT RATE AND PAYMENT RATE POLICY CHANGES TO LTCH PPS PAYMENTS FOR RY 2009
[Estimated 2008 LTCH PPS rate year payments compared to estimated 2009 LTCH PPS rate year payments*]

LTCH classification	Number of LTCHs	Number of LTCH PPS cases	Average estimated RY 2008 LTCH PPS rate year payment per case ¹	Average estimated RY 2009 LTCH PPS rate year payment per case ²	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for finalized changes to the federal rate ³	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for finalized changes to the area wage adjustment ⁴	Percent change in payments per discharge from RY 2008 to RY 2009 for all changes ⁵
All Providers	391	129,255	\$33,698	\$34,545	1.9	−0.1	2.5
By location:							
Rural	25	6,150	27,457	28,019	2.0	−0.4	2.0
Urban	366	123,105	34,010	34,871	1.9	−0.1	2.5
Large	188	74,266	35,399	36,322	1.8	0.0	2.6
Other	178	48,839	31,898	32,665	1.9	−0.2	2.4
By Participation Date:							
Before Oct. 1983 ..	17	6,927	29,776	30,691	1.9	0.5	3.1
Oct. 1983–Sept. 1993	46	18,659	35,173	36,050	1.8	−0.1	2.5
Oct. 1993–Sept. 2002	201	69,664	33,286	34,080	1.9	−0.2	2.4
After October 2002	120	32,289	34,184	35,090	1.9	0.0	2.7
Unknown Participation Date	7	1,716	41,097	42,368	1.8	0.5	3.1
By Ownership Type:							
Voluntary	85	22,712	34,269	35,184	1.8	0.0	2.7
Proprietary	273	101,601	33,441	34,266	1.9	−0.2	2.5
Government	16	2,370	36,129	37,151	1.8	0.2	2.8
Unknown Ownership Type	17	2,572	36,564	37,539	1.9	0.0	2.7
By Region:							
New England	16	8,266	30,010	30,969	1.9	0.7	3.2
Middle Atlantic	29	8,135	34,623	35,341	1.8	−0.6	2.1
South Atlantic	49	13,364	38,348	39,354	1.8	−0.1	2.6

TABLE V.—IMPACT OF PAYMENT RATE AND PAYMENT RATE POLICY CHANGES TO LTCH PPS PAYMENTS FOR RY 2009—
Continued

[Estimated 2008 LTCH PPS rate year payments compared to estimated 2009 LTCH PPS rate year payments*]

LTCH classification	Number of LTCHs	Number of LTCH PPS cases	Average estimated RY 2008 LTCH PPS rate year payment per case ¹	Average estimated RY 2009 LTCH PPS rate year payment per case ²	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for finalized changes to the federal rate ³	Percent change in estimated payments per discharge from RY 2008 to RY 2009 for finalized changes to the area wage adjustment ⁴	Percent change in payments per discharge from RY 2008 to RY 2009 for all changes ⁵
East North Central	67	19,180	37,205	38,117	1.9	-0.2	2.5
East South Central	31	8,343	33,095	33,763	1.9	-0.6	2.0
West North Central	19	5,199	35,471	36,415	1.9	0.0	2.7
West South Central	134	50,770	29,655	30,343	1.9	-0.3	2.3
Mountain	25	5,569	35,779	36,774	1.8	0.0	2.8
Pacific	21	10,429	41,664	42,987	1.8	0.6	3.2
By Bed Size:							
Beds: 0–24	34	4,633	30,444	31,044	2.0	-0.6	2.0
Beds: 25–49	195	44,616	33,618	34,440	1.9	-0.2	2.4
Beds: 50–74	78	26,845	33,393	34,248	1.9	-0.1	2.6
Beds: 75–124	47	22,806	36,034	37,013	1.8	0.1	2.7
Beds: 125–199	21	16,536	32,717	33,514	1.9	-0.2	2.4
Beds: 200 + ...	16	13,819	32,961	33,798	1.9	-0.1	2.5

¹ Estimated 2008 LTCH PPS rate year payments based on the rates, factors and policies established in the RY 2008 LTCH PPS final rule (72 FR 26870 through 27029), the RY 2008 LTCH PPS correction notice (72 FR 36613 through 36616) and the applicable sections of the MMSEA. As described in section XVI.B.3. of this final rule, for the purpose of this impact analysis, we modeled estimated RY 2008 payments based on the MMSEA provisions regarding the application of the revised standard Federal rate for RY 2008 and the revised SSO policy. Specifically, in estimating RY 2008 LTCH PPS payments, we applied the MMSEA revised RY 2008 standard Federal rate of \$38,086.04 to 3 months of RY 2008 (that is, April 1, 2008, through June 30, 2008) and we applied the RY 2008 rate from the RY 2008 LTCH PPS final rule of \$38,356.45 to 9 months of RY 2008 (that is, July 1, 2007, through March 31, 2008). Additionally, in estimating RY 2008 LTCH PPS payments, we accounted for the midyear change to the SSO policy provided for by section 114(c)(3) of the MMSA (that is, excluding the revisions to the SSO policy at § 412.529(c)(3)(i)) for discharges occurring on or after December 29, 2007.

² Estimated 2009 LTCH PPS rate year payments based on the payment rates and policy changes presented in the preamble of this final rule.

³ Percent change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for the changes to the Federal rate, as discussed in section IV.E. of the preamble of this final rule. (Note, because about 34 percent of all LTCH cases are projected to receive a payment adjustment under the SSO policy that is based either on the estimated cost of the case or the “blend option” (which is based in part on the “IPPS comparable amount”) rather than the Federal rate in RY 2009, the percent change in estimated payments per discharge due to the changes to the Federal rate for most of the categories of LTCHs, 1.9 percent, is somewhat less than the update to the Federal rate of 2.7 percent. In addition, since payments in RY 2008 were modeled based on the two rates applied during RY 2008 as described above, the estimated increase in payments to those cases that were paid based on the “higher” RY 2008 rate from the RY 2008 LTCH PPS final rule (approximately 75 percent of cases) will be less than the 2.7 percent update that was applied to the “lower” revised RY 2008 standard Federal rate in determining the RY 2009 Federal rate.)

⁴ Percent change in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year for changes to the area wage adjustment at § 412.525(c) (as discussed in section V.F.1. of the preamble of this final rule).

⁵ Percent change in estimated payments per discharge from the 2008 LTCH PPS rate year (as described in section XI.A.2.c. of this final rule) to the 2009 LTCH PPS rate year including all of the changes presented in the preamble of this final rule. Note, this column, which shows the percent change in estimated payments per discharge for all changes, may not equal the sum of the percent changes in estimated payments per discharge for changes to the standard Federal rate (column 6) and the changes to the area wage adjustment (column 7) due to the effect of estimated changes in both payments to SSO cases that are paid based on estimated costs and aggregate HCO payments (as discussed in this final rule), as well as other interactive effects that cannot be isolated.

d. Results

Based on the most recent available data (as described previously for 391 LTCHs), we have prepared the following summary of the impact (as shown in Table V) of the LTCH PPS payment rate and policy changes presented in this final rule. The impact analysis in Table V shows that estimated payments per discharge are expected to increase approximately 2.5 percent, on average, for all LTCHs from the 2008 LTCH PPS rate year as compared to the 2009 LTCH PPS rate year as a result of the payment rate and policy changes presented in this final rule. We note that although we are proposing a 2.7 percent increase to the standard Federal rate for RY 2009,

based on the latest market basket estimate (3.6 percent) for the 15-month 2009 rate year and offset by the coding and documentation adjustment (0.9 percent), for most categories of LTCHs, the impact analysis shown in Table V only shows a 1.9 percent increase (column 6) in estimated payments per discharge from RY 2008 to RY 2009 as a result of the change to the standard Federal rate. The projected impact of 1.9 percent for the change in the standard Federal rate shown in column 6 is less than the 2.7 percent update to the standard Federal rate discussed in section IV.C. of the preamble due to several factors. First, as we discussed above, we modified the impact analysis

for this final rule in response to a comment we received on the impact analysis performed for the proposed rule. Specifically, in our modeling of estimated payments for RY 2008, we accounted for the mid-year change in the SSO payment policy that occurred during RY 2008 and incorporated both the “lower” MMSEA revised RY 2008 standard Federal rate, under which discharges are paid for 3 months, and the “higher” rate from the RY 2008 LTCH PPS final rule, under which discharges are paid for 9 months, in accordance with the MMSEA as discussed above and in more detail in section I.E. of this preamble. Since payments in RY 2008 were modeled

based on the two rates under which discharges are paid during RY 2008 as described above, the estimated increase in payments to those cases that were paid based on the "higher" RY 2008 rate from the RY 2008 LTCH PPS final rule (approximately 75 percent of cases) will be less than the 2.7 percent update that was applied to the "lower" MMSEA revised RY 2008 standard Federal rate in determining the RY 2009 Federal rate. Furthermore, approximately 30 percent of LTCH cases are SSO cases, which are paid based on the estimated cost of the case or the blend option one component of which is the IPPS comparable amount rather than on the updated Federal rate. The inclusion of the estimated payments for these SSO cases in the estimate of the average payment per discharge for all LTCH cases results in an estimated increase that is less than the 2.7 percent update to the standard Federal rate. Therefore, because over 30 percent of all LTCH PPS cases are projected to receive a payment that is not based fully on the standard Federal rate, the percent change in estimated payments per discharge due to the change to the standard Federal rate for most categories of LTCHs shown in Table V is projected to be 1.9 percent, which is somewhat less than the 2.5 percent update to the standard Federal rate. In addition to the 1.9 percent increase to the standard Federal rate for RY 2009, the projected percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year of 2.5 percent shown in Table V (see column 8) reflects the effect of estimated SSO payments and a slight increase in estimated HCO payments as we discussed previously. That is, in calculating the estimated increase in payments for HCO and SSO from RY 2008 to RY 2009, we increased costs by applying the applicable market basket (approximately 3.2 percent). As noted above, SSOs comprise approximately 16 percent of total LTCH PPS payments and HCOs comprise approximately 8 percent of estimated total LTCH PPS payments. Furthermore, as discussed previously in this regulatory impact analysis, the average increase in estimated payments per discharge from the 2008 LTCH PPS rate year to the 2009 LTCH PPS rate year, on average, for all LTCHs is approximately 2.5 (as shown in Table V) and was determined by comparing estimated RY 2009 LTCH PPS payments (using the rates and policies discussed in the preamble of this rule) to estimated RY 2008 LTCH PPS payments (as described above in

section XI.A.2.c. of this regulatory impact analysis).

(1) Location

Based on the most recent available data, the majority of LTCHs are in urban areas. Approximately 6 percent of the LTCHs are identified as being located in a rural area, and approximately 5 percent of all LTCH cases are treated in these rural hospitals. The impact analysis presented in Table V shows that the average percent increase in estimated payments per discharge for the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year for all hospitals is 2.5 percent for all changes. For rural LTCHs, the percent change for all changes is estimated to be 2.0 percent, while for urban LTCHs, we estimate this increase to be 2.5 percent. Large urban LTCHs are projected to experience a 2.6 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, while other urban LTCHs are projected to experience a 2.4 percent increase in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table V. Rural LTCHs are projected to experience a somewhat lower than average increase in estimated payments per discharge for all changes primarily due to the changes to the area wage adjustment (0.4 percent, see column 7 of table V). That is, 72 percent of the LTCHs in these areas are expected to experience a decrease in their wage index value from RY 2008 to RY 2009.

(2) Participation Date

LTCHs are grouped by participation date into four categories: (1) Before October 1983; (2) between October 1983 and September 1993; (3) between October 1993 and September 2002; and (4) after October 2002. Based on the most recent available data, the majority (approximately 51 percent) of the LTCH cases are in hospitals that began participating between October 1993 and September 2002, and are projected to experience about the average increase (2.4 percent) in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table V.

LTCHs that began participating in Medicare between October 1983 and September 1993, are projected to experience the average percent increase (2.5 percent) in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table V. Approximately 12 percent of LTCHs began participating in Medicare

between October 1983 and September 1993 while approximately 31 percent of LTCHs began participating in Medicare after October 2002 (that is, the beginning of the LTCH PPS, which was implemented for cost reporting periods beginning on or after October 1, 2002). LTCHs that began participating in Medicare after October 2002 are projected to experience a slightly higher than average percent increase (2.7 percent) in estimated payments per discharge from the 2008 LTCH PPS rate year compared to the 2009 LTCH PPS rate year, as shown in Table V. Similarly, LTCHs that began participating before October 1983 are projected to experience higher than the average increase (3.1 percent) in estimated payments per discharge for the 2009 LTCH PPS rate year as compared to the 2008 LTCH PPS rate year (see Table V).

(3) Ownership Control

Other than LTCHs whose ownership control type is unknown, LTCHs are grouped into three categories based on ownership control type: voluntary; proprietary; and government. Based on the most recent available data, approximately 4 percent of LTCHs are identified as government-owned and operated (see Table V). We expect that for these government-owned and operated LTCHs, estimated 2009 LTCH PPS rate year payments per discharge will increase 2.8 percent in comparison to the 2008 LTCH PPS rate year, as shown in Table V. We are projecting that government-run LTCHs will experience a somewhat higher than average increase in estimated payments in RY 2009 as compared to RY 2008 primarily due to the effect of the changes to the area wage adjustment. Specifically, the majority (69 percent) of hospitals in this category are projected to experience an increase in their wage index value from RY 2008 to RY 2009. In addition, because the majority (approximately 75 percent) of hospitals in this category have a wage index of less than 1.0, the decrease to the labor-related share (from 75.788 percent to 75.662 percent) also contributes to the larger than average increase in estimated payments for RY 2009 as compared to RY 2008, shown in Table V.

We project that estimated 2009 LTCH PPS rate year payments per discharge for voluntary LTCHs, which account for approximately 22 percent of LTCHs, will increase slightly higher than the average (2.7 percent) in comparison to estimated 2008 LTCH PPS rate year payments (see Table V). The majority (approximately 70 percent) of LTCHs are identified as proprietary. We project

that RY 2009 estimated payments per discharge for these proprietary LTCHs will increase by the average (2.5 percent) in comparison to the 2008 LTCH PPS rate year (see Table V).

(4) Census Region

Estimated payments per discharge for the 2009 LTCH PPS rate year are projected to increase for LTCHs located in all regions in comparison to the 2008 LTCH PPS rate year. The percent increase in estimated payments per discharge for the 2009 LTCH PPS rate year as compared to the 2008 LTCH PPS rate year for all regions is largely attributable to the increase in the standard Federal rate, while the variations in the estimated percent increases in payments ranging from 2.0 percent to 3.2 percent, is primarily due to the differences in estimated payment changes due to changes to the area wage adjustment.

Of the 9 census regions, we project that the increase in 2009 LTCH PPS rate year estimated payments per discharge in comparison to the 2008 LTCH PPS rate year will have the largest impact on LTCHs in the New England and Pacific regions (3.2 percent for both; see Table V). LTCHs located in both the New England and Pacific regions are expected to experience a larger than average increase in estimated payments due to the changes in the area wage adjustment (0.7 percent for the New England region, and 0.6 percent for the Pacific region, as shown in Table V). This is because approximately 87 percent of LTCHs located in the New England region and all of LTCHs in the Pacific region are projected to experience an increase in their wage index values for RY 2009 as compared to RY 2008.

For LTCHs located in the Middle Atlantic and East South Central regions, we estimate that the somewhat lower than average projected increase (2.1 percent and 2.0 percent, respectively) in estimated payments per discharge for the 2009 LTCH PPS rate year compared to the 2008 LTCH PPS rate year is largely a result of the changes to the area wage adjustment. Specifically, the vast majority of LTCHs in the Middle Atlantic region (approximately 86 percent) and East South Central region (approximately 71 percent) would experience a decrease in their wage index value from RY 2008 to RY 2009 which contributes to the lower than average estimated increase in payments from RY 2008 to RY 2009.

We project that in comparison to the 2008 LTCH PPS rate year, the 2009 LTCH PPS rate year estimated payments per discharge for LTCHs in the West

North Central, South Atlantic, East North Central, and West South Central regions will increase near the average (2.7 percent, 2.6 percent, 2.5 percent, and 2.3 percent, respectively). For LTCHs located in the Mountain region, we estimate that the slightly higher than average projected increase (2.8 percent) in estimated payments per discharge for the 2009 LTCH PPS rate year compared to the 2008 LTCH PPS rate year is a result of the changes to the area wage adjustment. That is, we estimate that a slight majority (52 percent) of hospitals in the Mountain region will experience an increase in their wage index values from RY 2008 to RY 2009.

(5) Bed Size

LTCHs were grouped into six categories based on bed size: 0–24 beds; 25–49 beds; 50–74 beds; 75–124 beds; 125–199 beds; and greater than 200 beds.

We are projecting an increase in estimated 2009 LTCH PPS rate year payments per discharge in comparison to the 2008 LTCH PPS rate year for all bed size categories. Most LTCHs are in bed size categories where estimated 2009 LTCH PPS rate year payments per discharge are projected to increase at or near the average increase of 2.5 percent for all LTCHs, in comparison to estimated 2008 LTCH PPS rate year payments per discharge (that is, all LTCH bed size categories except the category of LTCHs with 0–24 beds). Specifically, estimated payments per discharge for the 2009 LTCH PPS rate year are projected to increase for LTCHs with 25–49 and 125–199 beds at 2.4 percent, for LTCHs with more than 200 beds at 2.5 percent, for LTCHs with 50–74 beds at 2.6 percent, and for LTCHs with more than 75–124 beds, at 2.7 percent.

Estimated payments per discharge for the 2009 LTCH PPS rate year for LTCHs with 0–24 beds are projected to have a somewhat lower than average increase (2.0 percent) in comparison to all hospitals. This lower than average increase in estimated payments per discharge for LTCHs with 0–24 beds is largely due to the changes to the area wage adjustment. Specifically, LTCHs in this category are expected to experience a larger than average decrease in their payments from RY 2008 to RY 2009 due to the changes to the area wage adjustment primarily because approximately 74 percent of the hospitals in this category are projected to experience a decrease in their wage index value from RY 2008 to RY 2009.

e. Effect on the Medicare Program

Based on actuarial projections, an estimate of Medicare spending (total estimated Medicare program payments) for LTCH services over the next 5 years based on current LTCH PPS policy (as established in previous LTCH PPS final rules) is shown in Table IV in section IV.D. of the preamble of this rule. As noted previously, we project that the provisions of this rule will result in an increase in estimated aggregate LTCH PPS payments in RY 2009 of approximately 110 million (or about 2.5 percent) for the 391 LTCHs in our database.

Consistent with the statutory requirement for budget neutrality, as we discussed in the August 30, 2002 final rule that implemented the LTCH PPS, in developing the LTCH PPS, we intended estimated aggregate payments under the LTCH PPS in FY 2003 be projected to equal the estimated aggregate payments that would have been made if the LTCH PPS were not implemented. Our methodology for estimating payments for purposes of the BN calculations for determining the FY 2003 standard Federal rate used the best available data and necessarily reflects assumptions. As discussed in section IV.D. of this rule, section 114(c)(4) of the MMSEA provides that the “Secretary shall not, for the 3-year period beginning on the date of the enactment of this Act, make the one-time prospective adjustment to long-term care hospital prospective payment rates provided for in § 412.523(d)(3) of title 42, Code of Federal Regulations, or any similar provision.” That provision delays the effective date of any one-time budget neutrality adjustment until no earlier than December 29, 2010. However, prior to the enactment of the MMSEA of 2007, we had developed a methodology for evaluating the appropriateness of proposing a one-time budget neutrality adjustment under existing § 412.523(d)(3). In order to inform the public of our thinking, and to stimulate comments for our consideration during the 3-year delay in implementing any adjustment under the recent legislation, we have presented our analysis and its results in section IV.D. of the preamble of the RY 2009 LTCH PPS proposed rule (73 FR 5376 through 5383).

f. Effect on Medicare Beneficiaries

Under the LTCH PPS, hospitals receive payment based on the average resources consumed by patients for each diagnosis. We do not expect any changes in the quality of care or access to services for Medicare beneficiaries under the LTCH PPS, but we expect that

paying prospectively for LTCH services would enhance the efficiency of the Medicare program.

3. Accounting Statement

As discussed in section XVI.A.1. of this final rule, the impact analysis of this final rule projects an increase in estimated aggregate payments of approximately \$110 million (or about 2.5 percent) for the 391 LTCHs in our database. Therefore, as required by OMB Circular A-4 (available at <http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf>), in Table V, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule. Table VI provides our best estimate of the increase in Medicare payments under the LTCH PPS as a result of the provisions presented in this final rule based on the data for the 391 LTCHs in our database. All expenditures are classified as transfers to Medicare providers (that is, LTCHs).

TABLE VI.—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES, FROM THE 2008 LTCH PPS RATE YEAR TO THE 2009 LTCH PPS RATE YEAR

[In millions]

Category	Transfers
Annualized Monetized Transfers.	Positive transfer—Estimated increase in expenditures: \$110 million
From Whom To Whom?	Federal Government To LTCH Medicare Providers

In accordance with the provisions of Executive Order 12866, this final rule was reviewed by the Office of Management and Budget.

B. Electronic Submission of Cost Reports: Revision to Effective Date of Cost Reporting Period

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96-354), section 1102(b) of the Social Security Act, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4), Executive Order 13132 on Federalism, and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Order 13258) directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize

net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects (\$100 million or more in any 1 year). This rule does not reach the economic threshold and thus is not considered a major rule.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and small governmental jurisdictions. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of \$6.5 million to \$31.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. We are not preparing an analysis for the RFA because we have determined that this rule will not have a significant economic impact on a substantial number of small entities.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined that this rule will not have a significant impact on the operations of a substantial number of small rural hospitals.

Section 202 of the Unfunded Mandates Reform Act of 1995 also requires that agencies assess anticipated costs and benefits before issuing any rule whose mandates require spending in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. The threshold level is currently approximately \$130 million. This rule will have no consequential effect on the governments mentioned or on the private sector.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. Since this regulation does not impose any costs on State or local governments, the requirements of E.O. 13132 are not applicable.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects in 42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

■ 1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh) and section 124 of Pub. L. 106-113 (113 Stat. 1501A-332).

Subpart O—Prospective Payment System for Long Term Care Hospitals

■ 2. Section 412.503 is amended by—

■ A. Revising the definition of “Long-term care hospital prospective payment system rate year”.

■ B. Adding new definitions of “rural” and “urban” in alphabetical order.

The revision and additions read as follows:

§ 412.503 Definitions.

* * * * *

Long-term care hospital prospective payment system rate year means—

(1) From July 1, 2003 and ending on or before June 30, 2008, the 12-month period of July 1 through June 30.

(2) From July 1, 2008 and ending on September 30, 2009, the 15-month period of July 1, 2008 through September 30, 2009.

(3) Beginning on or after October 1, 2009, the 12-month period of October 1 through September 30.

* * * * *

Rural area means—(1) For cost reporting periods beginning on or after October 1, 2002, with respect to discharges occurring during the period covered by such cost reports but before July 1, 2005, an area defined in § 412.62(f)(1)(iii);

(2) For discharges occurring on or after July 1, 2005, and before July 1, 2008, an area as defined in § 412.64(b)(1)(ii)(C); and

(3) For discharges occurring on or after July 1, 2008, any area outside an urban area.

Urban area means—(1) For cost reporting periods beginning on or after October 1, 2002, with respect to

discharges occurring during the period covered by such cost reports but before July 1, 2005, an area defined in § 412.62(f)(1)(ii);

(2) For discharges occurring on or after July 1, 2005, and before July 1, 2008, an urban area means an area as defined in § 412.64(b)(1)(ii)(A) and (B); and

(3) For discharges occurring on or after July 1, 2008, a Metropolitan Statistical Area, as defined by the Executive Office of Management and Budget.

■ 3. Section 412.523 is amended by—

■ A. Adding new paragraph (c)(3)(v).

■ B. Revising paragraph (d)(2) by removing the phrase “sections 1886(b)(2) and (b)(3) of the Act” and adding “section 1886(b)(2)(E) and (b)(3)(f) of the Act” in its place.

■ C. Revising paragraph (d)(3).

The addition and revisions read as follows:

§ 412.523 Methodology for calculating the Federal prospective payment rates.

* * * * *

(c) * * *

(3) * * *

(v) *For long-term care hospital prospective payment system rate year beginning July 1, 2008 and ending September 30, 2009.* The standard Federal rate for long-term care hospital prospective payment system rate year beginning July 1, 2008 and ending September 30, 2009 is the standard Federal rate for the previous long-term care hospital prospective payment system rate year updated by 2.7 percent. The standard Federal rate is adjusted, as appropriate, as described in paragraph (d) of this section.

* * * * *

(d) * * *

(3) The Secretary reviews payments under this prospective payment system and may make a one-time prospective adjustment to the long-term care hospital prospective payment system rates no earlier than December 29, 2010, and by no later than October 1, 2012, so that the effect of any significant difference between the data used in the original computations of budget neutrality for FY 2003 and more recent data to determine budget neutrality for FY 2003 is not perpetuated in the prospective payment rates for future years.

* * * * *

■ 4. Section 412.525 is amended by revising paragraph (c) to read as follows:

§ 412.525 Adjustments to the Federal prospective payment.

* * * * *

(c) *Adjustments for area levels.* The labor portion of a long-term care hospital's Federal prospective payment is adjusted to account for geographical differences in the area wage levels using an appropriate wage index (established by CMS), which reflects the relative level of hospital wages and wage-related costs in the geographic area (that is, urban or rural area as determined in accordance with the definitions set forth in § 412.503) of the hospital compared to the national average level of hospital wages and wage-related costs. The appropriate wage index (established by CMS) is updated annually.

■ 5. Section 412.529 is amended by revising paragraphs (d)(4)(ii)(B) and (d)(4)(iii)(b) to read as follows:

§ 412.529 Special payment provision for short-stay outliers.

* * * * *

(d) * * *

(4) * * *

(ii) * * *

(B) Is adjusted for different area wage levels based on the geographic classifications set forth at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for nonreclassified hospitals. For LTCHs located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors.

* * * * *

(iii) * * *

(B) Is adjusted for the applicable geographic adjustment factors, including local cost variation based on the geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for nonreclassified hospitals and, applicable large urban location cost of living adjustment factors for LTCHs in Alaska and Hawaii, if applicable.

* * * * *

■ 6. Section 412.534 is amended by revising paragraphs (d)(1), (f)(2)(ii), and (f)(3)(ii) to read as follows:

§ 412.534 Special payment provisions for long-term care hospitals within hospitals and satellites of long-term care hospitals.

* * * * *

(d) * * *

(1) Subject to paragraphs (g) and (h) of this section, in the case of a long-term care hospital or satellite facility that is located in a rural area as defined in § 412.503 and is co-located with another hospital for any cost reporting period

beginning on or after October 1, 2004 in which the long-term care hospital or satellite facility has a discharged Medicare inpatient population of whom more than 50 percent were admitted to the long-term care hospital or satellite facility from the co-located hospital, payments for the patients who are admitted from the co-located hospital and who cause the long-term care hospital or satellite facility to exceed the 50 percent threshold for discharged patients who were admitted from the co-located hospital are the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (f) of this section, to the amount that were otherwise payable under § 412.1(a). Payments for the remainder of the long-term care hospital's or long-term care hospital satellite facility's patients are made under the rules in this subpart at §§ 412.500 through 412.541 with no adjustment under this section.

* * * * *

(f) * * *

(2) * * *

(ii) Is adjusted for different area wage levels based on the geographic classifications set forth at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for nonreclassified hospitals. For LTCHs located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors; * * *

(3) * * *

(ii) Is adjusted by the applicable geographic adjustment factors, including local cost variation based on the applicable geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for nonreclassified hospitals, applicable large urban location and cost of living adjustment factors for LTCHs for Alaska and Hawaii, if applicable;

* * * * *

■ 7. Section 412.535 is amended by—

■ A. Revising the introductory text.

■ B. Revising paragraph (a).

■ C. Redesignating paragraph (b) as paragraph (d).

■ D. Adding new paragraphs (b) and (c).

The revisions and additions read as follows:

§ 412.535 Publication of the Federal prospective payment rates.

Except as specified in paragraph (b), CMS publishes information pertaining

to the long-term care hospital prospective payment system effective for each annual update in the **Federal Register**.

(a) For the period beginning on or after July 1, 2003 and ending on June 30, 2008, information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of each long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(b) For the period beginning on July 1, 2008 and ending on September 30, 2009, information of the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before May 1 prior to the start of the long-term care hospital prospective payment system rate year which begins July 1, unless for good cause it is published after May 1, but before June 1.

(c) For the period beginning on or after October 1, 2009, information on the unadjusted Federal payment rates and a description of the methodology and data used to calculate the payment rates are published on or before August 1 prior to the start of the Federal fiscal year which begins October 1, unless for good cause it is published after August 1, but before September 1.

* * * * *

■ 8. Section 412.536 is amended by revising paragraphs (c)(1), (e)(2)(ii), and (e)(3)(ii) to read as follows.

§ 412.536 Special payment provisions for long-term care hospitals and satellites of long-term care hospitals that discharged Medicare patients admitted from a hospital not located in the same building or on the same campus as the long-term care hospital or satellite of the long-term care hospital.

* * * * *

(c) *Special treatment of rural hospitals.* (1) Subject to paragraph (f) of

this section, in the case of a long-term care hospital or long-term care hospital satellite facility that is located in a rural area as defined in § 412.503 that has a discharged Medicare inpatient population of whom more than 50 percent were admitted to the long-term care hospital or long-term care hospital satellite facility from a hospital not co-located with the long-term care hospital or with the satellite of a long-term care hospital, payment for the Medicare discharges who are admitted from that hospital and who cause the long-term care hospital or satellite facility to exceed the 50 percent threshold for Medicare discharges is determined at the lesser of the amount otherwise payable under this subpart or the amount payable under this subpart that is equivalent, as set forth in paragraph (e) of this section, to the amount that is otherwise payable under subpart A, § 412.1(a). Payments for the remainder of the long-term care hospital's or long-term care hospital satellite facility's Medicare discharges admitted from that referring hospital are made under the rules in this subpart at § 412.500 through § 412.541 with no adjustment under this section.

* * * * *

(e) * * *

(2) * * *

(ii) Is adjusted for different area wage levels based on the geographic classifications defined at § 412.503 and the applicable hospital inpatient prospective payment system labor-related share, using the applicable hospital inpatient prospective payment system wage index value for nonreclassified hospitals. For long-term care hospitals located in Alaska and Hawaii, this amount is also adjusted by the applicable hospital inpatient prospective payment system cost of living adjustment factors;

* * * * *

(3) * * *

(ii) Is adjusted by the applicable geographic adjustment factors, including local cost variation based on

the applicable geographic classifications set forth at § 412.503 and the applicable full hospital inpatient prospective payment system wage index value for non-reclassified hospitals, applicable large urban location and cost of living adjustment factors for long-term care hospitals for Alaska and Hawaii, if applicable;

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 24, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: May 1, 2008.

Michael O. Leavitt,

Secretary.

The following addendum will not appear in the Code of Federal Regulations.

Addendum

This addendum contains the tables referred to throughout the preamble to this final rule. The tables presented below are as follows:

Table 1: Long-Term Care Hospital Wage Index for Urban Areas for Discharges Occurring from July 1, 2008 through September 30, 2009.

Table 2: Long-Term Care Hospital Wage Index for Rural Areas for Discharges Occurring from July 1, 2008 through September 30, 2009.

Table 3: FY 2008 MS-LTC-DRG Relative Weights, Geometric Average Length of Stay, and Short-Stay Outlier Threshold (effective for discharges occurring on or after July 1, 2008 through September 30, 2009)). (Note: This table is the same information provided in Table 11 of the FY 2008 IPPS final rule (72 FR 48143 through 48157), which has been reprinted here for convenience.)

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA code	Urban area (constituent counties)	Proposed wage index
10180	Abilene, TX Callahan County, TX. Jones County, TX. Taylor County, TX.	0.7957
10380	Aguadilla-Isabela-San Sebastián, PR Aguada Municipio, PR. Aguadilla Municipio, PR. Añasco Municipio, PR. Isabela Municipio, PR. Lares Municipio, PR.	0.3448

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
10420	Moca Municipio, PR. Rincón Municipio, PR. San Sebastián Municipio, PR. Akron, OH	0.8794
10500	Portage County, OH. Summit County, OH. Albany, GA	0.8514
10580	Baker County, GA. Dougherty County, GA. Lee County, GA. Terrell County, GA. Worth County, GA. Albany-Schenectady-Troy, NY	0.8588
10740	Albany County, NY. Rensselaer County, NY. Saratoga County, NY. Schenectady County, NY. Schoharie County, NY. Albuquerque, NM	0.9554
10780	Bernalillo County, NM. Sandoval County, NM. Torrance County, NM. Valencia County, NM. Alexandria, LA	0.7979
10900	Grant Parish, LA. Rapides Parish, LA. Allentown-Bethlehem-Easton, PA-NJ	0.9865
11020	Warren County, NJ. Carbon County, PA. Lehigh County, PA. Northampton County, PA. Altoona, PA	0.8618
11100	Blair County, PA. Amarillo, TX	0.9116
11180	Armstrong County, TX. Carson County, TX. Potter County, TX. Randall County, TX. Ames, IA	1.0046
11260	Story County, IA. Anchorage, AK	1.1913
11300	Anchorage Municipality, AK. Matanuska-Susitna Borough, AK. Anderson, IN	0.8827
11340	Madison County, IN. Anderson, SC	0.9086
11460	Anderson County, SC. Ann Arbor, MI	1.0539
11500	Washtenaw County, MI. Anniston-Oxford, AL	0.7926
11540	Calhoun County, AL. Appleton, WI	0.9598
11700	Calumet County, WI. Outagamie County, WI. Asheville, NC	0.9185
12020	Buncombe County, NC. Haywood County, NC. Henderson County, NC. Madison County, NC. Athens-Clarke County, GA	1.0517
12060	Clarke County, GA. Madison County, GA. Oconee County, GA. Oglethorpe County, GA. Atlanta-Sandy Springs-Marietta, GA	0.9828
	Barrow County, GA. Bartow County, GA. Butts County, GA. Carroll County, GA. Cherokee County, GA.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Clayton County, GA. Cobb County, GA. Coweta County, GA. Dawson County, GA. DeKalb County, GA. Douglas County, GA. Fayette County, GA. Forsyth County, GA. Fulton County, GA. Gwinnett County, GA. Haralson County, GA. Heard County, GA. Henry County, GA. Jasper County, GA. Lamar County, GA. Meriwether County, GA. Newton County, GA. Paulding County, GA. Pickens County, GA. Pike County, GA. Rockdale County, GA. Spalding County, GA. Walton County, GA.	
12100	Atlantic City, NJ	1.2198
12220	Atlantic County, NJ	
12220	Auburn-Opelika, AL	0.8090
12260	Lee County, AL	
12260	Augusta-Richmond County, GA-SC	0.9645
	Burke County, GA. Columbia County, GA. McDuffie County, GA. Richmond County, GA. Aiken County, SC. Edgefield County, SC.	
12420	Austin-Round Rock, TX	0.9544
	Bastrop County, TX. Caldwell County, TX. Hays County, TX. Travis County, TX. Williamson County, TX.	
12540	Bakersfield, CA	1.1051
12580	Kern County, CA	
12580	Baltimore-Towson, MD	1.0134
	Anne Arundel County, MD. Baltimore County, MD. Carroll County, MD. Harford County, MD. Howard County, MD. Queen Anne's County, MD. Baltimore City, MD.	
12620	Bangor, ME	0.9978
12700	Penobscot County, ME	
12700	Barnstable Town, MA	1.2603
12940	Barnstable County, MA	
12940	Baton Rouge, LA	0.8034
	Ascension Parish, LA. East Baton Rouge Parish, LA. East Feliciana Parish, LA. Iberville Parish, LA. Livingston Parish, LA. Pointe Coupee Parish, LA. St. Helena Parish, LA. West Baton Rouge Parish, LA. West Feliciana Parish, LA.	
12980	Battle Creek, MI	1.0179
13020	Calhoun County, MI	
13020	Bay City, MI	0.8897
13140	Bay County, MI	
13140	Beaumont-Port Arthur, TX	0.8531
	Hardin County, TX.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Jefferson County, TX.	
	Orange County, TX.	
13380	Bellingham, WA	1.1474
	Whatcom County, WA.	
13460	Bend, OR	1.0942
	Deschutes County, OR.	
13644	Bethesda-Gaithersburg-Frederick, MD	1.0511
	Frederick County, MD.	
	Montgomery County, MD.	
13740	Billings, MT	0.8666
	Carbon County, MT.	
	Yellowstone County, MT.	
13780	Binghamton, NY	0.8949
	Broome County, NY.	
	Tioga County, NY.	
13820	Birmingham-Hoover, AL	0.8898
	Bibb County, AL.	
	Blount County, AL.	
	Chilton County, AL.	
	Jefferson County, AL.	
	St. Clair County, AL.	
	Shelby County, AL.	
	Walker County, AL.	
13900	Bismarck, ND	0.7225
	Burleigh County, ND.	
	Morton County, ND.	
13980	Blacksburg-Christiansburg-Radford, VA	0.8192
	Giles County, VA.	
	Montgomery County, VA.	
	Pulaski County, VA.	
	Radford City, VA.	
14020	Bloomington, IN	0.8915
	Greene County, IN.	
	Monroe County, IN.	
	Owen County, IN.	
14060	Bloomington-Normal, IL	0.9325
	McLean County, IL.	
14260	Boise City-Nampa, ID	0.9465
	Ada County, ID.	
	Boise County, ID.	
	Canyon County, ID.	
	Gem County, ID.	
	Owyhee County, ID.	
14484	Boston-Quincy, MA	1.1792
	Norfolk County, MA.	
	Plymouth County, MA.	
	Suffolk County, MA.	
14500	Boulder, CO	1.0426
	Boulder County, CO.	
14540	Bowling Green, KY	0.8159
	Edmonson County, KY.	
	Warren County, KY.	
14740	Bremerton-Silverdale, WA	1.0904
	Kitsap County, WA.	
14860	Bridgeport-Stamford-Norwalk, CT	1.2735
	Fairfield County, CT.	
15180	Brownsville-Harlingen, TX	0.8914
	Cameron County, TX.	
15260	Brunswick, GA	0.9475
	Brantley County, GA.	
	Glynn County, GA.	
	McIntosh County, GA.	
15380	Buffalo-Niagara Falls, NY	0.9568
	Erie County, NY.	
	Niagara County, NY.	
15500	Burlington, NC	0.8747
	Alamance County, NC.	
15540	Burlington-South Burlington, VT	0.9660
	Chittenden County, VT.	
	Franklin County, VT.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
15764	Grand Isle County, VT. Cambridge-Newton-Framingham, MA	1.1215
15804	Middlesex County, MA. Camden, NJ	1.0411
15940	Burlington County, NJ. Camden County, NJ. Gloucester County, NJ. Canton-Massillon, OH	0.8935
15980	Carroll County, OH. Stark County, OH. Cape Coral-Fort Myers, FL	0.9396
16180	Lee County, FL. Carson City, NV	1.0003
16220	Carson City, NV. Casper, WY	0.9385
16300	Natrona County, WY. Cedar Rapids, IA	0.8852
16580	Benton County, IA. Jones County, IA. Linn County, IA. Champaign-Urbana, IL	0.9392
16620	Champaign County, IL. Ford County, IL. Piatt County, IL. Charleston, WV	0.8289
16700	Boone County, WV. Clay County, WV. Kanawha County, WV. Lincoln County, WV. Putnam County, WV. Charleston-North Charleston, SC	0.9124
16740	Berkeley County, SC. Charleston County, SC. Dorchester County, SC. Charlotte-Gastonia-Concord, NC-SC	0.9520
16820	Anson County, NC. Cabarrus County, NC. Gaston County, NC. Mecklenburg County, NC. Union County, NC. York County, SC. Charlottesville, VA	0.9277
16860	Albemarle County, VA. Fluvanna County, VA. Greene County, VA. Nelson County, VA. Charlottesville City, VA. Chattanooga, TN-GA	0.8994
16940	Catoosa County, GA. Dade County, GA. Walker County, GA. Hamilton County, TN. Marion County, TN. Sequatchie County, TN. Cheyenne, WY	0.9308
16974	Laramie County, WY. Chicago-Naperville-Joliet, IL	1.0715
17020	Cook County, IL. DeKalb County, IL. DuPage County, IL. Grundy County, IL. Kane County, IL. Kendall County, IL. McHenry County, IL. Will County, IL. Chico, CA	1.1290
17140	Butte County, CA. Cincinnati-Middletown, OH-KY-IN	0.9784
	Dearborn County, IN. Franklin County, IN.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Ohio County, IN. Boone County, KY. Bracken County, KY. Campbell County, KY. Gallatin County, KY. Grant County, KY. Kenton County, KY. Pendleton County, KY. Brown County, OH. Butler County, OH. Clermont County, OH. Hamilton County, OH. Warren County, OH.	
17300	Clarksville, TN-KY	0.8251
	Christian County, KY. Trigg County, KY. Montgomery County, TN.	
17420	Stewart County, TN. Cleveland, TN	0.8052
	Bradley County, TN. Polk County, TN.	
17460	Cleveland-Elyria-Mentor, OH	0.9339
	Cuyahoga County, OH. Geauga County, OH. Lake County, OH. Lorain County, OH. Medina County, OH.	
17660	Coeur d'Alene, ID	0.9532
	Kootenai County, ID.	
17780	College Station-Bryan, TX	0.9358
	Brazos County, TX. Burleson County, TX. Robertson County, TX.	
17820	Colorado Springs, CO	0.9719
	El Paso County, CO. Teller County, CO.	
17860	Columbia, MO	0.8658
	Boone County, MO. Howard County, MO.	
17900	Columbia, SC	0.8800
	Calhoun County, SC. Fairfield County, SC. Kershaw County, SC. Lexington County, SC. Richland County, SC. Saluda County, SC.	
17980	Columbus, GA-AL	0.8729
	Russell County, AL. Chattahoochee County, GA. Harris County, GA. Marion County, GA. Muscogee County, GA.	
18020	Columbus, IN	0.9537
	Bartholomew County, IN.	
18140	Columbus, OH	1.0085
	Delaware County, OH. Fairfield County, OH. Franklin County, OH. Licking County, OH. Madison County, OH. Morrow County, OH. Pickaway County, OH. Union County, OH.	
18580	Corpus Christi, TX	0.8588
	Aransas County, TX. Nueces County, TX. San Patricio County, TX.	
18700	Corvallis, OR	1.0959
	Benton County, OR.	
19060	Cumberland, MD-WV	0.8294

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
19124	Allegany County, MD. Mineral County, WV. Dallas-Plano-Irving, TX Collin County, TX. Dallas County, TX. Delta County, TX. Denton County, TX. Ellis County, TX. Hunt County, TX. Kaufman County, TX. Rockwall County, TX.	0.9915
19140	Dalton, GA Murray County, GA. Whitfield County, GA.	0.8760
19180	Danville, IL Vermilion County, IL.	0.8957
19260	Danville, VA Pittsylvania County, VA. Danville City, VA.	0.8240
19340	Davenport-Moline-Rock Island, IA-IL Henry County, IL. Mercer County, IL. Rock Island County, IL. Scott County, IA.	0.8830
19380	Dayton, OH Greene County, OH. Miami County, OH. Montgomery County, OH. Preble County, OH.	0.9190
19460	Decatur, AL Lawrence County, AL. Morgan County, AL.	0.7885
19500	Decatur, IL Macon County, IL.	0.8074
19660	Deltona-Daytona Beach-Ormond Beach, FL Volusia County, FL.	0.9031
19740	Denver-Aurora, CO Adams County, CO. Arapahoe County, CO. Broomfield County, CO. Clear Creek County, CO. Denver County, CO. Douglas County, CO. Elbert County, CO. Gilpin County, CO. Jefferson County, CO. Park County, CO.	1.0718
19780	Des Moines-West Des Moines, IA Dallas County, IA. Guthrie County, IA. Madison County, IA. Polk County, IA. Warren County, IA.	0.9226
19804	Detroit-Livonia-Dearborn, MI Wayne County, MI.	0.9999
20020	Dothan, AL Geneva County, AL. Henry County, AL. Houston County, AL.	0.7270
20100	Dover, DE Kent County, DE.	1.0099
20220	Dubuque, IA Dubuque County, IA.	0.9058
20260	Duluth, MN-WI Carlton County, MN. St. Louis County, MN. Douglas County, WI.	0.9975
20500	Durham, NC Chatham County, NC. Durham County, NC.	0.9816

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
20740	Orange County, NC. Person County, NC. Eau Claire, WI	0.9475
20764	Chippewa County, WI. Eau Claire County, WI. Edison, NJ	1.1181
20940	Middlesex County, NJ. Monmouth County, NJ. Ocean County, NJ. Somerset County, NJ. El Centro, CA	0.8914
21060	Imperial County, CA. Elizabethtown, KY	0.8711
21140	Hardin County, KY. Larue County, KY. Elkhart-Goshen, IN	0.9611
21300	Elkhart County, IN. Elmira, NY	0.8264
21340	Chemung County, NY. El Paso, TX	0.8989
21500	El Paso County, TX. Erie, PA	0.8495
21660	Erie County, PA. Eugene-Springfield, OR	1.0932
21780	Lane County, OR. Evansville, IN-KY	0.8662
21820	Gibson County, IN. Posey County, IN. Vanderburgh County, IN. Warrick County, IN. Henderson County, KY. Webster County, KY.	1.1050
21940	Fairbanks, AK	0.4375
22020	Fairbanks North Star Borough, AK. Fajardo, PR	0.8042
22140	Ceiba Municipio, PR. Fajardo Municipio, PR. Luquillo Municipio, PR. Fargo, ND-MN	0.9587
22180	Cass County, ND. Clay County, MN. Farmington, NM	0.9368
22220	San Juan County, NM. Fayetteville, NC	0.8742
22380	Cumberland County, NC. Hoke County, NC. Fayetteville-Springdale-Rogers, AR-MO	1.1687
22420	Benton County, AR. Madison County, AR. Washington County, AR. McDonald County, MO. Flagstaff, AZ	1.1220
22500	Coconino County, AZ. Flint, MI	0.8249
22520	Genesee County, MI. Florence, SC	0.7680
22540	Darlington County, SC. Florence County, SC. Florence-Muscle Shoals, AL	0.9667
22660	Colbert County, AL. Lauderdale County, AL. Fond du Lac, WI	0.9897
22744	Fond du Lac County, WI. Fort Collins-Loveland, CO	1.0229
22900	Larimer County, CO. Fort Lauderdale-Pompano Beach-Deerfield Beach, FL	0.7933
	Broward County, FL. Fort Smith, AR-OK	
	Crawford County, AR. Franklin County, AR.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
23020	Sebastian County, AR. Le Flore County, OK. Sequoyah County, OK. Fort Walton Beach-Crestview-Destin, FL	0.8743
23060	Okaloosa County, FL. Fort Wayne, IN	0.9284
23104	Allen County, IN. Wells County, IN. Whitley County, IN. Fort Worth-Arlington, TX	0.9693
23420	Johnson County, TX. Parker County, TX. Tarrant County, TX. Wise County, TX. Fresno, CA	1.0993
23460	Fresno County, CA. Gadsden, AL	0.8159
23540	Etowah County, AL. Gainesville, FL	0.9196
23580	Alachua County, FL. Gilchrist County, FL. Gainesville, GA	0.9216
23844	Hall County, GA. Gary, IN	0.9224
24020	Jasper County, IN. Lake County, IN. Newton County, IN. Porter County, IN. Glens Falls, NY	0.8256
24140	Warren County, NY. Washington County, NY. Goldsboro, NC	0.9288
24220	Wayne County, NC. Grand Forks, ND-MN	0.7881
24300	Polk County, MN. Grand Forks County, ND. Grand Junction, CO	0.9864
24340	Mesa County, CO. Grand Rapids-Wyoming, MI	0.9315
24500	Barry County, MI. Ionia County, MI. Kent County, MI. Newaygo County, MI. Great Falls, MT	0.8675
24540	Cascade County, MT. Greeley, CO	0.9658
24580	Weld County, CO. Green Bay, WI	0.9727
24660	Brown County, WI. Kewaunee County, WI. Oconto County, WI. Greensboro-High Point, NC	0.9010
24780	Guilford County, NC. Randolph County, NC. Rockingham County, NC. Greenville, NC	0.9402
24860	Greene County, NC. Pitt County, NC. Greenville-Mauldin-Easley, SC	0.9860
25020	Greenville County, SC. Laurens County, SC. Pickens County, SC. Guayama, PR	0.3064
25060	Arroyo Municipio, PR. Guayama Municipio, PR. Patillas Municipio, PR. Gulfport-Biloxi, MS	0.8773
	Hancock County, MS. Harrison County, MS. Stone County, MS.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
25180	Hagerstown-Martinsburg, MD-WV Washington County, MD. Berkeley County, WV. Morgan County, WV.	0.9013
25260	Hanford-Corcoran, CA Kings County, CA.	1.0499
25420	Harrisburg-Carlisle, PA Cumberland County, PA. Dauphin County, PA. Perry County, PA.	0.9280
25500	Harrisonburg, VA Rockingham County, VA. Harrisonburg City, VA.	0.8867
25540	Hartford-West Hartford-East Hartford, CT Hartford County, CT. Middlesex County, CT. Tolland County, CT.	1.0959
25620	Hattiesburg, MS Forrest County, MS. Lamar County, MS. Perry County, MS.	0.7366
25860	Hickory-Lenoir-Morganton, NC Alexander County, NC. Burke County, NC. Caldwell County, NC. Catawba County, NC.	0.9028
25980	Hinesville-Fort Stewart, GA Liberty County, GA. Long County, GA.	0.9187
26100	Holland-Grand Haven, MI Ottawa County, MI.	0.9006
26180	Honolulu, HI Honolulu County, HI.	1.1556
26300	Hot Springs, AR Garland County, AR.	0.9109
26380	Houma-Bayou Cane-Thibodaux, LA Lafourche Parish, LA. Terrebonne Parish, LA.	0.7892
26420	Houston-Sugar Land-Baytown, TX Austin County, TX. Brazoria County, TX. Chambers County, TX. Fort Bend County, TX. Galveston County, TX. Harris County, TX. Liberty County, TX. Montgomery County, TX. San Jacinto County, TX. Waller County, TX.	0.9939
26580	Huntington-Ashland, WV-KY-OH Boyd County, KY. Greenup County, KY. Lawrence County, OH. Cabell County, WV. Wayne County, WV.	0.9041
26620	Huntsville, AL Limestone County, AL. Madison County, AL.	0.9146
26820	Idaho Falls, ID Bonneville County, ID. Jefferson County, ID.	0.9264
26900	Indianapolis-Carmel, IN Boone County, IN. Brown County, IN. Hamilton County, IN. Hancock County, IN. Hendricks County, IN. Johnson County, IN. Marion County, IN. Morgan County, IN.	0.9844

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
26980	Putnam County, IN. Shelby County, IN. Iowa City, IA	0.9568
27060	Johnson County, IA. Washington County, IA. Ithaca, NY	0.9630
27100	Tompkins County, NY. Jackson, MI	0.9329
27140	Jackson County, MI. Jackson, MS	0.8011
27180	Copiah County, MS. Hinds County, MS. Madison County, MS. Rankin County, MS. Simpson County, MS. Jackson, TN	0.8676
27260	Chester County, TN. Madison County, TN. Jacksonville, FL	0.9021
27340	Baker County, FL. Clay County, FL. Duval County, FL. Nassau County, FL. St. Johns County, FL. Jacksonville, NC	0.8079
27500	Onslow County, NC. Janesville, WI	0.9702
27620	Rock County, WI. Jefferson City, MO	0.8478
27740	Callaway County, MO. Cole County, MO. Moniteau County, MO. Osage County, MO. Johnson City, TN	0.7677
27780	Carter County, TN. Unicoi County, TN. Washington County, TN. Johnstown, PA	0.7543
27860	Cambria County, PA. Jonesboro, AR	0.7790
27900	Craighead County, AR. Poinsett County, AR. Joplin, MO	0.8951
28020	Jasper County, MO. Newton County, MO. Kalamazoo-Portage, MI	1.0433
28100	Kalamazoo County, MI. Van Buren County, MI. Kankakee-Bradley, IL	1.0238
28140	Kankakee County, IL. Kansas City, MO-KS	0.9504
28420	Franklin County, KS. Johnson County, KS. Leavenworth County, KS. Linn County, KS. Miami County, KS. Wyandotte County, KS. Bates County, MO. Caldwell County, MO. Cass County, MO. Clay County, MO. Clinton County, MO. Jackson County, MO. Lafayette County, MO. Platte County, MO. Ray County, MO. Kennewick-Richland-Pasco, WA	1.0075
28660	Benton County, WA. Franklin County, WA. Killeen-Temple-Fort Hood, TX	0.8249

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
28700	Bell County, TX. Coryell County, TX. Lampasas County, TX. Kingsport-Bristol-Bristol, TN-VA	0.7658
28740	Hawkins County, TN. Sullivan County, TN. Bristol City, VA. Scott County, VA. Washington County, VA.	0.9556
28940	Kingston, NY	0.8036
29020	Ulster County, NY. Knoxville, TN	0.9591
29100	Anderson County, TN. Blount County, TN. Knox County, TN. Loudon County, TN. Union County, TN.	0.9685
29140	Kokomo, IN	0.8869
29180	Howard County, IN. Tipton County, IN. La Crosse, WI-MN	0.8247
29340	Houston County, MN. La Crosse County, WI. Lafayette, IN	0.7777
29404	Benton County, IN. Carroll County, IN. Tippecanoe County, IN. Lafayette, LA	1.0603
29420	Lafayette Parish, LA. St. Martin Parish, LA. Lake Charles, LA	0.9333
29460	Calcasieu Parish, LA. Cameron Parish, LA. Lake County-Kenosha County, IL-WI	0.8661
29540	Lake County, IL. Kenosha County, WI. Lake Havasu City-Kingman, AZ	0.9252
29620	Mohave County, AZ. Lakeland, FL	1.0119
29700	Polk County, FL. Lancaster, PA	0.8093
29740	Lancaster County, PA. Lansing-East Lansing, MI	0.8676
29820	Clinton County, MI. Eaton County, MI. Ingham County, MI.	1.1799
29940	Laredo, TX	0.8227
30020	Webb County, TX. Las Cruces, NM	0.8025
30140	Dona Ana County, NM. Las Vegas-Paradise, NV	0.8192
30300	Clark County, NV. Lawrence, KS	0.9454
30340	Douglas County, KS. Lawton, OK	0.9193
30460	Comanche County, OK. Lebanon, PA	0.9191
	Lebanon County, PA. Lewiston, ID-WA	
	Nez Perce County, ID. Asotin County, WA.	
	Lewiston-Auburn, ME	
	Androscoggin County, ME. Lexington-Fayette, KY	
	Bourbon County, KY. Clark County, KY. Fayette County, KY. Jessamine County, KY. Scott County, KY. Woodford County, KY.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
30620	Lima, OH	0.9424
	Allen County, OH.	
30700	Lincoln, NE	1.0051
	Lancaster County, NE.	
	Seward County, NE.	
30780	Little Rock-North Little Rock-Conway, AR	0.8863
	Faulkner County, AR.	
	Grant County, AR.	
	Lonoke County, AR.	
	Perry County, AR.	
	Pulaski County, AR.	
	Saline County, AR.	
30860	Logan, UT-ID	0.9183
	Franklin County, ID.	
	Cache County, UT.	
30980	Longview, TX	0.8717
	Gregg County, TX.	
	Rusk County, TX.	
	Upshur County, TX.	
31020	Longview, WA	1.0827
	Cowlitz County, WA.	
31084	Los Angeles-Long Beach-Glendale, CA	1.1771
	Los Angeles County, CA.	
31140	Louisville-Jefferson County, KY-IN	0.9065
	Clark County, IN.	
	Floyd County, IN.	
	Harrison County, IN.	
	Washington County, IN.	
	Bullitt County, KY.	
	Henry County, KY.	
	Jefferson County, KY.	
	Meade County, KY.	
	Nelson County, KY.	
	Oldham County, KY.	
	Shelby County, KY.	
	Spencer County, KY.	
	Trimble County, KY.	
31180	Lubbock, TX	0.8680
	Crosby County, TX.	
	Lubbock County, TX.	
31340	Lynchburg, VA	0.8732
	Amherst County, VA.	
	Appomattox County, VA.	
	Bedford County, VA.	
	Campbell County, VA.	
	Bedford City, VA.	
	Lynchburg City, VA.	
31420	Macon, GA	0.9541
	Bibb County, GA.	
	Crawford County, GA.	
	Jones County, GA.	
	Monroe County, GA.	
	Twiggs County, GA.	
31460	Madera, CA	0.8069
	Madera County, CA.	
31540	Madison, WI	1.0935
	Columbia County, WI.	
	Dane County, WI.	
	Iowa County, WI.	
31700	Manchester-Nashua, NH	1.0273
	Hillsborough County, NH.	
31900	Mansfield, OH	0.9271
	Richland County, OH.	
32420	Mayagüez, PR	0.3711
	Hormigueros Municipio, PR.	
	Mayagüez Municipio, PR.	
32580	McAllen-Edinburg-Mission, TX	0.9123
	Hidalgo County, TX.	
32780	Medford, OR	1.0318
	Jackson County, OR.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
32820	Memphis, TN-MS-AR Crittenden County, AR. DeSoto County, MS. Marshall County, MS. Tate County, MS. Tunica County, MS. Fayette County, TN. Shelby County, TN. Tipton County, TN.	0.9250
32900	Merced, CA Merced County, CA.	1.2120
33124	Miami-Miami Beach-Kendall, FL Miami-Dade County, FL.	1.0002
33140	Michigan City-La Porte, IN LaPorte County, IN.	0.8914
33260	Midland, TX Midland County, TX.	1.0017
33340	Milwaukee-Waukesha-West Allis, WI Milwaukee County, WI. Ozaukee County, WI. Washington County, WI. Waukesha County, WI.	1.0214
33460	Minneapolis-St. Paul-Bloomington, MN-WI Anoka County, MN. Carver County, MN. Chisago County, MN. Dakota County, MN. Hennepin County, MN. Isanti County, MN. Ramsey County, MN. Scott County, MN. Sherburne County, MN. Washington County, MN. Wright County, MN. Pierce County, WI. St. Croix County, WI.	1.1093
33540	Missoula, MT Missoula County, MT.	0.8953
33660	Mobile, AL Mobile County, AL.	0.8033
33700	Modesto, CA Stanislaus County, CA.	1.1962
33740	Monroe, LA Ouachita Parish, LA. Union Parish, LA.	0.7832
33780	Monroe, MI Monroe County, MI.	0.9414
33860	Montgomery, AL Autauga County, AL. Elmore County, AL. Lowndes County, AL. Montgomery County, AL.	0.8088
34060	Morgantown, WV Monongalia County, WV. Preston County, WV.	0.8321
34100	Morristown, TN Grainger County, TN. Hamblen County, TN. Jefferson County, TN.	0.7388
34580	Mount Vernon-Anacortes, WA Skagit County, WA.	1.0529
34620	Muncie, IN Delaware County, IN.	0.8214
34740	Muskegon-Norton Shores, MI Muskegon County, MI.	0.9836
34820	Myrtle Beach-Conway-North Myrtle Beach, SC Horry County, SC.	0.8634
34900	Napa, CA Napa County, CA.	1.4476
34940	Naples-Marco Island, FL	0.9487

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
34980	Collier County, FL. Nashville-Davidson-Murfreesboro-Franklin, TN Cannon County, TN. Cheatham County, TN. Davidson County, TN. Dickson County, TN. Hickman County, TN. Macon County, TN. Robertson County, TN. Rutherford County, TN. Smith County, TN. Sumner County, TN. Trousdale County, TN. Williamson County, TN. Wilson County, TN.	0.9689
35004	Nassau-Suffolk, NY Nassau County, NY. Suffolk County, NY.	1.2640
35084	Newark-Union, NJ-PA Essex County, NJ. Hunterdon County, NJ. Morris County, NJ. Sussex County, NJ. Union County, NJ. Pike County, PA.	1.1862
35300	New Haven-Milford, CT New Haven County, CT.	1.1871
35380	New Orleans-Metairie-Kenner, LA Jefferson Parish, LA. Orleans Parish, LA. Plaquemines Parish, LA. St. Bernard Parish, LA. St. Charles Parish, LA. St. John the Baptist Parish, LA. St. Tammany Parish, LA.	0.8897
35644	New York-White Plains-Wayne, NY-NJ Bergen County, NJ. Hudson County, NJ. Passaic County, NJ. Bronx County, NY. Kings County, NY. New York County, NY. Putnam County, NY. Queens County, NY. Richmond County, NY. Rockland County, NY. Westchester County, NY.	1.3115
35660	Niles-Benton Harbor, MI Berrien County, MI.	0.9141
35980	Norwich-New London, CT New London County, CT.	1.1432
36084	Oakland-Fremont-Hayward, CA Alameda County, CA. Contra Costa County, CA.	1.5685
36100	Ocala, FL Marion County, FL.	0.8627
36140	Ocean City, NJ Cape May County, NJ.	1.0988
36220	Odessa, TX Ector County, TX.	1.0042
36260	Ogden-Clearfield, UT Davis County, UT. Morgan County, UT. Weber County, UT.	0.9000
36420	Oklahoma City, OK Canadian County, OK. Cleveland County, OK. Grady County, OK. Lincoln County, OK. Logan County, OK.	0.8815

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
36500	McClain County, OK. Oklahoma County, OK. Olympia, WA	1.1512
36540	Thurston County, WA. Omaha-Council Bluffs, NE-IA	0.9561
	Harrison County, IA. Mills County, IA. Pottawattamie County, IA. Cass County, NE. Douglas County, NE. Sarpy County, NE. Saunders County, NE. Washington County, NE.	
36740	Orlando-Kissimmee, FL	0.9226
	Lake County, FL. Orange County, FL. Osceola County, FL. Seminole County, FL.	
36780	Oshkosh-Neenah, WI	0.9551
36980	Winnebago County, WI. Owensboro, KY	0.8652
	Daviess County, KY. Hancock County, KY. McLean County, KY.	
37100	Oxnard-Thousand Oaks-Ventura, CA	1.1852
37340	Ventura County, CA. Palm Bay-Melbourne-Titusville, FL	0.9325
37380	Brevard County, FL. Palm Coast, FL	0.8945
37460	Flagler County, FL. Panama City-Lynn Haven, FL	0.8313
37620	Bay County, FL. Parkersburg-Marietta-Vienna, WV-OH	0.8105
	Washington County, OH. Pleasants County, WV. Wirt County, WV. Wood County, WV.	
37700	Pascagoula, MS	0.8647
	George County, MS. Jackson County, MS.	
37764	Peabody, MA	1.0650
37860	Essex County, MA. Pensacola-Ferry Pass-Brent, FL	0.8281
37900	Escambia County, FL. Santa Rosa County, FL. Peoria, IL	0.9299
	Marshall County, IL. Peoria County, IL. Stark County, IL. Tazewell County, IL. Woodford County, IL.	
37964	Philadelphia, PA	1.0925
	Bucks County, PA. Chester County, PA. Delaware County, PA. Montgomery County, PA. Philadelphia County, PA.	
38060	Phoenix-Mesa-Scottsdale, AZ	1.0264
	Maricopa County, AZ. Pinal County, AZ.	
38220	Pine Bluff, AR	0.7839
	Cleveland County, AR. Jefferson County, AR. Lincoln County, AR.	
38300	Pittsburgh, PA	0.8525
	Allegheny County, PA. Armstrong County, PA. Beaver County, PA. Butler County, PA. Fayette County, PA.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
38340	Washington County, PA. Westmoreland County, PA. Pittsfield, MA	1.0091
38540	Berkshire County, MA. Pocatello, ID	0.9465
38660	Bannock County, ID. Power County, ID. Ponce, PR	0.4450
38860	Juana Díaz Municipio, PR. Ponce Municipio, PR. Villalba Municipio, PR. Portland-South Portland-Biddeford, ME	1.0042
38900	Cumberland County, ME. Sagadahoc County, ME. York County, ME. Portland-Vancouver-Beaverton, OR-WA	1.1498
38940	Clackamas County, OR. Columbia County, OR. Multnomah County, OR. Washington County, OR. Yamhill County, OR. Clark County, WA. Skamania County, WA. Port St. Lucie, FL	1.0016
39100	Martin County, FL. St. Lucie County, FL. Poughkeepsie-Newburgh-Middletown, NY	1.0982
39140	Dutchess County, NY. Orange County, NY. Prescott, AZ	1.0020
39300	Yavapai County, AZ. Providence-New Bedford-Fall River, RI-MA	1.0574
39340	Bristol County, MA. Bristol County, RI. Kent County, RI. Newport County, RI. Providence County, RI. Washington County, RI. Provo-Orem, UT	0.9557
39380	Juab County, UT. Utah County, UT. Pueblo, CO	0.8851
39460	Pueblo County, CO. Punta Gorda, FL	0.9254
39540	Charlotte County, FL. Racine, WI	0.9498
39580	Racine County, WI. Raleigh-Cary, NC	0.9839
39660	Franklin County, NC. Johnston County, NC. Wake County, NC. Rapid City, SD	0.8811
39740	Meade County, SD. Pennington County, SD. Reading, PA	0.9356
39820	Berks County, PA. Redding, CA	1.3541
39900	Shasta County, CA. Reno-Sparks, NV	1.0715
40060	Storey County, NV. Washoe County, NV. Richmond, VA	0.9425
	Amelia County, VA. Caroline County, VA. Charles City County, VA. Chesterfield County, VA. Cumberland County, VA. Dinwiddie County, VA. Goochland County, VA. Hanover County, VA.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Henrico County, VA. King and Queen County, VA. King William County, VA. Louisa County, VA. New Kent County, VA. Powhatan County, VA. Prince George County, VA. Sussex County, VA. Colonial Heights City, VA. Hopewell City, VA. Petersburg City, VA. Richmond City, VA.	
40140	Riverside-San Bernardino-Ontario, CA	1.1100
	Riverside County, CA. San Bernardino County, CA.	
40220	Roanoke, VA	0.8691
	Botetourt County, VA. Craig County, VA. Franklin County, VA. Roanoke County, VA. Roanoke City, VA. Salem City, VA.	
40340	Rochester, MN	1.0755
	Dodge County, MN. Olmsted County, MN. Wabasha County, MN.	
40380	Rochester, NY	0.8858
	Livingston County, NY. Monroe County, NY. Ontario County, NY. Orleans County, NY. Wayne County, NY.	
40420	Rockford, IL	0.9814
	Boone County, IL. Winnebago County, IL.	
40484	Rockingham County—Strafford County, NH	1.0111
	Rockingham County, NH. Strafford County, NH.	
40580	Rocky Mount, NC	0.9001
	Edgecombe County, NC. Nash County, NC.	
40660	Rome, GA	0.9042
	Floyd County, GA.	
40900	Sacramento—Arden-Arcade—Roseville, CA	1.3505
	El Dorado County, CA. Placer County, CA. Sacramento County, CA. Yolo County, CA.	
40980	Saginaw-Saginaw Township North, MI	0.8812
	Saginaw County, MI.	
41060	St. Cloud, MN	1.0549
	Benton County, MN. Stearns County, MN.	
41100	St. George, UT	0.9358
	Washington County, UT.	
41140	St. Joseph, MO-KS	0.8762
	Doniphan County, KS. Andrew County, MO. Buchanan County, MO. DeKalb County, MO.	
41180	St. Louis, MO-IL	0.9024
	Bond County, IL. Calhoun County, IL. Clinton County, IL. Jersey County, IL. Macoupin County, IL. Madison County, IL. Monroe County, IL. St. Clair County, IL. Crawford County, MO.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Franklin County, MO. Jefferson County, MO. Lincoln County, MO. St. Charles County, MO. St. Louis County, MO. Warren County, MO. Washington County, MO. St. Louis City, MO.	
41420	Salem, OR	1.0572
	Marion County, OR. Polk County, OR.	
41500	Salinas, CA	1.4775
	Monterey County, CA.	
41540	Salisbury, MD	0.8994
	Somerset County, MD. Wicomico County, MD.	
41620	Salt Lake City, UT	0.9399
	Salt Lake County, UT. Summit County, UT. Tooele County, UT.	
41660	San Angelo, TX	0.8579
	Irion County, TX. Tom Green County, TX.	
41700	San Antonio, TX	0.8834
	Atascosa County, TX. Bandera County, TX. Bexar County, TX. Comal County, TX. Guadalupe County, TX. Kendall County, TX. Medina County, TX. Wilson County, TX.	
41740	San Diego-Carlsbad-San Marcos, CA	1.1492
	San Diego County, CA.	
41780	Sandusky, OH	0.8822
	Erie County, OH.	
41884	San Francisco-San Mateo-Redwood City, CA	1.5195
	Marin County, CA. San Francisco County, CA. San Mateo County, CA.	
41900	San Germán-Cabo Rojo, PR	0.4729
	Cabo Rojo Municipio, PR. Lajas Municipio, PR. Sabana Grande Municipio, PR. San Germán Municipio, PR.	
41940	San Jose-Sunnyvale-Santa Clara, CA	1.5735
	San Benito County, CA. Santa Clara County, CA.	
41980	San Juan-Caguas-Guaynabo, PR	0.4528
	Aguas Buenas Municipio, PR. Aibonito Municipio, PR. Arecibo Municipio, PR. Barceloneta Municipio, PR. Barranquitas Municipio, PR. Bayamón Municipio, PR. Caguas Municipio, PR. Camuy Municipio, PR. Canóvanas Municipio, PR. Carolina Municipio, PR. Cataño Municipio, PR. Cayey Municipio, PR. Ciales Municipio, PR. Cidra Municipio, PR. Comerio Municipio, PR. Corozal Municipio, PR. Dorado Municipio, PR. Florida Municipio, PR. Guaynabo Municipio, PR. Gurabo Municipio, PR. Hatillo Municipio, PR.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
	Humacao Municipio, PR. Juncos Municipio, PR. Las Piedras Municipio, PR. Loíza Municipio, PR. Manatí Municipio, PR. Maunabo Municipio, PR. Morovis Municipio, PR. Naguabo Municipio, PR. Naranjito Municipio, PR. Orocovis Municipio, PR. Quebradillas Municipio, PR. Río Grande Municipio, PR. San Juan Municipio, PR. San Lorenzo Municipio, PR. Toa Alta Municipio, PR. Toa Baja Municipio, PR. Trujillo Alto Municipio, PR. Vega Alta Municipio, PR. Vega Baja Municipio, PR. Yabucoa Municipio, PR.	
42020	San Luis Obispo-Paso Robles, CA	1.2488
	San Luis Obispo County, CA.	
42044	Santa Ana-Anaheim-Irvine, CA	1.1766
	Orange County, CA.	
42060	Santa Barbara-Santa Maria-Goleta, CA	1.1714
	Santa Barbara County, CA.	
42100	Santa Cruz-Watsonville, CA	1.6122
	Santa Cruz County, CA.	
42140	Santa Fe, NM	1.0734
	Santa Fe County, NM.	
42220	Santa Rosa-Petaluma, CA	1.4696
	Sonoma County, CA.	
42260	Sarasota-Bradenton-Venice, FL	0.9933
	Manatee County, FL.	
	Sarasota County, FL.	
42340	Savannah, GA	0.9131
	Bryan County, GA.	
	Chatham County, GA.	
	Effingham County, GA.	
42540	Scranton—Wilkes-Barre, PA	0.8457
	Lackawanna County, PA.	
	Luzerne County, PA.	
	Wyoming County, PA.	
42644	Seattle-Bellevue-Everett, WA	1.1572
	King County, WA.	
	Snohomish County, WA.	
42680	Sebastian-Vero Beach, FL	0.9412
	Indian River County, FL.	
43100	Sheboygan, WI	0.8975
	Sheboygan County, WI.	
43300	Sherman-Denison, TX	0.8320
	Grayson County, TX.	
43340	Shreveport-Bossier City, LA	0.8476
	Bossier Parish, LA.	
	Caddo Parish, LA.	
	De Soto Parish, LA.	
43580	Sioux City, IA-NE-SD	0.9251
	Woodbury County, IA.	
	Dakota County, NE.	
	Dixon County, NE.	
	Union County, SD.	
43620	Sioux Falls, SD	0.9563
	Lincoln County, SD.	
	McCook County, SD.	
	Minnehaha County, SD.	
	Turner County, SD.	
43780	South Bend-Mishawaka, IN-MI	0.9617
	St. Joseph County, IN.	
	Cass County, MI.	
43900	Spartanburg, SC	0.9422

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
44060	Spartanburg County, SC. Spokane, WA	1.0455
44100	Spokane County, WA. Springfield, IL	0.8944
44140	Menard County, IL. Sangamon County, IL. Springfield, MA	1.0366
44180	Franklin County, MA. Hampden County, MA. Hampshire County, MA. Springfield, MO	0.8695
44220	Christian County, MO. Dallas County, MO. Greene County, MO. Polk County, MO. Webster County, MO. Springfield, OH	0.8694
44300	Clark County, OH. State College, PA	0.8768
44700	Centre County, PA. Stockton, CA	1.1855
44940	San Joaquin County, CA. Sumter, SC	0.8599
45060	Sumter County, SC. Syracuse, NY	0.9910
45104	Madison County, NY. Onondaga County, NY. Oswego County, NY. Tacoma, WA	1.1055
45220	Pierce County, WA. Tallahassee, FL	0.9025
45300	Gadsden County, FL. Jefferson County, FL. Leon County, FL. Wakulla County, FL. Tampa-St. Petersburg-Clearwater, FL	0.9020
45460	Hernando County, FL. Hillsborough County, FL. Pasco County, FL. Pinellas County, FL. Terre Haute, IN	0.8805
45500	Clay County, IN. Sullivan County, IN. Vermillion County, IN. Vigo County, IN. Texarkana, TX-Texarkana, AR	0.7770
45780	Miller County, AR. Bowie County, TX. Toledo, OH	0.9431
45820	Fulton County, OH. Lucas County, OH. Ottawa County, OH. Wood County, OH. Topeka, KS	0.8538
45940	Jackson County, KS. Jefferson County, KS. Osage County, KS. Shawnee County, KS. Wabaunsee County, KS. Trenton-Ewing, NJ	1.0699
46060	Mercer County, NJ. Tucson, AZ	0.9245
46140	Pima County, AZ. Tulsa, OK	0.8340
	Creek County, OK. Okmulgee County, OK. Osage County, OK. Pawnee County, OK. Rogers County, OK. Tulsa County, OK.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
46220	Wagoner County, OK. Tuscaloosa, AL	0.8303
	Greene County, AL. Hale County, AL. Tuscaloosa County, AL.	
46340	Tyler, TX	0.9114
46540	Smith County, TX. Utica-Rome, NY	0.8486
	Herkimer County, NY. Oneida County, NY.	
46660	Valdosta, GA	0.8098
	Brooks County, GA. Echols County, GA. Lanier County, GA. Lowndes County, GA.	
46700	Vallejo-Fairfield, CA	1.4666
	Solano County, CA.	
47020	Victoria, TX	0.8302
	Calhoun County, TX. Goliad County, TX. Victoria County, TX.	
47220	Vineland-Millville-Bridgeton, NJ	1.0133
	Cumberland County, NJ.	
47260	Virginia Beach-Norfolk-Newport News, VA-NC	0.8818
	Currituck County, NC. Gloucester County, VA. Isle of Wight County, VA. James City County, VA. Mathews County, VA. Surry County, VA. York County, VA. Chesapeake City, VA. Hampton City, VA. Newport News City, VA. Norfolk City, VA. Poquoson City, VA. Portsmouth City, VA. Suffolk City, VA. Virginia Beach City, VA. Williamsburg City, VA.	
47300	Visalia-Porterville, CA	1.0091
	Tulare County, CA.	
47380	Waco, TX	0.8518
	McLennan County, TX.	
47580	Warner Robins, GA	0.9128
	Houston County, GA.	
47644	Warren-Troy-Farmington Hills, MI	1.0001
	Lapeer County, MI. Livingston County, MI. Macomb County, MI. Oakland County, MI. St. Clair County, MI.	
47894	Washington-Arlington-Alexandria, DC-VA-MD-WV	1.0855
	District of Columbia, DC. Calvert County, MD. Charles County, MD. Prince George's County, MD. Arlington County, VA. Clarke County, VA. Fairfax County, VA. Fauquier County, VA. Loudoun County, VA. Prince William County, VA. Spotsylvania County, VA. Stafford County, VA. Warren County, VA. Alexandria City, VA. Fairfax City, VA. Falls Church City, VA. Fredericksburg City, VA.	

TABLE 1.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR URBAN AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009—Continued

CBSA code	Urban area (constituent counties)	Proposed wage index
47940	Manassas City, VA. Manassas Park City, VA. Jefferson County, WV. Waterloo-Cedar Falls, IA	0.8519
48140	Black Hawk County, IA. Bremer County, IA. Grundy County, IA. Wausau, WI	0.9679
48260	Marathon County, WI. Weirton-Steubenville, WV-OH	0.7924
48300	Jefferson County, OH. Brooke County, WV. Hancock County, WV. Wenatchee, WA	1.1469
48424	Chelan County, WA. Douglas County, WA. West Palm Beach-Boca Raton-Boynton Beach, FL	0.9728
48540	Palm Beach County, FL. Wheeling, WV-OH	0.6961
48620	Belmont County, OH. Marshall County, WV. Ohio County, WV. Wichita, KS	0.9062
48660	Butler County, KS. Harvey County, KS. Sedgwick County, KS. Sumner County, KS. Wichita Falls, TX	0.7920
48700	Archer County, TX. Clay County, TX. Wichita County, TX. Williamsport, PA	0.8043
48864	Lycoming County, PA. Wilmington, DE-MD-NJ	1.0824
48900	New Castle County, DE. Cecil County, MD. Salem County, NJ. Wilmington, NC	0.9410
49020	Brunswick County, NC. New Hanover County, NC. Pender County, NC. Winchester, VA-WV	0.9913
49180	Frederick County, VA. Winchester City, VA. Hampshire County, WV. Winston-Salem, NC	0.9118
49340	Davie County, NC. Forsyth County, NC. Stokes County, NC. Yadkin County, NC. Worcester, MA	1.1287
49420	Worcester County, MA. Yakima, WA	1.0267
49500	Yakima County, WA. Yauco, PR	0.3284
49620	Guánica Municipio, PR. Guayanilla Municipio, PR. Peñuelas Municipio, PR. Yauco Municipio, PR. York-Hanover, PA	0.9359
49660	York County, PA. Youngstown-Warren-Boardman, OH-PA	0.9002
49700	Mahoning County, OH. Trumbull County, OH. Mercer County, PA. Yuba City, CA	1.0756
49740	Sutter County, CA. Yuba County, CA. Yuma, AZ	0.9488
	Yuma County, AZ.	

TABLE 2.—LONG-TERM CARE HOSPITAL WAGE INDEX FOR RURAL AREAS FOR DISCHARGES OCCURRING FROM JULY 1, 2008 THROUGH SEPTEMBER 30, 2009

CBSA code	Nonurban area	Proposed wage index
01	Alabama	0.7533
02	Alaska	1.2109
03	Arizona	0.8479
04	Arkansas	0.7371
05	California	1.2023
06	Colorado	0.9704
07	Connecticut	1.1119
08	Delaware	0.9727
10	Florida	0.8465
11	Georgia	0.7659
12	Hawaii	1.0612
13	Idaho	0.7920
14	Illinois	0.8335
15	Indiana	0.8576
16	Iowa	0.8566
17	Kansas	0.7981
18	Kentucky	0.7793
19	Louisiana	0.7373
20	Maine	0.8476
21	Maryland	0.9034
22	Massachusetts	1.1589
23	Michigan	0.8953
24	Minnesota	0.9079
25	Mississippi	0.7700
26	Missouri	0.7930
27	Montana	0.8379
28	Nebraska	0.8849
29	Nevada	0.9272
30	New Hampshire	1.0470
31	New Jersey*	
32	New Mexico	0.8940
33	New York	0.8268
34	North Carolina	0.8603
35	North Dakota	0.7182
36	Ohio	0.8714
37	Oklahoma	0.7492
38	Oregon	0.9906
39	Pennsylvania	0.8385
41	Rhode Island*	
42	South Carolina	0.8656
43	South Dakota	0.8549
44	Tennessee	0.7723
45	Texas	0.7968
46	Utah	0.8116
47	Vermont	0.9919
49	Virginia	0.7896
50	Washington	1.0259
51	West Virginia	0.7454
52	Wisconsin	0.9667
53	Wyoming	0.9287

* All counties within the State are classified as urban.

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD

MS-LTC-DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
001	Heart transplant or implant of heart assist system w MCC	0.0000	0.0	0.0
002	Heart transplant or implant of heart assist system w/o MCC	0.0000	0.0	0.0
003	ECMO or trach w MV 96+ hrs or PDX exc face, mouth & neck w maj O.R	4.2380	64.3	53.6
004	Trach w MV 96+ hrs or PDX exc face, mouth & neck w/o maj O.R	3.0249	46.7	38.9
005	Liver transplant w MCC or intestinal transplant	0.0000	0.0	0.0
006	Liver transplant w/o MCC	0.0000	0.0	0.0
007	Lung transplant	0.0000	0.0	0.0
008	Simultaneous pancreas/kidney transplant	0.0000	0.0	0.0
009	Bone marrow transplant	1.1417	29.0	24.2

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
010	Pancreas transplant	1.1417	29.0	24.2
011	Tracheostomy for face, mouth & neck diagnoses w MCC	1.5545	35.2	29.3
012	Tracheostomy for face, mouth & neck diagnoses w CC	1.5545	35.2	29.3
013	Tracheostomy for face, mouth & neck diagnoses w/o CC/MCC	1.5545	35.2	29.3
020	Intracranial vascular procedures w PDX hemorrhage w MCC	1.5545	35.2	29.3
021	Intracranial vascular procedures w PDX hemorrhage w CC	0.5472	20.3	16.9
022	Intracranial vascular procedures w PDX hemorrhage w/o CC/MCC	0.5472	20.3	16.9
023	Cranio w major dev impl/acute complex CNS PDX w MCC or chemo implant	1.5545	35.2	29.3
024	Cranio w major dev impl/acute complex CNS PDX w/o MCC	0.5472	20.3	16.9
025	Craniotomy & endovascular intracranial procedures w MCC	1.5545	35.2	29.3
026	Craniotomy & endovascular intracranial procedures w CC	1.5545	35.2	29.3
027	Craniotomy & endovascular intracranial procedures w/o CC/MCC	1.5545	35.2	29.3
028	Spinal procedures w MCC	1.1417	29.0	24.2
029	Spinal procedures w CC or spinal neurostimulators	1.1417	29.0	24.2
030	Spinal procedures w/o CC/MCC	0.5472	20.3	16.9
031	Ventricular shunt procedures w MCC	1.5545	35.2	29.3
032	Ventricular shunt procedures w CC	0.5472	20.3	16.9
033	Ventricular shunt procedures w/o CC/MCC	0.5472	20.3	16.9
034	Carotid artery stent procedure w MCC	1.5545	35.2	29.3
035	Carotid artery stent procedure w CC	1.1417	29.0	24.2
036	Carotid artery stent procedure w/o CC/MCC	1.1417	29.0	24.2
037	Extracranial procedures w MCC	1.5545	35.2	29.3
038	Extracranial procedures w CC	1.1417	29.0	24.2
039	Extracranial procedures w/o CC/MCC	1.1417	29.0	24.2
040	Periph/cranial nerve & other nerv syst proc w MCC	1.2704	36.2	30.2
041	Periph/cranial nerve & other nerv syst proc w CC or periph neurostim	1.0810	34.3	28.6
042	Periph/cranial nerve & other nerv syst proc w/o CC/MCC	0.7305	22.9	19.1
052	Spinal disorders & injuries w CC/MCC	1.0629	32.3	26.9
053	Spinal disorders & injuries w/o CC/MCC	1.0629	32.3	26.9
054	Nervous system neoplasms w MCC	0.7205	23.6	19.7
055	Nervous system neoplasms w/o MCC	0.6779	22.0	18.3
056	Degenerative nervous system disorders w MCC	0.7407	26.4	22.0
057	Degenerative nervous system disorders w/o MCC	0.6309	24.4	20.3
058	Multiple sclerosis & cerebellar ataxia w MCC	0.7305	22.9	19.1
059	Multiple sclerosis & cerebellar ataxia w CC	0.5595	22.6	18.8
060	Multiple sclerosis & cerebellar ataxia w/o CC/MCC	0.5472	20.3	16.9
061	Acute ischemic stroke w use of thrombolytic agent w MCC	0.7897	24.2	20.2
062	Acute ischemic stroke w use of thrombolytic agent w CC	0.6563	22.7	18.9
063	Acute ischemic stroke w use of thrombolytic agent w/o CC/MCC	0.5472	20.3	16.9
064	Intracranial hemorrhage or cerebral infarction w MCC	0.7746	25.1	20.9
065	Intracranial hemorrhage or cerebral infarction w CC	0.6691	23.3	19.4
066	Intracranial hemorrhage or cerebral infarction w/o CC/MCC	0.5472	20.3	16.9
067	Nonspecific cva & precerebral occlusion w/o infarct w MCC	0.5472	20.3	16.9
068	Nonspecific cva & precerebral occlusion w/o infarct w/o MCC	0.5472	20.3	16.9
069	Transient ischemia	0.5472	20.3	16.9
070	Nonspecific cerebrovascular disorders w MCC	0.7897	24.2	20.2
071	Nonspecific cerebrovascular disorders w CC	0.6563	22.7	18.9
072	Nonspecific cerebrovascular disorders w/o CC/MCC	0.5472	20.3	16.9
073	Cranial & peripheral nerve disorders w MCC	0.7849	25.6	21.3
074	Cranial & peripheral nerve disorders w/o MCC	0.6260	23.4	19.5
075	Viral meningitis w CC/MCC	0.7305	22.9	19.1
076	Viral meningitis w/o CC/MCC	0.5472	20.3	16.9
077	Hypertensive encephalopathy w MCC	0.7305	22.9	19.1
078	Hypertensive encephalopathy w CC	0.7305	22.9	19.1
079	Hypertensive encephalopathy w/o CC/MCC	0.5472	20.3	16.9
080	Nontraumatic stupor & coma w MCC	0.6312	24.6	20.5
081	Nontraumatic stupor & coma w/o MCC	0.5618	23.1	19.3
082	Traumatic stupor & coma, coma >1 hr w MCC	0.8864	29.5	24.6
083	Traumatic stupor & coma, coma >1 hr w CC	0.7305	22.9	19.1
084	Traumatic stupor & coma, coma >1 hr w/o CC/MCC	0.7305	22.9	19.1
085	Traumatic stupor & coma, coma <1 hr w MCC	0.9044	28.3	23.6
086	Traumatic stupor & coma, coma <1 hr w CC	0.7437	25.1	20.9
087	Traumatic stupor & coma, coma <1 hr w/o CC/MCC	0.6361	20.4	17.0
088	Concussion w MCC	1.1417	29.0	24.2
089	Concussion w CC	1.1417	29.0	24.2
090	Concussion w/o CC/MCC	1.1417	29.0	24.2
091	Other disorders of nervous system w MCC	0.8019	25.6	21.3
092	Other disorders of nervous system w CC	0.6704	22.0	18.3

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
093	Other disorders of nervous system w/o CC/MCC	0.5811	20.1	16.8
094	Bacterial & tuberculous infections of nervous system w MCC	1.0328	27.9	23.3
095	Bacterial & tuberculous infections of nervous system w CC	0.9306	27.0	22.5
096	Bacterial & tuberculous infections of nervous system w/o CC/MCC	0.9306	27.0	22.5
097	Non-bacterial infect of nervous sys exc viral meningitis w MCC	0.9289	26.8	22.3
098	Non-bacterial infect of nervous sys exc viral meningitis w CC	0.8629	22.7	18.9
099	Non-bacterial infect of nervous sys exc viral meningitis w/o CC/MCC	0.7305	22.9	19.1
100	Seizures w MCC	0.7904	26.5	22.1
101	Seizures w/o MCC	0.6177	21.4	17.8
102	Headaches w MCC	0.8249	25.0	20.8
103	Headaches w/o MCC	0.8249	25.0	20.8
113	Orbital procedures w CC/MCC	0.7305	22.9	19.1
114	Orbital procedures w/o CC/MCC	0.7305	22.9	19.1
115	Extraocular procedures except orbit	0.8249	25.0	20.8
116	Intraocular procedures w CC/MCC	0.8249	25.0	20.8
117	Intraocular procedures w/o CC/MCC	0.8249	25.0	20.8
121	Acute major eye infections w CC/MCC	0.7305	22.9	19.1
122	Acute major eye infections w/o CC/MCC	0.5472	20.3	16.9
123	Neurological eye disorders	0.5472	20.3	16.9
124	Other disorders of the eye w MCC	1.1417	29.0	24.2
125	Other disorders of the eye w/o MCC	0.8249	25.0	20.8
129	Major head & neck procedures w CC/MCC or major device	1.1977	26.4	22.0
130	Major head & neck procedures w/o CC/MCC	0.7305	22.9	19.1
131	Cranial/facial procedures w CC/MCC	1.5545	35.2	29.3
132	Cranial/facial procedures w/o CC/MCC	1.5545	35.2	29.3
133	Other ear, nose, mouth & throat O.R. procedures w CC/MCC	0.7305	22.9	19.1
134	Other ear, nose, mouth & throat O.R. procedures w/o CC/MCC	0.7305	22.9	19.1
135	Sinus & mastoid procedures w CC/MCC	0.7305	22.9	19.1
136	Sinus & mastoid procedures w/o CC/MCC	0.7305	22.9	19.1
137	Mouth procedures w CC/MCC	1.5545	35.2	29.3
138	Mouth procedures w/o CC/MCC	1.5545	35.2	29.3
139	Salivary gland procedures	1.5545	35.2	29.3
146	Ear, nose, mouth & throat malignancy w MCC	1.1977	26.4	22.0
147	Ear, nose, mouth & throat malignancy w CC	1.0416	24.9	20.8
148	Ear, nose, mouth & throat malignancy w/o CC/MCC	0.7305	22.9	19.1
149	Dysequilibrium	0.5472	20.3	16.9
150	Epistaxis w MCC	0.7305	22.9	19.1
151	Epistaxis w/o MCC	0.7305	22.9	19.1
152	Otitis media & URI w MCC	0.7305	22.9	19.1
153	Otitis media & URI w/o MCC	0.7305	22.9	19.1
154	Nasal trauma & deformity w MCC	0.7703	21.0	17.5
155	Nasal trauma & deformity w CC	0.7703	21.0	17.5
156	Nasal trauma & deformity w/o CC/MCC	0.7305	22.9	19.1
157	Dental & Oral Diseases w MCC	0.8249	25.0	20.8
158	Dental & Oral Diseases w CC	0.8249	25.0	20.8
159	Dental & Oral Diseases w/o CC/MCC	0.5472	20.3	16.9
163	Major chest procedures w MCC	2.2157	39.7	33.1
164	Major chest procedures w CC	1.5545	35.2	29.3
165	Major chest procedures w/o CC/MCC	1.5545	35.2	29.3
166	Other resp system O.R. procedures w MCC	2.4392	42.3	35.3
167	Other resp system O.R. procedures w CC	2.1594	38.0	31.7
168	Other resp system O.R. procedures w/o CC/MCC	1.1417	29.0	24.2
175	Pulmonary embolism w MCC	0.7160	22.0	18.3
176	Pulmonary embolism w/o MCC	0.5989	20.1	16.8
177	Respiratory infections & inflammations w MCC	0.8393	23.5	19.6
178	Respiratory infections & inflammations w CC	0.7671	22.2	18.5
179	Respiratory infections & inflammations w/o CC/MCC	0.6885	19.0	15.8
180	Respiratory neoplasms w MCC	0.8140	20.2	16.8
181	Respiratory neoplasms w CC	0.7103	19.3	16.1
182	Respiratory neoplasms w/o CC/MCC	0.5472	20.3	16.9
183	Major chest trauma w MCC	0.5472	20.3	16.9
184	Major chest trauma w CC	0.5472	20.3	16.9
185	Major chest trauma w/o CC/MCC	0.5472	20.3	16.9
186	Pleural effusion w MCC	0.8259	23.6	19.7
187	Pleural effusion w CC	0.7042	21.1	17.6
188	Pleural effusion w/o CC/MCC	0.7042	21.1	17.6
189	Pulmonary edema & respiratory failure	0.9743	24.0	20.0
190	Chronic obstructive pulmonary disease w MCC	0.6858	20.9	17.4

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
191	Chronic obstructive pulmonary disease w CC	0.6256	19.5	16.3
192	Chronic obstructive pulmonary disease w/o CC/MCC	0.5832	17.2	14.3
193	Simple pneumonia & pleurisy w MCC	0.7088	21.6	18.0
194	Simple pneumonia & pleurisy w CC	0.6429	19.8	16.5
195	Simple pneumonia & pleurisy w/o CC/MCC	0.5962	18.2	15.2
196	Interstitial lung disease w MCC	0.6529	20.0	16.7
197	Interstitial lung disease w CC	0.6133	19.6	16.3
198	Interstitial lung disease w/o CC/MCC	0.5956	19.7	16.4
199	Pneumothorax w MCC	0.8249	25.0	20.8
200	Pneumothorax w CC	0.7305	22.9	19.1
201	Pneumothorax w/o CC/MCC	0.5472	20.3	16.9
202	Bronchitis & asthma w CC/MCC	0.6903	21.1	17.6
203	Bronchitis & asthma w/o CC/MCC	0.5650	17.1	14.3
204	Respiratory signs & symptoms	0.8187	22.0	18.3
205	Other respiratory system diagnoses w MCC	0.8207	22.4	18.7
206	Other respiratory system diagnoses w/o MCC	0.7667	21.5	17.9
207	Respiratory system diagnosis w ventilator support 96+ hours	2.0266	34.3	28.6
208	Respiratory system diagnosis w ventilator support <96 hours	1.5514	27.8	23.2
215	Other heart assist system implant	0.8249	25.0	20.8
216	Cardiac valve & oth maj cardiothoracic proc w card cath w MCC	1.5545	35.2	29.3
217	Cardiac valve & oth maj cardiothoracic proc w card cath w CC	0.8249	25.0	20.8
218	Cardiac valve & oth maj cardiothoracic proc w card cath w/o CC/MCC	0.8249	25.0	20.8
219	Cardiac valve & oth maj cardiothoracic proc w/o card cath w MCC	1.5545	35.2	29.3
220	Cardiac valve & oth maj cardiothoracic proc w/o card cath w CC	0.8249	25.0	20.8
221	Cardiac valve & oth maj cardiothoracic proc w/o card cath w/o CC/MCC	0.8249	25.0	20.8
222	Cardiac defib implant w cardiac cath w AMI/HF/shock w MCC	1.5545	35.2	29.3
223	Cardiac defib implant w cardiac cath w AMI/HF/shock w/o MCC	1.5545	35.2	29.3
224	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w MCC	1.5545	35.2	29.3
225	Cardiac defib implant w cardiac cath w/o AMI/HF/shock w/o MCC	1.5545	35.2	29.3
226	Cardiac defibrillator implant w/o cardiac cath w MCC	1.5545	35.2	29.3
227	Cardiac defibrillator implant w/o cardiac cath w/o MCC	1.5545	35.2	29.3
228	Other cardiothoracic procedures w MCC	1.5410	35.0	29.2
229	Other cardiothoracic procedures w CC	1.2681	30.8	25.7
230	Other cardiothoracic procedures w/o CC/MCC	0.8249	25.0	20.8
231	Coronary bypass w PTCA w MCC	1.5545	35.2	29.3
232	Coronary bypass w PTCA w/o MCC	0.8249	25.0	20.8
233	Coronary bypass w cardiac cath w MCC	1.5545	35.2	29.3
234	Coronary bypass w cardiac cath w/o MCC	0.8249	25.0	20.8
235	Coronary bypass w/o cardiac cath w MCC	1.5545	35.2	29.3
236	Coronary bypass w/o cardiac cath w/o MCC	0.8249	25.0	20.8
237	Major cardiovasc procedures w MCC or thoracic aortic aneurysm repair	1.5545	35.2	29.3
238	Major cardiovasc procedures w/o MCC	0.8249	25.0	20.8
239	Amputation for circ sys disorders exc upper limb & toe w MCC	1.3794	37.4	31.2
240	Amputation for circ sys disorders exc upper limb & toe w CC	1.2872	36.1	30.1
241	Amputation for circ sys disorders exc upper limb & toe w/o CC/MCC	1.1417	29.0	24.2
242	Permanent cardiac pacemaker implant w MCC	1.5545	35.2	29.3
243	Permanent cardiac pacemaker implant w CC	1.5545	35.2	29.3
244	Permanent cardiac pacemaker implant w/o CC/MCC	1.1417	29.0	24.2
245	AICD lead & generator procedures	0.7305	22.9	19.1
246	Perc cardiovasc proc w drug-eluting stent w MCC or 4+ vessels/stents	0.8249	25.0	20.8
247	Perc cardiovasc proc w drug-eluting stent w/o MCC	0.8249	25.0	20.8
248	Perc cardiovasc proc w non-drug-eluting stent w MCC or 4+ ves/stents	1.5545	35.2	29.3
249	Perc cardiovasc proc w non-drug-eluting stent w/o MCC	1.5545	35.2	29.3
250	Perc cardiovasc proc w/o coronary artery stent or AMI w MCC	0.8249	25.0	20.8
251	Perc cardiovasc proc w/o coronary artery stent or AMI w/o MCC	0.8249	25.0	20.8
252	Other vascular procedures w MCC	1.5410	35.0	29.2
253	Other vascular procedures w CC	1.2681	30.8	25.7
254	Other vascular procedures w/o CC/MCC	0.8249	25.0	20.8
255	Upper limb & toe amputation for circ system disorders w MCC	1.1713	33.7	28.1
256	Upper limb & toe amputation for circ system disorders w CC	0.9516	29.4	24.5
257	Upper limb & toe amputation for circ system disorders w/o CC/MCC	0.9516	29.4	24.5
258	Cardiac pacemaker device replacement w MCC	1.5545	35.2	29.3
259	Cardiac pacemaker device replacement w/o MCC	1.5545	35.2	29.3
260	Cardiac pacemaker revision except device replacement w MCC	1.5545	35.2	29.3
261	Cardiac pacemaker revision except device replacement w CC	0.5472	20.3	16.9
262	Cardiac pacemaker revision except device replacement w/o CC/MCC	0.5472	20.3	16.9
263	Vein ligation & stripping	0.8249	25.0	20.8
264	Other circulatory system O.R. procedures	1.0667	31.6	26.3

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
280	Acute myocardial infarction, discharged alive w MCC	0.7263	21.4	17.8
281	Acute myocardial infarction, discharged alive w CC	0.6931	22.8	19.0
282	Acute myocardial infarction, discharged alive w/o CC/MCC	0.6931	22.8	19.0
283	Acute myocardial infarction, expired w MCC	0.6609	17.0	14.2
284	Acute myocardial infarction, expired w CC	0.6609	17.0	14.2
285	Acute myocardial infarction, expired w/o CC/MCC	0.6609	17.0	14.2
286	Circulatory disorders except AMI, w card cath w MCC	1.1417	29.0	24.2
287	Circulatory disorders except AMI, w card cath w/o MCC	0.8249	25.0	20.8
288	Acute & subacute endocarditis w MCC	0.9082	26.4	22.0
289	Acute & subacute endocarditis w CC	0.8580	26.4	22.0
290	Acute & subacute endocarditis w/o CC/MCC	0.7664	25.5	21.3
291	Heart failure & shock w MCC	0.6968	21.4	17.8
292	Heart failure & shock w CC	0.6252	20.4	17.0
293	Heart failure & shock w/o CC/MCC	0.5775	18.5	15.4
294	Deep vein thrombophlebitis w CC/MCC	0.8249	25.0	20.8
295	Deep vein thrombophlebitis w/o CC/MCC	0.8249	25.0	20.8
296	Cardiac arrest, unexplained w MCC	0.6609	17.0	14.2
297	Cardiac arrest, unexplained w CC	0.6609	17.0	14.2
298	Cardiac arrest, unexplained w/o CC/MCC	0.6609	17.0	14.2
299	Peripheral vascular disorders w MCC	0.7152	24.8	20.7
300	Peripheral vascular disorders w CC	0.6150	22.2	18.5
301	Peripheral vascular disorders w/o CC/MCC	0.5557	19.4	16.2
302	Atherosclerosis w MCC	0.6170	21.9	18.3
303	Atherosclerosis w/o MCC	0.5673	20.5	17.1
304	Hypertension w MCC	0.8249	25.0	20.8
305	Hypertension w/o MCC	0.5856	22.6	18.8
306	Cardiac congenital & valvular disorders w MCC	0.8786	24.2	20.2
307	Cardiac congenital & valvular disorders w/o MCC	0.7767	23.1	19.3
308	Cardiac arrhythmia & conduction disorders w MCC	0.7431	24.7	20.6
309	Cardiac arrhythmia & conduction disorders w CC	0.5940	20.4	17.0
310	Cardiac arrhythmia & conduction disorders w/o CC/MCC	0.5184	17.0	14.2
311	Angina pectoris	0.7305	22.9	19.1
312	Syncope & collapse	0.5336	19.7	16.4
313	Chest pain	0.5472	20.3	16.9
314	Other circulatory system diagnoses w MCC	0.8123	23.1	19.3
315	Other circulatory system diagnoses w CC	0.7114	21.6	18.0
316	Other circulatory system diagnoses w/o CC/MCC	0.6243	18.9	15.8
326	Stomach, esophageal & duodenal proc w MCC	1.8646	36.2	30.2
327	Stomach, esophageal & duodenal proc w CC	1.5545	35.2	29.3
328	Stomach, esophageal & duodenal proc w/o CC/MCC	0.5472	20.3	16.9
329	Major small & large bowel procedures w MCC	1.5545	35.2	29.3
330	Major small & large bowel procedures w CC	1.5545	35.2	29.3
331	Major small & large bowel procedures w/o CC/MCC	0.5472	20.3	16.9
332	Rectal resection w MCC	1.5057	36.1	30.1
333	Rectal resection w CC	1.3309	30.7	25.6
334	Rectal resection w/o CC/MCC	0.8249	25.0	20.8
335	Peritoneal adhesiolysis w MCC	1.5545	35.2	29.3
336	Peritoneal adhesiolysis w CC	0.7305	22.9	19.1
337	Peritoneal adhesiolysis w/o CC/MCC	0.7305	22.9	19.1
338	Appendectomy w complicated principal diag w MCC	0.8884	24.1	20.1
339	Appendectomy w complicated principal diag w CC	0.7667	22.2	18.5
340	Appendectomy w complicated principal diag w/o CC/MCC	0.6856	19.9	16.6
341	Appendectomy w/o complicated principal diag w MCC	0.8884	24.1	20.1
342	Appendectomy w/o complicated principal diag w CC	0.7667	22.2	18.5
343	Appendectomy w/o complicated principal diag w/o CC/MCC	0.6856	19.9	16.6
344	Minor small & large bowel procedures w MCC	0.8884	24.1	20.1
345	Minor small & large bowel procedures w CC	0.7667	22.2	18.5
346	Minor small & large bowel procedures w/o CC/MCC	0.6856	19.9	16.6
347	Anal & stomal procedures w MCC	1.1417	29.0	24.2
348	Anal & stomal procedures w CC	0.8249	25.0	20.8
349	Anal & stomal procedures w/o CC/MCC	0.5472	20.3	16.9
350	Inguinal & femoral hernia procedures w MCC	1.5545	35.2	29.3
351	Inguinal & femoral hernia procedures w CC	1.1417	29.0	24.2
352	Inguinal & femoral hernia procedures w/o CC/MCC	0.8249	25.0	20.8
353	Hernia procedures except inguinal & femoral w MCC	0.8249	25.0	20.8
354	Hernia procedures except inguinal & femoral w CC	0.8249	25.0	20.8
355	Hernia procedures except inguinal & femoral w/o CC/MCC	0.8249	25.0	20.8
356	Other digestive system O.R. procedures w MCC	1.5057	36.1	30.1

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
357	Other digestive system O.R. procedures w CC	1.3309	30.7	25.6
358	Other digestive system O.R. procedures w/o CC/MCC	0.8249	25.0	20.8
368	Major esophageal disorders w MCC	1.1417	29.0	24.2
369	Major esophageal disorders w CC	1.1417	29.0	24.2
370	Major esophageal disorders w/o CC/MCC	1.1417	29.0	24.2
371	Major gastrointestinal disorders & peritoneal infections w MCC	0.8884	24.1	20.1
372	Major gastrointestinal disorders & peritoneal infections w CC	0.7667	22.2	18.5
373	Major gastrointestinal disorders & peritoneal infections w/o CC/MCC	0.6856	19.9	16.6
374	Digestive malignancy w MCC	0.8340	22.9	19.1
375	Digestive malignancy w CC	0.7563	19.7	16.4
376	Digestive malignancy w/o CC/MCC	0.5472	20.3	16.9
377	G.I. hemorrhage w MCC	0.7032	22.5	18.8
378	G.I. hemorrhage w CC	0.6334	21.5	17.9
379	G.I. hemorrhage w/o CC/MCC	0.5472	20.3	16.9
380	Complicated peptic ulcer w MCC	0.8249	25.0	20.8
381	Complicated peptic ulcer w CC	0.8249	25.0	20.8
382	Complicated peptic ulcer w/o CC/MCC	0.7305	22.9	19.1
383	Uncomplicated peptic ulcer w MCC	0.8249	25.0	20.8
384	Uncomplicated peptic ulcer w/o MCC	0.7305	22.9	19.1
385	Inflammatory bowel disease w MCC	0.8874	24.6	20.5
386	Inflammatory bowel disease w CC	0.7655	22.9	19.1
387	Inflammatory bowel disease w/o CC/MCC	0.7655	22.9	19.1
388	G.I. obstruction w MCC	0.8967	22.8	19.0
389	G.I. obstruction w CC	0.7893	21.9	18.3
390	G.I. obstruction w/o CC/MCC	0.7893	21.9	18.3
391	Esophagitis, gastroent & misc digest disorders w MCC	0.8509	24.4	20.3
392	Esophagitis, gastroent & misc digest disorders w/o MCC	0.6943	20.4	17.0
393	Other digestive system diagnoses w MCC	0.9915	25.5	21.3
394	Other digestive system diagnoses w CC	0.8523	22.0	18.3
395	Other digestive system diagnoses w/o CC/MCC	0.7214	20.9	17.4
405	Pancreas, liver & shunt procedures w MCC	1.5545	35.2	29.3
406	Pancreas, liver & shunt procedures w CC	1.5545	35.2	29.3
407	Pancreas, liver & shunt procedures w/o CC/MCC	1.1417	29.0	24.2
408	Biliary tract proc except only cholecyst w or w/o c.d.e. w MCC	1.5545	35.2	29.3
409	Biliary tract proc except only cholecyst w or w/o c.d.e. w CC	1.5545	35.2	29.3
410	Biliary tract proc except only cholecyst w or w/o c.d.e. w/o CC/MCC	1.5545	35.2	29.3
411	Cholecystectomy w c.d.e. w MCC	1.1417	29.0	24.2
412	Cholecystectomy w c.d.e. w CC	1.1417	29.0	24.2
413	Cholecystectomy w c.d.e. w/o CC/MCC	1.1417	29.0	24.2
414	Cholecystectomy except by laparoscope w/o c.d.e. w MCC	1.1417	29.0	24.2
415	Cholecystectomy except by laparoscope w/o c.d.e. w CC	1.1417	29.0	24.2
416	Cholecystectomy except by laparoscope w/o c.d.e. w/o CC/MCC	1.1417	29.0	24.2
417	Laparoscopic cholecystectomy w/o c.d.e. w MCC	1.5545	35.2	29.3
418	Laparoscopic cholecystectomy w/o c.d.e. w CC	1.1417	29.0	24.2
419	Laparoscopic cholecystectomy w/o c.d.e. w/o CC/MCC	1.1417	29.0	24.2
420	Hepatobiliary diagnostic procedures w MCC	1.1417	29.0	24.2
421	Hepatobiliary diagnostic procedures w CC	0.8249	25.0	20.8
422	Hepatobiliary diagnostic procedures w/o CC/MCC	0.8249	25.0	20.8
423	Other hepatobiliary or pancreas O.R. procedures w MCC	1.1417	29.0	24.2
424	Other hepatobiliary or pancreas O.R. procedures w CC	0.8249	25.0	20.8
425	Other hepatobiliary or pancreas O.R. procedures w/o CC/MCC	0.8249	25.0	20.8
432	Cirrhosis & alcoholic hepatitis w MCC	0.6223	19.0	15.8
433	Cirrhosis & alcoholic hepatitis w CC	0.6223	19.0	15.8
434	Cirrhosis & alcoholic hepatitis w/o CC/MCC	0.5472	20.3	16.9
435	Malignancy of hepatobiliary system or pancreas w MCC	0.7422	20.2	16.8
436	Malignancy of hepatobiliary system or pancreas w CC	0.7086	19.6	16.3
437	Malignancy of hepatobiliary system or pancreas w/o CC/MCC	0.7086	19.6	16.3
438	Disorders of pancreas except malignancy w MCC	1.0057	24.3	20.3
439	Disorders of pancreas except malignancy w CC	0.8437	21.9	18.3
440	Disorders of pancreas except malignancy w/o CC/MCC	0.7204	18.8	15.7
441	Disorders of liver except malig, cirr, alc hepa w MCC	0.7588	21.8	18.2
442	Disorders of liver except malig, cirr, alc hepa w CC	0.6925	21.2	17.7
443	Disorders of liver except malig, cirr, alc hepa w/o CC/MCC	0.6925	21.2	17.7
444	Disorders of the biliary tract w MCC	0.8181	24.0	20.0
445	Disorders of the biliary tract w CC	0.6977	21.7	18.1
446	Disorders of the biliary tract w/o CC/MCC	0.5472	20.3	16.9
453	Combined anterior/posterior spinal fusion w MCC	1.5545	35.2	29.3
454	Combined anterior/posterior spinal fusion w CC	1.5545	35.2	29.3

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
455	Combined anterior/posterior spinal fusion w/o CC/MCC	1.5545	35.2	29.3
456	Spinal fus exc cerv w spinal curv/malig/infec or 9+ fus w MCC	1.5545	35.2	29.3
457	Spinal fus exc cerv w spinal curv/malig/infec or 9+ fus w CC	1.5545	35.2	29.3
458	Spinal fus exc cerv w spinal curv/malig/infec or 9+ fus w/o CC/MCC	1.5545	35.2	29.3
459	Spinal fusion except cervical w MCC	1.5545	35.2	29.3
460	Spinal fusion except cervical w/o MCC	1.5545	35.2	29.3
461	Bilateral or multiple major joint procs of lower extremity w MCC	1.5545	35.2	29.3
462	Bilateral or multiple major joint procs of lower extremity w/o MCC	1.1417	29.0	24.2
463	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w MCC	1.3514	38.8	32.3
464	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w CC	1.1906	36.3	30.3
465	Wnd debrid & skn grft exc hand, for musculo-conn tiss dis w/o CC/MCC	1.0747	29.6	24.7
466	Revision of hip or knee replacement w MCC	1.5545	35.2	29.3
467	Revision of hip or knee replacement w CC	1.5545	35.2	29.3
468	Revision of hip or knee replacement w/o CC/MCC	1.5545	35.2	29.3
469	Major joint replacement or reattachment of lower extremity w MCC	1.5545	35.2	29.3
470	Major joint replacement or reattachment of lower extremity w/o MCC	1.5545	35.2	29.3
471	Cervical spinal fusion w MCC	1.5545	35.2	29.3
472	Cervical spinal fusion w CC	1.5545	35.2	29.3
473	Cervical spinal fusion w/o CC/MCC	1.5545	35.2	29.3
474	Amputation for musculoskeletal sys & conn tissue dis w MCC	1.3338	36.6	30.5
475	Amputation for musculoskeletal sys & conn tissue dis w CC	1.1390	32.7	27.3
476	Amputation for musculoskeletal sys & conn tissue dis w/o CC/MCC	1.1390	32.7	27.3
477	Biopsies of musculoskeletal system & connective tissue w MCC	1.5545	35.2	29.3
478	Biopsies of musculoskeletal system & connective tissue w CC	1.1417	29.0	24.2
479	Biopsies of musculoskeletal system & connective tissue w/o CC/MCC	1.1417	29.0	24.2
480	Hip & femur procedures except major joint w MCC	1.5545	35.2	29.3
481	Hip & femur procedures except major joint w CC	1.5545	35.2	29.3
482	Hip & femur procedures except major joint w/o CC/MCC	1.1417	29.0	24.2
483	Major joint & limb reattachment proc of upper extremity w CC/MCC	1.5545	35.2	29.3
484	Major joint & limb reattachment proc of upper extremity w/o CC/MCC	1.1417	29.0	24.2
485	Knee procedures w pdx of infection w MCC	1.5545	35.2	29.3
486	Knee procedures w pdx of infection w CC	1.1417	29.0	24.2
487	Knee procedures w pdx of infection w/o CC/MCC	1.1417	29.0	24.2
488	Knee procedures w/o pdx of infection w CC/MCC	1.5545	35.2	29.3
489	Knee procedures w/o pdx of infection w/o CC/MCC	1.5545	35.2	29.3
490	Back & neck proc exc spinal fusion w CC/MCC or disc device/neurostim	1.1417	29.0	24.2
491	Back & neck proc exc spinal fusion w/o CC/MCC	1.1417	29.0	24.2
492	Lower extrem & humer proc except hip, foot, femur w MCC	1.5545	35.2	29.3
493	Lower extrem & humer proc except hip, foot, femur w CC	1.1417	29.0	24.2
494	Lower extrem & humer proc except hip, foot, femur w/o CC/MCC	0.8249	25.0	20.8
495	Local excision & removal int fix devices exc hip & femur w MCC	1.3650	38.1	31.8
496	Local excision & removal int fix devices exc hip & femur w CC	1.1981	36.8	30.7
497	Local excision & removal int fix devices exc hip & femur w/o CC/MCC	1.1417	29.0	24.2
498	Local excision & removal int fix devices of hip & femur w CC/MCC	1.5545	35.2	29.3
499	Local excision & removal int fix devices of hip & femur w/o CC/MCC	0.7305	22.9	19.1
500	Soft tissue procedures w MCC	1.3212	35.2	29.3
501	Soft tissue procedures w CC	1.2903	30.7	25.6
502	Soft tissue procedures w/o CC/MCC	0.8249	25.0	20.8
503	Foot procedures w MCC	1.1417	29.0	24.2
504	Foot procedures w CC	0.8249	25.0	20.8
505	Foot procedures w/o CC/MCC	0.5472	20.3	16.9
506	Major thumb or joint procedures	0.7305	22.9	19.1
507	Major shoulder or elbow joint procedures w CC/MCC	0.8249	25.0	20.8
508	Major shoulder or elbow joint procedures w/o CC/MCC	0.8249	25.0	20.8
509	Arthroscopy	0.5472	20.3	16.9
510	Shoulder, elbow or forearm proc, exc major joint proc w MCC	1.1417	29.0	24.2
511	Shoulder, elbow or forearm proc, exc major joint proc w CC	1.1417	29.0	24.2
512	Shoulder, elbow or forearm proc, exc major joint proc w/o CC/MCC	0.5472	20.3	16.9
513	Hand or wrist proc, except major thumb or joint proc w CC/MCC	1.5545	35.2	29.3
514	Hand or wrist proc, except major thumb or joint proc w/o CC/MCC	0.7305	22.9	19.1
515	Other musculoskelet sys & conn tiss O.R. proc w MCC	1.3230	34.8	29.0
516	Other musculoskelet sys & conn tiss O.R. proc w CC	1.1417	29.0	24.2
517	Other musculoskelet sys & conn tiss O.R. proc w/o CC/MCC	0.8249	25.0	20.8
533	Fractures of femur w MCC	0.8249	25.0	20.8
534	Fractures of femur w/o MCC	0.7305	22.9	19.1
535	Fractures of hip & pelvis w MCC	0.7305	22.9	19.1
536	Fractures of hip & pelvis w/o MCC	0.5998	23.7	19.8
537	Sprains, strains, & dislocations of hip, pelvis & thigh w CC/MCC	0.5472	20.3	16.9

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
538	Sprains, strains, & dislocations of hip, pelvis & thigh w/o CC/MCC	0.5472	20.3	16.9
539	Osteomyelitis w MCC	0.9013	29.7	24.8
540	Osteomyelitis w CC	0.8107	28.7	23.9
541	Osteomyelitis w/o CC/MCC	0.7787	26.9	22.4
542	Pathological fractures & musculoskeletal & conn tiss malig w MCC	0.7359	21.7	18.1
543	Pathological fractures & musculoskeletal & conn tiss malig w CC	0.6347	21.3	17.8
544	Pathological fractures & musculoskeletal & conn tiss malig w/o CC/MCC	0.5472	20.3	16.9
545	Connective tissue disorders w MCC	0.8501	23.9	19.9
546	Connective tissue disorders w CC	0.6492	20.7	17.3
547	Connective tissue disorders w/o CC/MCC	0.5472	20.3	16.9
548	Septic arthritis w MCC	0.8584	28.2	23.5
549	Septic arthritis w CC	0.7347	26.4	22.0
550	Septic arthritis w/o CC/MCC	0.6704	23.5	19.6
551	Medical back problems w MCC	0.7305	26.6	22.2
552	Medical back problems w/o MCC	0.6022	22.8	19.0
553	Bone diseases & arthropathies w MCC	0.8249	25.0	20.8
554	Bone diseases & arthropathies w/o MCC	0.4822	20.5	17.1
555	Signs & symptoms of musculoskeletal system & conn tissue w MCC	0.7305	22.9	19.1
556	Signs & symptoms of musculoskeletal system & conn tissue w/o MCC	0.7305	22.9	19.1
557	Tendonitis, myositis & bursitis w MCC	0.8177	25.9	21.6
558	Tendonitis, myositis & bursitis w/o MCC	0.6919	21.4	17.8
559	Aftercare, musculoskeletal system & connective tissue w MCC	0.7157	26.2	21.8
560	Aftercare, musculoskeletal system & connective tissue w CC	0.6393	24.6	20.5
561	Aftercare, musculoskeletal system & connective tissue w/o CC/MCC	0.5889	21.7	18.1
562	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w MCC	1.1417	29.0	24.2
563	Fx, sprn, strn & disl except femur, hip, pelvis & thigh w/o MCC	0.5472	20.3	16.9
564	Other musculoskeletal sys & connective tissue diagnoses w MCC	0.8134	24.9	20.8
565	Other musculoskeletal sys & connective tissue diagnoses w CC	0.7382	24.8	20.7
566	Other musculoskeletal sys & connective tissue diagnoses w/o CC/MCC	0.6862	22.1	18.4
573	Skin graft &/or debrid for skn ulcer or cellulitis w MCC	1.3068	38.0	31.7
574	Skin graft &/or debrid for skn ulcer or cellulitis w CC	1.1567	37.1	30.9
575	Skin graft &/or debrid for skn ulcer or cellulitis w/o CC/MCC	0.9938	31.7	26.4
576	Skin graft &/or debrid exc for skin ulcer or cellulitis w MCC	1.5545	35.2	29.3
577	Skin graft &/or debrid exc for skin ulcer or cellulitis w CC	1.1417	29.0	24.2
578	Skin graft &/or debrid exc for skin ulcer or cellulitis w/o CC/MCC	0.7305	22.9	19.1
579	Other skin, subcut tiss & breast proc w MCC	1.2793	36.8	30.7
580	Other skin, subcut tiss & breast proc w CC	1.1001	34.8	29.0
581	Other skin, subcut tiss & breast proc w/o CC/MCC	0.9100	29.9	24.9
582	Mastectomy for malignancy w CC/MCC	1.5545	35.2	29.3
583	Mastectomy for malignancy w/o CC/MCC	1.5545	35.2	29.3
584	Breast biopsy, local excision & other breast procedures w CC/MCC	1.1417	29.0	24.2
585	Breast biopsy, local excision & other breast procedures w/o CC/MCC	1.1417	29.0	24.2
592	Skin ulcers w MCC	0.8875	27.1	22.6
593	Skin ulcers w CC	0.7877	26.8	22.3
594	Skin ulcers w/o CC/MCC	0.7342	24.3	20.3
595	Major skin disorders w MCC	0.7525	24.5	20.4
596	Major skin disorders w/o MCC	0.6155	23.8	19.8
597	Malignant breast disorders w MCC	0.8249	25.0	20.8
598	Malignant breast disorders w CC	0.7305	22.9	19.1
599	Malignant breast disorders w/o CC/MCC	0.7305	22.9	19.1
600	Non-malignant breast disorders w CC/MCC	0.7305	22.9	19.1
601	Non-malignant breast disorders w/o CC/MCC	0.7305	22.9	19.1
602	Cellulitis w MCC	0.6643	22.5	18.8
603	Cellulitis w/o MCC	0.5528	19.4	16.2
604	Trauma to the skin, subcut tiss & breast w MCC	0.8249	25.0	20.8
605	Trauma to the skin, subcut tiss & breast w/o MCC	0.5685	21.2	17.7
606	Minor skin disorders w MCC	0.8324	23.2	19.3
607	Minor skin disorders w/o MCC	0.6776	22.6	18.8
614	Adrenal & pituitary procedures w CC/MCC	1.2008	33.1	27.6
615	Adrenal & pituitary procedures w/o CC/MCC	0.7305	22.9	19.1
616	Amputat of lower limb for endocrine, nutrit, & metabol dis w MCC	1.4505	41.0	34.2
617	Amputat of lower limb for endocrine, nutrit, & metabol dis w CC	1.2414	33.3	27.8
618	Amputat of lower limb for endocrine, nutrit, & metabol dis w/o CC/MCC	0.8249	25.0	20.8
619	O.R. procedures for obesity w MCC	0.8249	25.0	20.8
620	O.R. procedures for obesity w CC	0.8249	25.0	20.8
621	O.R. procedures for obesity w/o CC/MCC	0.8249	25.0	20.8
622	Skin grafts & wound debrid for endoc, nutrit & metab dis w MCC	1.1462	35.6	29.7
623	Skin grafts & wound debrid for endoc, nutrit & metab dis w CC	1.0197	32.2	26.8

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
624	Skin grafts & wound debrid for endoc, nutrit & metab dis w/o CC/MCC	0.8249	25.0	20.8
625	Thyroid, parathyroid & thyroglossal procedures w MCC	1.3385	36.6	30.5
626	Thyroid, parathyroid & thyroglossal procedures w CC	1.2008	33.1	27.6
627	Thyroid, parathyroid & thyroglossal procedures w/o CC/MCC	0.7305	22.9	19.1
628	Other endocrine, nutrit & metab O.R. proc w MCC	1.3385	36.6	30.5
629	Other endocrine, nutrit & metab O.R. proc w CC	1.2008	33.1	27.6
630	Other endocrine, nutrit & metab O.R. proc w/o CC/MCC	0.7305	22.9	19.1
637	Diabetes w MCC	0.7726	25.8	21.5
638	Diabetes w CC	0.6757	24.0	20.0
639	Diabetes w/o CC/MCC	0.6064	20.6	17.2
640	Nutritional & misc metabolic disorders w MCC	0.7879	23.2	19.3
641	Nutritional & misc metabolic disorders w/o MCC	0.6889	22.0	18.3
642	Inborn errors of metabolism	0.7305	22.9	19.1
643	Endocrine disorders w MCC	0.7358	24.9	20.8
644	Endocrine disorders w CC	0.7358	24.9	20.8
645	Endocrine disorders w/o CC/MCC	0.5472	20.3	16.9
652	Kidney transplant	0.0000	0.0	0.0
653	Major bladder procedures w MCC	1.1417	29.0	24.2
654	Major bladder procedures w CC	0.7305	22.9	19.1
655	Major bladder procedures w/o CC/MCC	0.5472	20.3	16.9
656	Kidney & ureter procedures for neoplasm w MCC	0.8249	25.0	20.8
657	Kidney & ureter procedures for neoplasm w CC	0.8249	25.0	20.8
658	Kidney & ureter procedures for neoplasm w/o CC/MCC	0.8249	25.0	20.8
659	Kidney & ureter procedures for non-neoplasm w MCC	1.1417	29.0	24.2
660	Kidney & ureter procedures for non-neoplasm w CC	0.7305	22.9	19.1
661	Kidney & ureter procedures for non-neoplasm w/o CC/MCC	0.5472	20.3	16.9
662	Minor bladder procedures w MCC	0.8249	25.0	20.8
663	Minor bladder procedures w CC	0.8249	25.0	20.8
664	Minor bladder procedures w/o CC/MCC	1.5545	35.2	29.3
665	Prostatectomy w MCC	0.8249	25.0	20.8
666	Prostatectomy w CC	0.8249	25.0	20.8
667	Prostatectomy w/o CC/MCC	1.1417	29.0	24.2
668	Transurethral procedures w MCC	1.5545	35.2	29.3
669	Transurethral procedures w CC	1.5545	35.2	29.3
670	Transurethral procedures w/o CC/MCC	0.8249	25.0	20.8
671	Urethral procedures w CC/MCC	0.7305	22.9	19.1
672	Urethral procedures w/o CC/MCC	0.5472	20.3	16.9
673	Other kidney & urinary tract procedures w MCC	1.3255	33.6	28.0
674	Other kidney & urinary tract procedures w CC	1.2557	30.6	25.5
675	Other kidney & urinary tract procedures w/o CC/MCC	1.1417	29.0	24.2
682	Renal failure w MCC	0.8553	23.6	19.7
683	Renal failure w CC	0.7752	21.8	18.2
684	Renal failure w/o CC/MCC	0.7121	20.5	17.1
685	Admit for renal dialysis	0.7726	26.0	21.7
686	Kidney & urinary tract neoplasms w MCC	0.8933	23.6	19.7
687	Kidney & urinary tract neoplasms w CC	0.7305	22.9	19.1
688	Kidney & urinary tract neoplasms w/o CC/MCC	0.5472	20.3	16.9
689	Kidney & urinary tract infections w MCC	0.6624	22.9	19.1
690	Kidney & urinary tract infections w/o MCC	0.5655	20.2	16.8
691	Urinary stones w esw lithotripsy w CC/MCC	1.5545	35.2	29.3
692	Urinary stones w esw lithotripsy w/o CC/MCC	1.5545	35.2	29.3
693	Urinary stones w/o esw lithotripsy w MCC	0.7305	22.9	19.1
694	Urinary stones w/o esw lithotripsy w/o MCC	0.7305	22.9	19.1
695	Kidney & urinary tract signs & symptoms w MCC	0.8249	25.0	20.8
696	Kidney & urinary tract signs & symptoms w/o MCC	0.5472	20.3	16.9
697	Urethral stricture	0.5472	20.3	16.9
698	Other kidney & urinary tract diagnoses w MCC	0.7919	22.6	18.8
699	Other kidney & urinary tract diagnoses w CC	0.7293	22.1	18.4
700	Other kidney & urinary tract diagnoses w/o CC/MCC	0.6052	19.6	16.3
707	Major male pelvic procedures w CC/MCC	0.7305	22.9	19.1
708	Major male pelvic procedures w/o CC/MCC	0.5472	20.3	16.9
709	Penis procedures w CC/MCC	1.1417	29.0	24.2
710	Penis procedures w/o CC/MCC	1.1417	29.0	24.2
711	Testes procedures w CC/MCC	1.1417	29.0	24.2
712	Testes procedures w/o CC/MCC	1.1417	29.0	24.2
713	Transurethral prostatectomy w CC/MCC	1.5545	35.2	29.3
714	Transurethral prostatectomy w/o CC/MCC	0.5472	20.3	16.9
715	Other male reproductive system O.R. proc for malignancy w CC/MCC	1.5545	35.2	29.3

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
716	Other male reproductive system O.R. proc for malignancy w/o CC/MCC	1.5545	35.2	29.3
717	Other male reproductive system O.R. proc exc malignancy w CC/MCC	1.1417	29.0	24.2
718	Other male reproductive system O.R. proc exc malignancy w/o CC/MCC	0.5472	20.3	16.9
722	Malignancy, male reproductive system w MCC	0.8249	25.0	20.8
723	Malignancy, male reproductive system w CC	0.7305	22.9	19.1
724	Malignancy, male reproductive system w/o CC/MCC	0.5472	20.3	16.9
725	Benign prostatic hypertrophy w MCC	1.1417	29.0	24.2
726	Benign prostatic hypertrophy w/o MCC	0.5472	20.3	16.9
727	Inflammation of the male reproductive system w MCC	0.7754	25.9	21.6
728	Inflammation of the male reproductive system w/o MCC	0.6172	20.8	17.3
729	Other male reproductive system diagnoses w CC/MCC	1.0319	26.6	22.2
730	Other male reproductive system diagnoses w/o CC/MCC	0.7305	22.9	19.1
734	Pelvic evisceration, rad hysterectomy & rad vulvectomy w CC/MCC	1.1417	29.0	24.2
735	Pelvic evisceration, rad hysterectomy & rad vulvectomy w/o CC/MCC	0.5472	20.3	16.9
736	Uterine & adnexa proc for ovarian or adnexal malignancy w MCC	1.1417	29.0	24.2
737	Uterine & adnexa proc for ovarian or adnexal malignancy w CC	0.8249	25.0	20.8
738	Uterine & adnexa proc for ovarian or adnexal malignancy w/o CC/MCC	0.5472	20.3	16.9
739	Uterine, adnexa proc for non-ovarian/adnexal malig w MCC	1.1417	29.0	24.2
740	Uterine, adnexa proc for non-ovarian/adnexal malig w CC	0.8249	25.0	20.8
741	Uterine, adnexa proc for non-ovarian/adnexal malig w/o CC/MCC	0.5472	20.3	16.9
742	Uterine & adnexa proc for non-malignancy w CC/MCC	0.8249	25.0	20.8
743	Uterine & adnexa proc for non-malignancy w/o CC/MCC	0.5472	20.3	16.9
744	D&C, conization, laparoscopy & tubal interruption w CC/MCC	0.8249	25.0	20.8
745	D&C, conization, laparoscopy & tubal interruption w/o CC/MCC	0.8249	25.0	20.8
746	Vagina, cervix & vulva procedures w CC/MCC	0.8249	25.0	20.8
747	Vagina, cervix & vulva procedures w/o CC/MCC	0.8249	25.0	20.8
748	Female reproductive system reconstructive procedures	0.8249	25.0	20.8
749	Other female reproductive system O.R. procedures w CC/MCC	0.8249	25.0	20.8
750	Other female reproductive system O.R. procedures w/o CC/MCC	0.8249	25.0	20.8
754	Malignancy, female reproductive system w MCC	1.1417	29.0	24.2
755	Malignancy, female reproductive system w CC	0.8249	25.0	20.8
756	Malignancy, female reproductive system w/o CC/MCC	0.5472	20.3	16.9
757	Infections, female reproductive system w MCC	0.8375	22.6	18.8
758	Infections, female reproductive system w CC	0.8317	27.2	22.7
759	Infections, female reproductive system w/o CC/MCC	0.5472	20.3	16.9
760	Menstrual & other female reproductive system disorders w CC/MCC	1.1417	29.0	24.2
761	Menstrual & other female reproductive system disorders w/o CC/MCC	0.5472	20.3	16.9
765	Cesarean section w CC/MCC	0.8249	25.0	20.8
766	Cesarean section w/o CC/MCC	0.7305	22.9	19.1
767	Vaginal delivery w sterilization &/or D&C	0.7305	22.9	19.1
768	Vaginal delivery w O.R. proc except steril &/or D&C	0.7305	22.9	19.1
769	Postpartum & post abortion diagnoses w O.R. procedure	0.7305	22.9	19.1
770	Abortion w D&C, aspiration curettage or hysterotomy	0.7305	22.9	19.1
774	Vaginal delivery w complicating diagnoses	0.7305	22.9	19.1
775	Vaginal delivery w/o complicating diagnoses	0.7305	22.9	19.1
776	Postpartum & post abortion diagnoses w/o O.R. procedure	1.1417	29.0	24.2
777	Ectopic pregnancy	0.7305	22.9	19.1
778	Threatened abortion	0.5472	20.3	16.9
779	Abortion w/o D&C	0.5472	20.3	16.9
780	False labor	0.5472	20.3	16.9
781	Other antepartum diagnoses w medical complications	1.1417	29.0	24.2
782	Other antepartum diagnoses w/o medical complications	0.5472	20.3	16.9
789	Neonates, died or transferred to another acute care facility	0.5472	20.3	16.9
790	Extreme immaturity or respiratory distress syndrome, neonate	0.5472	20.3	16.9
791	Prematurity w major problems	1.1417	29.0	24.2
792	Prematurity w/o major problems	0.5472	20.3	16.9
793	Full term neonate w major problems	1.1417	29.0	24.2
794	Neonate w other significant problems	1.1417	29.0	24.2
795	Normal newborn	0.5472	20.3	16.9
799	Splenectomy w MCC	1.1417	29.0	24.2
800	Splenectomy w CC	0.8249	25.0	20.8
801	Splenectomy w/o CC/MCC	0.8249	25.0	20.8
802	Other O.R. proc of the blood & blood forming organs w MCC	1.5545	35.2	29.3
803	Other O.R. proc of the blood & blood forming organs w CC	0.7305	22.9	19.1
804	Other O.R. proc of the blood & blood forming organs w/o CC/MCC	0.7305	22.9	19.1
808	Major hematomol/immun diag exc sickle cell crisis & coagul w MCC	0.8009	20.7	17.3
809	Major hematomol/immun diag exc sickle cell crisis & coagul w CC	0.8009	20.7	17.3
810	Major hematomol/immun diag exc sickle cell crisis & coagul w/o CC/MCC	0.8009	20.7	17.3

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
811	Red blood cell disorders w MCC	0.6655	23.2	19.3
812	Red blood cell disorders w/o MCC	0.5699	19.5	16.3
813	Coagulation disorders	0.8015	21.5	17.9
814	Reticuloendothelial & immunity disorders w MCC	0.7474	22.6	18.8
815	Reticuloendothelial & immunity disorders w CC	0.7305	22.9	19.1
816	Reticuloendothelial & immunity disorders w/o CC/MCC	0.7305	22.9	19.1
820	Lymphoma & leukemia w major O.R. procedure w MCC	0.8249	25.0	20.8
821	Lymphoma & leukemia w major O.R. procedure w CC	0.8249	25.0	20.8
822	Lymphoma & leukemia w major O.R. procedure w/o CC/MCC	0.8249	25.0	20.8
823	Lymphoma & non-acute leukemia w other O.R. proc w MCC	1.1417	29.0	24.2
824	Lymphoma & non-acute leukemia w other O.R. proc w CC	1.1417	29.0	24.2
825	Lymphoma & non-acute leukemia w other O.R. proc w/o CC/MCC	0.5472	20.3	16.9
826	Myeloprolif disord or poorly diff neopl w maj O.R. proc w MCC	0.8249	25.0	20.8
827	Myeloprolif disord or poorly diff neopl w maj O.R. proc w CC	0.8249	25.0	20.8
828	Myeloprolif disord or poorly diff neopl w maj O.R. proc w/o CC/MCC	0.8249	25.0	20.8
829	Myeloprolif disord or poorly diff neopl w other O.R. proc w CC/MCC	1.5545	35.2	29.3
830	Myeloprolif disord or poorly diff neopl w other O.R. proc w/o CC/MCC	1.5545	35.2	29.3
834	Acute leukemia w/o major O.R. procedure w MCC	1.1417	29.0	24.2
835	Acute leukemia w/o major O.R. procedure w CC	0.8249	25.0	20.8
836	Acute leukemia w/o major O.R. procedure w/o CC/MCC	0.5472	20.3	16.9
837	Chemo w acute leukemia as sdx or w high dose chemo agent w MCC	1.5545	35.2	29.3
838	Chemo w acute leukemia as sdx w CC or high dose chemo agent	0.8249	25.0	20.8
839	Chemo w acute leukemia as sdx w/o CC/MCC	1.5545	35.2	29.3
840	Lymphoma & non-acute leukemia w MCC	0.8718	20.8	17.3
841	Lymphoma & non-acute leukemia w CC	0.8026	20.1	16.8
842	Lymphoma & non-acute leukemia w/o CC/MCC	0.7305	22.9	19.1
843	Other myeloprolif dis or poorly diff neopl diag w MCC	1.1417	29.0	24.2
844	Other myeloprolif dis or poorly diff neopl diag w CC	1.1417	29.0	24.2
845	Other myeloprolif dis or poorly diff neopl diag w/o CC/MCC	1.1417	29.0	24.2
846	Chemotherapy w/o acute leukemia as secondary diagnosis w MCC	1.6788	37.4	31.2
847	Chemotherapy w/o acute leukemia as secondary diagnosis w CC	1.4350	27.6	23.0
848	Chemotherapy w/o acute leukemia as secondary diagnosis w/o CC/MCC	0.7305	22.9	19.1
849	Radiotherapy	0.8994	23.5	19.6
853	Infectious & parasitic diseases w O.R. procedure w MCC	1.7687	38.1	31.8
854	Infectious & parasitic diseases w O.R. procedure w CC	1.4381	30.8	25.7
855	Infectious & parasitic diseases w O.R. procedure w/o CC/MCC	0.7305	22.9	19.1
856	Postoperative or post-traumatic infections w O.R. proc w MCC	1.4470	36.1	30.1
857	Postoperative or post-traumatic infections w O.R. proc w CC	1.1886	31.5	26.3
858	Postoperative or post-traumatic infections w O.R. proc w/o CC/MCC	1.1109	28.4	23.7
862	Postoperative & post-traumatic infections w MCC	0.8670	25.2	21.0
863	Postoperative & post-traumatic infections w/o MCC	0.7478	23.4	19.5
864	Fever of unknown origin	0.7305	22.9	19.1
865	Viral illness w MCC	0.7823	21.8	18.2
866	Viral illness w/o MCC	0.6431	21.2	17.7
867	Other infectious & parasitic diseases diagnoses w MCC	1.0954	23.6	19.7
868	Other infectious & parasitic diseases diagnoses w CC	0.8869	22.0	18.3
869	Other infectious & parasitic diseases diagnoses w/o CC/MCC	0.5472	20.3	16.9
870	Septicemia w MV 96+ hours	1.9505	30.5	25.4
871	Septicemia w/o MV 96+ hours w MCC	0.8299	23.5	19.6
872	Septicemia w/o MV 96+ hours w/o MCC	0.7340	21.9	18.3
876	O.R. procedure w principal diagnoses of mental illness	0.7305	22.9	19.1
880	Acute adjustment reaction & psychosocial dysfunction	0.5472	20.3	16.9
881	Depressive neuroses	0.5472	20.3	16.9
882	Neuroses except depressive	0.5472	20.3	16.9
883	Disorders of personality & impulse control	0.5472	20.3	16.9
884	Organic disturbances & mental retardation	0.4883	23.3	19.4
885	Psychoses	0.4140	23.8	19.8
886	Behavioral & developmental disorders	0.5472	20.3	16.9
887	Other mental disorder diagnoses	0.5472	20.3	16.9
894	Alcohol/drug abuse or dependence, left ama	0.5472	20.3	16.9
895	Alcohol/drug abuse or dependence w rehabilitation therapy	0.5472	20.3	16.9
896	Alcohol/drug abuse or dependence w/o rehabilitation therapy w MCC	0.8249	25.0	20.8
897	Alcohol/drug abuse or dependence w/o rehabilitation therapy w/o MCC	0.5472	20.3	16.9
901	Wound debridements for injuries w MCC	1.3395	35.2	29.3
902	Wound debridements for injuries w CC	1.1605	33.5	27.9
903	Wound debridements for injuries w/o CC/MCC	0.7305	22.9	19.1
904	Skin grafts for injuries w CC/MCC	1.3351	40.8	34.0
905	Skin grafts for injuries w/o CC/MCC	0.7305	22.9	19.1

TABLE 3.—FY-2008 MS-LTC-DRGs, RELATIVE WEIGHTS, GEOMETRIC AVERAGE LENGTH OF STAY AND SHORT-STAY OUTLIER THRESHOLD—Continued

MS-LTC- DRG	MS-LTC-DRG title	Relative weight ¹	Geometric average length of stay	Short stay outlier threshold ²
906	Hand procedures for injuries	0.5472	20.3	16.9
907	Other O.R. procedures for injuries w MCC	1.6622	36.8	30.7
908	Other O.R. procedures for injuries w CC	1.3966	34.1	28.4
909	Other O.R. procedures for injuries w/o CC/MCC	0.8249	25.0	20.8
913	Traumatic injury w MCC	0.8462	26.9	22.4
914	Traumatic injury w/o MCC	0.6448	21.9	18.3
915	Allergic reactions w MCC	0.5472	20.3	16.9
916	Allergic reactions w/o MCC	0.5472	20.3	16.9
917	Poisoning & toxic effects of drugs w MCC	0.7305	22.9	19.1
918	Poisoning & toxic effects of drugs w/o MCC	0.7305	22.9	19.1
919	Complications of treatment w MCC	0.9858	26.3	21.9
920	Complications of treatment w CC	0.8518	24.6	20.5
921	Complications of treatment w/o CC/MCC	0.7511	23.0	19.2
922	Other injury, poisoning & toxic effect diag w MCC	0.5472	20.3	16.9
923	Other injury, poisoning & toxic effect diag w/o MCC	0.5472	20.3	16.9
927	Extensive burns or full thickness burns w MV 96+ hrs w skin graft	1.5545	35.2	29.3
928	Full thickness burn w skin graft or inhal inj w CC/MCC	1.1417	29.0	24.2
929	Full thickness burn w skin graft or inhal inj w/o CC/MCC	0.7305	22.9	19.1
933	Extensive burns or full thickness burns w MV 96+ hrs w/o skin graft	1.5545	35.2	29.3
934	Full thickness burn w/o skin grft or inhal inj	0.6998	24.2	20.2
935	Non-extensive burns	0.7525	24.9	20.8
939	O.R. proc w diagnoses of other contact w health services w MCC	1.2500	33.8	28.2
940	O.R. proc w diagnoses of other contact w health services w CC	1.1066	33.8	28.2
941	O.R. proc w diagnoses of other contact w health services w/o CC/MCC	0.9719	28.8	24.0
945	Rehabilitation w CC/MCC	0.5867	22.2	18.5
946	Rehabilitation w/o CC/MCC	0.4935	18.9	15.8
947	Signs & symptoms w MCC	0.6340	22.7	18.9
948	Signs & symptoms w/o MCC	0.5642	23.4	19.5
949	Aftercare w CC/MCC	0.6693	22.1	18.4
950	Aftercare w/o CC/MCC	0.5735	18.5	15.4
951	Other factors influencing health status	1.5837	26.2	21.8
955	Craniotomy for multiple significant trauma	1.5545	35.2	29.3
956	Limb reattachment, hip & femur proc for multiple significant trauma	0.7305	22.9	19.1
957	Other O.R. procedures for multiple significant trauma w MCC	1.5545	35.2	29.3
958	Other O.R. procedures for multiple significant trauma w CC	1.1417	29.0	24.2
959	Other O.R. procedures for multiple significant trauma w/o CC/MCC	1.1417	29.0	24.2
963	Other multiple significant trauma w MCC	1.5545	35.2	29.3
964	Other multiple significant trauma w CC	0.7305	22.9	19.1
965	Other multiple significant trauma w/o CC/MCC	0.5472	20.3	16.9
969	HIV w extensive O.R. procedure w MCC	1.5545	35.2	29.3
970	HIV w extensive O.R. procedure w/o MCC	1.5545	35.2	29.3
974	HIV w major related condition w MCC	0.8908	21.9	18.3
975	HIV w major related condition w CC	0.7492	21.3	17.8
976	HIV w major related condition w/o CC/MCC	0.7382	18.0	15.0
977	HIV w or w/o other related condition	0.7305	22.9	19.1
981	Extensive O.R. procedure unrelated to principal diagnosis w MCC	2.2339	42.0	35.0
982	Extensive O.R. procedure unrelated to principal diagnosis w CC	1.8277	37.6	31.3
983	Extensive O.R. procedure unrelated to principal diagnosis w/o CC/MCC	1.1417	29.0	24.2
984	Prostatic O.R. procedure unrelated to principal diagnosis w MCC	1.5545	35.2	29.3
985	Prostatic O.R. procedure unrelated to principal diagnosis w CC	1.1417	29.0	24.2
986	Prostatic O.R. procedure unrelated to principal diagnosis w/o CC/MCC	1.1417	29.0	24.2
987	Non-extensive O.R. proc unrelated to principal diagnosis w MCC	1.6972	37.9	31.6
988	Non-extensive O.R. proc unrelated to principal diagnosis w CC	1.3386	33.2	27.7
989	Non-extensive O.R. proc unrelated to principal diagnosis w/o CC/MCC	0.8249	25.0	20.8
998	Principal diagnosis invalid as discharge diagnosis	0.0000	0.0	0.0
999	Ungroupable	0.0000	0.0	0.0

¹ Transition blended relative weights for FY 2008 determined as described in Step 7 in section II.I.4. of the preamble of the FY 2008 IPPS final rule (72 FR 47295).

² The "short-stay outlier threshold" is calculated as 5/6ths of the geometric average length of stay of the MS-LTC-DRG (as specified at § 412.529(a), in conjunction with § 412.503).



Federal Register

**Friday,
May 9, 2008**

Part IV

Securities and Exchange Commission

**17 CFR Parts 230, 232, 239, 240, and 249
Revisions to the Cross-Border Tender
Offer, Exchange Offer, and Business
Combination Rules and Beneficial
Ownership Reporting Rules for Certain
Foreign Institutions; Proposed Rule**

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 232, 239, 240, and 249

[Release Nos. 33–8917; 34–57781; File No. S7–10–08]

RIN 3235–AK10

Revisions to the Cross-Border Tender Offer, Exchange Offer, and Business Combination Rules and Beneficial Ownership Reporting Rules for Certain Foreign Institutions

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: After eight years of experience with the current cross-border exemptions adopted in 1999, the Commission is proposing changes to expand and enhance the utility of these exemptions for business combination transactions. Our goal continues to be to encourage offerors and issuers in cross-border business combinations, and rights offerings by foreign private issuers, to permit U.S. security holders to participate in these transactions in the same manner as other holders. Many of the rule changes we propose today would codify existing interpretive positions and exemptive orders in the cross-border area. In several instances, we request comment about whether the rule changes we propose also should apply to tender offers for U.S. companies. In this release, we also address certain interpretive issues of concern for U.S. and other offerors engaged in cross-border business combinations. We hope that this guidance will prove useful in structuring and facilitating these transactions in a manner consistent with U.S. investor protection.

DATES: Comments should be received on or before June 23, 2008.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/proposed.shtml>);
- Send an e-mail to rule-comments@sec.gov. Please include File Number S7–10–08 on the subject line; or
- Use the Federal Rulemaking Portal (<http://www.regulations.gov>). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, U.S.

Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–10–08. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (<http://www.sec.gov/rules/proposed.shtml>). Comments also are available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

FOR FURTHER INFORMATION CONTACT: Christina Chalk, Senior Special Counsel, or Tamara Brightwell, Senior Special Counsel, at (202) 551–3440, in the Division of Corporation Finance, and Elizabeth Sandoe, Branch Chief, at (202) 551–5720, in the Division of Trading and Markets (for questions relating to the proposed changes to Rule 14e–5), U.S. Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–3628.

SUPPLEMENTARY INFORMATION: We propose to amend Rules 162,¹ 800² and 802³ under the Securities Act of 1933⁴ and Rule 101⁵ of Regulation S–T.⁶ We also propose to amend Rules 13d–1,⁷ 13e–3,⁸ 13e–4,⁹ 14d–1,¹⁰ and 14e–5¹¹ under the Securities Exchange Act of 1934.¹² We also propose changes to Form S–4,¹³ Form F–4,¹⁴ Form F–X,¹⁵ Form CB,¹⁶ Schedule 13G¹⁷ and Schedule TO.¹⁸

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¹ 17 CFR 230.162.

² 17 CFR 230.800.

³ 17 CFR 230.802.

⁴ 15 U.S.C. 77a et seq.

⁵ 17 CFR 232.101.

⁶ 17 CFR 232.10 et seq.

⁷ 17 CFR 240.13d–1.

⁸ 17 CFR 240.13e–3.

⁹ 17 CFR 240.13e–4.

¹⁰ 17 CFR 240.14d–1.

¹¹ 17 CFR 240.14e–5.

¹² 15 U.S.C. 78a et seq.

¹³ 17 CFR 239.25.

¹⁴ 17 CFR 239.34.

¹⁵ 17 CFR 239.42.

¹⁶ 17 CFR 239.800.

¹⁷ 17 CFR 240.13d–102.

¹⁸ 17 CFR 240.14d–100.

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I. Background

A. Introduction

Securities markets today are characterized by increasing globalization. Advances in information technology, the increased use of ADR¹⁹ facilities giving U.S. investors an ownership interest in the securities of foreign companies, and other factors have increased significantly the number of U.S. and foreign companies engaged in cross-border business combination transactions.²⁰ Computerization and the advent of the Internet age have fueled a revolution in investor participation in global capital markets. With increasing globalization of worldwide securities markets, U.S. investors frequently purchase securities issued by foreign companies, including foreign private issuers.

The Commission has undertaken several recent rulemaking initiatives that impact foreign private issuer reporting and registration requirements. For example, we recently revised our rules to make the U.S. capital markets more attractive to foreign private issuers by allowing the use of financial statements prepared in accordance with International Financial Reporting Standards (or IFRS) as issued by the International Accounting Standards Board (or IASB), without a reconciliation to U.S. GAAP.²¹ In addition, we amended the deregistration rules for exiting the U.S. regulatory system when the level of U.S. interest in a foreign private issuer's securities has decreased, such that continued registration is no longer justified.²² We

also have proposed a change to the manner of determining the availability of the Rule 12g3-2(b) exemption from Exchange Act registration.²³ Further, we have proposed rule revisions applicable to foreign issuers, intended to improve the accessibility of the U.S. public capital markets and enhance the information available to investors.²⁴

We believe these changes benefit investors and issuers. U.S. investors benefit from additional investment opportunities in securities of foreign companies, while issuers benefit from the potential for increased investor interest and a reduction in the cost of regulatory compliance. Consistent with these recent efforts to enhance our regulatory system applicable to foreign private issuers, we are proposing enhancements to our rules governing cross-border business combination transactions.

The rule revisions we propose today are based on our experiences in the cross-border area during the eight years since the current cross-border exemptions were adopted. The revisions are intended to address the areas of conflict or inconsistency with foreign regulations and practice that acquirors frequently encounter in cross-border business combination transactions.²⁵ Whether non-U.S. issuers list their securities on a U.S. market or U.S. investors access overseas trading markets to purchase their securities, cross-border business combination transactions frequently present conflicts between U.S. and foreign regulatory systems.²⁶ The cross-border exemptions

are premised on the status of the target company in a business combination, or the issuer in a rights offering, as a foreign private issuer as defined in our rules.

We believe the revisions we propose today represent an appropriate balance between the need to protect U.S. investors through application of the protections afforded by U.S. law, and the desirability of facilitating and enabling transactions that may benefit all security holders, including those in the United States. We also believe expanding the availability of the cross-border exemptions will serve the public interest by encouraging bidders to include U.S. holders in cross-border business combination transactions from which they otherwise might be excluded, thereby extending the benefits of those transactions to U.S. investors.

1. Treatment of U.S. Target Security Holders Before the Adoption of the Cross-Border Exemptions

Before the cross-border exemptions became effective in January 2000, U.S. holders²⁷ of a foreign issuer or foreign target company frequently were excluded from cross-border business combination transactions or rights offerings because of actual or perceived conflicts between U.S. and foreign law. Where U.S. security holders held a relatively small percentage of a foreign target's securities, their participation was not necessary to the successful completion of the business combination transaction and acquirors frequently excluded them.²⁸ Even where the percentage of securities held in the United States was significant, acquirors and issuers in business combination transactions and rights offerings

Release No. 34-55540 (March 27, 2007) [72 FR 16934] ("Deregistration Release").

²³ *Exemption from Registration Under Section 12(g) of the Securities Exchange Act of 1934 for Foreign Private Issuers*, Release No. 34-57350 (February 19, 2008) [73 FR 10102] ("Rule 12g3-2(b) Release").

²⁴ *Foreign Issuer Reporting Enhancements*, Release No. 33-8900 (February 29, 2008) [73 FR 13404].

²⁵ The proposed revisions are, with a few exceptions, limited to cross-border business combination transactions. "Cross-border" refers to business combinations in which the target company is a "foreign private issuer" as defined in Exchange Act Rule 3b-4(c) [17 CFR 240.3b-4(c)], and rights offerings where the issuer is a foreign private issuer, as so defined. In the past under very limited circumstances, offerors have obtained no-action and exemptive relief for business combinations in which the target company was a foreign issuer but did not meet the definition of foreign private issuer in Rule 3b-4. Such relief continues to be considered only in special circumstances and will be as narrowly tailored as practicable.

²⁶ "Business combination" is defined in Securities Act Rule 800(a) as any "statutory amalgamation, merger, arrangement or reorganization requiring the vote of security holders of one or more participating companies. It also includes a statutory short form merger that does not require a vote of security holders." In this release, we use the term more broadly to include those

kinds of transactions, as well as tender and exchange offers. See Securities Act Rule 165(f)(1) [17 CFR 230.165(f)(1)] (defining the term more broadly, to include the types of transactions listed in Rule 145(a) [17 CFR 230.145(a)], as well as exchange offers).

²⁷ See, e.g., Instruction 2 to Exchange Act Rules 14d-1(c) and 14d-1(d) (defining "U.S. holder" as "any security holder resident in the United States").

²⁸ See *Cross-Border Tender Offers, Business Combinations and Rights Offerings*, Release No. 33-7611 (November 13, 1998) [63 FR 69136] ("1998 Cross-Border Proposing Release"), Section II.A. The U.K. Takeover Panel (the entity that regulates tender offers in the United Kingdom) provided us with information it compiled in 1997 based on a random sample of 31 tender offers (out of 171 possible mergers or tender offers). When the U.S. ownership of the target was less than 15 percent (30 offers), the bidders excluded U.S. persons in all of the offers. When the U.S. ownership was more significant, such as 38 percent (one offer), the bidders included U.S. persons. In the 30 offers that excluded U.S. persons, the ownership percentage was as follows: in 27 offers, U.S. persons held less than 5 percent; in the remaining three offers, U.S. persons held 7 percent, 8 percent and 10-15 percent, respectively.

¹⁹ "ADRs" refer to American Depositary Receipts. We use this term synonymously with American Depositary Shares, or ADSs.

²⁰ See Jessica Hall, *Cross-Border Mergers Defy U.S. Slump*, REUTERS (October 18, 2007) (noting that cross-border deals reached record highs through mid-October 2007, and were up 82 percent over levels for the same period in 2006, according to figures compiled by the research firm Dealogic).

²¹ *Acceptance From Foreign Private Issuers of Financial Statements Prepared in Accordance With International Financial Reporting Standards Without Reconciliation to U.S. GAAP*, Release No. 33-8879 (December 21, 2007) [73 FR 986].

²² *Termination of a Foreign Private Issuer's Registration of a Class of Securities Under Section 12(g) and Duty to File Reports Under Section 13(a) or 15(d) of the Securities Exchange Act of 1934*,

sometimes avoided extending the offer into the United States because of perceived litigation risks or conflicts in rules or practice, or the desire not to engage in the process of preparing and filing a Securities Act registration statement.²⁹ Exclusion deprived U.S. investors of some or all of the benefits of such cross-border transactions.

2. Overview of the Cross-Border Exemptions

In an effort to facilitate the inclusion of U.S. security holders in primarily foreign transactions, we adopted the cross-border exemptions on October 26, 1999.³⁰ These exemptions represented the culmination of efforts since 1991, when we issued two proposing releases addressing cross-border issues.³¹ Between 1991 and 1999, the staff gained valuable experience addressing numerous individual requests for no-action and exemptive relief in the cross-border area.³² The cross-border exemptions addressed areas of frequent regulatory conflict or differences in practice encountered by the staff during those years.

Generally speaking, the cross-border exemptions are structured as a two-tier system based broadly on the level of U.S. interest in a transaction, measured by the percentage of target securities of a foreign private issuer held by U.S.

investors.³³ Where no more than ten percent of the subject securities are held in the United States (Tier I and Rules 801 and 802), a qualifying cross-border transaction will be exempt from most U.S. tender offer rules³⁴ and from the registration requirements of Section 5 of the Securities Act of 1933.³⁵ Tier I provides a broad exemption from the filing, dissemination and procedural requirements of the U.S. tender offer rules and the heightened disclosure requirements applicable to going private transactions as defined in Rule 13e-3.³⁶ Tier I also exempts the subject company of a tender offer from the obligation to express and support a position with respect to that tender offer.³⁷ At the same level of U.S. ownership, Rules 801 and 802 also provide relief from the registration requirements of Securities Act Section 5 for securities issued in rights offerings and business combination transactions.

Issuers relying on Rule 801, offerors relying on Rule 802, and third-party bidders and issuers relying on the Tier I cross-border exemption must furnish a Form CB to the Commission.³⁸ Form CB is a cover sheet for an English translation of the disclosure document used in the foreign home jurisdiction and disseminated to U.S. target security holders.³⁹ This form must be submitted to the Commission by the next business day after the disclosure document attached and used in the foreign home jurisdiction is published or otherwise disseminated in accordance with home country rules.⁴⁰ The materials submitted under cover of Form CB are not deemed filed with the Commission, and the filer is not subject to the liability provisions of Section 18 of the Exchange Act.⁴¹

³³ Although the target (or issuer in a rights offering) must be a foreign private issuer, the acquiror relying on the cross-border exemptions need not be a foreign private issuer and, in fact, may be a U.S. company.

³⁴ The U.S. anti-fraud and anti-manipulation rules and civil liability provisions continue to apply to these transactions. See Cross-Border Adopting Release, Section I.A.

³⁵ 15 U.S.C. 77e.

³⁶ Exchange Act Rules 13e-3(g)(6), 13e-4(h)(8) and 14d-1(c).

³⁷ Exchange Act Rule 14e-2(d).

³⁸ Securities Act Rules 801(a)(4)(i) and 802(a)(3)(i), and Exchange Act Rules 13e-4(h)(8)(iii) and 14d-1(c)(3)(iii).

³⁹ Item 1 of Form CB [17 CFR 239.800].

⁴⁰ Securities Act Rules 801(a)(4)(i) and 802(a)(3)(i) and Exchange Act Rules 14d-1(c)(3)(iii) and 13e-4(h)(8)(iii). If the bidder is a foreign company, it must also file a Form F-X with the Commission appointing an agent for service of process in the United States. See, e.g., Exchange Act Rule 14d-1(c)(3)(iii).

⁴¹ 15 U.S.C. 78r. See also, the Cross-Border Adopting Release, Section II.A.2. However, an acquiror or other person submitting Form CB is

A bidder relying on the Tier I exemption must submit a Form CB only if the tender offer would have been subject to Regulation 14D⁴² or Rule 13e-4, but for the Tier I exemption. No filing requirement exists for a tender offer subject only to Exchange Act Section 14(e) and Regulation 14E; accordingly, furnishing a Form CB is not necessary.⁴³

Where U.S. holders own more than ten percent but no more than 40 percent of the target securities (Tier II), the cross-border exemptions provide targeted relief from some U.S. tender offer rules to address certain recurring areas of regulatory conflict. The Tier II exemptions encompass narrowly-tailored relief from certain U.S. tender offer rules, such as the prompt payment, extension and notice of extension requirements in Regulation 14E. The Tier II exemptions do not provide relief from the registration requirements of Securities Act Section 5, nor do they include an exemption from the additional disclosure requirements applicable to going private transactions by issuers or affiliates.

The scope of the Tier I and Tier II cross-border exemptions and the exemptions from the Securities Act registration requirements provided in Rules 801 and 802 are based broadly on the level of U.S. interest in a given transaction, as illustrated by the percentage of shares held by U.S. persons. In addition to these U.S. ownership thresholds, the cross-border exemptions are conditioned on other requirements, such as the principle that U.S. target security holders be permitted to participate in the offer on terms at least as favorable as those afforded other target holders.⁴⁴ This approach differs from our approach in adopting revisions to the deregistration rules applicable to foreign private issuers in 2007⁴⁵ and more recently, in our proposed revisions to Rule 12g3-2(b) recommending the

subject to U.S. anti-fraud provisions. See footnote 34 above.

⁴² Exchange Act Rules 14d-1 through 14d-11.

⁴³ See Cross-Border Adopting Release, Section II.A.2. Regulation 14E applies to all tender offers, including those not subject to Section 13(e) or 14(d) of the Exchange Act. These include tender offers for non-equity securities and securities that are not registered under Section 12 of the Exchange Act [15 U.S.C. 78l], as well as partial offers for less than all of the subject class, where the bidder will not own, based on purchases in the tender offer and ownership in the target before the offer commences, more than five percent of the subject class of equity securities after the tender offer.

⁴⁴ Securities Act Rules 801(a)(3) and 802(a)(2) [17 CFR 230.801(a)(3) and 230.802(a)(2)]; Exchange Act Rules 13e-4(h)(8)(ii) and (i)(2)(ii); and 14d-1(c)(2) and (d)(2)(ii).

⁴⁵ See the Deregistration Release.

²⁹ *Id.*

³⁰ *Cross-Border Tender and Exchange Offers, Business Combinations and Rights Offerings*, Release No. 33-7759, 34-42054 (October 22, 1999) [64 FR 61382] ("Cross-Border Adopting Release"). In this release, we refer to the cross-border exemptions adopted in the Cross-Border Adopting Release as the "cross-border exemptions." The cross-border exemptions may be found in Securities Act Rules 800-802 [17 CFR 230.800-802] and Exchange Act Rules 13e-3(g)(6) [17 CFR 240.13e-3(g)(6)], 13e-4(h)(8) [17 CFR 240.13e-4(h)(8)], 13e-4(i) [17 CFR 240.13e-4(i)], 14d-1(c) [17 CFR 240.14d-1(c)], 14d-1(d) [17 CFR 240.14d-1(d)], and 14e-2(d) [17 CFR 240.14e-2(d)].

³¹ See *International Tender and Exchange Offers*, Release No. 33-6897 (June 5, 1991) [56 FR 27582] and *Cross-Border Rights Offers; Amendments to Form F-3*, Release No. 33-6896 (June 4, 1991) [56 FR 27564]. Additionally, we addressed a number of issues presented in the cross-border context in a concept release in 1990. See *Concept Release Multinational Tender and Exchange Offers*, Release No. 33-6866 (June 6, 1990) [55 FR 23751].

³² Where we refer in this release to "relief," we mean exemptive or no-action relief provided by letter in the context of an individual transaction, unless otherwise indicated. See footnote 49 below referring to the staff's delegated authority to provide exemptive relief from U.S. rule provisions for specific cross-border transactions. Where we refer to "interpretive guidance," we mean oral positions taken by the staff or written interpretations promulgated by the Division of Corporation Finance in the Manual of Publicly Available Telephone Interpretations available on our Web site. We refer to "Commission guidance" or "Commission interpretive guidance" to mean positions expressed by the Commission in releases.

use of an average daily trading volume test ("ADTV").⁴⁶

B. Summary of Rule Proposals and Interpretive Guidance

We believe the existing cross-border exemptions have facilitated the inclusion of U.S. security holders in foreign transactions in a manner consistent with our investor protection mandate.⁴⁷ We recognize that in some instances, however, the exemptions are not operating as optimally as intended, or do not address continuing and recurring conflicts of law and practice not anticipated when we adopted them.⁴⁸ As a result, companies repeatedly call upon the Commission's staff to address particular areas of conflict in the context of individual cross-border transactions.⁴⁹

The rule revisions we propose today address recurring issues and unintended consequences that have impeded the usefulness of the cross-border exemptions. We believe the proposed changes will encourage more offers to be extended into the United States. Generally speaking, the proposed revisions represent an expansion and refinement of the current exemptions,

and in some areas, would codify relief previously granted only on an individual basis. Our proposed codification of various staff interpretive positions would make such relief available as a matter of right, thereby reducing the burdens and costs for bidders and issuers of extending cross-border offers to U.S. holders when conducting cross-border transactions.

In some instances, the changes we propose would address practical problems that have limited the ability of bidders and issuers to rely on the exemptions. For example, we hope the proposed changes relating to the calculation of U.S. ownership of the target foreign private issuer will provide greater certainty and ease of use for those seeking to rely on the exemptions. In proposing these rule revisions, we hope to better address the burdens on bidders and issuers who must comply with two or more regulatory systems in the context of cross-border transactions.⁵⁰ As a result, we hope the revisions we propose today will make bidders more likely to extend offers to U.S. holders.

In this release, we also provide guidance on some of the interpretive issues that have arisen during the years since the cross-border exemptions were adopted. In some instances, we propose to codify existing staff interpretive positions. We also discuss our views on some of the interpretive matters addressed in the 1998 Cross-Border Proposing Release and the Cross-Border Adopting Release. The rule changes we propose today include:

- Refinement of the tests for calculating U.S. ownership of the target company for purposes of determining eligibility to rely on the cross-border exemptions in both negotiated and hostile transactions, including changes to:

- Use the date of public announcement of the business combination as the reference point for calculating U.S. ownership;

- Permit the offeror to calculate U.S. ownership as of a date within a 60-day range before announcement;

- Specify when the offeror has reason to know certain information about U.S. ownership that may affect its ability to rely on the presumption of eligibility in non-negotiated tender offers;

- Expanding relief under Tier I for affiliated transactions subject to Rule 13e-3 for transaction structures not covered under our current cross-border exemptions, such as schemes of arrangement, cash mergers, or compulsory acquisitions for cash;

- Extending the specific relief afforded under Tier II to tender offers not subject to Sections 13(e) or 14(d) of the Exchange Act;

- Expanding the relief afforded under Tier II in several ways to eliminate recurring conflicts between U.S. and foreign law and practice, including:

- Allowing more than one offer to be made abroad in conjunction with a U.S. offer;

- Permitting bidders to include foreign security holders in the U.S. offer and U.S. holders in the foreign offer(s);
- Allowing bidders to suspend back-end withdrawal rights while tendered securities are counted;

- Allowing subsequent offering periods to extend beyond 20 U.S. business days;

- Allowing securities tendered during the subsequent offering period to be purchased within 14 business days from the date of tender;

- Allowing bidders to pay interest on securities tendered during a subsequent offering period;

- Allowing separate offset and proration pools for securities tendered during the initial and subsequent offering periods;

- Codifying existing exemptive orders with respect to the application of Rule 14e-5 for Tier II tender offers;

- Expanding the availability of early commencement to offers not subject to Section 13(e) or 14(d) of the Exchange Act;

- Requiring that all Form CBs and the Form F-Xs that accompany them be filed electronically;

- Modifying the cover pages of certain tender offer schedules and registration statements to list any cross-border exemptions relied upon in conducting the relevant transactions; and

- Permitting foreign institutions to report on Schedule 13G to the same extent as their U.S. counterparts, without individual no-action relief.

In addition to these proposed rule changes, we provide guidance or solicit commenters' views on the following issues:

- The ability of bidders to terminate an initial offering period or any

⁴⁶ See the Rule 12g3-2(b) Release and the discussion in Section II.A.4 below.

⁴⁷ Another area in which we have modified our rules in the foreign private issuer context is the Multijurisdictional Disclosure System ("MJDS") with Canada. See Exchange Act Rule 14d-1(b). That system allows a bidder in a cross-border tender offer to conduct its offer in accordance with Canadian rules and/or the rules of any applicable Canadian province instead of U.S. tender offer requirements, where the conditions in the rule are met. These include the requirement that the target company in the tender offer be a foreign private issuer and not an investment company, and that U.S. holders own less than 40 percent of the subject securities. The bidder must file its offer materials, prepared in accordance with Canadian requirements, on Form 14D-1F [17 CFR 240.14d-102] with the Commission. See Rule 14d-1(b)(1). MJDS also specifies certain forms to be used by Canadian companies issuing securities to U.S. persons. See, e.g., Forms F-8 [17 CFR 239.38], F-9 [17 CFR 239.39], F-10 [17 CFR 239.40], and F-80 [17 CFR 239.41]. Except for limited solicitations of comment below, this release does not propose changes to MJDS.

⁴⁸ For a general discussion of the cross-border exemptions and a broad overview of how they operate, see Steven Davidoff & Brett Carron, "Getting U.S. Security Holders to the Party: The SEC's Cross-Border Release Five Years On," 26.3 U. Pa. J. Int'l Econ. L. 455 (2005); and John Basnage, William Curtin III & Jeffrey Rubin, "Cross-Border Tender Offers and Other Business Combination Transactions and the U.S. Federal Securities Laws: An Overview," 61.3 Business Lawyer 1071 (2006).

⁴⁹ Pursuant to Rule 30-1 of the SEC's Rules of General Organization [17 CFR 200.30-1], the staff has delegated authority to exempt individual bidders and issuers from application of our rules. No-action and exemptive letters issued by the staff in connection with cross-border transactions may be found on our Web site at <http://www.sec.gov/divisions/corpfin/cf-noaction.shtml> and <http://www.sec.gov/divisions/marketreg/mr-noaction.shtml#rule14e5>.

⁵⁰ Although the focus of the rule changes we propose is cross-border business combinations, in some instances, we solicit comment on whether certain of these changes should also apply to business combinations where the target company is a U.S. issuer. We may adopt these changes at the time we adopt changes to our cross-border business combination rules. For example, we ask for comments on whether the rule changes we propose to facilitate "mix and match" tender offers and the relaxation of the our rules relating to subsequent offering periods also should apply to tender offers for domestic companies.

voluntary extension of that period before a scheduled expiration date;

- The ability of bidders in tender offers to waive or reduce the minimum tender condition without providing withdrawal rights;

- The application of the all-holders provisions of our tender offer rules to foreign target security holders;

- The ability of bidders to exclude U.S. target security holders in cross-border tender offers; and

- The ability of bidders to use the vendor placement procedure for exchange offers subject to Section 13(e) or 14(d) of the Exchange Act.

II. Discussion

A. Eligibility Threshold—Determining U.S. Ownership

Business combination transactions are extraordinary events for target companies and their security holders. When U.S. persons hold a significant percentage of a target's securities in a cross-border business combination transaction, we believe U.S. tender offer and other rules should provide certain basic protections in transactions that will significantly impact their ownership interest in that target company.⁵¹ When U.S. persons do not hold a significant stake in the subject target class, we believe that by allowing the acquiror to conduct the transaction in accordance with the applicable foreign law, while including U.S. persons and treating them at least as favorably as all other target holders, U.S. persons are better protected than they would be if the acquiror chose to exclude them from the transaction so that the transaction would not be subject to U.S. regulations.

When we adopted the cross-border exemptions, we established a threshold eligibility test for use of the exemptions based on the percentage of target shares held by U.S. persons.⁵² The current test, based on the level of U.S. ownership in

the target company, has worked well conceptually. However, we have become aware of certain difficulties that can make application of our threshold eligibility test problematic in practice, including issues that can arise when conducting both the look-through analysis for negotiated transactions and the alternate test for non-negotiated deals, as discussed below. We believe the recommended changes will enhance the utility of the cross-border exemptions because they will make it easier for bidders and issuers to determine whether they are eligible to rely on them.

1. Methods for Determining U.S. Ownership Under the Existing Cross-Border Exemptions

a. Negotiated Transactions

As discussed above, under our current rules, eligibility to rely on the cross-border exemptions is determined in part by the percentage of U.S. beneficial holders of the relevant class of target securities.⁵³ U.S. ownership of the target company is determined by reference to the target's non-affiliated float⁵⁴ and holders of greater than ten percent of the subject class are excluded from the calculation of U.S. ownership.⁵⁵ Any securities held by the acquiror in the business combination transaction similarly are excluded from the calculation.⁵⁶

The rules specify the manner in which a bidder in a negotiated transaction must determine which target securities are held by persons resident

in the United States.⁵⁷ They require the acquiror to "look through" securities held of record by nominees in specified jurisdictions to identify those held for the accounts of persons located in the United States.⁵⁸ If after "reasonable inquiry," the acquiror is unable to obtain information about the location of the security holders for whom a nominee holds, the rules allow the acquiror to assume that the customers are residents of the jurisdiction in which the nominee has its principal place of business.⁵⁹ The relevant date for determining U.S. ownership is the 30th day before a benchmark date that varies with the type of transaction for which the exemption is sought.⁶⁰

b. Non-Negotiated Transactions

In adopting the eligibility standard for negotiated transactions described in the preceding section, we recognized that the required look-through analysis would be more difficult for third-party offerors in non-negotiated transactions because they would not have the cooperation of the issuer.⁶¹ In particular, obtaining information from nominees who hold for the account of others is difficult for third-party acquirors and may have the effect of alerting the market to a contemplated offer before the acquiror wishes to make

⁵⁷ See Instruction 2 to Exchange Act Rules 13e-4(h)(8) and (i), and 14d-1(c) and (d); Securities Act Rule 800(h).

⁵⁸ See, e.g., Instruction 2.iii. to Exchange Act Rules 14d-1(c) and 14d-1(d) (instructing the bidder to limit its inquiry as to securities held in nominee form to nominees located in the United States, the subject company's jurisdiction of incorporation and the jurisdiction that is the primary trading market for the subject securities, if different from the target's jurisdiction of incorporation). We recently revised the rule pertaining to termination of registration to include a definition of "primary trading market" that may include trading in more than one foreign market. See Exchange Act Rule 12h-6(f)(5) [17 CFR 240.12h-6(f)(5)]. This does not change the meaning of "primary trading market" as used in the cross-border exemptions and in the instruction to the definition of foreign private issuer in Exchange Act Rule 3b-4 and Securities Act Rule 405 [17 CFR 230.405]. An acquiror's or issuer's obligation to look through nominees in calculating U.S. ownership continues to be limited to the jurisdiction of the single, principal foreign trading market for the target's securities, if different from the target's jurisdiction of incorporation.

⁵⁹ See Securities Act Rule 800(h)(3) and Instruction 2.iv. to Exchange Act Rules 13e-4(h)(8) and (i), and 14d-1(c) and (d).

⁶⁰ See Instruction 2.i. to Exchange Act Rules 13e-4(h)(8) and (i), and 14d-1(c) and (d) (specifying that U.S. ownership must be calculated as of the 30th day before commencement of a tender offer). For the Securities Act Rule 801 and 802 exemptions, see Rule 800(h) (stating that U.S. ownership must be calculated as of the record date for a rights offering or as of the 30th day before the commencement of an exchange offer or the solicitation for a business combination other than a tender offer).

⁶¹ See discussion in the Cross-Border Adopting Release, Section II.F.3.

⁵¹ We believe these protections are even more critical in cross-border tender offers, where home country law may not allow acquirors to eliminate minority security holders under the same circumstances as in the United States. For example, in some foreign jurisdictions, the ability of bidders to "squeeze out" target security holders remaining after a tender offer may be more limited than in the United States, where this generally will be accomplished whenever the bidder purchases a majority of target shares. See discussion in footnote 155 below. Therefore, a decision whether to tender into an offer and the procedural protections associated with that offer may be even more critical, because target security holders who remain after the offer may not be cashed out in a back-end merger, as would be typical in the United States.

⁵² For rights offerings, eligibility to rely on Rule 801 is determined by the percentage of subject securities of the issuer held by U.S. persons. See Securities Act Rule 800(h).

⁵³ Note that in response to inquiries from U.S. bidders regarding the availability of Securities Act Rules 801 and 802 when there are no U.S. holders in the issuer (in a rights offering) or subject company (in an exchange offer or other business combination), or when an offer is not extended to U.S. holders, the Division of Corporation Finance has taken the position that the cross-border exemptions do not apply unless there is at least one U.S. security holder of the subject class of securities. See Section II.C. Question 1 in the Third Supplement to the Division of Corporation Finance's Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interp/telephone/phonesupplement3.htm>. This is consistent with the intent of the exemptions: to facilitate the inclusion of U.S. security holders of foreign private issuers in business combinations and rights offerings.

⁵⁴ We use "float" to refer to the aggregate market value of the subject securities held by non-affiliates. See generally, the definition of "Small Business Issuer" in Securities Act Rule 405 [17 CFR 230.405] and the Note to that provision. We do not include in that definition securities held by persons or entities that individually own more than ten percent of the subject securities.

⁵⁵ See Instruction 2.ii. to Exchange Act Rules 13e-4(h)(8) and (i), and 14d-1(c) and 14d-1(d). See also Securities Act Rule 800(h)(2).

⁵⁶ *Id.*

its intentions known. For that reason, the cross-border exemptions include a presumption available for non-negotiated or "hostile" transactions.⁶² The "hostile presumption" allows a third-party bidder in a non-negotiated tender or exchange offer to assume that U.S. ownership in the target company is no more than ten percent or 40 percent, the thresholds for Tier I and Rule 802, and Tier II respectively, so long as average daily trading volume in the United States does not exceed ten percent or 40 percent of the average daily trading volume worldwide over a twelve-month period ending 30 days before commencement, and the bidder has no reason to know that actual U.S. ownership is inconsistent with that figure (either based on the issuer's informational filings with the Commission or foreign regulators or based on the bidder's actual or imputed knowledge from other sources).⁶³

2. Current Eligibility Test for Negotiated Transactions

a. Concerns

Although we believe the current tests for determining eligibility to rely on the cross-border exemptions generally have worked well, changes in several areas would be appropriate to address timing and informational restrictions that have impeded the application of the current exemptions. Many of these problems relate to the threshold eligibility determination for negotiated transactions.

In particular, the requirement that U.S. ownership be calculated as of the 30th day before the commencement of a tender offer or exchange offer, or before the solicitation for other kinds of business combination transactions⁶⁴

presents practical difficulties for acquirors in certain jurisdictions. In some countries, the look-through analysis we require for negotiated transactions takes longer than 30 days to perform.⁶⁵ Numerous acquirors have advised us that in some jurisdictions, it is not possible to calculate U.S. ownership as of a set date in the past. In others, information about the location of target security holders is only published at fixed intervals.⁶⁶ Additionally, the exact date of commencement is not within the control of the acquiror in some jurisdictions.⁶⁷ In recognition of these problems, issuers have sought guidance from the staff regarding the date of calculating U.S. ownership for purposes of determining eligibility to rely on the cross-border exemptions. The staff has stated that, where the 30th day before commencement is impracticable for reasons outside of the acquiror's control the acquiror may use the date within the 30-day period before commencement that is as close as possible to the 30th day.⁶⁸ However, the staff continues to receive inquiries from acquirors who cannot definitively use a date within the 30 days before commencement because of logistical problems in the time needed to conduct the mandated look-through analysis, or because of the regulatory review process.⁶⁹ In the case of an exchange offer where the acquiror will issue securities in exchange for target securities, more than 30 days may

be needed to prepare offering materials and complete the regulatory review process.

The reference date for assessing U.S. ownership under the cross-border exemptions also creates logistical problems in certain cases. The current exemptions key the determination of U.S. ownership to the date of commencement of the tender offer or the commencement of the solicitation for other types of business combinations, or to the record date for a rights offering.⁷⁰ If the announcement of the transaction predates the commencement by more than 30 days, an acquiror will not know with certainty when it announces a transaction whether it will be eligible to rely on the cross-border exemptions at all, or whether it will be eligible for Tier I/Rule 802 or Tier II. The staff has been advised that this is problematic in some foreign jurisdictions because by law, the announcement must provide detailed information about the transaction, including information about how U.S. target security holders will be treated.⁷¹ Even where such information is not legally required at the time of announcement, issuers may wish to inform target security holders and the market at large of this information.

In addition, keying the look-through analysis to commencement creates a discrepancy for purposes of the exemption from Rule 14e-5. Rule 14e-5 generally prohibits purchases of target securities outside of a tender offer from the date of announcement of that offer through its expiration.⁷² Tender offers conducted in reliance on the Tier I exemption are exempt from the application of Rule 14e-5.⁷³ However, because Rule 14e-5 applies from the date of announcement of the tender offer, a bidder will not necessarily know at the time of announcement whether it will qualify for the cross-border exemptions as of the 30th date before commencement.

Finally, from time to time the suggestion is made that excluding holders of greater than ten percent of the

⁶² We distinguish a "hostile" tender offer from one made pursuant to an agreement with the target company, which we refer to as a negotiated or recommended transaction.

⁶³ See, e.g., Instruction 3.i.-iv. to Exchange Act Rules 14d-1(c) and 14d-1(d) (stating that the presumption is available unless the aggregate trading volume in the U.S. exceeds certain levels, or the bidder knows or should know that actual levels of U.S. ownership exceed the ceiling for the applicable exemption). The instruction, as currently written, refers to the Nasdaq market and the trading volume of securities on the over-the-counter (OTC) market as reported to the NASD, but since the adoption of Exchange Act Rules 14d-1(c) and 14d-1(d) and the corresponding instruction, the Nasdaq market has become an exchange, the NASDAQ OMX Group, Inc. Additionally, the trading volume of securities on the OTC market is now reported to the Financial Industry Regulatory Authority, Inc., or FINRA, which was created through the consolidation of the NASD and the member regulation, enforcement and arbitration functions of the NYSE. We therefore propose a technical change to the rules to reflect these changes.

⁶⁴ See Securities Act Rule 800(h)(1), Instruction 2.i. to Exchange Act Rules 13e-4(h)(8) and 13e-4(i), and Instruction 2.i. to Rules 14d-1(c) and 14d-1(d).

⁶⁵ See, e.g., *Serono S.A.* (September 12, 2002) ("*Serono S.A.*") (stating that approximately six to eight weeks is necessary to complete a look-through analysis to obtain information about the level of U.S. beneficial ownership of a French company).

⁶⁶ See Section I.I.E. Question 8 in the Third Supplement to the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interp/telephone/phonesupplement3.htm>.

⁶⁷ In some foreign jurisdictions, for example, a bidder is obligated to commence an offer within a certain number of days of receiving home country regulatory approval of its offer materials. As noted above, bidders cannot always obtain information about U.S. ownership as of a date in the past; rather, they can request that information only as of a current date going forward 30 days to the anticipated date of commencement. When the date of commencement is uncertain, it becomes difficult for offerors to comply with our rules.

⁶⁸ See Section I.I.E. Question 7 in the Third Supplement to the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interp/telephone/phonesupplement3.htm>.

⁶⁹ For example, shares of listed French companies are not certificated and the majority of such shares are held in bearer form, meaning that the only ownership records for such shares are maintained by Euroclear France, the French clearing system. It generally takes more than 30 days to request and analyze the position listing known as a "TPI report." See, e.g., *Alcan, Inc.* (October 7, 2003) ("*Alcan*") and *Equant N.V.* (April 18, 2005) ("*Equant N.V.*") and footnote 65 above.

⁷⁰ See Securities Act Rule 800(h)(1), Instruction 2.i. to Exchange Act Rules 13e-4(h)(8) and (i), and Instruction 2 to Exchange Act Rules 14d-1(c) and (d).

⁷¹ The staff has been contacted by counsel for bidders in certain European countries with concerns about calculating U.S. ownership as of the date specified under current rules, where an announcement of the transaction must be made more than 30 days before commencement and under home country regulation the announcement must include detailed information about the treatment of U.S. target holders.

⁷² Exchange Act Rule 14e-5 [17 CFR 240.14e-5]. We propose to extend this exemption to encompass Tier II-eligible tender offers.

⁷³ Exchange Act Rule 14e-5(b)(10)(i).

subject securities disproportionately elevates the levels of U.S. ownership in target companies. In the 1998 Cross-Border Proposing Release, we proposed to exclude from the calculation of U.S. ownership securities owned by non-U.S. target holders who individually held more than ten percent of the subject class, on the grounds that such large investors were affiliates and the securities they held were not part of the target's public float.⁷⁴ When the exemptions were adopted, they excluded securities held by both U.S. and non-U.S. persons holding greater than ten percent of the target company's securities because of commenters' concerns that excluding only large non-U.S. holders, as originally proposed, would skew the U.S. ownership percentages upward.⁷⁵ We continue to receive feedback from various constituencies, however, that exclusion of large holders results in reduced eligibility to rely on the cross-border exemptions. We would be interested in commenters' views on this requirement under our current rules and whether it should be modified or eliminated.

Request for Comment

- Should we continue to exclude from the calculation of U.S. ownership target securities held by the acquiror in the contemplated transaction?
- Should we eliminate the requirement to exclude subject securities held by greater than ten percent holders in calculating U.S. ownership of the target company? Would U.S. interest in a transaction more appropriately be measured by considering all of the outstanding securities, without excluding large holders? Would changing the rule in this manner result in extending the exemptions to circumstances where U.S. investors could be adversely affected?
- Should we eliminate greater than ten percent holders only where such holders are otherwise affiliated with the issuer?
- Are there problems in determining who is a greater than ten percent holder that should be addressed in revised rules?
- If the requirement to exclude large holders is retained, is a greater than ten percent holding the appropriate level for exclusion? Should the percentage be higher, such as 15 or 20 percent?
- Is there any reason to eliminate the exclusion of greater than ten percent holders only for non-U.S. holders and

not for U.S. holders, or vice-versa? What would the impact of such change be on the number of companies eligible for Tier I or Tier II?

- Should we maintain the same tests, with the revisions proposed, but raise the maximum U.S. ownership level for Tier I and Rules 801 and 802 to 15 percent? What effect would this have on the number of cross-border transactions eligible to be conducted under these exemptions? Would expanding the availability of Tier I and Rules 801 and 802 be in the interests of U.S. investors?

b. Proposed Changes to the Eligibility Standard for Negotiated Transactions

We believe that by revising the eligibility tests for negotiated cross-border business combination transactions as proposed, we would eliminate many of the issues that have arisen. As discussed above, the first problem with the current test is the requirement that U.S. ownership be calculated as of a single, specified date. Accordingly, we propose that acquirors be permitted to calculate U.S. ownership within a specified 60-day range rather than using a single date.⁷⁶ This approach is consistent with the position taken by the staff interpretively in considering timing issues in the cross-border context.⁷⁷ It also would provide greater flexibility where the timing of a transaction is driven by market forces or a regulatory process that is, to some extent, outside the control of the acquiror.

While we propose to provide greater flexibility as to the date on which U.S. ownership in the target company may be assessed, we remain concerned about the possibility that a date for calculation would intentionally be chosen to present less than a representative picture of the target security holder base. The instructions to the cross-border exemptions make it clear that the exemptions are not available for any transaction or series of transactions that technically comply with our rules but are, in fact, part of a plan or scheme to evade them in practice.⁷⁸

⁷⁶ As discussed below, we also propose to change the reference point for calculation of U.S. ownership from commencement to announcement. We are not currently proposing a change to the requirement to calculate as of the record date for rights offerings. See Rule 800(h)(1).

⁷⁷ See, e.g., Section II.E. Questions 6, 7 and 8 in the Third Supplement to the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interps/telephone/phonesupplement3.htm>.

⁷⁸ See General Note 2 to Securities Act Rules 800, 801 and 802, Instruction 4 to Exchange Act Rules 13e-4(h)(8) and 13e-4(i), and Instruction 5 to Exchange Act Rules 14d-1(c) and 14d-1(d).

As discussed above, another logistical problem with the cross-border exemptions centers on the use of commencement as the triggering event for the calculation of U.S. ownership. We now propose to require that U.S. ownership be calculated within a 60-day period before the public announcement of the cross-border tender offer or business combination transaction.⁷⁹ For these purposes, public announcement generally means the same as in Instruction 5 to Rule 14d-2(b)(2).⁸⁰ By using announcement instead of commencement as the triggering event for purposes of the calculation, we hope to enable acquirors planning cross-border transactions to determine at an earlier point how they will treat U.S. holders.

This change also would allow the application of the exemptions to be based on the characteristics of the target security holder base before it is influenced by the announcement of the transaction.⁸¹ Further, it would permit acquirors to meet home country requirements, which may mandate that the acquiror include information about the treatment of U.S. holders in the announcement of the transaction. In addition, it would encourage bidders to provide the markets and target security holders with valuable information at an earlier stage in the transaction process, including alerting investors who may acquire the target company's securities after the announcement whether they will have the full protections of Regulations 14D and 14E.

Where U.S. ownership levels do not permit the acquiror to rely on the Tier I exemption or Rule 802, calculating the level before announcement would provide more time to plan and put together the necessary offering materials. For those who plan to rely on the Tier II exemption, the proposed change would afford more time to determine and seek any necessary

⁷⁹ See proposed revisions to Securities Act Rule 800(h)(1), Instruction 2.i. to Exchange Act Rules 13e-4(h)(8) and (i), and Instruction 2.i. to Exchange Act Rules 14d-1(c) and (d).

⁸⁰ Instruction 5 to Exchange Act Rule 14d-2(b)(2) [17 CFR 240.14d-2(b)(2)] states that "'public announcement' is any oral or written communication by the bidder, or any person authorized to act on the bidder's behalf, that is reasonably designed to, or has the effect of, informing the public or security holders in general about the tender offer."

⁸¹ See Section II.E. Question 6 in the Third Supplement to the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interps/telephone/phonesupplement3.htm> (discussing the rationale for why the staff has permitted announcement to be used as the reference point for calculating U.S. ownership in "pre-conditional offers" conducted under U.K. or Irish law).

⁷⁴ See 1998 Cross-Border Proposing Release, Section II.H.2.

⁷⁵ See Cross-Border Adopting Release, Section II.F.2.

exemptive or no-action relief. In addition, because announcement also is the triggering event for application of Rule 14e-5, this change would further harmonize Tier I and Tier II relief as it relates to that provision. However, we are aware that for some business combination transactions, several weeks or months may elapse between the time of announcement and commencement of the transaction, because of home country regulatory review or other reasons. The target security holder base, including the percentage of those securities held by U.S. persons, may change significantly between announcement and commencement. We do not propose to change the relevant date for calculation of U.S. ownership for rights offerings. Issuers will continue to calculate U.S. ownership as of the record date for a rights offering.⁸² Because issuers control the record date for rights offerings and generally have greater access to information about their own security holders, the test for calculating U.S. ownership for rights offerings has not been the subject of requests for relief. Therefore, we do not propose to change that test today.

The existing cross-border exemptions provide that where one acquiror is eligible to rely on a particular cross-border exemption based on the level of U.S. ownership in the target, a second acquiror who makes an offer for the same target company may rely on the same exemption.⁸³ We do not propose to change this result with the rule modifications we propose today. We believe it provides an important safeguard to place competing transactions on an equal footing with respect to calculation of U.S. ownership and eligibility to rely on applicable cross-border exemptions.

Request for Comment

- Should we revise the date as of which U.S. ownership is calculated for purposes of determining eligibility to rely on the cross-border exemptions for business combination transactions, as proposed?

- Should we revise the rules to provide for a range of dates as proposed, or should we continue to specify a date certain for the calculation? If we continue to specify a date certain, should we specify a date earlier than the 30th day before commencement? For example, should we specify the 30th day before announcement?

- Is a range of 60 days before announcement sufficient time to allow bidders and issuers maximum flexibility while avoiding the potential for manipulation of the calculation of U.S. ownership? Or would 75 or 90 days be more appropriate?

- Is announcement the appropriate reference point for determining eligibility to rely on the cross-border exemptions? Or should we retain commencement as the reference point? Are there other alternative reference points we should consider?

- Should we keep commencement as a reference point, but use a range, such as within 60 days before commencement?

- Is it appropriate to use announcement as the reference point, even where a significant period of time may elapse between announcement and commencement, and the makeup of the target security holder base may change in response to announcement or because of the lapse of time? Should we establish a limit on the period of time which may elapse between the reference point for calculation of U.S. ownership and the commencement of the business combination transaction?

- Should we change the date as of which U.S. ownership is calculated for rights offerings in the same or in a similar manner? If so, please explain what issues may arise under the current test and what changes should be made.

- If we adopt the proposed rule changes allowing bidders and offerors to choose a date within a range for purposes of the calculation of U.S. ownership, should we provide guidance on what dates may not be chosen because of an event or events significantly affecting the target security holder base? For example, if an event occurs that the bidder or offeror knows significantly impacted the U.S. ownership of the target securities within the relevant sixty-day range, but the bidder or offeror did not cause or contribute to such event, should the bidder or offeror be prohibited from using that date as the reference point for the calculation of U.S. ownership?

3. The Current Test for Non-Negotiated or Hostile Tender Offers

a. Concerns

Where a third-party tender offer is not made pursuant to an agreement between the bidder and the target company, the current cross-border exemptions allow a bidder to presume eligibility to rely on the exemptions based on a test outlined in our rules, which focuses on information readily available to the

bidder.⁸⁴ The hostile presumption was adopted in recognition of the difficulties third parties face in obtaining information about U.S. ownership without the cooperation of the target company.⁸⁵ Because issuers have greater access to information about their own security holders, the hostile presumption is not available for issuer tender offers.

The eligibility standard for hostile transactions is based in part on the trading volume of the target's securities in the United States, as compared to worldwide trading volume, over a 12-month period.⁸⁶ However, the presumption of U.S. ownership derived under the trading volume element of the test is qualified by information about U.S. ownership reported in the target's most recent annual report filed with the Commission or its home country regulators.⁸⁷ In addition, the bidder cannot rely on the hostile presumption if it knows or has reason to know that the actual level of U.S. ownership of the subject securities exceeds the relevant thresholds for Tier I and Tier II.⁸⁸ Knowledge or "reason to know" may come from sources other than reports filed with the Commission or the target's home country regulator and disqualifies the bidder from being able to rely on the cross-border exemptions.

These elements of the hostile presumption have resulted in certain issues in practice. First, acquirors appear to be uncertain about what constitutes "reason to know" with respect to the level of U.S. ownership of the target, other than information reported in filings with the Commission or the home country regulators. Acquirors have expressed uncertainty about whether they have any obligation, and if so, the extent of their obligation to seek out information about U.S. ownership levels. Questions also arise as to the timing of that knowledge. For example, because average daily trading

⁸⁴ See Securities Act Rule 802(c) and Instruction 3 to Exchange Act Rules 14d-1(c) and 14d-1(d).

⁸⁵ See Cross-Border Adopting Release, Section II.F.3.

⁸⁶ Securities Act Rule 802(c)(2) and Instruction 3.ii. to Exchange Act Rules 14d-1(c) and 14d-1(d). Trading volume in the hostile presumption is not calculated in the same way as the average daily trading volume used for purposes of deregistration and the threshold proposed for Rule 12g3-2(b). The trading volume in the hostile presumption is calculated using a 12-calendar-month period ending 30 days before commencement of the offer, although we propose to change this calculation to a 12-calendar-month period ending no later than 60 days before announcement of the offer, as discussed below.

⁸⁷ Securities Act Rule 802(c)(3) and Instruction 3.iii. to Exchange Act Rules 14d-1(c) and 14d-1(d).

⁸⁸ Securities Act Rule 802(c)(4) and Instruction 3.iv. to Exchange Act Rules 14d-1(c) and 14d-1(d).

⁸² See Securities Act Rule 800(h)(1).

⁸³ See, e.g., Exchange Act Rule 14d-1(d)(1)(ii). The second bidder may choose not to rely on the same exemption as the first bidder. See also Cross-Border Adopting Release, Section II.F.1.

volume is calculated as of the 12-calendar-month period ending 30 days before commencement,⁸⁹ acquirors often are unsure of whether their actual or imputed knowledge of U.S. ownership similarly should be as of that date.

It also is possible that targets may use the reporting and knowledge elements of the hostile presumption defensively. For example, targets that learn of a possible hostile offer could file reports preemptively with the Commission stating a percentage of U.S. ownership that precludes the hostile bidder's reliance on certain exemptions, or they may contact the bidder's counsel directly to assert levels of U.S. ownership that disqualify the bidder from relying on Tier I and Rule 802 in particular.⁹⁰ In the latter case, bidders have asked whether such an assertion as to U.S. ownership must be substantiated (and if so, how) in order to preclude reliance on the hostile presumption. Even when a target has filed a periodic report with the Commission indicating a certain percentage of U.S. ownership as a defensive measure, we have seen targets reduce those ownership figures when the transaction becomes recommended. These types of situations create a level of uncertainty for unsolicited bidders that may make it difficult to apply the presumption of U.S. ownership in unsolicited offers.

b. Proposed Changes to the Presumption for Non-Negotiated Transactions

Today we propose changes to the hostile presumption for determining eligibility to rely on the cross-border exemptions. First, we propose to clarify the "reason to know" element of that test.⁹¹ In the years since the adoption of the cross-border exemptions, bidders frequently have asked what constitutes "reason to know" information about U.S. ownership for purposes of the hostile presumption. We propose to amend our rules to specify that an acquiror has reason to know information that is publicly available. This would include information appearing in reports compiled by independent information service providers that generally are available to the public. However, neither our current rules nor the changes we propose today

affirmatively would require an acquiror seeking to rely on the hostile presumption to engage such a third-party service at its own expense.

The proposed rule also would make it clear that acquirors are presumed to know information about beneficial ownership reflected in filings by third parties with the Commission, such as beneficial ownership reports on Schedule 13D, 13F⁹² or 13G. Similarly, acquirors are presumed to know about similar reports filed by third parties in the target's home country and in the country of its primary trading market, if different. Acquirors may not ignore credible information about target securities held by U.S. persons from non-public sources, such as from investment bankers or other market participants, including the target company, from whom they receive information. As discussed below, however, such information would have to be available before announcement to disqualify the acquiror from relying on the hostile presumption.

We also propose to specify the time periods applicable to the hostile presumption. For purposes of the element of that test relating to the average daily trading volume calculation, we propose to modify the instruction to our rules to mandate a calculation over a twelve-calendar month period ending no later than 60 days before announcement.⁹³ This time period for calculation is the same as the period we are proposing for negotiated transactions. We believe it is appropriate that the time periods for measuring levels of U.S. ownership be comparable for both hostile and negotiated transactions.

We also propose to add a timing element to the other components of the hostile presumption test. These changes to the instructions and to the rules would provide that the acquiror's knowledge or "reason to know" refers to knowledge as of the date of announcement. As proposed, our rules would allow an acquiror to ignore conflicting information received after announcement.⁹⁴ These changes are intended to address our concern that some target companies may be manipulating their disclosure of U.S. ownership with respect to unsolicited offers. They also would eliminate uncertainties created by changes in the target's security holder base that may be

caused by the announcement of the offer.

Request for Comment

- Is it helpful to specify in the rule, as proposed, examples of information that the acquiror has reason to know, or should the rule remain more general?

- Would the clarifications we propose to the reason to know element of the test prevent the abuse of U.S. ownership information by targets? Are there currently sufficient safeguards to prevent misuse of this information?

- For purposes of the hostile presumption, should we change the date for comparison of the average daily trading volume of the target securities to a twelve-month period ending no later than 60 days before announcement, as proposed?

- Should we limit the knowledge or reason to know element of the test to the same time, as proposed, so that acquirors will not be disqualified from relying on the presumption if they learn of conflicting U.S. ownership information after the date of announcement? Or should we require acquirors to take into account any information they learn at any time before commencement?

- Would the proposed cut-off date for the actual knowledge test be disadvantageous for U.S. investors in the target company?

- Where the target asserts levels of U.S. ownership that are inconsistent with reliance on an applicable presumption in the context of a hostile transaction, should the rules provide any guidance on the extent to which such assertions must be substantiated? Should we allow acquirors to ignore such assertions by the target, absent adequate substantiation or in the face of conflicting information known to the acquiror?

- If the rule changes are adopted as proposed, should we make corresponding changes to the date of comparison in the "actual knowledge" element of the test for the MJDS with Canada?⁹⁵

- Should we decline to make any changes in the reason to know element of the hostile presumption, leaving acquirors to assess the facts and circumstances in a specific situation on a case-by-case basis?

4. Possible New Eligibility Standards for Negotiated and Hostile Transactions

Instead of adopting the proposed changes to our current eligibility standards for hostile and negotiated cross-border business combinations

⁸⁹ Securities Act Rule 802(c)(2) and Instruction 3.ii. to Exchange Act Rules 14d-1(c) and 14d-1(d).

⁹⁰ It also is possible that a target may attempt to provide information preemptively before announcement of a hostile bid, but we believe this may happen less frequently when the determination of U.S. ownership is made as of a date before announcement, because the negotiations may begin in a friendly manner.

⁹¹ Securities Act Rule 802(c)(4) and Instruction 3.iv. to Exchange Act Rules 14d-1(c) and 14d-1(d).

⁹² 17 CFR 249.325.

⁹³ See proposed revisions to Securities Act Rule 802(c)(2) and Instruction 2.ii. to Exchange Act Rules 14d-1(c) and (d).

⁹⁴ See proposed Securities Act Rule 802(c)(3) and (4) and Instructions 3.iii. and iv. to Exchange Act Rules 14d-1(c) and (d).

⁹⁵ See Exchange Act Rule 14d-1(b).

discussed above, we could adopt a different approach based on different measures of U.S. investor interest in target securities. For example, for negotiated transactions, we could consider a test based on twelve-month ADTV in the United States as compared to worldwide trading volume over the same period. Alternatively, we could consider a test based on the percentage of shares that are held in the form of ADRs. It is possible that there are other, more suitable tests that we have yet to identify. We could adopt an alternate test for business combination transactions only, or we could adopt it for both business combinations and rights offerings.

As discussed above, the existing hostile presumption available for non-negotiated business combination transactions contains an element based on a comparison of U.S. and worldwide ADTV,⁹⁶ and we have recently used this test as a reference in other areas.⁹⁷ Based on an analysis performed by the staff comparing U.S. beneficial ownership figures yielded by the look-through analysis mandated by our current rules to the figures that would result by using an ADTV-based measure, it appears that trading volume may not reflect beneficial holdings of U.S. investors in a target company. To perform this analysis, the staff considered negotiated business combination transactions conducted under the existing cross-border exemptions using the current look-through analysis and compared the resulting percentages of U.S. beneficial ownership with the figures that would have resulted using the ratio of U.S. to worldwide ADTV. Based upon the transactions considered, the analysis suggests that the correlation between the ADTV-based measure and the percentage of target securities beneficially held by U.S. persons is low.

Using such a test may result in target companies with significant U.S. ownership qualifying for the Tier I and Rules 801 and 802 exemptions. Where a bidder, including a U.S. company, is eligible to rely on the Tier I cross-border exemptions, it may issue securities without registration under Securities Act Rule 802. We are concerned that use of an ADTV test for eligibility to rely on the cross-border exemptions would allow bidders, including U.S. bidders, to issue significant amounts of bidder securities to U.S. holders, without the protections of registration. For cash

tender offers and other kinds of business combination transactions, we do not believe the requirements of the U.S. tender offer and other rules applicable to business combinations are onerous. Unlike continuing Exchange Act registration and reporting requirements, these rules apply to a single, discrete transaction and, in many instances, are specifically tailored to address potential conflicts with foreign law and practice.

We are concerned that extraordinary events in the life of a corporation, such as tender or exchange offers or other kinds of business combination transactions, may pose unique opportunities and risks to security holders that are not present in the context of deregistration, where we have adopted an ADTV test for measuring U.S. interest in a transaction, or exemption from Exchange Act Section 12(g) registration under Rule 12g3-2(b), where we have proposed an ADTV test. In a tender or exchange offer, where the bidder may present its offer directly to target security holders even where the target company itself does not support the offer, the disclosure and procedural protections of our rules provide critical safeguards for U.S. investors. Unlike capital-raising transactions, the interests of all target security holders, including U.S. holders, are affected by business combinations, whether or not they are permitted to participate in them. As noted above, the requirement to comply with U.S. rules for a business combination transaction is generally less burdensome than the continuous reporting requirements under the Exchange Act. For these reasons, we have historically viewed a test based on U.S. beneficial ownership of target securities as the approach that best aligns U.S. investor interests with application of our rules. Therefore, we are not proposing the use of an ADTV test to determine eligibility to rely on the cross-border exemptions.

Similarly, we are not currently proposing a test based solely on a measure of the percentage of target securities held in ADR form. When the current cross-border exemptions were proposed, we considered an eligibility standard that presumed that target securities held in ADR form were beneficially held by U.S. persons.⁹⁸ Commenters were critical of any presumption that securities held in ADR form were held only by U.S. persons.⁹⁹ An ADR-based test need not rest on a presumption that securities held in ADR

form are held by U.S. persons; rather, ADRs could, in general, be considered a proxy for U.S. beneficial ownership, or for a component (e.g., direct retail) of U.S. beneficial ownership. Since some foreign target securities are traded in direct share form in the United States, any test based on securities held in ADR form would be inapplicable to those companies.

We believe that information about the percentage of target shares held in ADR form is not currently readily accessible to third-party bidders in non-negotiated offers. The information might become available through the introduction of registrant disclosure requirements, however. In the case of such disclosure, an ADR-based test could provide a solution for both hostile and negotiated transactions. A weakness of the ADR-based measure is that, as discussed above, because some foreign target securities are traded in direct share form in the United States, any test based on securities held in ADR form would be inapplicable to those companies. We also would need to consider the relevant time period for which we would look at the percentage of target securities held in ADR form if such a test were to be considered, and whether ADRs held by the acquiror and large holders would continue to be excluded from the calculation of U.S. ownership under such a test. If we did not exclude ADRs held by the bidder, the bidder could potentially influence the percentage of such securities held by U.S. persons by changing the form of its securities held from ADRs into the underlying securities. We are interested in obtaining comments as to whether an ADTV test or a test based on target securities held in ADR form would be appropriate.

Request for Comment

- Is our continued focus on the percentage of target securities beneficially held by U.S. persons as the relevant test for measuring U.S. interest appropriate and in the best interests of U.S. investors?

- If we change the rules as proposed, would this alleviate sufficiently the practical difficulties with the calculation of U.S. ownership, so that our rules will be more workable and will better encourage and facilitate the inclusion of U.S. security holders in cross-border transactions? Or would there still be a reason to move from the current focus on the percentage of securities held by U.S. investors to another standard?

- Are there other practical difficulties involving the beneficial ownership

⁹⁶ See Securities Act Rule 802(c) and Instructions 3.i–iv. to Exchange Act Rules 14d–1(c) and 14d–1(d).

⁹⁷ See footnotes 45 and 46 above.

⁹⁸ See 1998 Cross-Border Proposing Release, Section II.H.1.

⁹⁹ See Cross-Border Adopting Release, Section II.F.1.

standard that we have not addressed and that it would be helpful to address?

- Should we propose a different test for Tier I and Tier II eligibility, based on U.S. ADTV compared to worldwide ADTV over a twelve-month period?

- Using U.S. ADTV compared to worldwide ADTV would likely result in many more transactions being eligible for Tier I, and some additional transactions being eligible for Tier II if we maintain the existing ten percent and 40 percent thresholds. Should the thresholds be adjusted so that the transactions eligible for the cross-border exemptions are equivalent, in terms of number of transactions eligible, before and after changing the eligibility test? If ADTV levels in the United States are very low even where beneficial ownership is high, should we adjust the thresholds to account for this situation? For example, should we lower the Tier I threshold to five percent? One percent? Less than one percent? If we do this, should we also adjust the thresholds in the hostile presumption correspondingly? What would be the appropriate adjustments for Tier II?

- Are there reasons for or against adopting an ADTV test? For example, would an ADTV test be an adequate measure for gauging U.S. retail versus institutional ownership of the target securities?

- Should we qualify the ADTV test based on other factors, such as an acquiror's actual knowledge or U.S. ownership as reported by the target?

- If we adopt an ADTV test, should we adopt the concept of "primary trading market" as defined in Exchange Act Rule 12h-6(f)(5)?¹⁰⁰ That is, should we establish the requirement that the issuer maintain a listing for the subject securities on one or no more than two exchanges in a foreign jurisdiction that, alone or together, constitute 55 percent of the trading in the subject securities over a specified period as a comparison point for U.S. trading volume? Should we adopt the concept that the "primary trading market" for the subject securities may encompass one or no more than two foreign markets, and if more than one market, the requirement that the aggregate trading volume in one of those two foreign markets must be greater than the trading volume in the U.S., as specified in Rule 12h-6(f)(5)?

- Should we propose a different test for Tier I and Tier II eligibility, based on the percentage of shares held in ADR form?

- Is the percentage of shares held in ADR form an effective proxy for U.S. investor ownership? For U.S.

institutional ownership? For U.S. direct retail investor ownership?

- Are there reasons why U.S. persons may choose to hold target securities in direct share form instead of holding ADRs?

- Under a test based on the percentage of shares held in ADR form, should Tier I and Tier II eligibility thresholds remain constant at their current values (10 percent and 40 percent), or should they change? What criteria should we use, and what evidence should we consult in establishing eligibility thresholds for Tier I and Tier II?

- If we adopt such a test, as of what date should we measure the securities held in ADR form? Should we exclude from the calculation ADRs held by certain persons, such as the bidder, as we do under our current test for some kinds of business combination transactions?

- How should we handle securities of foreign private issuers that trade in direct share form?

- If we adopt a test based on the percentage of shares held in ADR form, should we amend Form 20-F to require reporting of sponsored ADRs outstanding, so that targets, acquirors and their investors understand eligibility status? How costly or difficult would it be for the issuer to obtain information about the number of sponsored ADRs outstanding? If this information were reported only once each year in the Form 20-F, would the information be current enough for use in cross-border transactions that might occur months later?

- Are there reasons for or against adopting a test based on the percentage of shares held in ADR form?

- ADTV- and ADR-based standards may effectively place companies with no U.S.-traded securities in Tier I. What implications would this have for investor protection?

- If we move toward a different standard for determining U.S. interest, should this new standard apply only to companies with securities traded in the U.S., with the beneficial ownership standard continuing to apply to companies with no securities traded in the U.S.? Alternatively, for securities not traded in U.S. markets, do U.S. investors adequately understand the distinct risks of ownership?

- If we make any changes to the standard for determining Tier I and Tier II eligibility, should we also change the standard for the hostile presumption? Should we adopt this alternative standard for business combination transactions only, or should we adopt it

for both business combinations and rights offerings?

- If we change the standard, should we also change the standard for the tender offer rules in Rule 14d-1(b) under the MJDS with Canada?

- Should we propose a different eligibility test(s) for determining eligibility to rely on the cross-border exemptions? What general criteria are important in selecting a measure for U.S. investor interest, for the purposes of this rule? Several potential criteria are (i) the ease of public access to information related to the measure; (ii) the difficulty of manipulation of the measure; and (iii) the alignment of the measure with the percentage of target securities beneficially held by U.S. investors. Are these criteria appropriate? Are there others we should consider?

B. Proposed Changes to Tier I Exemptions

1. Expanded Exemption From Rule 13e-3

Rule 13e-3 establishes specific filing and disclosure requirements for certain kinds of affiliated transactions, because of the conflicts of interest inherent in such situations.¹⁰¹ Rule 13e-3 applies to these kinds of transactions by issuers or their affiliates, where the transactions would have a "going private" effect.¹⁰²

Cross-border transactions conducted by the issuer or its affiliates under Exchange Act Rules 13e-4(h)(8), 14d-1(c) and Securities Act Rule 802 are exempt from the requirements of Rule 13e-3.¹⁰³ The scope of the current Tier I exemption from Rule 13e-3 does not apply to some transaction structures commonly used abroad. These include schemes of arrangement,¹⁰⁴ cash mergers, compulsory acquisitions for

¹⁰¹ The kinds of transactions covered by Exchange Act Rule 13e-3 include tender offers, purchases of securities, mergers, reorganizations, reclassifications and sales of substantially all the assets of a company. See Rule 13e-3(a)(3)(i)(A)-(C). Rule 13e-3 requires that a Schedule 13E-3 be filed for these kinds of transactions. See Exchange Act Rule 13e-3(d)(1).

¹⁰² Exchange Act Rule 13e-3(a)(3)(ii) lists the effects that will cause the rule to apply to a specified transaction: (A) Causing any class of equity securities of an issuer which is subject to section 12(g) or section 15(d) of the Act to be held of record by less than 300 persons; or (B) causing any class of equity securities of the issuer which is listed on an exchange or quoted on an interdealer quotation system to no longer be so listed or quoted. For foreign private issuers engaged in transactions that would have a going private effect under our rules, we interpret Rule 13e-3 to apply where the transaction results in fewer than 300 security holders of record in the United States. See *Foreign Issuer Reporting Enhancements*, Release No. 33-8900 (February 29, 2008).

¹⁰³ Exchange Act Rule 13e-3(g)(6).

¹⁰⁴ We use this term to refer to a court-approved business combination transaction. See, e.g., U.K. Companies Act, Parts 26 and 27.

¹⁰⁰ See footnote 58 above.

cash,¹⁰⁵ and other types of transactions. We do not believe there is a reason for excluding these kinds of transactions from the exemption from Rule 13e-3, assuming they would otherwise qualify for Tier I. We believe the form of the transaction structure should not prevent an otherwise-eligible issuer or affiliate from relying on the Tier I exemption from Rule 13e-3. We therefore propose to expand the scope of the Tier I exemption from Rule 13e-3 to remove any restriction on the category of transactions covered.

The heightened disclosure requirements of Rule 13e-3 may represent a significant disincentive for acquirors to include U.S. security holders in cross-border transactions that do not currently fit within the Rule 13e-3(g)(6) exemption, particularly where U.S. holders make up no more than ten percent of the target shareholder base. In several instances, the staff has granted individual no-action requests for transaction structures not covered within the scope of current Rule 13e-3(g)(6), but which otherwise met the conditions for reliance on that exemption.¹⁰⁶ The revised rule we propose today is consistent with the staff's approach in these no-action letters.

We believe exempting acquirors from the application of Rule 13e-3 in Tier I-eligible transactions is consistent with our goal of facilitating the inclusion of U.S. investors in primarily foreign transactions. Therefore, we propose to eliminate the restriction on the kinds of cross-border transactions that qualify for the Tier I exemption from Rule 13e-3. The proposed rule would include within the exemption any kind of transaction that would otherwise meet the conditions for Tier I or Rule 802 eligibility.¹⁰⁷ By omitting reference to

specific kinds of transaction structures, we hope the revised exemption will focus on substance rather than form.

Request for Comment

- Should the proposed expansion of the Tier I exemption from Rule 13e-3 specify the particular types of affiliated transaction structures that will be exempt from Rule 13e-3, as the current rule does?

- If so, what kinds of transactions should be covered?
- Is it preferable to phrase the exemption more generally, as proposed, to avoid limiting the focus on the transaction structure? Are there any kinds of affiliated transactions that should not be included in the exemption?

2. Technical Changes to Rule 802

We are proposing a technical change to Rule 802 to clarify the application of Rules 802(a)(2) and (3). When read in context, it is clear that the term "issuer" in those rules is intended to refer to the "offeror" in an exchange offer. We believe it is appropriate to revise those rules to use the term "offeror" instead. This is consistent with the reference to "offeror" in Rule 802(c)(4). These revisions are not intended to change the scope or operation of the existing rule.

In some foreign jurisdictions, local rule or practice dictates that the offeror and the target company jointly prepare a single offer document that is disseminated to target holders. In other jurisdictions, the offeror may prepare the offer materials but they are disseminated by the target company. Our rule change is not intended to change the obligation of the offeror to submit the Form CB with attached offer materials, even where the offer document is technically distributed by another party to the transaction on its behalf.

C. Proposed Changes to Tier II Exemptions

As discussed above, the Tier II cross-border exemptions currently provide targeted relief from specific U.S. tender offer rules, where U.S. persons hold more than ten percent but no more than

40 percent of the relevant class of target securities.¹⁰⁸ The Tier II exemptions address certain common procedural and practical problems associated with conducting offers in accordance with two or more different regulatory regimes. This relief is limited in scope, in recognition of the substantial U.S. interest in such transactions.

Unlike the Tier I exemptions and the Rule 801 and 802 exemptions, the Tier II exemptions do not exempt third-party bidders or issuers from applicable U.S. filing, disclosure, dissemination and procedural requirements for tender offers or going-private transactions subject to Rule 13e-3. In addition, no exemption is provided from the filing and disclosure requirements of Schedules TO and 13E-3. Accordingly, no Form CB is required for Tier II cross-border tender offers. Unlike Securities Act Rules 801 and 802, the Tier II exemptions do not provide relief from the registration requirements of Section 5 of the Securities Act.

Since the adoption of the cross-border exemptions, we have become aware of specific areas in which the Tier II exemptions do not function as smoothly as intended. We also have identified other instances of conflict between U.S. and foreign regulation or practice which we believe warrant expanded relief. The no-action and exemptive letters issued for Tier II cross-border transactions since the adoption of the exemptions reveal a number of common areas in which further regulatory relief may be appropriate. By broadening the relief provided for Tier II-eligible transactions as we propose today, we hope to obviate the need for many of these individual requests for relief in the future. This expanded relief is specifically targeted and narrowly tailored, and as a result, we believe it maintains an appropriate balance between investor protection and the promotion of cross-border transactions, particularly in transactions involving target companies with significant levels of U.S. ownership.

Request for Comment

- In addition to the proposed revisions described below, are there other areas in which Tier II should be expanded to better address the needs of bidders and U.S. target security holders in cross-border tender offers?

- Are there areas in which the existing Tier II exemptions or the revisions we propose should be limited or modified?

¹⁰⁵ By "compulsory acquisition," we mean a transaction where an acquiror purchases the specified minimum percentage of target securities set by applicable law or the governing instruments of the target company, thereby allowing it to acquire any remaining target securities it does not own without the consent of the holders. A compulsory acquisition may occur after a tender offer for all target securities. A compulsory acquisition of target securities remaining after a tender offer will sometimes be exempt from the application of Exchange Act Rule 13e-3 under existing rules. See Exchange Act Rule 13e-3(g)(1).

¹⁰⁶ See, e.g., *SUNDAY Communications Ltd.* (November 1, 2006) (involving a scheme of arrangement); *SUNDAY Communications Ltd.* (November 7, 2005) (involving a privatization scheme); and *Equant N.V.* (involving a synthetic merger).

¹⁰⁷ In order to qualify for the Tier I exemption, an offer must meet the following requirements of Exchange Act Rules 13e-4(h)(8) and 14d-1(c): (i) The acquiree must be a foreign private issuer as defined in Rule 3b-4 of the Exchange Act; (ii) U.S. holders of the acquiree must hold ten percent or

less of the securities subject to the offer; (iii) the acquiror must submit an English language translation of the offering materials to the SEC under cover of Form CB and, in the case of an acquiror who is a foreign private issuer, submit to service of process on Form F-X; (iv) U.S. holders must be treated on terms at least as favorable as those offered to any other security holders of the acquiree; and (v) U.S. holders of the acquiree must be provided the offering circular or other offering materials, in English, on a comparable basis as non-U.S. acquiree security holders. See also Securities Act Rule 802(a).

¹⁰⁸ Exchange Act Rules 13e-4(i) and 14d-1(d).

1. Extend Tier II Relief Where Target Securities Are Not Subject to Rule 13e-4 or Regulation 14D

The Tier II exemptions apply to transactions governed by Regulation 14D and Rule 13e-4 under the Exchange Act.¹⁰⁹ As currently written, it is unclear whether the Tier II exemptions are available when a tender offer is not subject to those rules, *i.e.*, when the tender offer is governed by Regulation 14E¹¹⁰ only. We believe the Tier II exemptions should be available if the conditions specified in our rules are satisfied, and therefore we propose to amend the rules accordingly to clarify that the Tier II exemptions are available regardless of whether the target securities are subject to Rule 13e-4 or Regulation 14D.

Since the adoption of the Tier II cross-border exemptions, the staff has periodically received inquiries from offerors in tender offers that would have qualified for the Tier II cross-border exemptions, but for the fact that the tender offer was not subject to Rule 13e-4 or Regulation 14D. The staff has taken the position that bidders otherwise meeting the conditions for reliance on the Tier II cross-border exemptions may rely on that relief in making tender offers for a subject class of securities not subject to Rule 13e-4 or Regulation 14D, to the extent applicable. Today we propose to codify this position by changing the language of the Tier II exemptions to specifically expand the scope of the exemptions to these kinds of offers.¹¹¹

Some of the relief afforded under the Tier II exemptions will not be necessary in the case of offers not subject to Rule 13e-4 or Regulation 14D. For example, because our “all-holders”

requirement¹¹² does not apply to such offers, the Tier II provision permitting the use of the dual offer structure¹¹³ may be unnecessary. However, where the relief provided in Tier II is needed, we see no reason to restrict its application only to tender offers subject to Rule 13e-4 or Regulation 14D.

Request for Comment

- Is the proposed expansion of the application of the Tier II exemptions to tender offers not subject to Rule 13e-4 or Regulation 14D appropriate?
- Should we condition the proposed extension of the relief provided under Tier II on any other factors besides general eligibility to rely on the Tier II exemptions?
- Are there other areas in which we should provide targeted relief (other than those currently proposed for Tier II offers) for tender offers not subject to Rule 13e-4 or Regulation 14D?

2. Expand Tier II Relief for Dual or Multiple Offers

a. Offeror May Make More Than One Non-U.S. Offer

U.S. tender offer rules require that when a bidder makes a tender offer that is subject to Section 13(e) or 14(d) of the Exchange Act, that tender offer must be open to all target security holders of that class.¹¹⁴ The Tier II cross-border exemptions currently contain a provision permitting a bidder conducting a tender offer to separate that offer into two separate offers—one U.S. and one foreign—for the same class of securities.¹¹⁵ This exemption for dual offers provides bidders with maximum flexibility to comply with two sets of regulatory regimes and to accommodate frequent conflicts in tender offer practice between U.S. and foreign jurisdictions. By permitting the use of two separate but concurrent offers—one made in compliance with U.S. rules and the other conducted in accordance with foreign law or practice—the dual offer provision facilitates cross-border tender offers.

In practice, however, issues have arisen because of the language of the dual offer provision contained in the Tier II exemptions. First, the text of the exemption specifically permits only two offers for the target class of securities.¹¹⁶ Bidders may be required to (or may

wish to) make more than one offer outside of the United States. This may be the case, for example, where the primary trading market for the target's securities differs from the target's country of incorporation.¹¹⁷

We see no reason to limit a bidder to only two offers for target securities. Where a bidder is subject to more than one foreign regulatory scheme, greater potential for regulatory conflicts may exist. We note that companies have, upon request, received relief permitting multiple foreign offers.¹¹⁸ We propose to eliminate the restriction on the number of non-U.S. offers a bidder may make in a cross-border tender offer by changing the references to “dual offers” to refer instead to “multiple offers.”¹¹⁹

b. U.S. Offer May Include Non-U.S. Persons and Foreign Offer(s) May Include U.S. Persons

The existing Tier II dual offer exemption provides that the U.S. offer can be open only to security holders resident in the United States.¹²⁰ This limitation creates a problem because bidders frequently seek to include all holders of ADRs, not only U.S. holders, in the U.S. offer. In many instances, the target's home country regulations do not apply, by their terms, to ADRs.¹²¹ Similarly, the existing Tier II dual offer provision mandates that the foreign offer be available only to non-U.S. holders.¹²² The prohibition against permitting U.S. holders from participating in the foreign offer may conflict with the law of the target's home country if those rules do not permit the exclusion of any security holders, including those in the United States.¹²³

¹¹⁷ See, *e.g.*, *Mittal Steel Company N.V.* (June 22, 2006) (“Mittal”). This letter states that it may be relied upon by any similarly-situated offeror or affiliate meeting the conditions outlined in the letter.

¹¹⁸ See, *e.g.*, *Alcan; Asia Satellite Telecommunications Holdings Limited* (May 25, 2007); *BCP Crystal Acquisition GmbH & Co* (February 3, 2004) (“BCP”) and *Mittal* (providing relief for purchases outside of a U.S. offer for a tender offer that included more than one offer conducted outside of the United States).

¹¹⁹ See proposed Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹²⁰ Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹²¹ See, *e.g.*, *Portugal Telecom, SGPS, S.A.* (December 19, 2006) (“*Portugal Telecom*”) (noting that the provisions of the Portuguese Securities Code and the rules and regulations of the Portuguese Comissão de Mercado de Valores Mobiliários did not apply to the offer for ADSs of the target company listed on the New York Stock Exchange).

¹²² Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹²³ See, *e.g.*, *Gas Natural SDG, S.A.* (March 6, 2006) (involving Spanish law).

¹⁰⁹ Rule 13e-4 and Regulation 14D apply only to tender offers for equity securities. Regulation 14D applies only where the equity security that is the subject of the tender offer is registered under Section 12 of the Exchange Act, and where the bidder makes a partial offer for less than all of the outstanding securities of the subject class, where the bidder could own more than 5 percent of those securities when purchases in the tender offer are aggregated with its existing ownership of those securities. Rule 13e-4 applies to an issuer tender offer where the subject securities are not themselves registered under Section 12, but where the issuer has another class of securities that are so registered.

¹¹⁰ Exchange Act Rule 14d-1(a) defines the scope of Regulation 14E and currently includes within the scope of that regulation only Exchange Act Rules 14e-1 and 14e-2. Exchange Act Rule 14d-1(a) was not amended to reflect the increased scope of Regulation 14E, beginning with the adoption of Exchange Act Rule 14e-3 in 1980. See *Tender Offers*, Release No. 34-17120 (September 4, 1980) [45 FR 60410]. Today we propose a change to the definition of Regulation 14E in Rule 14d-1(a), to encompass Exchange Act Rules 14e-1 through 14e-8.

¹¹¹ See proposed Exchange Act Rules 13e-4(i) and 14d-1(d).

¹¹² See Exchange Act Rules 13e-4(f)(8) and 14d-10(a) [17 CFR 240.14d-10(a)].

¹¹³ Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹¹⁴ Exchange Act Rules 13e-4(f)(8) and 14d-10(a)(1).

¹¹⁵ Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii).

¹¹⁶ *Id.*

Companies frequently are forced to seek individual relief from the staff to address these issues.¹²⁴ The staff often has granted relief to permit a U.S. offer in a dual offer structure to include all holders of ADRs, including foreign holders.¹²⁵ We propose to change our rules so that acquirors will no longer need to seek individual relief to structure their offers in this manner. We are not aware of a transaction for which acquirors have sought to extend the U.S. offer to foreign target holders who do not hold in ADR form. Therefore, we are not proposing to allow these holders to participate in U.S. offers.

We also propose to change our rules to allow U.S. holders to participate in non-U.S. offers where required under foreign law and where U.S. holders are provided with adequate disclosure about the implications of participating in the foreign offer. When relief has been granted to permit the inclusion of U.S. persons in a non-U.S. offer, it has been conditioned on appropriate disclosure in the offer materials concerning the risks for U.S. holders of participating in the foreign offer.¹²⁶ Relief also has been conditioned on the existence of an express legal requirement in the foreign target company's home jurisdiction to include U.S. target holders.¹²⁷

Today we propose to change our rules to address these issues by revising the equal treatment provisions in Exchange Act Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii) to allow a U.S. offer to be made to U.S. target holders and all holders of American Depositary Receipts representing interests in the subject securities. The U.S. offer must be made on terms at least as favorable as those offered any other holder of the subject securities. We note that the proposed changes are not intended to enable an offer to be made only to holders of ADRs or only to holders of the underlying securities, where the target shares are registered under Section 12 or where Rule 13e-4 otherwise applies. We view ADRs and the underlying securities as a single class for purposes of our tender offer

and beneficial ownership reporting rules.¹²⁸

In addition, revised Rules 13e-4(i)(2)(ii) and 14d-1(d)(2)(ii) would provide that one or more foreign offers may be conducted in conjunction with a U.S. offer for the same subject securities. U.S. persons may be included in the foreign offer(s) only where the laws of the jurisdiction governing such foreign offer(s) expressly preclude the exclusion of U.S. persons from the foreign offer(s) and where the offer materials distributed to U.S. persons fully and adequately disclose the risks of participating in the foreign offer(s).

c. Proration and the Use of the Dual or Multiple Offer Structure

When a bidder makes a partial tender offer¹²⁹ subject to Section 13(e) or 14(d) of the Exchange Act, our rules require tendered securities to be purchased on a pro rata basis if the offer is oversubscribed.¹³⁰ This is to assure equal treatment of security holders who have tendered their securities.

We are not proposing a change to this requirement. We are clarifying that bidders relying on the dual offer provision in the Tier II exemptions to conduct separate U.S. and non-U.S. offers for less than all of a class of target securities must use a single proration "pool," in accordance with the existing requirements of our rules.¹³¹ This is not a change in how the staff has interpreted existing proration rules; however, it has come to our attention that in the past, certain bidders may have separately prorated tenders made into the U.S. and foreign offers.¹³² In this release, we clarify that where a bidder makes a partial tender offer for less than all outstanding target securities of a given class, and relies on the provision in Tier II allowing the use of a dual or multiple (as proposed) offer structure, the securities tendered into the U.S. and non-U.S. offers must be pro rated on an aggregate basis in order to comply with proration rules. Otherwise, if different proration factors were used, U.S.

security holders could be disadvantaged as compared to target holders tendering into a foreign offer.

Request for Comment

- Should we permit the use of multiple offers outside of the United States for Tier-II eligible tender offers?

- Should we allow all non-U.S. holders to be included in a U.S. offer, or only non-U.S. holders of ADRs, as proposed?

- Should we allow U.S. holders to be included in the foreign offer(s) open to target security holders outside of the United States?

- Should we permit this, as proposed, only when applicable foreign law does not allow exclusion of U.S. holders from the foreign offer, even where a concurrent U.S. offer is available to them?

- Is the requirement that the implications of participating in the foreign offer(s) be disclosed in the U.S. offering materials adequate to protect U.S. investors?

- Should we impose additional conditions on the ability of offerors to include U.S. target holders in the foreign offer(s)?

- Are there situations where bidders in cross-border tender offers should be permitted to separately pro rate securities tendered into U.S. and foreign offers?

3. Termination of Withdrawal Rights While Tendered Securities Are Counted

We are proposing rule revisions to eliminate issues relating to the "back-end" withdrawal rights required under Section 14(d)(5) of the Exchange Act and Rule 13e-4(f)(2)(ii) for tender offers conducted under the Tier II cross-border exemptions. Under today's proposed changes, new provisions would be added to the Tier II exemptions permitting the suspension of back-end withdrawal rights during the time after the initial offering period, when tendered securities are being counted and before they are accepted for payment.¹³³ Both of the back-end withdrawal rights provisions require bidders to provide withdrawal rights after a set date, measured from the commencement of a tender offer.¹³⁴

¹³³ See proposed Exchange Act Rules 13e-4(i)(2)(v) and 14d-1(d)(2)(viii).

¹³⁴ Section 14(d)(5) of the Exchange Act [15 U.S.C. 78n(d)(5)] states that "[s]ecurities deposited pursuant to a tender offer * * * may be withdrawn by or on behalf of the depositor at any time until the expiration of seven days after the time definitive copies of the offer * * * are first published or sent or given to security holders, and at any time after sixty days from the date of the original tender offer * * *, except as the Commission may otherwise

Continued

¹²⁴ See *Harmony Gold Mining Company Limited* (November 19, 2004) ("Harmony Gold 2004"); *Discount Investment Corporation Ltd.* (June 14, 2004); *Alcan; Serono S.A.; and Southern Cross* (March 5, 2002).

¹²⁵ See e.g., *Royal Bank of Scotland Group plc* (July 23, 2007) ("Royal Bank"); *E.ON Aktiengesellschaft* (December 6, 2006) ("E.ON"); *Koninklijke Ahold N.V.* (September 10, 2002).

¹²⁶ See, e.g., *Endesa, S.A.* (July 3, 2007) ("Endesa").

¹²⁷ *Id.*

¹²⁸ See *American Depositary Receipts*, Release No. 33-6894 (May 23, 1991) [56 FR 24420], Section II.D.2 (explaining that, for purposes of determining beneficial ownership reporting requirements under Section 13 of the Exchange Act, ADRs and the underlying securities are to be considered a single class). The staff takes the same view that they are one class for purposes of the tender offer rules.

¹²⁹ A "partial tender offer" is a tender offer where the bidder is offering to purchase less than all of the outstanding securities of that the subject class.

¹³⁰ See Section 14(d)(6) of the Exchange Act [15 U.S.C. 78n(d)(6)], and Rules 13e-4(f)(3) and 14d-8 [17 CFR 240.14d-8].

¹³¹ *Id.*

¹³² See *AES Corporation* (October 22, 2001) (advising against this practice in the context of a partial cross-border tender offer).

Thus, even where a tender offer has technically closed and tenders are no longer being accepted, back-end withdrawal rights may exist until the offeror accepts tendered shares for payment.¹³⁵

Section 14(d)(5) of the Exchange Act grants us the authority to modify the back-end withdrawal rights afforded under that provision.¹³⁶ We exercised this authority in adopting Rule 14d-11, which permits the use of a "subsequent offering period" during which securities may be tendered but not withdrawn.¹³⁷ Practical considerations influenced our willingness to modify the withdrawal rights provisions of Section 14(d)(5) for subsequent offering periods. Permitting withdrawal rights during a subsequent offering period, when tendered shares are required to be purchased on a "rolling" or as tendered basis,¹³⁸ would interfere with the payment process.

The Tier II cross-border exemptions provide that a bidder need not extend withdrawal rights from the close of the initial offering period and before the commencement of the subsequent offering period, where the bidder announces the results of the initial offering period and pays for tendered securities in accordance with home country law or practice, so long as the subsequent offering period begins immediately thereafter.¹³⁹ Due to similar practical considerations, we propose to extend this suspension of the back-end withdrawal rights provisions for all tender offers conducted under Tier II during the counting of tendered securities. This would allow withdrawal rights to be terminated at the end of an offer and during the counting process for bidders that do not provide a subsequent offering period.¹⁴⁰

prescribe by rules, regulations, or order as necessary or appropriate in the public interest or for the protection of investors." Exchange Act Rule 13e-4(f)(2)(ii) includes a similar mandate for issuer tender offers: "The issuer or affiliate making the issuer tender offer shall permit securities tendered pursuant to the issuer tender offer to be withdrawn * * * if not yet accepted for payment, after the expiration of forty business days from the commencement of the issuer tender offer." Where the tender offer is subject to Rule 13e-4 and Regulation 14D, bidders also must provide withdrawal rights during the "initial offering period." We do not propose to modify this requirement.

¹³⁵ Whether back-end withdrawal rights arise also will depend on the length of the tender offer period; if the initial offering period and the payment process are completed before such rights arise, back-end withdrawal rights will not be triggered.

¹³⁶ See footnote 134 above.

¹³⁷ Exchange Act Rule 14d-7(a)(2) [17 CFR 240.14d-7(a)(2)].

¹³⁸ Exchange Act Rule 14d-11(c) [17 CFR 240.14d-11(c)].

¹³⁹ Exchange Act Rule 14d-1(d)(2)(v).

¹⁴⁰ For example, the subsequent offering period structure is available for third-party offerors subject

Differences in the tender, acceptance and payment procedures between U.S. and foreign offers necessitate this relief. In a U.S. offer, tendering security holders generally tender their shares to a single exchange agent employed by the bidder.¹⁴¹ Thus, bidders generally are in a position to know at any point in the offering period the number of securities tendered. Because bidders know how many target securities have been tendered into the offer at the expiration, acceptance of tendered securities in a U.S. offer can occur almost immediately after the expiration of an offer.¹⁴² Therefore, bidders in domestic offers are able to terminate the back-end withdrawal rights almost immediately after expiration by accepting securities tendered (assuming all offer conditions have been satisfied or waived). Bidders can begin the payment process promptly after expiration of the offer, consistent with their obligations under U.S. law to pay promptly.¹⁴³

The mechanics of the tender process in non-U.S. tender offers are generally very different. Tenders often are made through many different financial institutions instead of through a single tender agent, as in the United States.¹⁴⁴ The process of centralizing and counting tendered securities therefore may take an extended period of time.¹⁴⁵ In some countries, entities other than the bidder or its agents undertake the counting process and the announcement of the result of the tender offer.¹⁴⁶

to Regulation 14D, but not for issuer tender offers subject to Exchange Act Rule 13e-4. Applicable foreign law may also impact a third-party offeror's ability to provide a subsequent offering period.

¹⁴¹ Tenders may be made through nominees, such as broker-dealers, who hold the target securities in "street name," or directly by the ultimate beneficial holder of the target securities.

¹⁴² See Exchange Act Rule 14e-1 [17 CFR 240.14e-1] (stating that a bidder must promptly pay for or return tendered securities after the expiration or withdrawal of a tender offer). According to Rule 14e-1(d), in a U.S. offer, the bidder has only until 9:00 a.m. Eastern time on the next business day after the expiration of the tender offer to announce the extension of the offer.

¹⁴³ "Prompt payment" in U.S. offers is generally understood to mean payment within three days of expiration. See *Guidance on Mini-Tender Offers and Limited Partnership Tender Offers*, Release No. 34-43069 (July 24, 2000) [65 FR 46581].

¹⁴⁴ See, e.g., *Technip, S.A.* (August 30, 2001) (describing the tender process through banks, and other financial institutions and intermediaries) and *Vodafone AirTouch Plc* (December 22, 1999) (noting that under German law, tenders of target securities could be made through any branch of over 300 depository banks through which such securities were held).

¹⁴⁵ See, e.g., *Business Object S.A.* (December 5, 2007).

¹⁴⁶ *Id.* (The letter states that once the French Offer has expired, securities tendered in the French Offer are "centralized" at Euronext, which then counts the total number of securities tendered. The

Because of these differences in procedure, the bidder in a cross-border tender offer may not know whether the minimum tender condition has been satisfied immediately after the end of the initial offering period. The bidder cannot accept tendered securities until all offer conditions, including the minimum tender condition, have been satisfied or waived and the counting process is completed.¹⁴⁷ We already have recognized that the mechanics of the tendering and counting regimes in other countries justifies different treatment under our rules,¹⁴⁸ and for the same reasons, we believe it is appropriate to provide an exemption in this area.

Bidders previously have sought relief from the back-end withdrawal rights provisions for Tier II cross-border tender offers, during the period in which tendered securities are being counted and until the announcement of the results of the offer, where no subsequent offering period is provided.¹⁴⁹ The relief requested generally is premised on the following factors:

- The initial offering period of at least 20 business days has expired, and withdrawal rights were provided during that period;
- All offer conditions, other than the minimum tender condition, are satisfied or waived as of the expiration of the initial offering period;¹⁵⁰ and
- Back-end withdrawal rights are suspended only during the period

Autorite des Marchés Financiers (the French regulator) then announces the results of the offer).

¹⁴⁷ While a bidder technically could accept tendered securities immediately after the expiration of a cross-border tender offer by waiving the minimum tender condition, we believe this would be a significant hardship for bidders and would negatively impact bidders' ability to conduct cross-border tender offers.

¹⁴⁸ See Exchange Act Rules 13e-4(i)(2)(iv) and 14d-1(d)(iv). As a result of the differences in process between the U.S. and various foreign jurisdictions, Tier II currently includes prompt payment relief to allow a bidder meeting the conditions of that exemption to pay for tendered securities in accordance with home country law or practice.

¹⁴⁹ See, e.g., *Barclays PLC tender offer for ABN AMRO Holding N.V.* (August 7, 2007) ("*Barclays*") (period of no longer than five Dutch trading days); *Endesa, S.A.* (when the tendered shares are being counted and until payment occurs, in accordance with Spanish law and practice); *Portugal Telecom* (three Portuguese business days after the special session of Euronext Lisbon); *E.ON* (when the tendered shares are being counted and until payment occurs, in accordance with Spanish law and practice); and *Bayer AG* (April 28, 2006).

¹⁵⁰ If a bidder counts the number of securities tendered as of the expiration date in determining whether the minimum acceptance condition has been satisfied, we view this condition as having been satisfied as of expiration. This is the case even though the counting process may, as a logistical matter, take some period of time after expiration to be completed.

necessary to centralize and count the tendered securities, and are reinstated immediately at the end of that process, to the extent they are not terminated by acceptance of tendered securities immediately afterwards.¹⁵¹

As proposed, both third-party bidders for securities of a foreign private issuer and foreign private issuers repurchasing their own securities would be permitted to suspend back-end withdrawal rights while tendered securities are being counted, even where no subsequent offering period is provided. The revised rules would be conditioned on the following factors:

- The Tier II exemption must be available;
- The offer must include an offering period, including withdrawal rights, of at least 20 U.S. business days;
- At the time withdrawal rights are suspended, all offer conditions have been satisfied or waived, except to the extent that the bidder is still counting tendered securities to determine if the minimum acceptance condition has been satisfied; and
- Withdrawal rights are suspended only during the necessary centralization and counting process period and are reinstated immediately thereafter, except to the extent that they are terminated by the acceptance of tendered securities.

Request for Comment

- Is it appropriate and in the best interests of U.S. investors to permit the suspension of back-end withdrawal rights, as proposed?
- Do the proposed conditions address bidders' practical concerns while still protecting tendering security holders?
- Should we permit back-end withdrawal rights to be suspended only during the counting process? Or should

this relief be provided through the announcement of the results of the tender offer?

4. Expanded Relief for Subsequent Offering Periods

Since the adoption of the cross-border exemptions, foreign requirements and practices relating to tender offers have frequently led to conflicts with the Commission's rule on subsequent offering periods.¹⁵² Today we propose to address some of the more common areas of conflict. The most frequent area of conflict relates to the maximum limit on the length of the subsequent offering period of 20 U.S. business days imposed by our rules.¹⁵³ In some instances, foreign law mandates a subsequent offering period of longer than 20 U.S. business days.¹⁵⁴ In other non-U.S. jurisdictions, market practice dictates a subsequent offering period of longer than 20 business days.¹⁵⁵ In these

¹⁵² Exchange Act Rule 14d-11. At the same time we adopted the existing cross-border exemptions, we also changed our rules for domestic tender offers to permit the use of subsequent offering periods. See *Regulation of Takeovers and Security Holder Communications*, Release No. 33-7760 (October 22, 1999) [64 FR 61408] ("Regulation M-A Adopting Release"). We made this change in part because of years of experience with the subsequent offering period in cross-border tender offers.

¹⁵³ Our rules permit (but do not require) a bidder in a third-party tender offer to provide a subsequent offering period of between three and 20 U.S. business days, under certain conditions. The conditions outlined in Exchange Act Rule 14d-11 are: (a) The initial offering period of at least 20 business days has expired; (b) the offer is for all outstanding securities of the class, and if the bidder offers security holders a choice of different forms of consideration, there is not a ceiling on any form of consideration offered; (c) the bidder immediately accepts and promptly pays for all securities tendered during the initial offering period; (d) the bidder announces the results of the tender offer by 9 a.m. Eastern standard time on the morning after expiration of the initial offering period and immediately begins the subsequent offering period; (e) the bidder immediately accepts and promptly pays for all securities as they are tendered in the subsequent offering period; and (f) the bidder offers the same form and amount of consideration in both the initial and subsequent offering periods.

¹⁵⁴ See, e.g., *Embratel Participacoes S.A.* (December 6, 2006) ("*Embratel*"); and *Barrick Gold Corp.* (January 19, 2006).

¹⁵⁵ See *RWE Aktiengesellschaft* (March 22, 2002) ("*RWE*") (noting that subsequent offering periods lasting significantly longer than 20 business days are the custom in Great Britain and are permitted under The City Code on Takeovers); *Serono S.A.* (noting that French law does not set a maximum for the number of days in a subsequent offering and requesting relief for a 30 trading day subsequent offering period, with immediate acceptance of tendered shares on an "as tendered" basis); *Rio Tinto plc* (July 24, 2007) ("*Rio Tinto*") (noting that Canadian law sets no maximum period for subsequent offering periods); *STATs ChipPAC Ltd.* (March 15, 2007) (relief for a subsequent offering period of up to four months from the commencement date); and *Harmony Gold 2004* (requesting relief for a subsequent offering of longer than 20 U.S. business days, as permitted under South African law and as is customary market practice in that jurisdiction).

jurisdictions bidders must seek relief to extend the permissible time period of their subsequent offering periods to reconcile U.S. rules with foreign law or customary practice.¹⁵⁶

We believe establishing a maximum time period for subsequent offering periods in cross-border tender offers is no longer necessary, in part because it creates unnecessary conflict between U.S. and foreign law or practice. Therefore, we propose to eliminate this time limit for cross-border tender offers eligible to rely on the Tier II exemptions by adding a new provision specifically allowing Tier II cross-border tender offers to include subsequent offering periods longer than 20 U.S. business days. Allowing subsequent offering periods in cross-border tender offers to extend beyond the current 20-day maximum period is consistent with one of the primary reasons we revised our rules to permit subsequent offering periods generally: To enable bidders to reach the necessary thresholds for acquiring the remaining target securities not tendered in an initial offering period and to pay tendering security holders before they would receive payment in a second-step "squeeze out" process.¹⁵⁷ In some foreign jurisdictions, the ability of a bidder to acquire securities of the target that remain outstanding after a tender offer is more limited than in the United States.¹⁵⁸ We believe the ability to extend the subsequent offering period for longer than 20 U.S. business days will provide an opportunity for remaining target security holders to tender into a successfully-consummated offer, after which the market for their securities may be very limited.¹⁵⁹ The subsequent offering period allows target security holders to be paid before a compulsory acquisition can be

¹⁵⁶ *Id.*

¹⁵⁷ See Regulation M-A Adopting Release, Section II.G.1. ("The purpose of the subsequent offering period is two-fold. First, the period will assist bidders in reaching the statutory state law minimum necessary to engage in a short-form, back-end merger with the target. Second, the period will provide security holders who remain after the offer one last opportunity to tender into an offer that is otherwise complete in order to avoid the delay and illiquid market that can result after a tender offer and before a back-end merger.").

¹⁵⁸ Where an acquirer obtains more than 50 percent of the target securities of a domestic company, it generally can acquire the remaining target shares through a back-end merger. In some foreign jurisdictions, the bidder's ability to "squeeze out" remaining target shareholders is more limited. See, e.g., *In the Matter of Texas Utilities Company* (March 27, 1998) ("*Texas Utilities*") (noting that under U.K. law, the compulsory acquisition process is available only when the bidder owns at least 90 percent of the subject securities and this process is the only means to acquire 100 percent of the subject class).

¹⁵⁹ See Regulation M-A Adopting Release, Section II.G.1. and footnote 157 above.

¹⁵¹ See the letters listed in footnote 149 above. Note that the only conditions that may survive the expiration of the initial offering period are regulatory approvals necessary to consummate the tender offer. We believe that the existence of the back-end withdrawal rights provided in Exchange Act Rule 13e-4(f)(2)(ii) and Section 14(d)(5) of the Exchange Act provide a critical safeguard where a regulatory condition survives the expiration of the initial offering period. These provisions allow tendering security holders to withdraw their tendered securities after a certain period of time. Certain regulatory approval processes, such as anti-trust approvals, may be lengthy and back-end withdrawal rights may provide an important safeguard in such cases. See generally, *ProSiebenSat.1 Media AG* (January 30, 2007) (in granting no-action relief from the prompt payment requirements of Exchange Act Rule 14e-1(c) where a regulatory condition was expected to survive the expiration of a tender offer, the staff explicitly noted that tendering target holders would have withdrawal rights through the date of receipt of such regulatory approvals). The staff will continue to consider limited relief under those circumstances only where a compelling reason exists.

completed, in a circumstance where an offer has become unconditional and will certainly be consummated.¹⁶⁰

Request for Comment

- Are there any other conflicts between U.S. and foreign laws or practice arising out of the subsequent offering period structure that should be addressed through additional rule revisions?

- Is it appropriate, as proposed, to eliminate the 20 U.S. business day limit on the length of the subsequent offering period for Tier II cross-border tender offers?

- Should we eliminate the 20 U.S. business day limit on the length of the subsequent offering period for all tender offers generally, including those for domestic issuers?

- Do bidders for U.S. companies face any practical difficulties because of the 20 U.S. business day limit?

- Is the limit on the length of the subsequent offering period necessary for investor protection, either in the U.S. or in cross-border offers? Should we retain a limit but increase it, for example, to 30 or 60 U.S. business days?

a. Proposed Revisions To Prompt Payment Rule

Another area of conflict in subsequent offering period practice that we address today relates to the requirement under U.S. rules that bidders must immediately accept and promptly pay for all securities “as they are tendered during the subsequent offering period.”¹⁶¹ The requirement to purchase securities tendered during the subsequent offering period on a rolling basis exists because, in the absence of withdrawal rights, which need not be provided during a subsequent offering period,¹⁶² tendering security holders should receive the offer consideration as quickly as possible. Bidders in cross-border tender offers often are required to, or for practical reasons need to, follow local practices when paying for securities tendered in a subsequent offering period.¹⁶³ We have been advised, however, that the requirement that securities be paid for on an as

tendered basis in the same manner as in the United States may conflict with market practice in certain non-U.S. jurisdictions, and is in many instances practicably unworkable there.¹⁶⁴

Today we propose to allow, under certain circumstances, securities tendered during the subsequent offering period for a Tier II cross-border tender offer to be purchased on a modified rolling basis. We do this by including language in proposed new Rule 14d-1(d)(2)(iv) that defines “prompt payment” for purposes of the requirement under Rule 14d-11(e) to purchase on an as tendered basis. Instead of requiring daily aggregation of securities tendered during the subsequent offering period, the proposed rule would permit such securities to be “bundled” and paid for within 14 business days from the date of tender. We chose 14 business days as the time period because, in our experience, that amount of time is sufficient to cover the subsequent offering periods used in most foreign jurisdictions.¹⁶⁵ Depending on the length of the subsequent offering period and the payment practice in the applicable foreign jurisdiction, this may allow payment for securities tendered during the subsequent offering period to be made at the end of that period. We understand that this is market practice in some foreign jurisdictions.¹⁶⁶

Another practical difficulty involving subsequent offering periods arises because, in certain foreign jurisdictions, bidders are legally required to pay interest on securities tendered during the subsequent offering period. Generally, the rate of interest is set by law and is calculated from the date on which securities are tendered.¹⁶⁷

¹⁶⁴ See *Barrick Gold Corporation* (October 10, 2006) (discussing multiple “take-up” dates required under Canadian rules). See also *Singapore Technologies Semiconductors Pte Ltd.* (March 15, 2007) and *BCP*.

¹⁶⁵ In this context, we propose to define “business day” without reference to a business day in the United States. A business day as used in proposed Rule 14d-1(d)(2)(iv) is determined with reference to the relevant foreign jurisdiction. By not defining business day in accordance with the U.S. calendar, we hope to make this rule modification more useful because U.S. and non-U.S. holidays will vary.

¹⁶⁶ See *Barclays* (Dutch practice requires payment for securities tendered during a subsequent offering period to be made within five Dutch trading days after the end of that period); Alcan (noting that French practice is to pay for securities tendered in the subsequent offering period at the end of that period); and *Smith & Nephew Group plc* (April 4, 2003) (payment within ten Swiss trading days after the end of the subsequent offering period is required under Swiss law).

¹⁶⁷ For example, in Brazil, bidders must pay interest at a statutory rate on securities “put” to the bidder after the termination of a successful voluntary offer. We consider such a put right to be a tender offer or to constitute the subsequent

Sometimes interest is calculated as of a set reference point not directly tied to the tender offer timetable.¹⁶⁸

Under either scenario, paying interest on securities tendered during a subsequent offering period conflicts with U.S. tender offer rules in several respects. U.S. rules specify that for offers subject to Regulation 14D, a bidder must pay the same form and amount of consideration for securities tendered during the subsequent offering period as it pays for those tendered into the initial offering period.¹⁶⁹ For those types of offers, it is also impermissible to pay different amounts of consideration for securities tendered within either the initial or the subsequent offering periods.¹⁷⁰ Companies have addressed this conflict by seeking exemptive relief.¹⁷¹

We propose to revise our rules to permit the payment of interest for securities tendered during a subsequent offering period in a Tier II cross-border tender offer where required under foreign law.¹⁷² The proposed new provision explicitly notes that paying interest on securities tendered during the subsequent offering period would not be deemed to violate the equal treatment principles in Rule 14d-10(a)(2).¹⁷³ As discussed above, under the equal treatment and all-holders provisions of the tender offer rules,¹⁷⁴ a bidder could not pay interest only on securities tendered into a foreign offer.

Request for Comment

- Is it appropriate to permit payment for securities tendered during the subsequent offering period in cross-border tender offers to be made up to 14 business days after the date of tender?

- Is 14 business days a sufficient period to make this relief useful for cross-border tender offers that include a subsequent offering period? Would a shorter (five, seven or 10 business days)

offering period in a voluntary offer. See the description of this feature of Brazilian law in *Embratel* and “*Telemar Participacoes S.A.* (October 9, 2007) (“*Telemar*”). See also, *Bayer AG* (September 26, 2006) (“*Bayer 2006*”) (describing a similar requirement under German law).

¹⁶⁸ Under German law, for example, we have been advised that if a bidder acquires a sufficient percentage of a target’s shares in a voluntary tender offer, it may enter into a “domination agreement” with the target. The bidder is then required to pay interest at a rate set by German law on all securities tendered during the subsequent offering period, from the date that such domination agreement becomes effective. See *Blackstone Entities* (December 16, 2004) (“*Blackstone*”).

¹⁶⁹ Exchange Act Rule 14d-11(f).

¹⁷⁰ Exchange Act Rule 14d-10(a)(2).

¹⁷¹ See e.g., *Telemar*; *Embratel*; and *Blackstone*.

¹⁷² See proposed Exchange Act Rule 14d-1(d)(2)(vii).

¹⁷³ See proposed Exchange Act Rule 14d-1(d)(2).

¹⁷⁴ Exchange Act Rule 14d-10.

¹⁶⁰ See footnote 157 above.

¹⁶¹ Exchange Act Rule 14d-11(e).

¹⁶² See Note to Exchange Act Rule 14d-11.

¹⁶³ See *Barclays* (relief granted to permit payment for securities tendered in the subsequent offering period within five Dutch trading days after the end of that period); *Rio Tinto plc* (shares tendered during a subsequent offering period may be taken up and paid for within ten calendar days of the date of tender, in accordance with Canadian law); *Aventis* (June 10, 2004) (relief granted to permit payment for securities tendered into a French offer to be made within 12-18 French trading days after the expiration of that period).

or longer period (15, 20 or 30 business days) of time better serve the interests of bidders or tendering security holders?

○ Should we permit payment for securities tendered during the subsequent offering period to be made within a certain number of days after the end of that period, such as within five, 10 or 14 business days, even if we eliminate the time limit on the length of the subsequent offering period? Or would this disadvantage tendering security holders?

• Should we revise our rules to permit the payment of interest on target securities tendered during the subsequent offering period, as proposed?

• Should we expand the proposed relief to encompass interest paid on securities tendered during the initial offering period?

• Should we provide this relief only where interest is required to be paid under foreign law, as proposed?

• Should the proposed amendment only permit de minimis interest payments? If so, what limits are appropriate?

b. Prompt Payment and “Mix and Match” Offers

The final issue we address with respect to subsequent offering periods involves “mix and match” offers. The requirement to pay for shares on an as tendered basis during the subsequent offering period is particularly problematic in cross-border tender offers that include a mix and match election feature. In this offer structure, target security holders are offered a set mix of cash and securities of the bidder—often referred to as the “standard entitlement”—with the option to elect a different proportion of cash and securities, to the extent that other tendering security holders make opposite elections.¹⁷⁵ The bidder typically sets a maximum amount of cash or securities that it will issue in the offer; to the extent that more tendering target security holders elect cash or bidder securities, their elections are prorated to the extent they cannot be satisfied through “offsetting elections” made by other target security holders.¹⁷⁶

Mix and match offers often conflict with U.S. requirements applicable to the subsequent offering period. First, those rules provide that a bidder may offer a choice of different forms of consideration in the subsequent offering

period, but only if there is no ceiling on any form of consideration offered.¹⁷⁷ In addition, the rules require a bidder to offer the same form and amount of consideration to tendering security holders in both the initial and subsequent offering periods.¹⁷⁸ Both requirements present difficulties in the context of mix and match offers. In these kinds of offers, bidders want to impose a maximum limit on either (or both) the number of securities or the amount of cash they will be obligated to deliver if the offer is successful.¹⁷⁹ In addition, the offset feature characteristic of mix and match offers is inconsistent with the prohibition on offering different forms and amounts of consideration in the initial and subsequent offering periods.

Because of the prompt payment and other requirements of U.S. rules and the requirements of foreign law or practice in cross-border offers, bidders in mix and match offers often request relief to use two different proration and offset pools in their offers: one for securities tendered during the initial offering period and another for those tendered in the subsequent offering period.¹⁸⁰ That is, bidders match elections made during the initial offering period against each other to determine offsets and proration and begin the payment process for those securities as promptly as practicable after the end of the initial offering period.¹⁸¹ Similarly, securities tendered during the subsequent offering period are matched against each other, not against those tendered during the initial offering period, so as not to delay the payment process. As a result, the mix of consideration provided to tendering security holders may be different in the initial and subsequent offering periods.

Today we propose to revise our rules to specifically allow separate offset and proration pools for securities tendered during the initial and the subsequent offering periods.¹⁸² We view these changes as necessary and appropriate to facilitate the prompt payment for securities tendered during these offer periods, and to permit the use of the mix and match offer structure generally. Because of the same practical considerations, we also propose to

eliminate the prohibition on a “ceiling” for the form of consideration offered in the subsequent offering period, where target security holders are given the ability to elect between two or more different forms of offer consideration. These changes would be accomplished by adding a provision in Rule 14d–1(d)(2) that specifies that such practices are permissible for Tier II cross-border offers.¹⁸³

Request for Comment

• Would these proposed rule changes address the practical needs of cross-border offerors? Would there be any disadvantages for target security holders?

• Should we extend these changes to all tender offers, including tender offers for U.S. issuers? Would bidders for U.S. issuers use the ability to make mix and match offers? Would such a structure be workable in the U.S. and in the best interests of U.S. investors?

5. Additional Guidance With Respect to Terminating Withdrawal Rights After Reduction or Waiver of a Minimum Acceptance Condition

U.S. tender offer rules generally provide that a bidder must allow an offer to remain open for a certain period of time after a material change in its terms is communicated to target security holders.¹⁸⁴ The minimum time periods established allow target security holders time to learn of and react to information about material changes. Some target holders may want to tender in response to the new information, while others who already have tendered may seek to withdraw their securities. For this reason, U.S. rules mandate that, for

¹⁸³ See *id.*

¹⁸⁴ Exchange Act Rule 14d–4(d)(2)(i)–(iv) sets forth the minimum time periods for which an offer must remain open after certain specified types of changes in the terms of that offer are communicated to target security holders. The Rule states that an offer must remain open for: (1) Ten business days after dissemination of a prospectus supplement containing a change in price, the amount of securities sought, the dealer's soliciting fee or other similarly significant change; (2) ten business days for a prospectus supplement included as part of a post-effective amendment; (3) twenty business days for a prospectus supplement when the initial prospectus was materially deficient; and (4) five business days for a material change other than price or share levels. Exchange Act Rule 14d–4(d)(2) by its terms applies only to third-party tender offers for Exchange Act registered securities. However, we have stated that we view the time periods established in that rule as general guidelines applicable to all tender offers, including those subject only to Regulation 14E. See the discussion in the Regulation M–A Adopting Release, Section II.E.2. In addition, Rule 14e–1(b), applicable to all tender offers, specifies that a tender offer must be kept open for a minimum of ten business days after an increase or decrease in the amount of securities sought or the consideration offered or a change in the dealer's soliciting fee.

¹⁷⁷ Exchange Act Rule 14d–11(b).

¹⁷⁸ Exchange Act Rule 14d–11(f).

¹⁷⁹ See letters cited in footnote 175 above.

¹⁸⁰ *Id.*

¹⁸¹ This is necessitated by foreign rules, which typically require those securities to be accepted and paid for while the subsequent offering period is ongoing. U.S. rules also require that securities tendered in an initial offering period be accepted and promptly paid for at the end of that period. Exchange Act Rule 14d–11(c).

¹⁸² See proposed Exchange Act Rule 14d–1(d)(2)(ix).

¹⁷⁵ See *Barclays and SERENA Software Inc.* (April 13, 2004) (setting a cap on the number of bidder shares and cash that would be issued in a mix and match election, with elections for more cash or shares being offset against one another).

¹⁷⁶ *Id.*

tender offers subject to Section 13(e) or 14(d) of the Exchange Act, in addition to keeping the offer open for a set period of time after providing notice of a material change, the bidder must provide withdrawal rights during such period.¹⁸⁵

In the years leading up to the adoption of the existing cross-border exemptions in 1999, we found that in practice, this U.S. withdrawal rights requirement created a conflict with foreign practice in cross-border tender offers. We discussed in the 1998 Cross-Border Proposing Release how the U.S. requirement to provide withdrawal rights for a set period after the waiver or reduction in a minimum acceptance condition created a conflict with U.K. practice, the jurisdiction with which we had the most experience at that time.¹⁸⁶ We noted that the staff had granted relief to bidders to address this conflict in individual cases.¹⁸⁷

In adopting the cross-border exemptions, we affirmed the staff's interpretive position that a bidder meeting the conditions of the Tier II exemptions may waive or reduce the minimum acceptance condition without providing withdrawal rights during the time remaining in the tender offer after the waiver or reduction.¹⁸⁸ We conditioned a bidder's ability to rely on this guidance on the following:

- The bidder must announce that it may reduce or waive the minimum condition at least five business days before it reduces or waives it;¹⁸⁹
- The bidder must disseminate this announcement through a press release and other methods reasonably designed to inform U.S. security holders, which may include placing an advertisement in a newspaper of national circulation in the United States;¹⁹⁰
- The press release must state the exact percentage to which the condition may be reduced. The bidder must announce its actual intentions once it is

required to do so under the target's home country rules;

- During the five-day period after the announcement of a possible waiver or reduction, security holders who have tendered into the offer must be afforded the right to withdraw tendered securities;
- The announcement must advise security holders to withdraw their tendered securities immediately if their willingness to tender into the offer would be affected by the reduction or waiver of the minimum acceptance condition;
- The procedure for reducing or waiving the minimum acceptance condition must be described in the offering document; and
- The bidder must hold the offer open for acceptances for at least five business days after the reduction or waiver of the minimum acceptance condition.

When the bidder terminates withdrawal rights pursuant to this interpretive position, all offer conditions must be satisfied or waived so that the offer is wholly unconditional when withdrawal rights terminate.¹⁹¹ A bidder may not terminate withdrawal rights where an extension is otherwise required under our rules because of another material change in the terms of the offer.¹⁹²

While we continue to recognize that bidders in cross-border tender offers may need the flexibility afforded by this interpretive position, we are aware of certain issues arising from its application. When we adopted the interpretive position regarding waiver or reduction of a minimum acceptance condition, we did so primarily on the basis of the staff's experience with U.K. law and practice.¹⁹³ The regulatory accommodation was necessitated by U.K. practice and the particular circumstances common to the U.K. markets. The vast majority of the transactions for which the staff had granted this relief before we adopted the

interpretive position involved cash tender offers.¹⁹⁴

In the years since the Commission adopted the interpretive position, we have become aware of the unintended consequences of this position in the context of certain kinds of offers, including exchange offers and competed offers. We believe it is necessary to provide additional guidance on the circumstances under which bidders may rely upon this interpretive position in cross-border tender offers to waive or reduce a minimum acceptance condition without providing withdrawal rights after such waiver. For these reasons, today we are limiting the interpretive position adopted in the Cross-Border Adopting Release.

The interpretation originally was premised on bidders' need to reduce the minimum acceptance condition in order to declare the offer wholly unconditional, thereby permitting the participation of certain institutional holders that were prevented by charter from tendering into conditional offers.¹⁹⁵ The interpretive guidance about the ability to waive or reduce the minimum acceptance condition was and continues to be limited to instances where it is necessary because of specific features of home country law or practice that make it impossible or unnecessarily burdensome to comply with the extension requirements of U.S. law.

We also think it is important to note that, where bidders may seek to waive or reduce a minimum acceptance condition in a Tier II-eligible tender offer without extending withdrawal rights after the waiver or reduction, the initial offering materials or a supplement must fully discuss the implications of the waiver or reduction.¹⁹⁶ We note that this necessary disclosure may be challenging to provide in the context of an exchange offer, but we believe security holders need this disclosure to make an informed investment decision about the

¹⁸⁵ *Id.*

¹⁸⁶ See 1998 Cross-Border Proposing Release, Section II.C.2.f.

¹⁸⁷ See *id.* citing *e.g.*, *In the Matter of Pacificorp and The Energy Group*, Exchange Act Release No. 38776 (June 25, 1997).

¹⁸⁸ Cross-Border Adopting Release, Section II.B.

¹⁸⁹ A statement at the commencement of the offer that the bidder may reduce or waive the minimum acceptance condition is insufficient to satisfy this element. See Cross-Border Adopting Release, Section II.B.

¹⁹⁰ Some bidders have asked for the elimination of the requirement that the notice of a potential waiver or reduction in the minimum acceptance condition be placed in a newspaper of national circulation in the United States. We continue to believe that this requirement serves an important function in notifying target security holders about a possible change in the terms of the offer, and therefore we are retaining it.

¹⁹¹ We note that this is consistent with the interpretive position previously expressed by the staff. See Section II.A. Question 1 in the Third Supplement to the Division of Corporation Finance's Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interp/telephone/phonesupplement3.htm>.

¹⁹² See, *e.g.*, *STATS ChipPAC Ltd.* (March 15, 2007) ("*STATS ChipPAC*") (noting that a bidder may not terminate withdrawal rights or close an offer during any extension mandated under Regulations 14D or 14E). In addition to the extension requirements in Rule 14e-1(b), we note that the Commission has expressed the view that the minimum time periods set forth in Rule 14d-4(d)(2) represent "general guidelines that should be applied uniformly to all tender offers, including those subject only to Regulation 14E." See Regulation M-A Adopting Release, Section II.E.2.

¹⁹³ See Cross-Border Adopting Release, Section II.B.

¹⁹⁴ See, *e.g.*, *Texas Utilities*.

¹⁹⁵ See, *e.g.*, *Willis Corroon Group plc* (July 22, 1998) and *Thorn plc* (June 30, 1998). For example, we were advised that certain U.K. institutional holders are prohibited from tendering into an offer until all offer conditions have been satisfied or waived. For that reason, it is critical that the bidder reduce the minimum tender condition in an effort to induce these institutions to tender, which in turn may allow the bidder to reach the 90 percent ownership level necessary to effect a compulsory acquisition under U.K. law.

¹⁹⁶ This is a general requirement under the tender offer rules. See, *e.g.*, Item 1 of Schedule TO and Item 101 of Regulation M-A (requiring the filer to describe the essential terms and to describe the significance of the transaction for target security holders). See also, footnote 254 below for transactions subject to the registration requirements of Section 5 of the Securities Act.

potential impact of the bidder accepting a lesser percentage of securities than originally proposed as the minimum acceptance condition.

In addition to the potential need to provide alternate sets of pro forma financial statements under our existing disclosure rules,¹⁹⁷ we believe reducing the minimum acceptance condition significantly below the level at which it is initially set may fundamentally change the nature of the transaction and the relationship between the offeror and the target company going forward. For example, an offeror could go from potentially holding a majority interest in the target to a minority stakeholder with limited ability to influence the management of the target. This change has implications for both the target holders who choose to tender into the offer and receive bidder shares, as well as those who elect not to tender and remain as target security holders. It also has implications with respect to the acquiror's ability to consolidate the financial statements of the target.

Consequently, even for cash tender offers, the staff has conditioned the granting of no-action relief in the cross-border context on bidders adequately disclosing in the initial offer materials the impact of a potential waiver or reduction.¹⁹⁸ For example, where a bidder initially includes an 80 percent minimum acceptance condition in its offer, but seeks the flexibility to reduce this condition to 51 percent and purchase tendered securities immediately without affording withdrawal rights, the staff has noted that the disclosure document must fully and fairly present the potential impact of both outcomes for target shareholders. In addition, the staff also has encouraged bidders to consider the disclosures necessary with regard to the ability to govern or otherwise integrate the target company after any acquisition at a lower level.

The difficulty in providing the necessary disclosure is heightened where there are two or more competing bids, creating an even greater level of uncertainty. In that circumstance, a bidder that waives or reduces its minimum acceptance condition to purchase a minority stake in the target may nevertheless be able to thwart the minimum acceptance condition of a

competing bidder, thereby defeating the competing bid. Under these circumstances, target security holders are disadvantaged because they have no opportunity to react to the change in the terms of the offer by withdrawing their securities and accepting the competing bid. As noted above, this may also affect the success of the competing bid.

Today we are refining our prior guidance to clarify that, in addition to the conditions outlined in the Cross-Border Adopting Release and the general disclosure obligations discussed above, the relief from the extension requirements of Rule 14d-4(d)(2) adopted in the Cross-Border Adopting Release may not be relied upon unless the bidder is eligible to rely on the Tier II exemptions and the bidder undertakes not to waive or reduce the minimum acceptance condition below a majority.¹⁹⁹ This will limit the impact on target security holders of allowing this type of change without providing withdrawal rights, while balancing the needs of bidders to meet the requirements of foreign home country law or practice. In addition, this interpretive position is limited to circumstances where there exists a requirement of law or practice in the foreign home country justifying a bidder's inability to extend the offer after a waiver or reduction in the minimum offer condition. Furthermore, it does not apply to mandatory extensions for changes related to the offer consideration, the amount of target securities sought in the offer, and a change to the dealer's soliciting fee.²⁰⁰

Bidders seeking to rely on this guidance, as modified, must fully disclose and discuss all of the implications of the potential waiver or reduction, including at the specific levels contemplated, in its offering materials. For example, in some foreign jurisdictions, the ability to operate and fully integrate the target company as a subsidiary of the bidder after a tender offer depends on the bidder's ability to purchase a percentage of target securities higher than a simple majority.²⁰¹ In those jurisdictions, the

impact of waiving or reducing the minimum acceptance condition below the levels necessary to operate and fully integrate the target as a subsidiary must be fully explained in the initial offering materials disseminated to target security holders. Where such disclosure is not provided, the bidder may not rely on the interpretive guidance set forth in the Cross-Border Adopting Release, as modified today. In those circumstances, the bidder must disseminate additional disclosure and also must allow adequate time in the offer period, including extension of withdrawal rights, as mandated by our rules.²⁰²

Request for Comment

- Should we continue to allow bidders in Tier II-eligible offers to waive or reduce the minimum acceptance condition without providing withdrawal rights?

- Are the conditions set forth in the Cross-Border Adopting Release adequate? Or overly burdensome?

- Is it appropriate to modify such relief, as discussed above?

- Should we condition the ability to waive or reduce the minimum acceptance condition without providing withdrawal rights on the undertaking by the bidder not to waive below a majority, as proposed? What should constitute a "majority" for these purposes?

- Should we continue to require bidders seeking to rely on the interpretation to place an advertisement in a newspaper of national circulation in the United States? Does this serve a useful function under current market practice? Does it constitute an undue burden?

- Is the guidance, as modified above, clear? Should it be codified in rules?

6. Early Termination of the Initial Offering Period or a Voluntary Extension of the Initial Offering Period

Under U.S. tender offer rules, the initial offering period in a tender offer must remain open for specified minimum time periods after a material change in the terms of an offer.²⁰³ The minimum time periods vary with the

¹⁹⁹ By a majority, we mean more than 50 percent of the outstanding target securities that are the subject of the tender offer.

²⁰⁰ See Exchange Act Rules 13e-4(e)(3)(ii), 14d-4(d)(2)(ii) and 14e-1(b).

²⁰¹ We have been advised that Germany is one such foreign jurisdiction. Under German law, 75 percent of a target's security holders must approve a "domination agreement" between the target and the bidder in order for the bidder to effectively exercise control of the target company after a tender offer. Therefore, unless the bidder can obtain at least 75 percent of the target's securities in the tender offer, it cannot be assured of the ability to fully integrate the target company. See, e.g., *Bayer 2006* and *Blackstone*.

²⁰² See footnote 197 above.

²⁰³ Exchange Act Rules 13e-4(e)(3) and 14d-4(d)(2) set forth the minimum required time periods for "registered securities offers," where the bidder is offering registered securities and commences an offer before the effectiveness of its registration statement. See footnote 184 above with respect to the Commission's statement concerning the broader applicability of those time periods for other kinds of tender offers. In addition, Rule 14e-1(b) also sets forth timing requirements with respect to certain kinds of changes in the terms of the offer.

¹⁹⁷ See Item 5 of Forms S-4 and F-4 and Exchange Act Rule 11-02(b)(8) of Regulation S-X [17 CFR 210.11-02(b)(8)]. Rule 11-02(b)(8) mandates that where a transaction is structured in such a way that significantly different results may occur, additional pro forma presentation must be provided which give effect to the range of possible results.

¹⁹⁸ See, e.g., *Royal Bank*.

materiality of the change.²⁰⁴ For a change other than one related to the tender price or the number of securities sought in the offer, five business days may be sufficient to allow security holders time to learn of, and react to, new information.²⁰⁵ We believe that where the expiration of a tender offer has been set, whether at the outset of the offer or through a voluntary extension, a change in that expiration date constitutes a material change requiring an offer to remain open within the time periods established by our rules. These minimum time periods are important because they allow security holders who have already tendered into the offer to react to the change by withdrawing their tendered securities; similarly, those who have not tendered may choose to do so in response to the change.

The minimum time periods established by our rules for changes to the terms of a tender offer may conflict with foreign law or practice, where bidders may be required to terminate an offer and withdrawal rights immediately after all offer conditions are satisfied.²⁰⁶ Thus, in some foreign jurisdictions, bidders must accept tendered securities and begin the payment process as soon as all offer conditions are satisfied, even if this occurs before the scheduled expiration date of the initial offering period or any voluntary extension of that period.²⁰⁷ In other foreign jurisdictions, longstanding practice dictates early termination of a voluntary extension of the initial offering period when an offer becomes wholly unconditional.²⁰⁸ These jurisdictions take the view that once the offer is

wholly unconditional and is therefore certain to be consummated, the initial offering period should close immediately and tendering security holders should receive the offer consideration as soon as possible. Security holders who did not tender before the end of the initial offering period can tender into the subsequent offering.

In the Cross-Border Adopting Release, we adopted a staff interpretive position relating to a change in a specific type of offer condition, the minimum acceptance condition.²⁰⁹ Such a change represents a modification of the original conditions of the tender offer, not the satisfaction of an existing offer condition. However, we did not provide similar guidance with respect to early termination of the initial offering period, or any extension of that period, for changes other than to the minimum acceptance condition.

Both before and after the adoption of the cross-border exemptions, bidders in cross-border tender offers frequently have sought additional relief from the staff to terminate the initial offering period before its scheduled expiration, thereby terminating withdrawal rights, upon the satisfaction of all offer conditions.²¹⁰ In connection with early termination, some bidders also have concurrently requested relief from the requirement under our rules to promptly “publish, send or give” to target security holders information concerning any material change in the terms of a tender offer.²¹¹

Under specified circumstances, bidders have been given relief to permit the early termination of the initial offering period (or any voluntary extension of that period).²¹² A voluntary extension is an extension that is not required under U.S. tender offer rules. Early termination of the initial offering period is not permitted, however, where U.S. rules require mandatory offer extensions for certain changes to the terms of an offer, including those arising from changes in the offer consideration, the dealer’s soliciting fee, or the percentage of target securities for which the offer is made, or other material

changes.²¹³ Thus, bidders making any of these kinds of changes to the terms of a tender offer may not terminate an initial offering period (or any of that period) before the scheduled expiration of the mandatory extension.

The relief granted by the staff in this area is contingent on several conditions similar to those we established for bidders wishing to waive or reduce a minimum acceptance condition.²¹⁴ Bidders seeking to terminate the initial offering period before its scheduled expiration may do so only if, at the time the initial offering period expires and withdrawal rights terminate:

- The initial offering period has been open for at least 20 U.S. business days and all offer conditions have been satisfied;²¹⁵
- The bidder has adequately discussed the possibility of and the impact of the early termination in the original offer materials;
- The bidder provides a subsequent offering period after early termination of the initial offering period;
- All offer conditions have been satisfied when the initial offering period terminates;²¹⁶ and
- The bidder does not terminate the initial offering period during any mandatory extension of the initial offering period required under U.S. tender offer rules.²¹⁷

At this time, we are not codifying the guidelines set forth in staff no-action precedent for cross-border tender offers regarding the ability to terminate an initial offering period or a voluntary extension of that period early.

²¹³ See Exchange Act Rules 13e-4(f)(1)(ii) and 14e-1(b).

²¹⁴ See, e.g., RWE.

²¹⁵ *Id.*

²¹⁶ A bidder may not waive an offer condition without providing withdrawal rights after the waiver to allow security holders who have already tendered into the offer the opportunity to react to information about the waiver. Because a waiver is entirely within the control of the bidder and represents a change in the terms of the offer, the bidder must afford tendering security holders the right to withdraw their securities in response to the change. To the extent that foreign law would permit a waiver of the offer conditions to trigger a requirement to immediately terminate the initial offering period or any voluntary extension of that period, requests for relief will be considered on a case-by-case basis. As noted above, we address the specific circumstance of a bidder that seeks to waive the minimum acceptance condition in a tender offer in another section of this release. See Section II.C.5. above. However, the ability of a bidder to waive an offer condition in a cross-border tender offer may be more limited than in a domestic offer, because in some foreign jurisdictions, the waiver of an offer condition is permitted only with the permission of the home country regulator. In addition, foreign rules may limit the type of conditions that may be included in a cross-border tender offer.

²¹⁷ See discussion above for the definition of “mandatory extension” as we use that term here.

²⁰⁴ See Exchange Act Rules 13e-4(e)(3)(i) through (iv) and 14d-4(d)(2)(i) through (iv) and 14e-1(b).

²⁰⁵ See Exchange Act Rules 13e-4(e)(3) and 14d-4(d)(2)(i). Of course, additional time may be needed for specific types of new information that is of particular importance to target security holders. See Exchange Act Rules 13e-4(e)(3)(ii) and 14d-4(d)(ii) (stating that ten business days is the required period for a change “similarly significant” to a change in price or the number of securities sought).

²⁰⁶ We refer to the time when all offer conditions have been satisfied or waived as the time when the offer becomes “wholly unconditional.”

²⁰⁷ See *STATS ChipPAC* (stating that under the Singapore Code, payment for securities tendered in a tender offer must be made within 21 calendar days after such offer is declared unconditional or after the relevant holder accepts the offer, whichever is later); *Jilin Chemical Industrial Company Limited* (December 21, 2005) (“*Jilin Chemical*”) (stating that under the Hong Kong Code, once a tender offer becomes wholly unconditional, the bidder must pay for tendered securities within ten days of that date); and *Harmony Gold Mining Ltd.* (March 10, 2005) (“*Harmony Gold 2005*”) (describing South African legal requirements for prompt payment that are triggered by the offer going unconditional, which may occur before the scheduled expiration of the initial offering period or any voluntary extension of that period).

²⁰⁸ This is the case in the United Kingdom. See, e.g., RWE.

²⁰⁹ See Cross-Border Adopting Release, Section II.B. Today, as discussed above in Section II.C.5, we are modifying our guidance with respect to the bidder’s ability to waive or reduce the minimum acceptance condition in a Tier-II tender offer without providing withdrawal rights.

²¹⁰ See *AstraZeneca PLC* (May 23, 2006); *Harmony Gold 2005*; and *In the Matter of Central and South West Corp.* (September 27, 1995).

²¹¹ See Exchange Act Rule 14d-4(d). See *Jilin Chemical* (requesting no-action relief under Exchange Act Rules 14d-4(d) and 14d-6(c)).

²¹² See footnote 210 above.

Considering the responses we receive to our requests for comment below, we will determine whether to revise our rules to codify this relief, under the conditions specified.

Request for Comment

- Is this relief necessary to alleviate practical difficulties? If so, should the relief be codified in rules?
- Should we allow a bidder in a Tier II-eligible cross-border tender offer to terminate the initial offering period or any voluntary extension of that period upon the satisfaction of all offer conditions? Or should the rules limit this relief only to early termination of the initial offering period or only to early termination of a voluntary extension of the initial offering period?
- Should we allow early termination only where it is specifically required under the law of the target's home jurisdiction? Or should this be permitted when customary under foreign practice as well?
- Should we condition this relief on any other conditions besides those listed above? For example, should we require the same kind of advance notice as we propose for a waiver of the minimum acceptance condition in a tender offer?

7. Codification of Rule 14e-5 Cross-Border Exemptions

We propose to modernize and enhance the utility of Exchange Act Rule 14e-5 by codifying exemptive relief issued in the context of cross-border tender offers.²¹⁸ Rule 14e-5 safeguards the interests of persons who sell their securities in response to a tender offer. As we noted in 1999, the rule protects investors by preventing an offeror from extending greater or different consideration to some security holders by offering to purchase their shares outside the offer, while other security holders are limited to the offer's terms.²¹⁹ The rule prohibits the disparate treatment of security holders, prevents the avoidance of proration requirements, and guards against the dangers posed by a bidder's purchases outside an offer that may involve fraud, deception and manipulation.²²⁰

Specifically, Rule 14e-5 prohibits purchasing or arranging to purchase any subject securities or any related securities except as part of the tender

offer.²²¹ The rule's prohibitions apply from the time of public announcement of the tender offer until the offer expires.²²² The rule applies to "covered persons"²²³ as that term is defined in the rule. Covered persons include the offeror and its affiliates,²²⁴ the offeror's dealer-manager and its affiliates,²²⁵ any advisor to the offeror and its affiliates or the offeror's dealer-manager and its affiliates whose compensation is dependent on the completion of the offer,²²⁶ as well as any person acting, directly or indirectly, in concert with the abovementioned persons in connection with any purchase or arrangement to purchase any subject securities or any related securities.²²⁷

In the Cross-Border Adopting Release, we adopted an exception to allow purchases or arrangements to purchase made outside of, but during, Tier I tender offers.²²⁸ As limited to Tier I tender offers, the exception extends only to tender offers for the securities of foreign private issuers "where U.S. persons hold of record ten percent or less of the class of securities sought in the offer."²²⁹ We determined to "continue to review requests for relief from Rule 14e-5 for offers other than Tier I eligible offers on a case-by-case basis."²³⁰ Since that time, we have received numerous requests for relief to allow purchases outside of tender offers conducted under the Tier II exemptions.

Over the past several years in the cross border context, frequent exemptions from Rule 14e-5's prohibition have been granted for Tier II tender offers in three recurring areas: Purchases and arrangements to purchase securities of a foreign private issuer (1) pursuant to the non-U.S. tender offer for a cross-border tender offer where there are separate U.S. and non-U.S. offers;²³¹ (2) by offerors and their affiliates outside of a tender offer;²³² and (3) by

financial advisor's affiliates outside of a tender offer.²³³ In 2006 and 2007, three class exemptive letters were issued in these areas.²³⁴ The rule changes we propose today are intended to codify this exemptive relief.

As discussed above, a Tier II tender offer for a foreign target company may be structured as two concurrent but separate tender offers: One made to U.S. security holders and another made to target security holders outside the U.S.²³⁵ If purchases pursuant to the foreign offer are made during the Rule 14e-5 prohibited period,²³⁶ those purchases would run afoul of the rule because they technically constitute purchases outside the U.S. tender offer. Exemptive relief has been commonly provided in connection with Tier II offers to allow purchases or arrangements to purchase in the foreign offer where there are safeguards to protect the interests of U.S. tendering security holders. This relief facilitates cross-border tender offers and encourages the inclusion of U.S. security holders in such offers. We propose to change Rule 14e-5 to codify that relief today, to allow purchases or arrangements to purchase the subject securities pursuant to a foreign offer (or multiple foreign offers)²³⁷ and during a U.S. tender offer.

Proposed Rule 14e-5(b)(11) would permit purchases or arrangements to purchase pursuant to a foreign tender offer (or in more than one foreign offer) during the Rule 14e-5 prohibited period if certain conditions are satisfied. This proposed exception would permit purchases in a foreign offer or offers made concurrently or substantially concurrently with a U.S. offer under Rule 14d-1(d)(2)(ii). The tender offer must qualify as a Tier II tender offer under Rule 14d-1(d).²³⁸ Thus, the

(March 2, 2007) ("Sulzer") (providing class relief to similarly situated parties, under the conditions specified).

²³³ See, e.g., *Rule 14e-5 Relief for Certain Trading Activities of Financial Advisors* (April 4, 2007) ("Financial Advisors") (providing class relief for similarly situated parties, under the conditions specified).

²³⁴ See notes 231 through 233 above. As noted there, the class exemptive letters indicate that they may be relied upon by all similarly-situated parties.

²³⁵ Exchange Act Rule 14d-1(d)(2)(ii).

²³⁶ The Rule 14e-5 prohibited period is the period of time from public announcement of the tender offer until expiration.

²³⁷ As discussed above, we propose to allow bidders eligible to rely on the Tier II exemption to separate their offer into a U.S. offer and multiple non-U.S. offers. We also propose to extend relief from Exchange Act Rule 14e-5 for purchases in more than one non-U.S. offer during the term of the U.S. offer.

²³⁸ Consistent with *Mittal*, the proposed exception is limited to tender offers that qualify as

Continued

²¹⁸ See footnotes 231 through 233 below.

²¹⁹ Cross-Border Adopting Release [64 FR 61382 at 61387].

²²⁰ *Regulation of Takeovers and Security Holder Communications*, Release No. 34-40633 (November 3, 1998) [63 FR 67331 at 67359].

²²¹ "Subject securities" means the securities or class of securities that are sought to be acquired in the transaction or that are otherwise the subject of the transaction. 17 CFR 229.1000(g). "Related securities" means securities that are immediately convertible into, exchangeable for, or exercisable for subject securities. See Exchange Act Rule 14e-5(c)(6).

²²² Exchange Act Rule 14e-5(a).

²²³ Exchange Act Rule 14e-5(c)(3).

²²⁴ Exchange Act Rule 14e-5(c)(3)(i).

²²⁵ Exchange Act Rule 14e-5(c)(3)(ii).

²²⁶ Exchange Act Rule 14e-5(c)(3)(iii).

²²⁷ Exchange Act Rule 14e-5(c)(3)(iv).

²²⁸ Exchange Act Rule 14e-5(b)(10).

²²⁹ Cross-Border Adopting Release [64 FR 61382 at 61388].

²³⁰ *Id.*

²³¹ See, e.g., *Mittal* (providing class relief for similarly situated parties, under the conditions specified).

²³² See, e.g., *Cash Tender Offer by Sulzer AG for the Ordinary Shares of Bodycote International plc*

subject company must be a foreign private issuer.

The proposed exception is conditioned on the existence of certain safeguards to help protect U.S. security holders. These conditions address the economic terms, consideration, and procedural terms of the tender offer. The conditions require that U.S. security holders are treated at least as favorably as non-U.S. tendering security holders. The proposal also permits any cash consideration to be paid to U.S. security holders to be converted from the currency paid in the foreign offer to U.S. dollars at the exchange rate disclosed in the U.S. offering documents. In addition, the conditions require transparency regarding the offeror's intent to make purchases pursuant to a foreign offer in the U.S. offering documents. As the activity that the proposed exception covers is quite narrow, the exception is limited to purchases in foreign tender offers and does not apply to open market transactions, private transactions, or other transactions outside the tender offer.

The second and third recurring relief requests under Rule 14e-5 for cross-border tender offers concern purchases and arrangements to purchase by an offeror and its affiliates, as well as by a financial advisor's affiliates.²³⁹ Some cross-border tender offers are structured as a single global offer made in the U.S. and other jurisdictions. Purchases and arrangements to purchase the subject securities outside the tender offer, including open market purchases and privately negotiated purchases, very often are permitted under foreign law. The staff has granted relief to allow purchases outside a tender offer when this activity is permissible under the laws of the target's foreign home jurisdiction if certain conditions designed to promote the fair treatment of tendering security holders are met. We propose to change Rule 14e-5 to codify that relief.²⁴⁰

Tier II tender offers under Rule 14d-1(d). Tender offers that do not qualify as Tier II tender offers, such as issuer tender offers, would not meet the requirements of this proposed exception.

²³⁹ An affiliate of a financial advisor includes a separately identifiable department of the financial advisor.

²⁴⁰ The proposed Rule 14e-5(b)(12) exception does not impose any additional conditions to those provided in the *Sulzer* and *Financial Advisors* letters. However, some conditions from those letters are not incorporated into the proposal in an effort to streamline the rule text in a manner that would not compromise the fair treatment of security holders. For example, condition number ten in the *Financial Advisors* letter concerns voluntary compliance with the United Kingdom's City Code and condition numbers three and five in *Sulzer* concerns compliance with the laws of the target's

Proposed Rule 14e-5(b)(12) would permit purchases or arrangements to purchase outside of a Tier II tender offer by (i) an offeror and its affiliates; and (ii) an affiliate of a financial advisor if certain conditions are satisfied. This rule revision is intended to address situations where the subject company is a non-U.S. company, the majority of whose shareholders reside outside the U.S. Thus, the subject company must be a foreign private issuer, and the covered person must reasonably expect that the tender offer qualifies as Tier II.²⁴¹ The proposal prohibits any purchases or arrangements to purchase in the U.S. otherwise than pursuant to the tender offer. Further, it contains conditions to enhance the transparency of the excepted activity. For example, the proposal would require that the U.S. offering materials prominently disclose the possibility of or the intention to make purchases or arrangements to purchase outside the tender offer. The proposal also would require disclosure in the U.S. of purchases made outside the tender offer to the extent that such information is made public in the home jurisdiction.

Where an offeror or its affiliate purchases or arranges to purchase outside of a tender offer, the proposed exception would impose one additional condition regarding consideration. In order to safeguard against the disparate treatment of security holders, the proposed exception would require that the tender offer price be raised to equal any higher price paid outside of the tender offer.

Where an affiliate of a financial advisor purchases or arranges to purchase outside of a tender offer, our proposed exception would impose additional conditions. In order to prevent the flow of information that may result in a violation of U.S. securities laws, these conditions relate to information barriers and common officers or employees. Specifically, the proposal would require that the financial advisor and affiliate maintain and enforce written policies and procedures designed to prevent the flow of information among the financial advisor and the affiliate that might result in a violation of the federal securities laws and regulations. It also would require that the affiliate have no officers (or persons performing similar functions) or employees (other than

home jurisdiction and bilateral or multilateral memorandum of understanding are not included in the proposal.

²⁴¹ We would modify the reasonable expectation condition if the proposal to change the timing of the Tier II calculation to a date no earlier than 60 days before the tender offer announcement is adopted.

clerical, ministerial, or support personnel) in common with the financial advisor that directly effect or recommend transactions in the subject securities or related securities who also will be involved in providing the offeror or subject company with financial advisory services or dealer-manager services. The proposed exception also would require that the financial advisor have a registered broker-dealer affiliate under Section 15(a) of the Exchange Act.²⁴² As the exception is premised on the affiliate of the financial advisor carrying out its normal business activity when purchasing outside a tender offer, it would not permit purchases or arrangements to purchase to be made to facilitate the tender offer. Accordingly, purchasing activity effected in reliance on the proposed exception should be consistent with the affiliate's prior levels of activity. We note that risk arbitrage is excluded from the exception applicable to the financial advisor's affiliate.²⁴³ Risk arbitrage is so closely related to the tender offer that the incentive for abusive behavior is significant. Finally, we propose to add definitions of subject company²⁴⁴ and home jurisdiction²⁴⁵ to Rule 14e-5, consistent with existing definitions.

Request for Comment

- We solicit comment on all aspects of the proposed exceptions, including each of the enumerated conditions.
- We solicit specific comments on each of the conditions in the Rule 14e-5(b)(11) proposal concerning Tier II status, economic terms, consideration, currency conversion, procedural terms, disclosure and purchases being made solely pursuant to the foreign tender offer.
- We solicit specific comments on each of the conditions in the Rule 14e-5(b)(12) proposal concerning foreign private issuer and Tier II status, no purchases or arrangements to purchase in the U.S. other than pursuant to the tender offer, and disclosure. We also solicit comment on the price matching condition applicable to the offeror and its affiliates, as well as each of the additional conditions applicable to a financial advisor's affiliate, including the financial advisor having an affiliate that is registered as a broker or dealer

²⁴² 15 U.S.C. 78o.

²⁴³ Risk arbitrage may involve the purchase of the subject security and the sale of stock in the proposed acquirer. See *Financial Advisors* and the attached request dated April 3, 2007 regarding Blanket Exemptive Relief Request under Rule 14e-5 excepting risk arbitrage from the list of trading activities at page 3.

²⁴⁴ 17 CFR 229.1000.

²⁴⁵ Exchange Act Rule 14d-1.

under Section 15(a) of the Exchange Act.

- Are there additional means besides analyzing prior purchasing activity by the financial advisor's affiliate to assure that routine trading activity outside the tender offer is not conducted with the intent to affect the tender offer?

- Are there additional conditions that should be added to the proposed exceptions to safeguard the interests of persons who sell their securities in response to a tender offer? In particular, should conditions number ten from the *Financial Advisors* letter²⁴⁶ and numbers three and five from the *Sulzer* letter²⁴⁷ be incorporated into the Rule 14e-5(b)(12) proposal?

- Are there other alternatives that would better protect the interests of security holders?

- We solicit comment on suggested definitions of risk arbitrage.

- In addition to risk arbitrage, is there any other purchasing activity that should be excluded from the proposed Rule 14e-5(b)(12) exception?

D. Expanded Availability of Early Commencement for Exchange Offers

In 1999, we adopted rule revisions intended to minimize the regulatory disparity between cash and stock tender offers.²⁴⁸ Before those changes, exchange offers in which the bidder offered its shares as part or all of the offer consideration were at a disadvantage compared to cash offers because of the regulatory review process associated with the filing of a Securities Act registration statement.²⁴⁹ Cash

tender offers could commence on the date of the filing of a tender offer statement with the Commission. Before the 1999 rule revisions, exchange offers, by contrast, could not begin until the staff completed its review of the registration statement filed by the bidder and it had been declared effective. This disparity was of particular concern in the tender offer context, where multiple bidders may make contemporaneous offers for the same target company through competing offers.

To address this disparity in the regulatory process for cash tender offers and exchange offers, we adopted rule changes permitting exchange offers to commence upon the date of the filing of a registration statement under specified conditions.²⁵⁰ However, bidders exercising the option to "early commence" an exchange offer may not terminate that offer and purchase tendered shares until the registration statement has been declared effective by the Commission.²⁵¹ We recognized in proposing the early commencement option that a regulatory disparity in the treatment of cash and stock tender offers could continue to exist because the staff review process might delay the effectiveness of the registration statement in an exchange offer and thus could delay the bidder's ability to close the exchange offer.²⁵² In adopting the early commencement option, however, the staff undertook to expedite the review of such exchange offers so that they could compete on an equal footing with cash tender offers.²⁵³ We believe the staff generally has been successful in meeting this commitment.

Since we made early commencement available, we have recognized that a regulatory disparity continues to exist because the early commencement option is not available for exchange offers that are not subject to Rule 13e-4 or Regulation 14D.²⁵⁴ In certain

contrast, cash offers, which may compete with exchange offers, can commence as soon as the required information is filed with the Commission and disseminated to security holders. The delay in commencing an exchange offer can place the bidder at risk that a competing all-cash bid will commence and close before the exchange offer can even commence."

²⁵⁰ See Regulation M—A Adopting Release, Section II.E.1.

²⁵¹ See Securities Act Rule 162(a) [17 CFR 230.162(a)].

²⁵² See Regulation M—A Proposing Release, Section II.A.3.A.

²⁵³ See Regulation M—A Adopting Release, Section II.E.1.

²⁵⁴ Securities Act Rule 162(a) provides an exemption from the registration requirements of Section 5(a) of the Securities Act only for exchange offers subject to Rule 13e-4(e) or 14d-4(b). Since those rules apply only to tender offers for target

foreign jurisdictions, the staff has been advised that applicable non-U.S. tender offer rules provide that, where a bidder makes a tender offer for one class of target securities, it also must make an offer or offers for any other class or classes of securities issued by the same target and convertible into the subject securities. Because these offers are made contemporaneously and through a single offer document, if one class of target securities is not subject to Rule 13e-4(e) or Rule 14d-4(b), the bidder effectively loses the ability to commence early under our existing rules. This may create an undue burden for bidders, where the offer for each class of target securities is made in accordance with the requirements of Regulation 14D or Rule 13e-4, as modified by the Tier II cross-border exemptions.

We believe that all exchange offers eligible for the Tier II cross-border exemptions should be able to take advantage of the early commencement procedure, regardless of whether the exchange offer is subject to the provisions of Regulation 14E only, where the offeror voluntarily provides protections required in an offer subject to Rule 13e-4 or Regulation 14D. Since its adoption, the early commencement procedure has worked well in facilitating exchange offers and we believe extending the procedure to all Tier II offers would be appropriate. Under the expanded rules we propose today, bidders for foreign securities that are not registered under the Exchange Act would be able to take advantage of the early commencement option, subject to the conditions discussed below.

Today we propose to expand the availability of early commencement for cross-border exchange offers not subject to Rule 13e-4 or Regulation 14D under the conditions outlined in our proposed rules.²⁵⁵ A new provision in the Tier II exemptions would permit early commencement, where the exchange offer meets the conditions of the exemptions. We also propose a corresponding change to Securities Act Rule 162 to extend the exemption from Section 5(a) in that rule for exchange offers not subject to Rule 13e-4 or Regulation 14D that otherwise meet the conditions for the Tier II exemptions.

Initially, the Commission did not make this option available because we were concerned that such offers were

securities registered under Section 12 of the Exchange Act and in limited other circumstances, early commencement is not currently available for all exchange offers. See footnote 109 above for a discussion of when Exchange Act Rule 13e-4 and Regulation 14D apply.

²⁵⁵ Proposed Exchange Act Rules 13e-4(i)(2)(vi) and 14d-1(d)(2)(x).

²⁴⁶ Condition number ten states: "The Financial Advisor, through its Affiliates and Departments, conduct the Trading Activities voluntarily in compliance with the pertinent provisions of the United Kingdom's City Code on Takeovers and mergers and Rules Governing Substantial Acquisitions of Shares (the "City Code"), and the Affiliates and Departments conduct themselves as if they were connected exempt principal traders as defined in the City Code, including complying with regulations with respect to the establishment and maintenance of information barriers, conflict of interest provisions and other requirements, other than with respect to the notification of relevant trades to the Panel * * *". *Financial Advisors* at p. 3.

²⁴⁷ Condition number three states: "The Prospective Purchasers comply with the applicable laws and regulations of the 'home jurisdiction' as defined in Rule 14d-1." *Sulzer* at p. 2. Condition number five states: "The Commission and the home jurisdiction are parties to a bilateral or multilateral memorandum of understanding (MOU) as to the consultation and cooperation in the administration and enforcement of securities laws." *Sulzer* at p. 3.

²⁴⁸ See Regulation M—A Adopting Release, Section II.3.A.

²⁴⁹ See Regulation M—A Proposing Release, Section I. ("In some cases, where the staff undertakes to review and comment during the waiting period, the delay of effectiveness can be quite lengthy. This delay is particularly troublesome for bidders in exchange offers. In

not subject to all of the disclosure and procedural protections applicable to registered offers.²⁵⁶ In particular, the absence of the requirement to provide withdrawal rights in offerings for unregistered classes of securities caused us to retain the requirement that a bidder could not commence such offers before the registration statement filed to register the share issuance had been declared effective by the Commission.²⁵⁷ The proposed rules would address these concerns by permitting early commencement for exchange offers for unregistered securities only where the bidder provides withdrawal rights in the offer to the same extent as would be required under Regulation 14D or Rule 13e-4.²⁵⁸ In addition, the proposed rule would require the same minimum time periods after the occurrence of specified changes as are required for other "early commencement" offers.²⁵⁹

Request for Comment

- Should the expanded eligibility to commence early be limited, as proposed, to cross-border exchange offers eligible to rely on the Tier II exemptions only?
- Should the expanded eligibility be conditioned on the bidder providing withdrawal rights and keeping the offer open for certain minimum time periods after information about material changes is disseminated to security holders, as proposed? Are there any other procedural protections applicable to offers subject to Regulation 14D or Rule 13e-4 besides withdrawal rights that should be required in an early commencement offer not subject to Regulation 14D or Rule 13e-4?
- Should the early commencement option be made available for all exchange offers, including those for domestic target companies not within the scope of current Rule 162? For example, would this be useful in the case of tender offers for debt securities,

which are not covered by Regulation 14D or Rule 13e-4?

- Are there certain types of exchange offers for which early commencement should not be permitted, whether in the cross-border context or otherwise? For example, should transactions in which an issuer privately places securities and, shortly thereafter, conducts an exchange offer to exchange them for registered securities²⁶⁰ be permitted to commence early, where such offers are not subject to Rule 13e-4?

- What have been bidders' experiences with the usefulness of the early commencement option in our current rules, in light of the staff review and comment process?

E. Proposed Changes to Schedules and Forms

1. Form CB

When an offeror or issuer relies on the Tier I cross-border exemptions in connection with a cross-border business combination transaction or rights offering, it may be required to furnish to the Commission an English translation of the offer materials, submitted under cover of Form CB.²⁶¹ When we adopted Form CB in 1999, we specified that the form could be submitted in paper form only. In 2002, however, the Commission adopted rule changes mandating electronic filing for persons already reporting under Section 13(a)²⁶² or 15(d)²⁶³ of the Exchange Act.²⁶⁴ If the person furnishing the Form CB is not an Exchange Act reporting entity, it may currently submit the Form CB in paper or via the Commission's Electronic Data Gathering, Analysis, and Retrieval system, or EDGAR.²⁶⁵

As a result of advances in technology and its widespread use, we believe it would be appropriate to require all Form CBs to be filed electronically via our EDGAR system. We therefore

²⁶⁰ See the no-action letter issued to *Exxon Capital Holdings Corp.* (April 1988). These offers are commonly known as "Exxon Capital exchange offers."

²⁶¹ Exchange Act Rules 14d-1(c)(3)(iii) and 13e-4(h)(8)(iii). Form CB must be furnished to the Commission by the first business day after publication or dissemination of the attached disclosure document in the applicable foreign jurisdiction(s). See Securities Act Rules 801(a)(4)(i) and 802(a)(4)(i), and Exchange Act Rules 13e-4(h)(8)(iii) and 14d-1(c)(3)(iii). The obligation to furnish a Form CB arises only when the bidder in a tender offer otherwise would have been required to file a Schedule TO or a registration statement for an exchange offer; thus, no Form CB is required for cash tender offers subject only to Regulation 14E.

²⁶² 15 U.S.C. 78m.

²⁶³ 15 U.S.C. 78o(d).

²⁶⁴ See Rule 101(a)(1)(vi) of Regulation S-T [17 CFR 232.101(a)(1)(vi)].

²⁶⁵ See Rule 101(b)(7) of Regulation S-T [17 CFR 232.101(b)(7)].

propose to amend Item 101(a) of Regulation S-T to require that all Form CBs be submitted electronically.²⁶⁶ For the same reasons, we also propose to require the electronic filing of the form for appointment of an agent in the United States for service of process, which must be filed by all foreign companies that furnish a Form CB to the Commission.²⁶⁷ For purposes of the current cross-border exemptions, our rules require Form F-X²⁶⁸ to be filed electronically only when the Form CB must be so filed, *i.e.*, when the foreign company filing it is already subject to the reporting requirements of Section 13 or Section 15(d) of the Exchange Act.²⁶⁹

We note that, in order to file electronically, an offeror or issuer that is not already doing so would need to obtain filing codes required to file on EDGAR. An offeror or issuer that does not already have EDGAR filing codes, and to which the Commission has not previously assigned a user identification number, which we call a "Central Index Key (CIK)" code, would obtain the codes by filing electronically a Form ID²⁷⁰ at <https://www/filermanagement.edgarfiling.sec.gov> and filing, in paper by fax within two business days before or after filing the Form ID, a notarized authenticating document. The authenticating document would need to be manually signed by the applicant over the applicant's typed signature, include the information contained in the Form ID, and confirm the authenticity of the Form ID.²⁷¹ If the authenticating document is filed after electronically filing the Form ID, it would need to include the accession number assigned to the electronically filed Form ID as a result of its filing.²⁷²

Electronic filing in all cases would benefit investors by enabling them to more easily access these forms through the Commission's website. If adopted, this requirement would have no impact

²⁶⁶ See proposed Rule 101(a)(1)(vi) of Regulation S-T.

²⁶⁷ See proposed Rule 101(a)(1)(vii) of Regulation S-T.

²⁶⁸ Form F-X is a form for appointing an agent in the United States for service of process. It must be filed by foreign filers only.

²⁶⁹ See Rules 101(a)(vii) and 101(b)(8)(i) of Regulation S-T.

²⁷⁰ 17 CFR 239.63, 249.446, 269.7 and 274.402.

²⁷¹ An offeror or issuer could confirm the authenticity of a Form ID by, for example, stating that "[name of offeror or issuer] hereby confirms the authenticity of the Form ID [filed] [to be filed] on [specify date] containing the information contained in this document."

²⁷² 17 CFR 232.10(b). An "accession number" is a unique number generated by EDGAR for each electronic submission. Assignment of an accession number does not mean that EDGAR has accepted a submission.

²⁵⁶ See Section I.E. Question 4 in the Third Supplement to the Division of Corporation Finance Manual of Publicly Available Telephone Interpretations (July 2001), at <http://www.sec.gov/interp/telephone/phonesupplement3.htm> (noting that the early commencement option is not available for debt restructurings under existing rules, because Regulation 14D and Rule 13e-4 apply to tenders for equity securities only).

²⁵⁷ Securities Act Rule 162(a) states that an exchange offer subject to Exchange Act Rule 13e-4(e) or 14d-4(b) may commence upon the filing of a registration statement "so long as no securities are purchased until the registration statement has been declared effective and the tender offer has expired in accordance with the tender offer rules."

²⁵⁸ Proposed Exchange Act Rules 13e-4(i)(2)(vi) and 14d-1(d)(2)(x).

²⁵⁹ Proposed Securities Act Rule 162(a).

on the liability of the persons furnishing their offer materials under cover of Form CB.²⁷³ Additionally, it would not change the circumstances under which a Form CB or Form F-X must be filed.

We are not currently proposing, but we solicit comment on, whether we should change the cover page of the Form CB to make it easier for the staff to monitor the application of the cross-border exemptions. We could amend the cover page of the Form CB to include a space where persons furnishing the form would specify the U.S. ownership interest in the foreign target company or in the issuer for rights offerings supporting reliance on the exemptions. This would help us monitor the application and effectiveness of the cross-border exemptions. This information already would be available to the person furnishing the Form CB, since it is required for the Tier I calculation.²⁷⁴

Request for Comment

- Should we require all Form CBs to be furnished to the Commission in electronic form via our EDGAR system, as proposed? Would this requirement present a hardship for non-reporting entities submitting the form? For example, would the process for procuring a notarized authenticating document in a foreign jurisdiction for purposes of obtaining a Form ID present a hardship for non-reporting entities?

- If we change our rules to require the electronic submission of all Form CBs, should we adopt the same requirements for electronic filing of Form F-Xs, as proposed, when required to be submitted with the Form CB?

- Are there reasons why electronic filing would not be desirable?

- Should we require the filing person to fill in a box on the cover page of the Form CB specifying the level of U.S. ownership of the target or issuer that permits reliance on the cross-border exemptions?

2. Proposed Changes to Schedule TO, Form F-4 and Form S-4

We also propose to add a box on the cover page of the Schedule TO and Forms F-4 and S-4 that a filing person would be required to check to indicate reliance on one of the applicable cross-border exemptions.²⁷⁵ This would be

helpful to the staff as well as to filing persons. For example, the inclusion of this information on the cover page of a tender offer statement or registration statement, filed in connection with a cross-border transaction in which the filer is seeking to rely on an applicable cross-border exemption, would enable the staff to perform the review process more efficiently. The availability of this information would eliminate staff comments that are based on misperceptions about which exemption the filer is seeking and which U.S. rules apply to the transaction, thereby reducing the time and cost involved for the filer in responding to staff comments. Currently, there is often no way to tell from reading the tender offer materials whether filers are relying on the cross-border exemptions.

We also solicit comment on whether we should include a space or box on the cover page of these schedules and forms requiring the filer to specify the U.S. ownership percentage that permits reliance on the exemption claimed. We do not propose this change today, but we believe it could be helpful in certain circumstances and are interested in commenters' views on whether this would present an undue burden or liability risk for filers. If we were to require this, it would be required only if one or more of the cross-border exemptions is being relied upon. As with Form CB, filers already would possess this information in determining eligibility to rely on the applicable cross-border exemption.

Request for Comment

- Would the proposed requirement to check a box identifying the cross-border exemption relied upon be a burden for filers? Would the information be useful to the public?

- Should we also add a box or blank space on the cover page of Schedule TO and Forms S-4 and F-4 where filers would list the percentage of the target securities held by U.S. persons that permits reliance on the applicable cross-border exemption? Would this requirement represent an undue hardship or liability for filers?

- Would investors or others find this information useful in connection with their consideration of the transaction?

F. Beneficial Ownership Reporting by Foreign Institutions

1. Background

The beneficial ownership reporting requirements in Sections 13(d)²⁷⁶ and

13(g)²⁷⁷ of the Exchange Act²⁷⁸ and the corresponding regulations²⁷⁹ provide investors and the issuer with information about accumulations of securities that may have the potential to change or influence control of the issuer. This statutory and regulatory framework establishes a comprehensive reporting system for gathering and disseminating information about the ownership of equity securities.

The beneficial ownership reporting provisions require, subject to exceptions, that any person who acquires more than five percent of a class of equity securities registered under Section 12 of the Exchange Act²⁸⁰ and other specified equity securities report the acquisition on Schedule 13D within ten days. Persons holding more than five percent of a class of such securities at the end of the calendar year, but not required to report on Schedule 13D, must file a short-form Schedule 13G within 45 days after December 31. These Schedule 13G filers include persons exempt from the requirements of Section 13(d),²⁸¹ as well as specified institutional investors holding securities in the ordinary course of business and not with a control purpose.²⁸² As specified in Rule 13d-1(b)(1)(ii), the types of institutional investors that may file on Schedule 13G under that rule include a broker or dealer registered under Section 15(a) of the Exchange Act,²⁸³ a bank as defined in Section 3(a)(6) of the Exchange Act,²⁸⁴ an insurance company as defined in Section 3(a)(9) of the Exchange Act,²⁸⁵ an investment company registered under Section 8 of the Investment Company Act of 1940,²⁸⁶ an investment adviser registered under Section 203 of the Investment Advisers Act of 1940,²⁸⁷ an employee benefit plan or pension fund that is subject to the provisions of the Employee Retirement Income Security Act,²⁸⁸ and related holding companies and groups. The list of institutional investors in Rule 13d-1(b)(1)(ii) currently does not include non-domestic institutions generally, and is limited to institutions

²⁷⁷ 15 U.S.C. 78m(g).

²⁷⁸ 15 U.S.C. 78a *et seq.*

²⁷⁹ Regulation 13D-G, Exchange Act Rule 13d-1 *et seq.* [17 CFR 240.13d-1 *et seq.*].

²⁸⁰ 15 U.S.C. 78l.

²⁸¹ This category consists of persons filing on Schedule 13G because their acquisitions are statutorily or administratively exempt from reporting on Schedule 13D.

²⁸² Exchange Act Rule 13d-1(b)(1)(ii).

²⁸³ 15 U.S.C. 78o(b).

²⁸⁴ 15 U.S.C. 78c(a)(6).

²⁸⁵ 15 U.S.C. 78c(a)(9).

²⁸⁶ 15 U.S.C. 80a-8.

²⁸⁷ 15 U.S.C. 80b-1 *et seq.*

²⁸⁸ Codified principally in 29 U.S.C. 1001-1461.

²⁷³ We note that persons furnishing Form CB are not subject to Section 18 liability with respect to the information provided.

²⁷⁴ For bidders relying on the hostile presumption available for non-negotiated transactions, the Form CB would list the percentage of U.S. ownership of the target yielded by the ADTV calculation, unless the bidder had reason to know a different level of U.S. ownership.

²⁷⁵ Existing Form CB contains such a box.

²⁷⁶ 15 U.S.C. 78m(d).

such as brokers, dealers, investment advisers and investment companies registered with the Commission, or regulated banks, pension funds or insurance companies.

In 1977, we proposed an amendment to the precursor to Rule 13d-1(b)(1)(ii)²⁸⁹ which would have allowed non-domestic entities similar to domestic brokers, dealers, banks, investment companies, investment advisers, employee benefit plans, and parents and groups of these persons to use the short form Schedule 13G to report beneficial ownership, provided that such persons agreed to make available to the Commission the same information they would be required to furnish in responding to the disclosure requirements of Schedule 13D.²⁹⁰ When we adopted final rules in 1978, however, we declined to amend the rule to allow foreign entities, who otherwise qualified, to use the short form available to U.S. institutions.²⁹¹

The 1978 adopting release indicated that applications for exemptive orders by foreign entities would be entertained to enable them to report on Schedule 13G. The release discussed several conditions to the availability of such exemptive orders, and stated that the Commission would entertain applications when the acquisitions are in the ordinary course of business and not with the purpose nor with the effect of changing or influencing control of the issuer, nor in connection with or as a participant in any transaction having such purpose or effect. It stated that the Commission may consider any further conditions that may be appropriate when granting exemptive orders.

Historically, use of the Schedule 13G by foreign institutions filing as qualified institutions under Rule 13d-1(b)(i)(ii) has been limited to institutions that have obtained an exemptive order from the Commission²⁹² or, under the current practice, a no-action position from the Division of Corporation Finance based upon the requester's undertaking to grant the Commission or the staff access to information that would otherwise be disclosed in a Schedule 13D and the comparability of

the foreign regulatory scheme applicable to the particular category of institutional investor.²⁹³ In connection with the amendments to the beneficial ownership reporting requirements proposed in 1996, we noted that we "believe[d] that a non-U.S. institution seeking relief to file pursuant to Rule 13d-1(b)(1) should be subject to a regulatory scheme in its country comparable to the U.S. regulatory scheme for the particular category of institution and that such institutions should undertake to grant the Commission access to information that would otherwise be disclosed on Schedule 13D."²⁹⁴ We stated that no change to the practice of issuing exemptive orders or staff no-action positions was proposed.²⁹⁵ We requested comment regarding whether the rules should be amended to expressly allow foreign institutional investors that are the functional equivalent of our domestic institutions to file on Schedule 13G.²⁹⁶

When we adopted amendments to the beneficial ownership reporting rules in 1998, we stated that we were not expanding the list of qualified institutional investors in Rule 13d-1(b)(1)(ii) to include foreign institutions.²⁹⁷ Further, we stated that the use of Schedule 13G pursuant to the provisions of Rule 13d-1(b)(1) would continue to be limited to institutions such as brokers, dealers, investment companies, and investment advisers registered with the Commission, or regulated banks, pension funds, or insurance companies, and its availability would not be extended to foreign institutions generally.²⁹⁸ The adopting release noted that foreign

institutional investors that do not have a disqualifying purpose or effect would be able to rely on the passive investor provisions of Rule 13d-1(c) to file a Schedule 13G.²⁹⁹ To the extent that any foreign institutional investor sought to report on Schedule 13G as a qualified institutional investor, the institution would be required to obtain an exemptive order or no-action position. We continue to receive and grant requests from foreign institutions seeking to file on Schedule 13G as qualified institutional investors.³⁰⁰

2. Proposed Rules

The past ten years have brought tremendous change to our capital markets. As the capital markets become increasingly global, we believe we need to continually re-evaluate our regulatory scheme to determine whether it is efficiently and effectively protecting investors and not imposing unnecessary burdens. We recognize that the burden imposed on foreign institutions that must file a Schedule 13D (or obtain an individual no-action letter) is more extensive than the filing requirements applicable to comparable U.S. institutions that are able to report beneficial ownership on Schedule 13G. We also recognize that foreign institutions filing as passive investors pursuant to Rule 13d-1(c) are subject to more stringent requirements than institutions eligible to rely on Rule 13d-1(b).³⁰¹ We weigh these burdens against

²⁹⁹ The passive investor provision was adopted in 1998 to expand the class of investors eligible to file on the short form Schedule 13G. See Release No. 34-39538. Under Exchange Act Rule 13d-1(c), a passive investor choosing to file a Schedule 13G must file within ten calendar days after acquiring beneficial ownership and must certify that it does not have a disqualifying purpose or effect. Qualified institutional investors filing on Schedule 13G pursuant to Exchange Act Rule 13d-1(b) must file the form within 45 calendar days after the calendar year end of the year in which, on the last day of the year, its beneficial ownership of the subject class exceeds 5 percent. Under the amendments we propose today and discussed below, a foreign institution would be permitted to file on Schedule 13G as a qualified institutional investor if it meets the specified conditions.

³⁰⁰ See footnote 293 above.

³⁰¹ Currently, a difference exists for passive investors and qualified institutional investors in the timing requirements for filing an initial Schedule 13G, as discussed above, and filing amendments to Schedule 13G. Passive investors amend Schedule 13G in a manner similar to qualified institutional investors, but more promptly. Another difference in the filing requirements for passive investors and qualified institutional investors is the applicable certification. Finally, an investor beneficially owning more than 20 percent of a class of securities may not file as a passive investor. A qualified institutional investor is not subject to the 20 percent limit. These differences present a significant burden for institutions that do a significant amount of trading or engage in securities transactions on behalf of clients. Allowing foreign institutions to file as qualified institutional investors would

²⁸⁹ Exchange Act Rule 13d-5 was the precursor to Exchange Act Rule 13d-1(b).

²⁹⁰ See *Beneficial Ownership Disclosure Requirements*, Release No. 34-13292 (February 24, 1977) [42 FR 44964].

²⁹¹ The release stated that we determined not to adopt the amendment "in view of the substantial enforcement difficulties encountered in seeking to assure compliance by foreign persons with the provisions of Section 13(d)." See *Filing and Disclosure Requirements Relating to Beneficial Ownership*, Release No. 34-14692 (April 21, 1978) [43 FR 18484].

²⁹² *Id.*

²⁹³ See, e.g., *Canada Pension Plan Investment Board* (May 5, 2006) (granting relief for the Canada Pension Plan (CPP) Investment Board to file on Schedule 13G where the Board represented that the Canadian Pension Plan was the functional equivalent of a U.S. private pension fund and the regulatory regime governing the CPP Investment Board was substantially similar to the regulations applicable to U.S. pension funds under the Employee Retirement Income Security Act of 1974) and *Citigroup Inc.* (May 27, 2004) (granting relief for certain qualifying subsidiaries of Citigroup organized under the laws of England and Wales; the subsidiaries conducted investment banking business, including market-making, through trading in their own accounts and for their customers and represented that they were subject to regulation in the United Kingdom that was comparable to U.S. regulations).

²⁹⁴ See *Amendments to Beneficial Ownership Reporting Requirements*, Release No. 34-37403 (July 3, 1996) [61 FR 36521] (the "Reproposing Release").

²⁹⁵ *Id.*

²⁹⁶ *Id.*

²⁹⁷ See *Amendments to Beneficial Ownership Reporting Requirements*, Release No. 34-39538 (January 12, 1998) [63 FR 2854].

²⁹⁸ *Id.*

the important safeguards that the provisions of Rule 13d-1(b) provide. We believe that it may be possible to extend Schedule 13G filing eligibility pursuant to Rule 13d-1(b) to foreign institutions, while maintaining the protections of the rule.³⁰²

Accordingly, we propose to amend Rule 13d-1(b)(1)(ii) to include foreign institutions that are substantially comparable to the U.S. institutions listed in subparagraphs (A)–(J) of the current rule. In this regard, to be eligible to file on Schedule 13G, the foreign institution would be required to determine,³⁰³ and certify on Schedule 13G, that it is subject to a regulatory scheme comparable to the regulatory scheme applicable to its U.S. counterparts.³⁰⁴ Additionally, in its

reduce the filing burden for those foreign institutions and decrease the disparities in the way U.S. and foreign institutions are treated under the rules.

³⁰² We note that in 2004, the Commission adopted a rule that remedied disparate treatment of domestic and foreign banks. See *Foreign Bank Exemption from the Insider Lending Prohibition of the Exchange Act Section 13(k)*, Release No. 34–49616 (April 26, 2004) [69 FR 24016].

³⁰³ Similar to a domestic institution, a foreign institution would need to determine whether it qualified to use the short-form Schedule 13G at the time it exceeded the beneficial ownership threshold. This initial determination as to form eligibility would require a foreign institution to determine, at the time it exceeds the beneficial ownership threshold, whether it is subject to a foreign regulatory scheme applicable to the particular category of institutional investor comparable to the applicable U.S. regulatory scheme. If the foreign institution made such a determination, it would be eligible to file on Schedule 13G as a qualified institutional investor, as long as it could provide the certification required by Schedule 13G. If at any time before filing a Schedule 13G pursuant to proposed Rule 13d-1(b)(1)(ii)(K) the foreign institution determined that it was no longer able to rely on the provision, it would be required to file a Schedule 13D in accordance with the rules.

³⁰⁴ When determining whether the foreign regulatory scheme is comparable to the U.S. regulatory scheme, the foreign institution should consider a number of factors, including whether the institution is engaged in a business similar to the business engaged in by the qualified institutional investors listed in Rule 13d-1(b)(1)(ii), and whether the institution affords protections similar to those offered by domestic institutions (such as minimum capital requirements, deposit guarantees, licensing requirements, periodic reporting of information in the home country, power of inspection by home country regulators, etc.). See, e.g., *Natixis S.A., Banque Fédérale des Banques Populaires and Caisse Nationale des Caisses d'Epargne* (October 9, 2007) (granting relief where the requestor and its subsidiaries represented they were engaged in businesses similar to those engaged in by one or more qualified institutional investors listed in Rule 13d-1(b)(1)(ii) and that they were subject to regulation in France that was substantially comparable to the U.S. regulatory scheme) and *DnB NOR ASA and Qualifying Subsidiaries* (January 9, 2008) (granting relief where DnB NOR and its qualifying subsidiaries represented that they were engaged in businesses similar to those engaged in by one or more classes of persons identified in Rule 13d-1(b)(1)(ii) and that they were subject to

certification on Schedule 13G, the foreign institution would need to undertake to furnish to the Commission staff, upon request, the information it otherwise would be required to provide in a Schedule 13D. If these proposed rule changes are adopted, Rule 13d-1(b) would continue to be available only to institutions that acquired and held the equity securities in the ordinary course of business and not with the purpose or effect of influencing or changing control of the issuer.³⁰⁵

Under Rule 13d-1(e), when a passive investor or qualified institutional investor determines that it holds subject securities with a disqualifying purpose or effect, it must file a Schedule 13D no later than 10 calendar days after the change in investment purpose.³⁰⁶ Therefore, in the event that an institution—foreign or domestic—determines that it holds subject securities with a disqualifying purpose or effect, it would be required to file a Schedule 13D. In addition, the institution would be subject to a “cooling-off period.”³⁰⁷ During the cooling-off period, the reporting person is prohibited from voting or directing the voting of the subject securities or acquiring additional beneficial ownership of any equity securities of the issuer or any person controlling the issuer. We believe the cooling-off period provides an important safeguard for the market and investors and allows them time to react to the information in the Schedule 13D filing.

As noted above, in the past we expressed concern regarding possible difficulties with enforcement in the event that we sought additional information from a foreign institution. We believe that such difficulties are mitigated by various factors. First, we are proposing that any foreign institution availing itself of Schedule 13G certify that it is subject to a comparable regulatory scheme and that it will provide Schedule 13D-type information upon request. Second, much of the additional Schedule 13D-type information already may be provided to the primary home country regulator and may be publicly available or available in the event of a formal request.

extensive regulation in the jurisdictions in which they operate analogous to U.S. regulations).

³⁰⁵ See Exchange Act Rule 13d-1(b).

³⁰⁶ Exchange Act Rule 13d-1(e).

³⁰⁷ We adopted the cooling-off period in 1998, and it applies to both passive investors and qualified institutional investors; therefore, it would apply to a foreign institution filing under proposed Exchange Act Rule 13d-1(b). The cooling-off period begins with the change in investment purpose and lasts until the expiration of the tenth calendar day from the date the investor filed a Schedule 13D.

Request for Comment

- Would the proposed amendments alleviate practical difficulties for foreign beneficial owners without affecting the quality of information available to U.S. investors?

- Should a foreign institution be required, as proposed, to certify on Schedule 13G that it is subject to a regulatory scheme comparable to the U.S. regulatory scheme for the particular category of institution?

- Would foreign institutions find it difficult to certify that they are subject to comparable regulation? How should we alleviate any difficulty?

- Should the certification be different or include any other information? Should the certification language include a statement that the foreign institution is subject to comprehensive supervision or regulation in its home jurisdiction,³⁰⁸ rather than the language we proposed? Why or why not?

- Should filing on Schedule 13G only be available, as proposed, to non-U.S. persons who undertake on Schedule 13G to furnish the staff with information, at its request, that would otherwise be disclosed in a Schedule 13D?

- Should a foreign institution that seeks to use a Schedule 13G also be required to file a Form F-X? Should the Form F-X, like Schedule 13G, be required to be filed electronically?

- Should a foreign institution that intends to rely on proposed new Rule 13d-1(b)(1)(ii)(K) be required to file a public notice of such intent? If such a notice was required to be filed, when should the notice be filed and should the filer be required to make the proposed certification at the time the notice is filed?

- Should we also require foreign institutions filing as passive investors under Rule 13d-1(c) to file a Form F-X?

- Should the use of Schedule 13G by foreign institutions relying on the proposed rule be limited to institutions from jurisdictions that have a bilateral enforcement memorandum of understanding (MOU) with the SEC or institutions that are signatories to the IOSCO Multilateral Memorandum of Understanding concerning consultation, cooperation and the exchange of information?

³⁰⁸ Similar language is used in Exchange Act Rule 13k-1, which provides an exemption for foreign banks from the insider lending prohibition of Section 13(k). The rule provides a definition of a foreign bank and includes conditions that foreign banks must meet, such as being required to insure deposits or being subject to a deposit guarantee.

G. Interpretive Guidance

1. Application of the All-Holders Rule to Foreign Target Security Holders

Most of this release deals with cross-border business combination transactions where the target is a foreign private issuer. In this section, however, we address an issue involving the treatment of foreign target security holders in tender offers generally, including those for U.S. target companies. The issue of bidders' ability to exclude foreign target security holders is addressed here because it closely relates to the issue of the exclusion of U.S. target security holders in cross-border tender offers, which we discuss in the next section below. As we continue to encourage our fellow international securities and takeover regulators to minimize the ability of bidders to exclude U.S. holders from business combination transactions, we recognize the need to take similar steps with regard to the ability of bidders to exclude non-U.S. holders pursuant to our rules.

In 1986, we adopted Rule 14d-10 and amended Rule 13e-4(f) to require that all target security holders in a tender offer subject to either of those rules be included in the tender offer and treated equally.³⁰⁹ These rules require that third-party tender offers subject to Section 14(d) of the Exchange Act, as well as issuer tender offers subject to Section 13(e) of the Exchange Act, be open to all holders of the subject class of securities.³¹⁰ This equal treatment provision does not prohibit tender offers for less than all outstanding securities of a subject class, but it does require that all security holders be able to accept the tender offer if they choose.³¹¹

The all-holders provisions in Rules 14d-10 and 13e-4(f) apply equally to U.S. as well as non-U.S. target

holders.³¹² However, we are aware that certain bidders are purporting to exclude foreign target security holders in tender offers subject to these rules. Therefore, we wish to reiterate our position that the all-holders requirement does not allow the exclusion of any foreign or U.S. target holder in tender offers subject to those rules. We believe it is in the interests of U.S. investors to enforce U.S. equal treatment principles for the benefit of non-U.S. target security holders. This is particularly true today, where comparable foreign all-holders requirements may protect U.S. investors by preventing their exclusion from cross-border offers.

We recognize, however, that the requirement to make an offer available to all foreign target holders, particularly for registered exchange offers, may present a burden for bidders that may need to comply with both foreign and U.S. rules. We are soliciting comment on whether any amendments to the U.S. equal treatment provisions are necessary or advisable to allow certain target security holders to be excluded from the offer. In this regard, we note the exception in Rule 14d-10(b), which states that the all-holders rule will not "prohibit a bidder from making a tender offer excluding all security holders in a state where the bidder is prohibited from making the tender offer by administrative or judicial action pursuant to a state statute after a good faith effort by the bidder to comply with such statute."³¹³ We are soliciting comment as to whether this rule should be amended to include a similar provision with respect to target holders in foreign jurisdictions. We are also soliciting comment as to whether we should specifically define what a "good faith effort" means.

Notwithstanding the requirements of Rule 14d-10 and Rule 13e-4(f) to extend an offer to all holders of a target company's securities, these provisions have not been interpreted to require that offering materials be mailed into foreign jurisdictions.³¹⁴ We recognize that disseminating a U.S. offer document in

non-U.S. jurisdictions may implicate applicable foreign laws. Certain foreign jurisdictions allow bidders not to mail offer materials into certain foreign jurisdictions. For instance, the U.K. Takeover Panel has adopted a "de minimis" exception permitting bidders not to mail offer materials to target holders in jurisdictions where few target securities are held. Under that rule, bidders for U.K. target companies may choose not to mail offer materials to target security holders outside the U.K. and outside the European Economic Area (the "EEA") when a particular jurisdiction presents significant risks of civil, regulatory or criminal liability to the bidder and less than three percent of the securities of the target are held of record in that jurisdiction.³¹⁵ We note that even when the U.K. Code does not require the dissemination of offer materials into a particular foreign jurisdiction pursuant to this provision, it does not sanction a prohibition on tenders from security holders located there.

We further note that certain bidders have required target holders to certify that tendering their securities complies with local laws or that an exemption applies that allows such tenders without further action by the bidder to register or qualify its offer. We do not believe it is appropriate to shift this burden of assuring compliance with the relevant jurisdiction's laws to target security holders because target security holders may not be in possession of relevant facts regarding the bidder's action and the provisions of local law in their home

³¹⁵ The City Code on Takeovers and Mergers, Rule 30.3. The note to Rule 30.3 provides an exception to the UK's dissemination requirement with respect to shareholders outside of the EEA. The note states:

Where local laws or regulations of a particular non-EEA jurisdiction may result in a significant risk of civil, regulatory or, particularly, criminal exposure for the offeror or the offeree company if the information or documentation is sent or made available to shareholders in that jurisdiction without any amendment, and unless they can avoid such exposure by making minor amendments to the information being provided or documents being sent or made available either:

(a) The offeror or the offeree company need not provide such information or send or make such information or documents available to registered shareholders of the offeree company who are located in that jurisdiction if less than 3% of the shares of the offeree company are held by registered shareholders located there at the date on which the information is to be provided or the information or documents are to be sent or made available * * * ; or

(b) In all other cases, the Panel may grant a dispensation where it would be proportionate in the circumstances to do so having regard, notably, to the cost involved, any resulting delay to the transaction timetable, the number of registered shareholders in the relevant jurisdiction, the number of shares involved and any other factors invoked by the offeror or the offeree company.

³⁰⁹ See *Amendments to Tender Offer Rules: All-Holders and Best-Price*, Release No. 34-23421 (July 11, 1986) [51 FR 25873] ("All-Holders and Best Price Adopting Release").

³¹⁰ Pursuant to these provisions, the bidder may not restrict the offer to target holders as of a particular record date only. See footnote 35 in All-Holders and Best Price Adopting Release. While as a practical matter, the bidder will look to beneficial holders as of a recent date in distributing the offer materials, the offer must be open to all target security holders, including those who purchase after the tender offer commences. See *In the Matter of Application of WHX Corp.*, Exchange Act Release No. 47980 (June 4, 2003), *vacated on other grounds*, *WHX Corp. v. SEC*, 362 F.3d 854 (D.C. Cir. 2004).

³¹¹ If the tender offer is for less than all of the securities of the subject class and the offer is oversubscribed, the bidder must purchase tendered securities on a pro rata basis. See Section 14(d)(6) of the Exchange Act and Exchange Act Rules 13e-4(f)(3) and 14d-8.

³¹² See All-Holders and Best-Price Adopting Release, Section III.A.2., which stated "While a tender offer subject to Sections 13(e) and 14(d) of the Williams Act must be held open to all holders of the subject class of securities, *including foreign persons*, Rules 14d-10(b)(1) and 13e-4(f)(9)(i) make clear that the all-holders requirement does not affect the required dissemination of tender offers. * * * The Commission has not interpreted these provisions as requiring dissemination of tender offer materials outside of the United States, and the adoption of the all-holders requirement is not intended to impose any additional requirements in this regard." (emphasis added; footnotes omitted).

³¹³ Exchange Act Rule 13e-4(e)(9) contains a comparable provision for issuer tender offers.

³¹⁴ See footnote 312 above.

jurisdiction necessary to make this determination.

Request for Comment

- Is it necessary or appropriate for bidders in tender offers for U.S. target companies to exclude foreign target security holders in certain non-U.S. jurisdictions? Why? Is the answer different for cash tender offers versus exchange offers?
- Should bidders be allowed to condition tendering into an offer on the subject security holder certifying to compliance with the securities law requirements of its jurisdiction?
- Would permitting exclusion of some foreign target holders result in decreased protections for U.S. holders in cross-border tender offers?
- Should Rule 14d-10 and Rule 13e-4 be amended to include a provision expressly stating that those rules will not prohibit a bidder from excluding shareholders in a particular foreign jurisdiction, where the bidder is prohibited from making the tender offer by foreign law after a good faith effort by the bidder to comply with the law?
 - What should be considered a “good faith effort” for purposes of such a rule change?
 - Should the number or percentage of security holders in a particular jurisdiction or the cost or additional timing requirements of complying with a particular jurisdiction’s rules impact the good faith determination?
- Should our rules be revised to permit exclusion of foreign target security holders in any jurisdiction where a minimal number of target holders are located? If so, what would be an appropriate de minimis threshold? Three percent? Five percent?
- If the rules should be amended as described, should such a provision be expanded to specifically include situations where a bidder is unable to determine the beneficial ownership of the securities in a foreign jurisdiction?
- If we were to adopt a de minimis exclusion, should we permit exclusion only where the bidder also establishes a significant risk of civil or criminal liability by extending the offer into that jurisdiction?
- Should we require dissemination of offering materials to all holders of a target’s securities, whether or not they are located in the United States? If we adopted such a requirement, should there be exceptions? If so, what should they be?

2. Ability of Bidders To Exclude U.S. Target Security Holders

As discussed above, one of the primary motivations of the Commission

in adopting the cross-border exemptions was to facilitate the inclusion of U.S. security holders in cross-border business combination transactions. We believe those exemptions have been successful generally in encouraging offerors in cross-border business combination transactions to include U.S. security holders in those transactions. At the request of commenters, the Cross-Border Adopting Release also provided guidance on whether and under what circumstances offer materials for offshore tender and exchange offers may be posted on the Internet without triggering U.S. tender offer and registration rules.³¹⁶ This followed earlier Commission guidance on the use of Internet Web sites to solicit securities transactions and to offer securities.³¹⁷ The issue of using Internet Web sites in offshore tender and exchange offers is part of a broader question as to whether and how bidders in cross-border business combination transactions legitimately may avoid the application of U.S. registration and tender offer rules. Based on our experience with these matters since 1999, we believe it may be helpful to provide additional guidance on issues specific to cross-border tender offers.

Whether U.S. tender offer rules apply in the context of a cross-border tender offer depends on whether the bidder triggers U.S. jurisdictional means in making a tender offer.³¹⁸ Today foreign jurisdictions commonly require information about a tender offer or business combination transaction to be posted on a publicly-available and unrestricted Web site.³¹⁹ In addition, it is common for both bidders and target

companies in business combination transactions to post information about the transactions on their own Internet Web sites, whether or not they are required by the law of the foreign home jurisdiction to do so.

As discussed above, the Commission has provided guidance on measures acquirors may take to avoid triggering U.S. jurisdictional means.³²⁰ We have recognized that bidders who are not U.S. persons³²¹ may structure a tender offer to avoid the use of the means or instrumentalities of interstate commerce or any facility of a national securities exchange in making its offer and, thus avoid triggering application of our rules.³²² A bidder making a tender offer for target securities of a foreign private issuer may exclude U.S. target security holders if the offer is conducted outside the United States and U.S. jurisdictional means are not implicated.³²³ However, a bidder may implicate U.S. jurisdictional means if it fails to take adequate measures to prevent tenders by U.S. target holders while purporting to exclude them. While we encourage bidders to allow U.S. target security holders to participate in cross-border tender offers, when a bidder permits them to participate in a tender offer, it must follow U.S. rules unless an exemption applies. The relevant question thus becomes how bidders may conduct exclusionary offers that are limited to non-U.S. holders³²⁴ without implicating U.S. tender offer rules, particularly where those offers are subject to the equal treatment principles in Section 13(e) or 14(d) of the Exchange Act.³²⁵

³²⁰ See generally, the 1998 Internet Release and the Cross-Border Adopting Release.

³²¹ In our view, it generally is inappropriate for a U.S. bidder to exclude U.S. target security holders when making a tender offer for a foreign private issuer target company. We continue to believe that, in light of the cross-border exemptions adopted in 1999, a U.S. bidder generally would not have reason to exclude U.S. target security holders in making an offer for the securities of a foreign private issuer. See Cross-Border Adopting Release, Section II.G.4. The rule revisions proposed today, if adopted, would reinforce this view.

³²² See All-Holders and Best Price Adopting Release, Section III.A.3. (finding that amendments to the all-holders and best price provisions specifically exempting offshore exclusionary offers from those provisions were unnecessary, given the application of the jurisdictional means test).

³²³ See footnote 319 above.

³²⁴ We use the term “exclusionary offer” to mean tender offers that exclude U.S. target holders of the subject class of securities for which the offer is made.

³²⁵ For tender offers not subject to Sections 13(e) or 14(d) of the Exchange Act, such as third-party offers for a target class of securities that is not registered under Section 12 of the Exchange Act, no all-holders requirement exists. Therefore, U.S. target security holders technically may be excluded

Continued

³¹⁶ See Cross-Border Adopting Release, Section II.G.

³¹⁷ See *Statement of the Commission regarding use of Internet Web sites to offer securities, solicit securities transactions or advertise investment securities offshore*, Release No. 33-7516 (March 23, 1998) [63 FR 14806] (“1998 Internet Release”).

³¹⁸ Section 14(d)(1) of the Exchange Act reads in relevant part: “It shall be unlawful for any person, directly or indirectly, by use of the mails or by any means or instrumentality of interstate commerce or of any facility of a national securities exchange or otherwise, to make a tender offer for, or a request or invitation for tenders of, any class of any equity security which is registered pursuant to section 12 of this title * * * if, after consummation thereof, such person would, directly or indirectly, be the beneficial owner of more than 5 per centum of such class, unless at the time copies of the offer or request or invitation are first published or sent or given to security holders such person has filed with the Commission a statement containing such information as the Commission may by rules or regulations prescribe. * * *.”

³¹⁹ See, e.g., *ProSiebenSat.1 Media AG* (September 12, 2005) (describing the procedure in Germany of posting the offer documents on an Internet web site). Such foreign provisions may include a requirement to post the offer documents themselves, or notice of the offer with instructions on how to obtain the offer materials.

The Commission has recognized, and we reaffirm today, that business combination transactions present special considerations not common to capital-raising issuances.³²⁶ Because of their pre-existing investment in a target company, target security holders, including U.S. holders, are likely to seek out any information about the target company, the acquiror, and the proposed transaction.³²⁷ U.S. security holders also may have a greater incentive and opportunity to find a means to participate in transactions involving the target securities they own. Even where they are not able to do so, U.S. holders' interest in those securities may be affected significantly by a business combination transaction involving the target company.³²⁸

For these reasons, bidders seeking to avoid the application of U.S. law should take special precautions to assure that their offer is not made in the United States. We have provided guidance on how they may do so in the context of cross-border tender offers.³²⁹ Perhaps the most basic measure is to include legends on the offer materials themselves and on any Internet Web site on which they are posted, indicating that the offer is not being made in the United States.³³⁰ In addition, the bidder should take special precautions to assure that tenders are not accepted from nor sales of bidder securities made (in the case of exchange offers) to target security holders resident in the United States.³³¹ These may include, in responding to inquiries and processing

from those offers even where the U.S. jurisdictional means are triggered; however, these offers would need to comply with the procedural and anti-fraud requirements of applicable U.S. rules.

³²⁶ See Cross-Border Adopting Release, Section II.G.2.

³²⁷ This is particularly true today, where advances in technology permit investors to establish online alert systems to inform them of any news relating to a target company.

³²⁸ This is particularly the case in cross-border tender offers, where bidders' ability to "squeeze out" target security holders remaining after a tender offer may be more limited than in the United States. For example, in some countries, bidders must achieve ownership levels significantly in excess of 51 percent of target securities to be able to compulsorily acquire the remaining target securities. Where target securities are delisted after the tender offer, U.S. holders excluded from the offer may be left with an illiquid security.

³²⁹ See Cross-Border Adopting Release, Section II.G.2.

³³⁰ See 1998 Internet Release, Section III.B.

³³¹ See Cross-Border Adopting Release, Section II.G.2. We note that business combinations other than tender offers, where the target company is being merged out of existence, are different because once such transactions are approved, all target holders' securities will be acquired. In business combinations other than tender offers, we have stated that we do not believe the acquiror should avoid the payment of consideration to U.S. target holders. *Id.*

letters of transmittal, obtaining adequate information to determine whether the target security holder is a U.S. investor.³³² In addition, the bidder could require representations by the tendering security holder, or anyone tendering on that person's behalf, that the tendering holder is not a U.S. holder or someone tendering on behalf of a U.S. holder.³³³

Several issues have come to light with respect to these measures to keep a tender offer outside of the United States. First, we reiterate that a legend or disclaimer stating that the offer is not being made into the United States, or that the offer materials may not be distributed there, is not likely to be sufficient in itself because, as discussed in the preceding paragraph, if the bidder wants to support a claim that the offer has no jurisdictional connection to the United States, it also will need to take special precautions to prevent sales to or tenders from U.S. target holders.³³⁴ In some cases, bidders purporting to make exclusionary tender offers offshore have attempted to circumvent foreign all-holders requirements by including statements that the tender offer is not "being made into the United States." We do not view such statements as sufficient in themselves to avoid being subject to the U.S. federal securities laws if, as a practical matter, U.S. holders are not and may not be prevented from participating in the offer using U.S. jurisdictional means.

Bidders may require a representation or certification from tendering holders that they are not U.S. holders to avoid triggering U.S. law.³³⁵ We recognize the possibility that target security holders could misrepresent their status in order to be permitted to tender into an exclusionary offer. We have stated that where this occurs, bidders will not be viewed as having targeted U.S. investors, thereby invoking U.S. jurisdictional means.³³⁶ However, this position is premised on the bidder having taken adequate measures reasonably designed to guard against purchases from and sales to U.S. holders.³³⁷ It is also premised on the absence of indicia that would or should put the bidder on notice that the tendering holder is a U.S. investor.³³⁸

³³² *Id.*

³³³ *Id.*

³³⁴ See Cross-Border Adopting Release, Section II.G.2.

³³⁵ See Cross-Border Adopting Release, Section II.G.2.

³³⁶ See 1998 Internet Release, Section III.C.

³³⁷ *Id.*

³³⁸ These would include receipt of payment drawn on a U.S. bank, provision of a U.S. taxpayer identification number or statements by the

Where tenders in exclusionary offers are made through offshore nominees, bidders could require that these nominees certify that tenders are not being made on behalf of U.S. holders. We recognize that this may be problematic where the law of the applicable foreign jurisdiction prevents the nominee from knowing the identity or location of beneficial holders on whose behalf they hold.

While we encourage the participation of U.S. target security holders in cross-border tender offers and other business combination transactions, their participation should be accomplished in compliance with U.S. rules or through applicable cross-border exemptions. In the future, the staff will more closely monitor exclusionary offers to determine whether Commission action is necessary to protect U.S. target holders.

Request for Comment

- Should the Commission provide additional guidance on the specific measures an acquiror may or should take to avoid triggering U.S. jurisdictional means in the context of cross-border business combination transactions?

- What measures are reasonable and effective, and in the best interests of U.S. investors?

- Should we also consider further rulemaking to address the situation where a bidder seeks to avoid U.S. jurisdictional means by excluding U.S. target security holders, but is subject to foreign home country rules mandating that all target security holders must be permitted to participate in the offer? How would such rules balance the practical needs of bidders with the requirement to protect the interests of U.S. investors?

3. Vendor Placements

In many business combination transactions, the offer consideration may include securities of the bidder. In some transactions, cash may be offered together with the bidders' securities and, in other transactions, no cash will be offered and the bidder's securities will constitute the sole consideration offered to tendering holders of the target's securities.

For Tier I-eligible tender offers, for purposes of complying with the equal

tendering holder that notwithstanding a foreign address, the tendering holder is a U.S. investor. We have explicitly noted that if, after implementing measures intended to safeguard against tenders by U.S. persons, the bidder discovers it has purchased securities from U.S. holders, it should consider other measures that may avoid this lapse in the future. *Id.*

treatment requirement, bidders are permitted to offer cash consideration to U.S. holders in lieu of offering securities so long as the bidder has a reasonable basis for believing that the amount of cash is substantially equivalent to the value of the consideration offered to non-U.S. holders. In addition, most Tier I-eligible offers should be eligible for the exemption from Securities Act registration provided by Rule 802. If Rule 802 or another exemption from registration is not available, then the bidder is required to register the securities being offered under the Securities Act.

In certain cross-border exchange offers, bidders may seek to avoid the registration requirements under the Securities Act by establishing a vendor placement arrangement for the benefit of U.S. target security holders who tender into the offer. In a vendor placement, the bidder generally employs a third party to sell in offshore transactions the securities to which tendering U.S. security holders are entitled in the offer. The bidder (or the third party) then remits the proceeds of the resale (minus expenses) to those U.S. target security holders that tendered into the offer.

Where permissible, the vendor placement process allows bidders in cross-border exchange offers to extend the offer into the United States but avoid the Securities Act registration requirements. In effect, the vendor placement is an effort to convert an exchange offer involving the offer and sale of the bidder's securities (which would require Securities Act registration) into an offer involving solely cash (which does not require registration) as it relates to tendering U.S. security holders.

The staff often receives inquiries about the use of the vendor placement structure in cross-border offers and has in the past issued no-action letters permitting the use of the structure in limited situations.³³⁹ Although tendering holders receive cash in a vendor placement, the amount of cash received is largely dependent on the market value of the underlying security. The protections of the Securities Act are intended to give investors access to information when making an investment decision with respect to the purchase of a security. A vendor placement does not in all circumstances eliminate the requirement for Securities

Act registration, because tendering U.S. holders may be effectively making an investment decision with respect to the purchase of a security.

In the no-action letters issued by the staff, there are a number of factors the staff looks to in deciding whether the vendor placement arrangement obviates the need for Securities Act registration. These factors include:

- The level of U.S. ownership in the target company;
- The amount of bidder securities to be issued overall in the business combination as compared to the amount of bidder securities outstanding before the offer;
- The amount of bidder securities to be issued to tendering U.S. holders and subject to the vendor placement, as compared to the amount of bidder securities outstanding before the offer;
- The liquidity and general trading market of the bidder's securities;
- The likelihood that the vendor placement can be effected within a very short time after the termination of the offer and the bidder's acceptance of shares tendered in the offer;
- The likelihood that the bidder plans to disclose material information around the time of the vendor placement sales; and
- The process used to effect the vendor placement sales.

We believe these factors are relevant to whether registration is required. In addition to the other factors listed above, offerors should be particularly cognizant of U.S. target ownership levels.

We believe that a vendor placement arrangement in cross-border exchange offers would be subject to Securities Act registration unless the market for the bidder securities to be issued in the exchange offer and sold pursuant to the vendor placement procedure is highly liquid and robust and the number of bidder securities to be issued in the exchange offer and for the benefit of tendering U.S. holders is relatively small compared to the total number of bidder securities outstanding. We also would consider:

- The timeliness of the vendor placement process; that is, whether sales of bidder securities through the vendor placement process are effected within a few business days of the closing of the offer;
- Whether the bidder announces material information, such as earnings results, forecasts or other financial or operating information, before that process is complete; and
- Whether the vendor placement involves special selling efforts by

brokers or others acting on behalf of the bidder.

In tender offers subject to Section 14(d) of the Exchange Act, the all-holders and best price requirements in Rule 14d-10 also are implicated by the use of the vendor placement structure because U.S. target security holders would receive different consideration from their non-U.S. counterparts. We generally believe that the parameters of the Tier I cross-border exemptions should represent the appropriate limits under which a bidder in a tender offer subject to Regulation 14D may offer cash to U.S. security holders while issuing shares to their counterparts outside the United States.

Bidders making a cross-border exchange offer sometimes ask whether they may exclude some U.S. target holders and include in the exchange offer only those U.S. target holders (such as accredited investors) for whom an exemption from the registration requirements of the Securities Act may be available. We have stated that exchange offers for securities subject to Section 14(d) of the Exchange Act may not be made in the United States on a private offering basis, consistent with the all-holders provisions of Rule 14d-10.³⁴⁰ Thus, even where the bidder is eligible to rely on an exemption from Securities Act Section 5 for such offers, it would violate the equal treatment provisions applicable to such offers by excluding target security holders for whom an exemption was not available. Similarly, as discussed above, offering cash under a vendor placement arrangement to some U.S. holders and bidder securities to others (such as institutions) is not permitted in tender offers subject to the all-holders rule.

Bidders may continue to use vendor placement arrangements in accordance with the guidance set forth here. Where a bidder seeks to use the vendor placement structure for a tender offer subject to Rule 14d-10 at U.S. ownership levels above Tier I, it must seek an exemption from those rules. As noted above, such relief will be granted only where it is in the interests of U.S. investors.

III. General Request for Comment

We request and encourage any interested person to submit comments on any aspect of our proposals or guidance and any of related matters that might impact the proposed amendments or guidance. We request comment from investors, issuers, and other users of the information that may be affected by the

³⁴⁰ See footnote 91 in the Cross-Border Adopting Release.

³³⁹ See, e.g., *Singapore Telecommunications Ltd* (May 15, 2001); *Oldcastle, Inc.* (July 3, 1986); *Electrocomponents PLC* (September 23, 1982), *Equitable Life Mortgage and Realty Investors* (December 23, 1982); *Getty Oil (Canadian Operations) Ltd.* (May 19, 1983) and *Hudson Bay Mining and Smelting Co., Ltd.* (June 19, 1985).

proposed rule changes and interpretive guidance. We also request comment from service professionals, such as law and accounting firms. With respect to any comments, we note that they are of greatest assistance to our rulemaking initiatives if accompanied by supporting data and analysis of the issues addressed in those comments.

IV. Paperwork Reduction Act

Some provisions of the proposed rule amendments require the "collection of information" within the meaning of the Paperwork Reduction Act of 1995 (the "PRA").³⁴¹ We will submit our proposed revisions to the Office of Management and Budget ("OMB") for review in accordance with the PRA.³⁴² The titles for the collections of information are:

- (1) "Form S-4" (OMB Control No. 3235-0065);
- (2) "Form F-4" (OMB Control No. 3235-0325);
- (3) "Form ID" (OMB Control No. 3235-0328);
- (4) "Form CB" (OMB Control No. 3235-0518);
- (5) "Form F-X" (OMB Control No. 3235-0379);
- (6) "Schedule TO" (OMB Control No. 3235-0515); and
- (7) "Securities Ownership—Regulation 13D (Commission Rules 13d-1 through 13d-7 and Schedules 13D and 13G)" (OMB Control No. 3235-0145).

We adopted these existing forms and schedules pursuant to the Securities Act and Exchange Act. Forms F-4 and S-4 contain disclosure requirements for registration statements that are prepared by issuers to provide investors information to make informed investment decisions in registered offerings of securities. Form CB and Schedule TO provide investors with information to make informed investment decisions regarding certain business combination transactions and rights offerings. Regulation 13D was adopted pursuant to the Exchange Act and sets forth the disclosure requirements for securities ownership reports filed by investors.

The hours and costs associated with preparing and filing the disclosure, filing the forms and schedules and retaining records required by these regulations constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of

information unless it displays a currently valid OMB control number.

A. Summary of Proposals

1. Proposed Amendments to the Tier I Exemption and Form CB

The proposed rule amendments would add to the types of affiliated transactions that could be effected in reliance on the Tier I exemption from Rule 13e-3(g)(6). A Form CB would be required when an issuer or acquiror relies on the expanded Tier I exemption proposed and publishes or otherwise disseminates an informational document to holders of the subject securities. Because more transactions would become eligible to rely on the exemption from Rule 13e-3 for cross-border transactions, this rule change may result in additional submissions of Form CB. If the rule were not expanded, however, the issuer or affiliate would be required to comply with the more burdensome filing requirements of Schedule 13E-3 if the issuer or affiliate sought to include U.S. security holders in the transaction. We believe the proposed rule and reduced filing requirement would encourage issuers or affiliates to include U.S. security holders in transactions that otherwise may have excluded them to avoid Rule 13e-3 and the corresponding Schedule 13E-3 filing requirements. Domestic or foreign entities or persons engaged in cross-border business combination transactions would likely be the respondents to the collection of information requirements.

Unlike Schedule 13E-3, Form CB is a notice filing that is little more than a cover sheet that incorporates offer documents sent to security holders pursuant to applicable foreign rules in the issuer's or target's home country. The party furnishing the form must attach an English translation of the offer materials disseminated abroad. Form CB must be submitted by the next U.S. business day after that document is disseminated under home country rules.

We propose to require all Form CBs to be filed electronically. Under existing rules, only persons who are already subject to reporting obligations under Section 13(a) or 15(d) of the Exchange Act are required to submit Form CB electronically and all others may submit the form in paper. We also propose to require that Form F-Xs filed in connection with Form CBs to be filed electronically. We do not expect these amendments to affect the overall collection of information burden of these forms.

Form ID is filed by registrants, individuals, transfer agents, third-party

filers or their agents to request the assignment of access codes that permit the filing of securities documents on EDGAR. This form enables the Commission to assign an identification number (CIK), confirmation code, password and password modification authorization code to each EDGAR filer, each of which is designed to protect the security of the EDGAR system. While we do not expect that the proposed amendments will affect the overall collection of information burden of Forms CB and F-X, we do expect that it will cause additional respondents to file a Form ID each year and, as a result, will increase the annual collection of information burden for that form. We estimate that 65,700 respondents file Form ID each year at an estimated burden of .15 hours per response, all of which is borne internally by the respondent for a total annual burden of 9,855 hours. For fiscal year 2007, a total of 189 Form CBs were filed with the Commission. Of those 189 Form CBs, 100 were filed in paper. We expect the proposed amendments will cause an additional 100 respondents to file a Form ID each year and, as a result, cause an additional annual burden of 15 hours (100 × .15). For purposes of the PRA, we estimate that the additional burden cost resulting from the proposed amendments will be zero.

2. Proposed Amendments to Forms S-4, F-4, and Schedule TO

We propose amendments to the cover page of Forms S-4 and F-4 and Schedule TO that would require the filer to check a box specifying the applicable cross-border exemption being relied upon in connection with the transaction. Domestic and foreign persons or entities filing these documents would be the respondents to the collection of information requirement. This change would not affect the substantive obligation to file the forms or schedule. This additional information would allow the staff to better process such filings and monitor the application of the cross-border exemptions. For our proposal regarding Schedule TO and Forms S-4 and F-4, the amount of information required to be included in each schedule or form would change minimally with the addition of a check box. Accordingly, for purposes of the PRA, our preliminary estimate is that the amount of time necessary to prepare each schedule or form, and hence, the total amount of burden hours, would not change.

³⁴¹ 44 U.S.C. 3501 *et seq.*

³⁴² 44 U.S.C. 3507(d); 5 CFR 1320.11.

3. Proposed Amendments to Schedule 13G

Exchange Act Schedule 13G is a short-form filing for persons to report ownership of more than five percent of a class of equity securities registered under Section 12 of the Exchange Act. Generally, the filer must certify that the securities have not been acquired and are not held for the purpose of, or with the effect of, changing or influencing the control of the issuer of the securities. For purposes of the PRA, we currently estimate that compliance with the Schedule 13G requirements under Regulation 13D requires 98,800 burden hours in aggregate each year, broken down into 24,700 hours (or 2.6 hours per respondent) of respondent personnel time and costs of \$22,230,000 (or \$2,340 per respondent) for the services of outside professionals.³⁴³

The proposed amendment to Rule 13d-1 would expand the availability of Schedule 13G to foreign institutions governed by a regulatory system substantially comparable to the U.S. regulatory system for domestic institutions. We propose to allow specified foreign institutions to report beneficial ownership of more than five percent of a subject class of securities on Schedule 13G instead of Schedule 13D. Foreign institutions of the type specified in amended Rule 13d-1(b) would be the likely respondents to the collection of information requirements. These institutions either currently would be filing on Schedule 13D as required by existing rules, or would be required to seek no-action letters from the staff to permit them to file on Schedule 13G to the same extent as their domestic counterparts, so long as they satisfy certain conditions. Amending the rule would enable foreign institutions meeting the conditions in the rule to file the Schedule 13G without seeking a no-action letter. Therefore, the amended rule may result in only a slight increase in the number of Schedule 13G filers.³⁴⁴

³⁴³ These figures assume 9,500 respondents file Schedule 13G with the Commission annually. We estimate that 25 percent of the burden of preparation is carried by the company internally and that 75 percent of the burden of preparation is carried by outside professionals retained by the issuer. These figures assume an average cost of \$300 per hour for the services of outside professionals. We have increased the cost estimate to \$400 since our last estimate provided to OMB, based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission. Therefore, the revised cost for the service of outside professionals would be \$29,640,000 (\$400 × 74,100 hours) or \$3,120 per respondent.

³⁴⁴ Based on the number of no-action requests in this area in recent years, we believe that approximately three filers per year would benefit from this proposed change and would avoid the

For purposes of the PRA, we estimate that the proposed amendments to Schedule 13G would create an incremental burden of two hours per response, which we would add to the existing Schedule 13G burden resulting in a total burden of 117,800 hours.³⁴⁵ We note that the burden associated with the proposed amendments to Schedule 13G initially would be higher with an estimated burden of five hours. Over time, however, we believe that on average the burden would lessen and therefore estimate an incremental burden of two hours per response. Each additional filer would incur a burden of approximately .50 hours of respondent personnel time (25 percent of the total burden) and costs of \$450 for the services of outside professionals (75 percent of the total burden). In sum, we estimate that the amendments to Schedule 13G would increase the annual paperwork burden by approximately 1.50 hours of respondent personnel time³⁴⁶ and a cost of approximately \$1,350 for the services of outside professionals.³⁴⁷

We estimate that Schedule 13D has a total burden of approximately 14.5 hours per response to prepare and is filed by 3,000 respondents annually. For purposes of the PRA, we currently estimate that compliance with the Schedule 13D requirements under Regulation 13D requires 43,500 burden hours in aggregate each year, broken down into 10,875 hours (or 3.6 hours per respondent) of respondent personnel time and costs of \$9,787,500 (or \$3,263 per respondent) for the services of outside professionals.³⁴⁸

Based upon these estimates, a foreign institution currently filing a Schedule 13D that would be eligible to file a Schedule 13G pursuant to the proposed

time and expense of submitting a no-action request to the staff. In addition, foreign institutions currently filing on Schedule 13D who have not sought no-action relief to file on Schedule 13G would also benefit by becoming eligible to use the shorter Schedule 13G. See discussion above.

³⁴⁵ We currently estimate the burden for preparing a Schedule 13G filing to be 10.4 hours, resulting in a total of 98,800 burden hours in aggregate each year. If each additional filer incurred an additional two hours, the resulting burden would be 117,800 total burden hours ((10.4 hours + two hours) × 9500 respondents).

³⁴⁶ Three additional filers × .50 hours of respondent personnel time = 1.50 aggregate burden hours.

³⁴⁷ Three additional filers × \$450 = \$1,350.

³⁴⁸ As noted above, we have increased the cost estimate to \$400 since our last estimate provided to OMB, based on our consultations with several registrants and law firms and other persons who regularly assist registrants in preparing and filing with the Commission. Therefore, the revised cost for the service of outside professionals would be \$13,050,000 (\$400 × 10,875 hours) or \$4,350 per respondent.

rule would benefit from a cost reduction of \$473 per respondent.³⁴⁹ As noted above, however, for a number of years, the staff has provided no-action relief to foreign institutions seeking to file a Schedule 13G rather than a Schedule 13D. For those institutions that are already filing a Schedule 13G pursuant to no-action relief, the proposed rules should only increase the cost associated with providing the required certification in Schedule 13G and will not significantly impact the cost of complying with the requirements of Regulation 13D.

B. Solicitation of Comments

We request comment on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information would have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should send a copy to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090, with reference to File No. S7-10-08. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7-10-08, and be submitted to the Securities and Exchange Commission, Office of the Secretary—Records Management Branch, 100 F Street, NE., Office of Filings and Information Services, Washington, DC 20549. OMB is required to make a decision concerning the collection of information between 30

³⁴⁹ We calculate this figure in the following manner: \$3,263 - (\$2,340 + \$450) = \$473. The total cost burden of Schedule 13G is estimated currently at an aggregate burden of \$22,230,000, or \$2,340 per respondent (\$22,230,000/9,500 respondents = \$2,340).

and 60 days after publication of this release. Consequently, a comment to OMB is assured of having its full effect if OMB receives it within 30 days of publication.

V. Cost-Benefit Analysis

We are proposing amendments to our rules that would reduce the overall cost for issuers and acquirors engaged in cross-border business combination transactions. We also provide interpretive guidance regarding the application of certain rules. Under current rules, where there are conflicts between U.S. and foreign law or practice, acquirors in cross-border business combination transactions frequently seek no-action or exemptive letters from the staff. Under the proposed rule amendments, much of the relief sought in the past would be available without the need for no-action or exemptive letters. As a result, the benefits of the rule amendments would include an increase in regulatory certainty about the U.S. rules governing cross-border business combination transactions and a substantial savings in the cost of preparing letters requesting no-action or exemptive relief. Decreasing the burden on acquirors of complying with U.S. rules governing business combination transactions is designed to encourage them to extend more transactions to U.S. target holders; therefore, we believe the proposed rule revisions would be in the interests of U.S. investors while continuing to provide appropriate protections. In order to more fully characterize these benefits, we seek comments on the average cost of preparing such letters and the amount of time spent working through concerns raised during the staff's review of such letters. We also solicit comments on any incremental costs of undertaking cross-border transactions that might arise from the proposed rule amendments. We request any relevant data from commenters that would help us quantify these costs and related benefits.

In analyzing the costs and benefits of the proposed rules, we compare estimated future cross-border transaction activity that would likely occur under the proposed rules with what would occur in a benchmark case without the rules. Because the proposed rules would assure parties of their ability to engage in practices that are permitted now only through the request and issuance of a no-action or exemptive letter, the benchmark case is the level of transaction activity that would occur if parties did not have access to such regulatory relief.

A. Proposed Changes to the Eligibility Test for Determining Eligibility To Rely on the Cross-Border Exemptions

1. Proposed Changes

The changes we propose to the test for determining eligibility to rely on the cross-border exemptions for business combination transactions are limited in nature and scope and do not represent a significant departure from our current rules. They are intended to address specific problems acquirors have faced in determining whether they can rely on the cross-border exemptions. These changes are not intended to expand or reduce the number of parties eligible to use the cross-border exemptions. The changes will not materially affect the cost of undertaking such transactions relative to what would occur if parties could not reliably obtain no-action or exemptive letters, as currently is the case.

We propose to allow acquirors to calculate the required U.S. beneficial ownership figure within a range of dates that is no more than 60 days before a specified reference date. Currently, our rules require the calculation to be done as of a set date. We also propose to change the reference date for purposes of the required calculation for business combination transactions. Under current rules, the calculation was required to be done as of the 30th day before commencement of a cross-border business combination transaction. As proposed, we would require the calculation to be done no more than 60 days before the public announcement of the cross-border business combination transaction. We also propose limited changes to the manner in which U.S. ownership may be calculated for cross-border tender offers accomplished on a non-negotiated or hostile basis. These changes are intended to clarify certain elements of the "hostile presumption" test for these kinds of offers that have created uncertainty for acquirors in the past. As discussed above, the reference date for the negotiated transaction and hostile presumption tests for business combination transactions also would be changed to key off of the public announcement of the transaction. Finally, in this release and the proposed rules, we provide some guidance on the "reason to know" element of the hostile presumption test, which we hope would make the application of the test simpler and more certain for acquirors.

2. Benefits

We anticipate that the enhanced flexibility to choose a date within a range may make it easier for acquirors to accomplish the required calculation

as specified under our rules, thereby promoting use of the exemptions and the inclusion of U.S. holders while reducing the acquirors' burden of seeking no-action or exemptive letters in this area. Changing the reference point for the calculation of U.S. ownership to the public announcement of the transaction would mean that the calculation would be done as of a date when the target's security holder base may be unaffected (or less affected, if there are some changes in response to rumors in the market) by the announcement of the transaction, which would provide a more accurate picture of the security holder base. This change also would allow acquirors more flexibility in planning cross-border business combination transactions and therefore, we expect bidders would be encouraged to engage in these transactions. It is unclear whether using public announcement as the reference point for the calculation would have the effect of increasing or reducing U.S. ownership in the target company.

3. Costs

Under the proposed amendments, U.S. investors may lose certain protections under the U.S. rules governing cross-border business combination transactions if the foreign private issuer in which they own securities becomes the subject of such a transaction and the acquiror relies on the cross-border exemptions. To the extent that the applicable cross-border exemptions would exempt the acquiror from compliance with U.S. registration, filing and disclosure requirements, U.S. investors would lose these protections. In such circumstances, however, we believe that the benefit to U.S. investors of being included in the transaction rather than being excluded justifies the cost of reduced protections under U.S. law. Otherwise, we do not believe that U.S. investors would be harmed by the proposed flexibility in calculation of U.S. ownership.

B. Changes to the Tier I Cross-Border Exemptions

1. Expansion of the Tier I Exemption From Rule 13e-3

We propose to expand the set of cross-border business combination transactions that are exempt from the requirements of Rule 13e-3. Currently, the cross-border exemption from Rule 13e-3 applies only to tender or exchange offers or business combinations conducted under Tier I.³⁵⁰

³⁵⁰ As noted previously, the Tier I exemption is available when U.S. holders beneficially own no

We propose to expand the exemption to encompass any kind of affiliated transaction that otherwise meets the conditions of the Tier I exemption, including schemes of arrangement, cash mergers, compulsory acquisitions for cash, and other types of transactions.

a. Benefits

The expansion of the Tier I exemption from Rule 13e-3 would likely result in fewer filings of Schedule 13E-3, thus reducing the costs for issuers and affiliates in cross-border transactions that would otherwise be subject to those rules. Under the current rules, the burden of complying with Rule 13e-3 and Schedule 13E-3 may be greater for foreign filers than domestic filers. Foreign filers may not have a counterpart to these rule provisions in their home jurisdiction and may not be subject to the same fiduciary duty standards that form the basis for this heightened disclosure system for affiliated transactions.

Currently, some entities engaged in affiliated cross-border business combination transactions that would have been subject to Rule 13e-3 under our current rules and cross-border exemptions request individual exemptive relief from the staff. The staff has routinely granted these requests. To the extent that these kinds of requests would no longer be necessary, the rule change we propose today would further reduce the costs for these entities. Issuers and affiliates may have excluded U.S. holders from transactions where they would have been required to file a Schedule 13E-3. We have been told that entities may have avoided making an offer to U.S. holders to avoid application of these rules, although it is difficult to isolate the effect of this provision on the number of entities that chose not to include U.S. holders. During 2007, approximately 110 Schedules 13E-3 were filed, 10 of which were filed by foreign private issuers. During that same period, no requests for no-action relief on this issue were granted. Therefore, we assume the overall effect would not be significant, although we are not able to estimate the number of transactions that may have been structured to avoid U.S. jurisdictional means, thereby avoiding the requirement to file a Schedule 13E-3. We solicit comment regarding the number of entities or persons that the rule amendment would affect and the increases or decreases in cost that are likely to result. We believe the rule amendment would result in a cost

more than ten percent of the foreign private issuer target's securities.

reduction because it would lower the costs and burdens associated with extending these kinds of transactions into the United States. This amendment would be in the interests of U.S. investors to the extent that the expanded exemption from Rule 13e-3 motivates an acquiror to include U.S. investors in the transaction. Since the exemption applies only where U.S. security holders make up no more than ten percent of the subject security holder base, and because the heightened disclosure requirements of Schedule 13E-3 may be onerous for foreign filers, we believe this exemption may result in more cross-border transactions being extended to U.S. investors.

b. Costs

U.S. investors of foreign private issuer targets in cross-border business combination transactions that would have been subject to Rule 13e-3 but for our proposed rule amendment would lose the benefits of the disclosure in Schedule 13E-3, to the extent that such disclosure is not required under applicable foreign law.

We seek data regarding the number of Schedules 13E-3 filed with respect to the securities of foreign private issuers, the number of entities or persons that the rule amendment would affect, and the increases or decreases in cost that are likely to result, so we may be able to estimate the costs and benefits associated with any possible reduction of Schedule 13E-3 filings.

2. Technical Change to Rule 802 of Regulation C

We also propose technical changes to the language of Rule 802. These changes are not intended to substantively change the filing obligations under the current rule, and we do not believe they would have any impact on the way that rule currently functions, except to clarify how it may be used. Therefore, the proposed changes would likely confer no significant costs or benefits.

C. Proposed Changes to the Tier II Cross-Border Exemptions

The rule changes we propose represent an expansion of the current cross-border exemptions available to tender offers that meet the conditions outlined in our rules. The Tier II exemptions—which exempt certain tender offers for foreign target companies in which U.S. persons beneficially own more than ten percent but not more than 40 percent of the target's subject securities—currently apply to tender offers conducted by third parties, issuers or affiliates, where those tender offers are subject to Rule

13e-4 or Regulation 14D. The rule changes we propose would expand the relief provided in the Tier II exemptions, and clarify that the Tier II exemptions also may be used for cross-border tender offers subject only to Regulation 14E of the Exchange Act. We also propose to expand Tier II relief for dual offers by allowing offerors to make more than one concurrent non-U.S. offer, and to allow certain U.S. offers to include non-U.S. persons and certain foreign offers to include U.S. persons. Additionally, we propose changes to Rule 14e-5 to codify recent exemptive relief for Tier II-eligible tender offers.

1. Benefits

These changes to the Tier II cross-border exemptions would expand the relief provided for eligible cross-border tender offers.³⁵¹ The rule changes would reduce the need for bidders to seek individual no-action or exemptive relief from the staff. Since they represent areas in which relief is most frequently requested and granted for these kinds of transactions, the changes would reduce the associated costs and burdens of applying for relief. Where we already have reduced the associated costs and burdens of requesting and granting relief through Rule 14e-5 class exemptive letters, the codification of that relief in rule text benefits market participants by modernizing the rule and enhancing its utility by providing one readily-accessible location for exempted activities. Because the proposed rule changes will make it easier to make purchases outside of a U.S. tender offer in a manner consistent with relief frequently granted by the staff in this area, we believe the proposed changes also would have the effect of encouraging acquirors and bidders to extend cross-border tender offers to U.S. target holders on the same terms as all other target security holders.

To the extent that some of these proposed rule changes were not contemplated in the 1999 Cross-Border Adopting Release and came about only as a result of the staff's issuance of no-action and exemptive letters, we analyze the benefits and costs of the proposed revisions against the rules adopted in 1999 rather than against the perceived state of the rules as created by the issuance of no-action relief. When the Tier II exemption was adopted in 1999, by its terms it only applied to tender offers subject to Rule 13e-4 or Regulation 14D. However, we believe the benefits of the Tier II exemption

³⁵¹ See the discussion above regarding the changes to the threshold eligibility determination relating to the calculation of U.S. ownership.

would apply equally to cross-border tender offers governed by Regulation 14E only. By expanding the Tier II exemption to cover such offers, the changes we propose would allow more acquirors to take advantage of the exemption and thus allow more U.S. investors to benefit from being included in the offer. Expanding the category of offers for which Tier II relief is granted also would allow more flexibility in structuring offers and encourage more acquirors to take advantage of the exemption. Similarly, the proposed changes to the Tier II relief for dual offers and the proposed changes to Rule 14e-5 are intended to address certain foreign regulatory conflicts that were not fully appreciated when the Tier II exemption was adopted in 1999. By revising our rules to address these conflicts, we hope to enhance the applicability of the Tier II exemption and the exemptions to Rule 14e-5 and therefore encourage more acquirors to take advantage of the exemptions and include U.S. holders in cross-border transactions.

2. Costs

As with transactions governed by Regulation 14D and Rule 13e-4, the cost of reducing the protections of the Williams Act may include reduced procedural and informational safeguards for U.S. investors; however, the exemptions have been designed to reduce such a possibility. We are not aware of any other cost that would be incurred by expanding Tier II relief to tender offers governed by Regulation 14E only. In addition, because these amendments would not change the filing obligations of acquirors, investors would not lose the benefits of any required disclosure. Neither the existing or proposed changes to Tier II affect the registration requirements of Section 5 of the Securities Act, which are not covered by these exemptions.

The codification of Rule 14e-5 class exemptive letters into rule text should not increase costs to market participants, as the substance of the relief is not being altered. It is only a mechanism for the relief that is being changed from class exemptive letters to propose rule exemptions. While permitting purchases outside of a tender offer might negatively impact U.S. investors by weakening the equal treatment and proration protections of our rules, we believe that the conditions imposed on the ability to purchase outside of a Tier II tender offer under the proposed rules should help to safeguard the interests of U.S. security holders. We solicit comment on any increases or reductions in costs to

security holders that may result from the proposals.

D. Expanded Availability of Early Commencement

1. Proposed Change to Rule 162

The rules we propose today would expand the ability to commence an exchange offer before the registration statement filed with respect to the securities offered is declared effective by the Commission. Our current rules permit "early commencement" only where an exchange offer is subject to Rule 13e-4 or Regulation 14D. For tender offers conducted under Tier II, we propose to extend the option to all exchange offers, so long as withdrawal rights are provided to the same extent as would be required under Rule 13e-4 or Regulation 14D.

2. Benefits

The proposed rule change would further harmonize the treatment of exchange offers and cash tender offers. It would not impact the filing and disclosure obligations of the acquiror under the Securities Act, or the requirement to comply with the tender offer rules in Regulation 14E. Because foreign law may provide that a tender offer for one class of securities will trigger an obligation to make a contemporaneous offer for a related class, this rule change could enhance the ability of such exchange offers to commence early, and therefore could enhance the speed with which such offers may be effected. The proposed rule change also could allow combined offers to compete with cash bids.

The rule would provide the benefit to investors of receiving withdrawal rights when they otherwise would not have been required under U.S. rules. It also could cause offerors to extend an exchange offer to U.S. target security holders, where concerns about delays arising from the U.S. registration process might otherwise have caused them to exclude U.S. investors.

3. Costs

As discussed above, allowing an early commencement option for an exchange offer may result in informational costs for target security holders. Broadening the availability of early commencement may mean that investors may be more likely to receive updates to the original prospectus, to the extent that staff review results in material changes to that document. In addition, this may present increased costs for offerors who must recirculate in circumstances where they have elected to commence their

offer early, before the staff comment process (where applicable) is complete.

E. Proposed Changes to Forms and Schedules

In this release, we propose changes to the manner in which several forms and schedules are filed. We propose that all Form CBs, and Form F-Xs filed in connection with a Form CB, be required to be filed electronically. Currently, Form CB must be filed electronically only where the person furnishing it already is subject to Exchange Act Sections 13(a) or 15(d) reporting requirements. A Form F-X filed in connection with a Form CB must be filed electronically under the same circumstances.

In addition, we propose to add a box to the cover page of Schedule TO and Forms S-4 and F-4 where the filing person would specify the applicable cross-border exemption or exemptions being relied upon to conduct the applicable transaction. The cover page of Form CB already requires disclosure of this information. However, that form needs to be filed only for some cross-border transactions, and only for those conducted under Tier I or Rules 801 or 802. Under the rules proposed today, filers relying on the Tier II cross-border exemptions and filing a Schedule TO also would be required to indicate which, if any, cross-border exemption they are relying on in conducting their tender offer.

Similarly, filers of Form S-4 or F-4 that are conducting a cross-border transaction under the Tier II exemptions would be required to specify the cross-border exemption claimed on the cover page of those forms. In some cases, they also would be filing a Schedule TO, where the exchange offer is subject to Rule 13e-4 or Regulation 14D. However, Form S-4 or F-4 may be filed before Schedule TO, where an exchange offer commences early, and it would be helpful to have this information at the earliest possible time in the offering process (see discussion of benefits below). In other cases, where the subject class of securities is not subject to Rule 13e-4 or Regulation 14D, but the filer is relying on the Tier II exemptions under the expanded availability we propose today, requiring this information on the cover page of the Form S-4 or F-4 would be the only source of this information. The changes we propose to Schedule TO and Forms S-4 and F-4 would have no impact on the obligation of an offeror to file those forms.

1. Benefits

Requiring all Form CBs and related Form F-Xs to be filed via the

Commission's electronic data gathering and retrieval system, or EDGAR, would make those forms more quickly and easily accessible to the public, including U.S. investors. Instead of having to come in person or through an agent to the Commission's public reference room to conduct a search for these paper forms, investors would be able to access them electronically through the Commission's Web site or through any commercial service that links to EDGAR. Requiring Form CB to be filed electronically also would enable the press and other market participants to access these forms more easily and quickly, thereby benefiting the market participants and investors by possibly making information about the transaction more readily available.

Filers should further benefit from increased efficiencies in the filing process. Electronic filing avoids the delays and uncertainties sometimes associated with manual delivery of paper filings. Not having to submit multiple copies of paper documents to the Commission may reduce burdens on filers, especially if they are located outside of the United States. In addition, the longer filing hours for the direct electronic submission of documents (until 10 p.m., Eastern Standard Time or Eastern Daylight Saving Time, whichever is in effect) would allow filers additional flexibility in meeting their obligation to submit Form CB and Form F-X (where required) on the next business day after the attached disclosure document is disseminated pursuant to home country law.³⁵²

As to the information sought in Form S-4 or F-4 or Schedule TO, we believe this information would serve an important function for purposes of the staff review process and also would benefit filers. Currently, the staff may not be aware when reviewing a registration statement or tender offer statement that the filer is relying upon an applicable cross-border exemption to modify the terms of its offer. Consequently, the staff may not know

whether non-compliance with all the rules that would govern a particular transaction is a matter that the staff should pursue through the comment process. Providing this information when the Form S-4 or F-4 or Schedule TO is initially filed would eliminate the need for the staff to issue, and the bidder to respond to, unnecessary comments based on a lack of knowledge about reliance on a cross-border exemption.

2. Costs

There are costs associated with requiring all Forms CBs and related Form F-Xs to be filed electronically. During the fiscal year ended October 1, 2007, 45 initial Form CBs and 57 amendments were filed in paper. Initial costs of electronic filing include those associated with purchasing compatible computer equipment and software, including EDGAR software if obtained from a third-party vendor and not from the Commission's Web site. Initial costs also include training of existing employees to make the required EDGAR filings, or engaging a third-party to make them on the filer's behalf. Additional costs may be associated with the formatting and transmission of a filer's document on EDGAR. However, today financial printers and other information technology specialists capable of electronic document processing for the EDGAR system are widely available in the United States and abroad.

In addition, there would be initial costs associated with filing a Form ID in order to obtain the access codes needed to file a Form CB and Form F-X electronically.³⁵³ To file Form ID, an offeror or issuer must learn the related electronic filing requirements, obtain access to a computer and the Internet, use the computer to access the Commission's EDGAR Filer Management Web site, respond to Form ID's information requirements and fax to the Commission a notarized authenticating document. We expect that offerors or issuers would incur few, if any, additional costs related to obtaining computer and Internet access. We believe the vast majority of offerors

and issuers already would have access to a computer and the Internet.

Since a Form CB and the accompanying Form F-X required for foreign filers are not forms associated with periodic reporting on a regular basis and are required only for certain specified kinds of extraordinary transactions, we believe ongoing costs associated with the proposed rule amendments may not be significant. We solicit comments regarding the initial and ongoing costs that would be incurred by filers submitting Form CB and related Form F-X electronically.

We believe the costs associated with our proposed changes to Schedule TO and Forms S-4 and F-4 would be minimal. As discussed above, these changes would not impact the obligation to file the schedule or form, nor would they change the substantive disclosure required. Filers would already know whether, and if so, what cross-border exemption they will rely upon in conducting their transaction. The proposed rule change would require them only to specify that information for the benefit of the staff and others viewing the filings.

F. Changes to the Beneficial Ownership Reporting Rules

We propose to amend our rules to allow foreign institutions of the same type as the domestic institutions listed in Rule 13d-1(b)(1)(ii) to file on Schedule 13G instead of Schedule 13D. The proposed rule would permit filing on Schedule 13G for certain specified types of institutions, where they have acquired securities in the ordinary course of their business and not with the purpose or effect of changing or influencing control of the issuer of the subject securities. In order to use Schedule 13G to the same extent as their U.S. counterparts, these foreign "qualified institutional" filers also would have to meet certain conditions currently set forth in the staff's no-action letters. One such condition is the requirement to certify that the regulatory scheme applicable to that type of institution in its home country is comparable to the regulatory system applicable to its U.S. counterpart. Another such condition is an undertaking to provide to the Commission staff, upon request, the information that would have been required under Schedule 13D.

1. Benefits

Currently, the staff commonly grants requests from foreign institutions comparable to the types of institutions listed in Rule 13d-1(b) to file on Schedule 13G if they meet the

³⁵² Although filings are accepted until 10 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, Regulation S-T Item 13(a)(2) states that except as otherwise provided in the rule, "all filings submitted by direct transmission commencing on or before 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed on the same business day, and all filings submitted by direct transmission commencing after 5:30 p.m. Eastern Standard Time or Eastern Daylight Savings Time, whichever is currently in effect, shall be deemed filed as of the next business day." Therefore, offerors or issuers would be able to submit documents after Commission business hours on the day of dissemination and have the filing date be the next business day.

³⁵³ Offerors and issuers that already have EDGAR access codes would not need to file a Form ID. We assume, however, that about 53 percent of Form CB filers do not or would not already have codes. Assuming a cost of \$175 per hour for in-house professional staff, we estimate the current Form ID aggregate burden cost at \$2,625 per year (\$175 per hour × 15 hours per year). The additional Form ID burden cost resulting from the proposed amendments and the total Form ID burden cost that will result from adding the estimated additional Form ID burden cost to the estimated current Form ID burden cost will be \$1,727,250 (9,855 hours per year + 15 hours per year = 9,870 hours per year; 9,870 hours per year × \$175 per hour = \$1,727,250).

conditions outlined in the no-action letters. In the release adopting amendments to the beneficial ownership rules in 1998, the Commission discussed the fact that in the past, foreign institutional investors requested exemptive and no-action letters.³⁵⁴ The Commission also stated that foreign institutions that wanted to use Schedule 13G as a qualified institutional investor should continue to request no-action relief from the staff. Because the staff's issuance of no-action letters was contemplated at the time of the 1998 amendments to the beneficial ownership rules, we only consider the costs and benefits of the proposed rule relevant to the staff's current practice of issuing no-action letters. From this perspective, the proposed rule change would eliminate the costs and burdens on foreign institutions of seeking such relief individually. For foreign institutions that would otherwise have been eligible to file on Schedule 13G as passive investors under current rules, filing under Rule 13d-1(b) reduces the burden on those filers because the initial filing obligation is less onerous for qualified institutional filers. For example, qualified institutions filing under Rule 13d-1(b) are required to file a Schedule 13G within 45 days after the end of the calendar year in which they own over five percent of the subject class as of the last day of that year. By contrast, passive investors reporting on Schedule 13G pursuant to Rule 13d-1(c) must file their initial report within ten days of the acquisition of more than five percent of the class. Unlike qualified institutional filers, passive investors may not file on Schedule 13G when their ownership equals or exceeds 20 percent of the subject class. No such limit exists for qualified institutional filers.

2. Costs

Schedule 13D requires more extensive disclosure than Schedule 13G. Therefore, to the extent that a filer taking advantage of the proposed rule revisions otherwise would be required to file a Schedule 13D (or a Schedule 13G as a passive investor), there may be some information cost to U.S. investors by permitting the filer to use Schedule 13G. For instance, Schedule 13D requires information about the purpose of the beneficial owner's transaction in the securities, investment intent, and sources of funding. To the extent that such information may be of value to investors in making informed

investment decisions, there would be a cost in permitting these institutions to file on Schedule 13G. We seek comment on the usefulness to investors of requiring these foreign institutions to file on Schedule 13D.

Foreign institutions wishing to take advantage of the proposed rule change would incur certain costs to satisfy the conditions for filing on Schedule 13G. In particular, foreign institutions would need to assess whether their home country regulatory scheme is comparable to the regulatory scheme applicable to their U.S. counterparts. This might involve seeking the advice of home country or U.S. legal counsel. However, we believe the incremental costs of complying with the proposed rule would be minimal because foreign institutions are commonly granted no-action relief to file on Schedule 13G under the same circumstances as we propose to permit under the new rule.

Request for Comment

We are sensitive to the costs and benefits imposed by our rules, and have identified certain costs and benefits related to these proposals. We request comment on all aspects of this cost-benefit analysis, including identification of any additional costs and benefits. We encourage commenters to identify and supply relevant data concerning the costs and benefits of the proposed amendments.

VI. Consideration of Impact on Economy, Burden on Competition and Promotion of Efficiency, Competition and Capital Formation

Section 2(b) of the Securities Act³⁵⁵ and Section 3(f) of the Exchange Act³⁵⁶ require us, when engaged in rulemaking that requires us to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. When adopting rules under the Exchange Act, Section 23(a)(2) of the Exchange Act³⁵⁷ requires us to consider the impact that any new rule would have on competition. In addition, Section 23(a)(2) prohibits us from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. We request comment on whether the proposals, if adopted, would promote efficiency, competition and capital formation or have an impact or burden

on competition. Commenters are requested to provide empirical data and other factual support for their view, if possible.

The proposed changes to the test for determining eligibility to rely on the Tier I and Tier II cross-border exemptions and Rule 802 under Regulation C are intended to facilitate the application of those exemptions. When the exemptions were adopted in 1999, we determined that the cross-border exemptions are important tools to promote the inclusion of U.S. investors in transactions required to be conducted in accordance with a foreign regulatory system. Streamlining and improving the eligibility standards for the cross-border exemptions enhances their utility by promoting their ease of use, thereby encouraging the inclusion of U.S. investors in cross-border transactions.

The purpose of the proposed amendment to Rule 13e-3(g)(6) is to expand the exemption from Rule 13e-3 for cross-border transactions meeting the conditions of Tier I. This proposed amendment should reduce regulatory compliance burdens for issuers and affiliates engaged in affiliated cross-border transactions that would otherwise be subject to Rule 13e-3. The ability to avoid the application of Rule 13e-3 for certain cross-border transactions is expected to benefit U.S. investors, because an issuer or affiliate may choose to exclude them if it is the only means to avoid the heightened disclosure burdens of Rule 13e-3.

The purpose of the proposed changes to the Tier II tender offer exemptions in Rules 13e-4(i), 14d-1(d) and 14e-5 is to expand those exemptions to better address areas of recurring regulatory conflict. By codifying relief previously granted by the staff for individual transactions, the changes would reduce compliance burdens on issuers and bidders who would no longer need to seek such relief for each individual transaction. By enhancing the flexibility of U.S. tender offer rules in cross-border transactions, where those rules conflict with common elements of foreign law or practice, the changes would increase the likelihood that bidders would include U.S. investors in these transactions.

We do not anticipate that the proposed changes to Rule 14e-5 will have a significant impact, if any, on the economy because they simply codify the current scope of activities exempted from that rule's prohibitions through existing class exemptive letters. We believe that the proposed changes to Rule 14e-5 should not place any burden on competition as the proposed rule changes apply equally to all market

³⁵⁴ See *Amendments to Beneficial Ownership Reporting Requirements*, Release No. 34-39538 (January 12, 1998) [63 FR 2854].

³⁵⁵ 15 U.S.C. 77b(b).

³⁵⁶ 15 U.S.C. 78c(f).

³⁵⁷ 15 U.S.C. 78w(a)(2).

participants covered by the rule. We believe that the Rule 14e-5 class exemptive letters concerning Tier II cross-border transactions have promoted efficiency and capital formation by eliminating the time and cost burdens associated with individual grants of relief. We believe that the codification of those letters similarly should foster efficiency and cross-border capital formation.

The proposed amendment to Rule 162(a) expanding the ability of offerors to commence an exchange offer early where a tender offer is not subject to Regulation 14D or Rule 13e-4 would further equalize the regulatory burden between cash tender offers and exchange offers. Because foreign rules often contain a mandatory offer requirement, obligating an offeror to make a tender offer for a given class of securities, these rule changes would place mandatory offers for unregistered classes of securities on an equal footing with offers for registered equity securities.

The proposed changes to require that Forms CB and F-X be filed electronically on EDGAR could impose additional compliance costs on filers. Since Form F-X is filed only by foreign companies, the proposed change to that form would not impact U.S. companies. Requiring these forms to be filed electronically by all entities would level the playing field, since the forms are currently required to be filed electronically only by entities subject to a reporting obligation under Exchange Act Section 13(a) or 15(d).

The proposed changes to Schedule TO and Forms S-4 and F-4 would result in negligible additional compliance costs for filing persons. Because the proposed changes would require filers to publicly disclose information that they would already know if they are relying on the cross-border exemptions, we believe there would be little cost in implementing this change. Where the filer of a Schedule TO or Form S-4 or Form F-4 is not relying on the cross-border exemptions, no action would be required. In addition, this requirement applies equally to domestic and foreign filers. The proposed changes with respect to this schedule and these forms would not alter in any way the circumstances under which an offeror would incur a filing obligation under our rules.

The proposed rule changes generally would enhance efficiency in conducting cross-border tender offers and business combination transactions by streamlining the application of U.S. and foreign rules that may apply to those

transactions. We expect that they would promote capital formation by facilitating cross-border business combination transactions conducted under multiple and possibly conflicting regulatory systems. Some of the proposed rule revisions, such as the changes that would broaden the availability of early commencement for exchange offers and the applicability of the Tier II exemptions for tender offers not subject to Rule 13e-4 or Regulation 14D, may be viewed as enhancing competition between competing offers for the same target securities, because they would make these provisions available to different kinds of offers. Furthermore, the proposed rule changes would reduce the regulatory burden on entities engaging in cross-border business combination transactions generally, which may promote competition by encouraging additional entities to engage in these types of transactions. We solicit comment on whether the proposed rule changes would impose a burden on competition or whether they would promote efficiency, competition and capital formation. For example, would the proposals have an adverse effect on competition that is neither necessary nor appropriate in furtherance of the purposes of the Exchange Act? Would the proposals have an adverse effect on U.S. or foreign issuers? Commenters are requested to provide empirical data and other factual support for their views where possible.

VII. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603. It relates to proposed revisions to the rules and forms.³⁵⁸

A. Reasons for, and Objectives of, Proposed Action

The proposed rule changes are intended primarily to facilitate the inclusion of U.S. target security holders in cross-border business combination transactions. The rule changes would result in further reductions in the cost and burdens associated with including U.S. target holders in those transactions. U.S. target holders previously excluded from such transactions would benefit by having additional transactions extended to them.

The proposed rule changes are incremental in nature and would not be a significant departure from the current cross-border exemptions. The changes

would further harmonize U.S. and foreign law and practice, and to facilitate greater inclusion of U.S. target holders in cross-border transactions. In many instances, the proposed changes would codify existing staff interpretations and exemptive relief. We do not believe any less restrictive alternative to the proposed rule amendments exists that would serve the purpose of the tender offer and registration requirements of the federal securities laws. We did not identify alternatives to the proposed rules that are consistent with their objectives and our statutory authority. The proposed rules would not duplicate or conflict with any existing federal rule provisions.

B. Legal Basis

We are proposing the amendments to the forms and rules under the authority set forth in Sections 3(b), 7, 8, 9, 10, 19, and 28 of the Securities Act, and Sections 12, 13, 14, 23, 35A, and 36 of the Exchange Act.

C. Small Entities Subject to the Proposed Rules

The Regulatory Flexibility Act defines "small entity" to mean "small business," "small organization," or "small governmental jurisdiction."³⁵⁹ The Commission's rules define "small business" and "small organization" for purposes of the Regulatory Flexibility Act for each of the types of entities regulated by the Commission.³⁶⁰ A "small business" and "small organization," when used with reference to an issuer other than an investment company, generally means an issuer with total assets of \$5 million or less on the last day of its most recent fiscal year. We estimate that there are approximately 1,100 issuers that may be considered reporting small entities.³⁶¹ The proposed rules may affect each of the approximately 1,100 issuers that may be considered reporting small entities. We have no data to determine how many reporting or non-reporting small businesses may actually rely on the proposed rules, or may otherwise be impacted by the rule proposals. Acquirors relying on the exemptions may or may not have reporting obligations under the Exchange Act prior to engaging in a cross-border business combination transaction. An

³⁵⁹ 5 U.S.C. 601(6).

³⁶⁰ Securities Act Rule 157 (17 CFR 230.157) and Exchange Act Rule 0-10 (17 CFR 240.0-10) contain the applicable definitions.

³⁶¹ The estimated number of reporting small entities is based on 2007 data, including the Commission's EDGAR database and Thomson Financial's Worldscope database.

³⁵⁸ Based on an analysis of the language and legislative history of the Regulatory Flexibility Act, Congress does not appear to have intended the Act to apply to foreign issuers. Therefore, we are analyzing the impact on small U.S. entities only.

acquiror's ability to rely on the exemptions is not determined by the acquiror's size or market capitalization. However, we believe that small businesses are not typically acquirors in cross-border transactions. We believe that the proposed amendments would result in savings to entities (both small and large) that qualify for the exemptions. We request comment on the number of small entities that would be affected by our proposals, including any available empirical data.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments would not impose any new reporting, recordkeeping or other compliance requirements on issuers that are small entities.

E. Duplicative, Overlapping or Conflicting Federal Rules

The Commission believes that there are no rules that duplicate, overlap or conflict with the proposed amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources of small entities; (ii) the clarification, consolidation or simplification of compliance and reporting requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed amendment, or any part thereof, for small entities.

The proposed amendments are designed to expand and enhance the usefulness of the current cross-border exemptions. The Commission believes that different compliance or reporting requirements are not necessary because the proposed amendments do not establish any new reporting, recordkeeping, or compliance requirements for small entities. Establishing a different standard for small business entities would impose a greater compliance burden on small entities and would be inconsistent with the benefits provided for all entities that are able to avail themselves of the exemptions.

G. Solicitation of Comment

The Commission encourages the submission of comments with respect to any aspect of this Initial Regulatory Flexibility Analysis. We will consider any comments in preparing the Final Regulatory Flexibility Analysis, if the proposed amendments are adopted, and the comments will be placed in the same public file as comments on the proposed amendments themselves. In particular, we request comments regarding:

- The number of small entities that may be affected by the proposals;
- The existence or nature of the potential impact of the proposals on small entities discussed in the analysis; and
- How to quantify the impact of the proposed rules.

Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact.

VIII. Small Business Regulatory Enforcement Fairness Act

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (the "SBREFA"),³⁶² a rule is "major" if it has resulted, or is likely to result in:

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers or individual industries; or
- Significant adverse effects on competition, investment or innovation.

We request comment on whether our proposals would be a "major rule" for purposes of the SBREFA. We solicit comment and empirical data on:

- The potential effect on the U.S. economy on an annual basis;
- Any potential increase in costs or prices for consumers or individual industries; and
- Any potential effect on competition, investment or innovation.

IX. Statutory Basis and Text of Proposal

We propose amendments to the forms and rules under the authority set forth in Sections 3(b), 7, 8, 9, 10, 19 and 28 of the Securities Act, and Sections 12, 13, 14, 23, 35A, and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 230, 232, 239, 240, and 249

Reporting and recordkeeping requirements, Securities.

Text of Proposals

In accordance with the foregoing, we are proposing to amend Title 17, Chapter II of the Code of Federal Regulations as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for Part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77c, 77d, 77f, 77g, 77h, 77j, 77r, 77s, 77z-3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78o, 78t, 78w, 78ll(d), 78mm, 80a-8, 80a-24, 80a-28, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

2. Revise § 230.162(a) to read as follows:

§ 230.162 Submission of tenders in registered exchange offers.

(a) Notwithstanding section 5(a) of the Act (15 U.S.C. 77e(a)), offerors may solicit tenders of securities in an exchange offer subject to § 240.13e-4(e) or § 240.14d-4(b) of this chapter, and in exchange offers conducted under § 240.13e-4(i) or § 240.14d-1(d) of this chapter that are not subject to § 240.13e-4(e) or § 240.14d-4(b) of this chapter to the extent permitted under § 240.13e-4(i)(2)(vi) and § 240.14d-1(d)(2)(x) of this chapter, before a registration statement is effective as to the security offered, so long as no securities are purchased until the registration statement is effective and the tender offer has expired in accordance with the tender offer rules.

* * * * *

3. Revise § 230.800(h)(1) to read as follows:

§ 230.800 Definitions for §§ 230.800, 230.801 and 230.802.

* * * * *

(h) * * *

(1) Calculate percentage of outstanding securities held by U.S. holders as of the record date for a rights offering and as of a date no more than 60 days before the public announcement of an exchange offer or a business combination.

* * * * *

4. Amend § 230.802 by revising paragraphs (a)(2), (a)(3), (c)(2), (c)(3) and (c)(4) to read as follows:

§ 230.802 Exemption for offerings in connection with an exchange offer or business combination for the securities of foreign private issuers.

* * * * *

(a) * * *

(2) *Equal treatment.* The offeror must permit U.S. holders to participate in the

³⁶² Public Law 104-121, Title II, 110 Stat. 857 (1996) (codified in various sections of 50 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

exchange offer or business combination on terms at least as favorable as those offered any other holder of the subject securities. The offeror, however, need not extend the offer to security holders in those states or jurisdictions that require registration or qualification, except that the offeror must offer the same cash alternative to security holders in any such state that it has offered to security holders in any other state or jurisdiction.

(3) *Informational documents.* (i) If the offeror publishes or otherwise disseminates an informational document to the holders of the subject securities in connection with the exchange offer or business combination, the offeror must furnish that informational document, including any amendments thereto, in English, to the Commission on Form CB (§ 239.800 of this chapter) by the first business day after publication or dissemination. If the offeror is a foreign company, it must also file a Form F-X (§ 239.42 of this chapter) with the Commission at the same time as the submission of the Form CB to appoint an agent for service of process in the United States.

(ii) The offeror must disseminate the informational document to U.S. holders, including any amendments thereto, in English, on a comparable basis to that provided to security holders in the foreign subject company's home jurisdiction.

(iii) If the offeror disseminates by publication in its home jurisdiction, the offeror must publish the information in the United States in a manner reasonably calculated to inform U.S. holders of the offer.

* * * * *

(c) * * *

(2) The aggregate trading volume of the subject class of securities on all national securities exchanges in the United States or on the OTC market, as reported to the Financial Industry Regulatory Authority Inc., over the 12-calendar-month period ending on a date no more than 60 days before public announcement of the offer, exceeds 10 percent of the worldwide aggregate trading volume of that class of securities over the same period;

(3) The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission before the public announcement of the offer indicates that U.S. holders hold more than 10 percent of the outstanding subject class of securities; or

(4) The offeror knows, or has reason to know, before the public

announcement of the offer, that U.S. ownership exceeds 10 percent of the subject securities. As an example, for purposes of this paragraph, an offeror is deemed to have reason to know information about U.S. ownership of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the issuer's jurisdiction of incorporation or (if different) the non-U.S. jurisdiction in which the primary trading market for the subject securities is located. This example is not intended to be exclusive.

PART 232—REGULATION S-T— GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

5. The authority citation for Part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z-3, 77sss(a), 78c(b), 78l, 78m, 78n, 78o(d), 78w(a), 78ll, 80a-6(c), 80a-8, 80a-29, 80a-30, 80a-37, and 7201 *et. seq.*; and 18 U.S.C. 1350.

* * * * *

6. Amend § 232.101 by:

- a. Revising paragraphs (a)(1)(vi) and (a)(1)(vii);
- b. Removing and reserving paragraph (b)(7); and
- c. Revising paragraph (b)(8) to read as follows:

§ 232.101 Mandated electronic submissions and exceptions.

(a) * * *

(1) * * *

(vi) Form CB (§§ 239.800 and 249.480 of this chapter) filed or submitted under § 230.801 or 230.802 of this chapter or § 240.13e-4(h)(8), 240.14d-1(c), or 240.14e-2(d) of this chapter;

(vii) Form F-X (§ 239.42 of this chapter) when filed in connection with a Form CB (§§ 239.800 and 249.480 of this chapter);

* * * * *

(b) * * *

(8) Form F-X (§ 232.42 of this chapter) if filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251-230.263 of this chapter);

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

7. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z-2, 77z-3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78u-5, 78w(a), 78ll, 78mm, 80a-2(a), 80a-3, 80a-8, 80a-9, 80a-10, 80a-13, 80a-24, 80a-26, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

8. Form S-4 (referenced in § 239.25) is amended by adding a statement regarding reliance on the cross-border exemptions and check boxes on the cover page immediately before the "Calculation of Registration Fee" table to read as follows:

Note: The text of Form S-4 does not and this amendment will not appear in the Code of Federal Regulations.

Form S-4 Registration Statement Under the Securities Act of 1933

* * * * *

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Issuer Tender Offer) ☐

Exchange Act Rule 14d-1(d) (Third Party Tender Offer) ☐

* * * * *

9. Amend Form F-4 (referenced in § 239.34) by adding a statement regarding reliance on the cross-border exemptions and check boxes on the cover page immediately before the "Calculation of Registration Fee" table to read as follows:

Note: The text of Form F-4 does not and this amendment will not appear in the Code of Federal Regulations.

Form F-4 Registration Statement Under the Securities Act of 1933

* * * * *

If applicable, place an X in the box to designate the appropriate rule provision relied upon in conducting this transaction:

Exchange Act Rule 13e-4(i) (Issuer Tender Offer) ☐

Exchange Act Rule 14d-1(d) (Third Party Tender Offer) ☐

* * * * *

10. Amend Form F-X (referenced in § 239.42) by revising the Note to General Instruction II.B.(2) to read as follows:

Note: The text of Form F-X does not and this amendment will not appear in the Code of Federal Regulations.

Form F-X Appointment of Agent for Service of Process and Undertaking

General Instructions

* * * * *

II. * * *

B. * * *

(2) * * *

Note: Regulation S-T Rule 101(b)(8) only permits the filing of the Form F-X in paper if filed by a Canadian issuer when qualifying an offering statement pursuant to the provisions of Regulation A (§§ 230.251-230.263 of this chapter).

* * * * *

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

11. The authority citation for Part 240 continues to read, in part, as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z-2, 77z-3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j-1, 78k, 78k-1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u-5, 78w, 78x, 78ll, 78mm, 80a-20, 80a-23, 80a-29, 80a-37, 80b-3, 80b-4, 80b-11, and 7201 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

12. Amend § 240.13d-1 by:

- a. Removing “; and” from the end of paragraph (b)(1)(ii)(I);
- b. Adding paragraph (b)(1)(ii)(K); and
- c. Removing the authority citation following the section.

The addition reads as follows:

§ 240.13d-1 Filing of Schedules 13D and 13G.

* * * * *

(b)(1) * * *

(ii) * * *

(K) A non-U.S. institution that is the functional equivalent of any of the institutions listed in paragraphs (b)(1)(ii)(A) through (J) of this section, so long as the non-U.S. institution is subject to a regulatory scheme that is comparable to the regulatory scheme applicable to the equivalent U.S. institution; and

* * * * *

13. Amend § 240.13d-102 by:

a. Revising Instruction 12 to the Instruction for the Cover Page before the Notes;

b. In Item 3 removing the period at the end of paragraphs (a), (b), (c), and (d) and in each place adding a semicolon;

c. In Item 3 removing the period at the end of paragraph (j) and in its place adding a semicolon and adding paragraph (k); and

d. In Item 10 redesignating paragraph (b) as paragraph (c) and adding new paragraph (b).

The revision and additions read as follows:

§ 240.13d-102 Schedule 13G—Information to be included in statements filed pursuant to § 240.13d-1(b), (c), and (d) and amendments thereto filed pursuant to § 240.13d-2.

* * * * *

Instructions for Cover Page:

* * * * *

(12) *Type of Reporting Person*—Please classify each “reporting person” according to the following breakdown (see Item 3 of Schedule 13G) and place the appropriate Symbol on the form:

Category	Symbol
Broker Dealer	BD
Bank	BK
Insurance Company	IC
Investment Company	IV
Investment Adviser	IA
Employee Benefit Plan or Endowment Fund	EP
Parent Holding Company/Control Person	HC
Savings Association	SA
Church Plan	CP
Corporation	CO
Partnership	PN
Individual	IN
Non-U.S. Institution	FI
Other	OO

* * * * *

Item 3. * * *

(k) [] A non-U.S. institution that is the functional equivalent of any of the institutions listed in paragraphs (a)–(j) of this Item. Please specify the type of institution: _____

* * * * *

Item 10. Certification

* * * * *

(b) The following certification shall be included if the statement is filed pursuant to § 240.13d-1(b)(1)(ii)(K):

By signing below I certify that, to the best of my knowledge and belief, the foreign regulatory scheme applicable to [insert particular category of institutional investor] is comparable to the regulatory scheme applicable to the functionally equivalent U.S. institution(s). I also undertake to furnish to the Commission staff, upon request, information that would otherwise be disclosed in a Schedule 13D.

* * * * *

14. Amend § 240.13e-3 by revising paragraph (g)(6) to read as follows:

§ 240.13e-3 Going private transactions by certain issuers or their affiliates.

* * * * *

(g) * * *

(6) Any tender offer or business combination made in compliance with § 230.802 of this chapter, § 240.13e-4(h)(8) or § 240.14d-1(c) or any other kind of transaction that otherwise meets the conditions for reliance on the cross-border exemptions set forth in § 240.13e-4(h)(8), 240.14d-1(c) or 230.802(a) of this chapter except for the fact that it is not technically conducted under those rules.

15. Amend § 240.13e-4 by:

- a. Revising the introductory text of paragraph (i);
- b. Revising paragraph (i)(2)(ii);
- c. Adding paragraphs (i)(2)(v) and (vi); and

d. Revising paragraph 2.i. to the Instructions to paragraph (h)(8) and (i). The revisions and additions read as follows:

§ 240.13e-4 Tender offers by issuers.

* * * * *

(i) *Cross-border tender offers (Tier II).* Any issuer tender offer (including any exchange offer) that meets the conditions in paragraph (i)(1) of this section shall be entitled to the exemptive relief specified in paragraph (i)(2) of this section, provided that such issuer tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (i)(2) of this section. In addition, any issuer tender offer (including any exchange offer) subject only to the requirements of section 14(e) of the Act and Regulation 14E (§§ 240.14e-1 through 240.14e-8) thereunder that meets the conditions in paragraph (i)(1) of this section also shall be entitled to the exemptive relief specified in paragraph (i)(2) of this section, to the extent needed under the requirements of Regulation 14E provided the tender offer complies with all other requirements of Regulation 14E other than those for which an exemption has been specifically provided in paragraph (i)(2) of this section:

* * * * *

(2) * * *

(ii) *Equal treatment—separate U.S. and foreign offers.* Notwithstanding the provisions of paragraph (f)(8) of this section, an issuer or affiliate conducting an issuer tender offer meeting the conditions of paragraph (i)(1) of this section may separate the offer into multiple offers: One offer made to U.S. holders and all holders of American Depositary Receipts representing interests in the subject securities and one or more offers made to non-U.S. holders. The U.S. offer must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers. U.S. holders may be included in the foreign offer(s) only where the laws of the jurisdiction governing such foreign offer(s) expressly preclude the exclusion of U.S. holders from the foreign offer(s) and where the offer materials distributed to U.S. holders fully and adequately disclose the risks of participating in the foreign offer(s).

* * * * *

(v) *Suspension of withdrawal rights during counting of tendered securities.* The issuer or affiliate may suspend withdrawal rights required under

paragraph (f)(2) of this section at the end of the offer and during the period that securities tendered into the offer are being counted, provided that:

(A) The issuer or affiliate has provided an offer period including withdrawal rights for a period of at least 20 U.S. business days;

(B) At the time withdrawal rights are suspended, all offer conditions have been satisfied or waived, except to the extent that the issuer or affiliate is in the process of determining whether a minimum acceptance condition included in the terms of the offer has been satisfied by counting tendered securities; and

(C) Withdrawal rights are suspended only during the counting process and are reinstated immediately thereafter, except to the extent that they are terminated through the acceptance of tendered securities.

(vi) *Early commencement.* Notwithstanding the requirements of section 5(a) of the Act (15 U.S.C. 77e(a)), the issuer or affiliate in an exchange offer not subject to this section may solicit tenders before a registration statement is effective as to the security offered to the same extent as would be permitted pursuant to paragraph (e)(2) of this section, so long as no securities are purchased until the registration statement is effective and the tender offer has expired, and the issuer or affiliate provides withdrawal rights to the same extent as would be required if the exchange offer were subject to the requirements of section 13(e) of the Act (15 U.S.C. 78m(e)) and paragraph (f)(2)(i) of this section. If a material change occurs in the information published, sent or given to security holders, the issuer or affiliate must comply with the provisions of paragraph (e)(3) of this section in disseminating information about the material change to security holders, including the minimum periods during which the offer must remain open after notice of such change is provided to security holders.

Instructions to paragraph (h)(8) and (i) of this section:

* * * * *

2. * * *

i. Calculate the U.S. ownership as of a date no more than 60 days before the public announcement of the tender offer;

* * * * *

16. Amend § 240.14d-1 by:

a. Revising paragraph (a);

b. Revising paragraph (d) introductory text, paragraphs (d)(2)(ii) and (d)(2)(iv);

c. Adding paragraphs (d)(2)(vi), (d)(2)(vii), (d)(2)(viii), (d)(2)(ix), and (d)(2)(x); and

d. Revising Instructions 2.i., 3.ii., 3.iii., and 3.iv. to the Instructions to paragraphs (c) and (d).

The revisions and additions read as follows:

§ 240.14d-1 Scope of and definitions applicable to Regulations 14D and 14E.

* * * * *

(a) *Scope.* Regulation 14D (§§ 240.14d-1 through 240.14d-101) shall apply to any tender offer which is subject to section 14(d)(1) of the Act (15 U.S.C. 78n(d)(1)), including, but not limited to, any tender offer for securities of a class described in that section which is made by an affiliate of the issuer of such class. Regulation 14E (§§ 240.14e-1 through 240.14e-8) shall apply to any tender offer for securities (other than exempted securities) unless otherwise noted therein.

* * * * *

(d) *Tier II.* A person conducting a tender offer (including any exchange offer) that meets the conditions in paragraph (d)(1) of this section shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section, provided that such tender offer complies with all the requirements of this section other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section. In addition, a person conducting a tender offer subject only to the requirements of section 14(e) of the Act (15 U.S.C. 78n(e)) and Regulation 14E thereunder that meets the conditions in paragraph (d)(1) of the section also shall be entitled to the exemptive relief specified in paragraph (d)(2) of this section, to the extent needed pursuant to the requirements of Regulation 14E, provided that the tender offer complies with all requirements of Regulation 14E other than those for which an exemption has been specifically provided in paragraph (d)(2) of this section:

* * * * *

(2) * * *

(ii) *Equal treatment—separate U.S. and foreign offers.* Notwithstanding the provisions of § 240.14d-10, a bidder conducting a tender offer meeting the conditions of paragraph (d)(1) of this section may separate the offer into multiple offers: One offer made to U.S. holders and all holders of American Depositary Receipts representing interests in the subject securities and one or more offers made to non-U.S. holders. The U.S. offer must be made on terms at least as favorable as those offered any other holder of the same class of securities that is the subject of the tender offers. U.S. holders may be included in the foreign offer(s) only

where the laws of the jurisdiction governing such foreign offer(s) expressly preclude the exclusion of U.S. holders from the foreign offer(s) and where the offer materials distributed to U.S. holders fully and adequately disclose the risks of participating in the foreign offer(s).

* * * * *

(iv) *Prompt payment.* Payment made in accordance with the requirements of the home jurisdiction law or practice will satisfy the requirements of § 240.14e-1(c). Where payment may not be made on a more expedited basis under home jurisdiction law or practice, payment for securities tendered during any subsequent offering period within 14 business days of the date of tender will satisfy the prompt payment requirements of § 240.14d-11(e). For purposes of this paragraph, a business day is determined with reference to the target's home jurisdiction.

* * * * *

(vi) *Length of subsequent offering period.* Notwithstanding the provisions of § 240.14d-11, the maximum time period for a subsequent offering period may extend beyond 20 U.S. business days.

(vii) *Payment of interest on securities tendered during subsequent offering period.* Notwithstanding the requirements of § 240.14d-11(f), the bidder may pay interest on securities tendered during a subsequent offering period, if required under applicable foreign law. Paying interest on securities tendered during a subsequent offering period in accordance with this section will not be deemed to violate § 240.14d-10(a)(2).

(viii) *Suspension of withdrawal rights during counting of tendered securities.* The bidder may suspend withdrawal rights required under section 14(d)(5) of the Act (15 U.S.C. 78n(d)(5)) at the end of the offer and during the period that securities tendered into the offer are being counted, provided that:

(A) The bidder has provided an offer period including withdrawal rights for a period of at least 20 U.S. business days;

(B) At the time withdrawal rights are suspended, all offer conditions have been satisfied or waived, except to the extent that the bidder is in the process of determining whether a minimum acceptance condition included in the terms of the offer has been satisfied by counting tendered securities; and

(C) Withdrawal rights are suspended only during the counting process and are reinstated immediately thereafter, except to the extent that they are terminated through the acceptance of tendered securities.

(ix) *Mix and match elections and the subsequent offering period.*

Notwithstanding the requirements of § 240.14d-11(b), where the bidder offers target security holders a choice between different forms of consideration, it may establish a ceiling on one or more forms of consideration offered.

Notwithstanding the requirements of § 240.14d-11(f), a bidder that establishes a ceiling on one or more forms of consideration offered pursuant to this subsection may offset elections of tendering security holders against one another, subject to proration, so that elections are satisfied to the greatest extent possible and pro rated to the extent that they cannot be satisfied in full. Such a bidder also may separately offset and pro rate securities tendered during the initial offering period and those tendered during any subsequent offering period, notwithstanding the requirements of § 240.14d-10(c).

(x) *Early commencement.*

Notwithstanding the requirements of section 5(a) of the Act (15 U.S.C. 77e(a)), the bidder in an exchange offer not subject to § 240.14d-4(b) may solicit tenders before a registration statement is effective as to the security offered to the same extent as would be permitted pursuant to § 240.14d-4(b), so long as no securities are purchased until the registration statement is effective and the tender offer has expired, and the bidder provides withdrawal rights to the same extent as would be required if the exchange offer were subject to the requirements of § 240.14d-7. If a material change occurs in the information published, sent or given to security holders, the bidder must comply with the provisions of § 240.14d-4(d) in disseminating information about the material change to security holders, including the minimum periods during which the offer must remain open after notice of such change is provided to security holders.

Instructions to paragraphs (c) and (d):

* * * * *

2. * * *

i. Calculate the U.S. ownership as of a date no more than 60 days before the public announcement of the tender offer;

* * * * *

3. * * *

ii. The aggregate trading volume of the subject class of securities on all national securities exchanges in the United States or on the OTC market, as reported to the Financial Industry Regulatory Authority, Inc. over the 12-calendar-month period ending on a date no more than 60 days before public

announcement of the offer, exceeds 10 percent (40 percent in the case of paragraph (d) of this section) of the worldwide aggregate trading volume of that class of securities over the same period;

iii. The most recent annual report or annual information filed or submitted by the issuer with securities regulators of the home jurisdiction or with the Commission before the public announcement of the offer indicates that U.S. holders hold more than 10 percent (40 percent in the case of paragraph (d) of this section) of the outstanding subject class of securities; or

iv. The bidder knows or has reason to know, before the public announcement of the offer, that the level of U.S. ownership exceeds 10 percent (40 percent in the case of paragraph (d) of this section) of such securities. As an example, for purposes of this Instruction, a bidder is deemed to have reason to know information about U.S. ownership of the subject class of securities that is publicly available and that appears in any filing with the Commission or any regulatory body in the issuer's jurisdiction of incorporation or (if different) the non-U.S. jurisdiction in which the primary trading market for the subject securities is located. This example is not intended to be exclusive.

* * * * *

17. Amend § 240.14d-100 by adding a statement regarding reliance on the cross-border exemptions and check boxes on the cover page immediately before the General Instructions to read as follows:

§ 240.14d-100 Schedule TO. Tender offer statement under section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934.

Schedule TO—Tender Offer Statement Under Section 14(d)(1) or 13(e)(1) of the Securities Exchange Act of 1934

* * * * *

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

[] Rule 13e-4(i) (Issuer Tender Offer)
[] Rule 14d-1(d) (Third-Party Tender Offer)

* * * * *

18. Amend § 240.14e-5 by:

- a. Removing “and” at the end of paragraphs (b)(9) and (c)(6);
- b. Removing the period at the end of paragraphs (b)(10) and (c)(7) and in its place adding “; and”; and
- c. Adding paragraphs (b)(11), (b)(12), (c)(8), and (c)(9).

The additions read as follows:

§ 240.14e-5. Prohibiting purchases outside of a tender offer.

* * * * *

(b) *Excepted activity.* * * *

(11) *Purchases or arrangements to purchase pursuant to a foreign tender offer(s).* Purchases or arrangements to purchase pursuant to a foreign offer(s) where the offeror seeks to acquire subject securities through a U.S. tender offer and a concurrent or substantially concurrent foreign offer(s), if the following conditions are satisfied:

(i) The U.S. and foreign tender offer(s) meet the conditions for reliance on the Tier II cross-border exemptions set forth in § 240.14d-1(d);

(ii) The economic terms and consideration in the U.S. tender offer and foreign tender offer(s) are the same, provided that any cash consideration to be paid to U.S. security holders may be converted from the currency to be paid in the foreign tender offer(s) to U.S. dollars at an exchange rate disclosed in the U.S. offering documents;

(iii) The procedural terms of the U.S. tender offer are at least as favorable as the terms of the foreign tender offer(s);

(iv) The intention of the offeror to make purchases pursuant to the foreign tender offer(s) is disclosed in the U.S. offering documents; and

(v) Purchases by the offeror in the foreign tender offer(s) are made solely pursuant to the foreign tender offer(s) and not pursuant to an open market transaction(s), a private transaction(s), or other transaction(s); and

(12) *Purchases or arrangements to purchase by an affiliate of the financial advisor and an offeror and its affiliates.*

(i) Purchases or arrangements to purchase by an affiliate of a financial advisor and an offeror and its affiliates that are permissible under and will be conducted in accordance with the applicable laws of the subject company's home jurisdiction if the following conditions are satisfied:

(A) The subject company is a foreign private issuer as defined in § 240.3b-4(c);

(B) The covered person reasonably expects that the tender offer meets the conditions for reliance on the Tier II cross-border exemptions set forth in § 240.14d-1(d);

(C) No purchases or arrangements to purchase otherwise than pursuant to the tender offer are made in the United States;

(D) The United States offering materials disclose prominently: The possibility of, or the intention to make, purchases or arrangements to purchase subject securities or related securities outside of the tender offer, and if there will be public disclosure of purchases of

subject or related securities, the manner in which information regarding such purchases will be disseminated;

(E) There is public disclosure in the United States, to the extent that such information is made public in the subject company's home jurisdiction, of information regarding all purchases of subject securities and related securities otherwise than pursuant to the tender offer from the time of public announcement of the tender offer until the tender offer expires;

(F) Purchases or arrangements to purchase by an offeror and its affiliates must satisfy the following additional condition: the tender offer price will be increased to match any consideration paid outside of the tender offer that is greater than the tender offer price; and

(G) Purchases or arrangements to purchase by an affiliate of a financial advisor must satisfy the following additional conditions:

(1) The financial advisor and the affiliate maintain and enforce written policies and procedures reasonably designed to prevent the transfer of information among the financial advisor and affiliate that might result in a violation of U.S. federal securities laws and regulations through the establishment of information barriers;

(2) The financial advisor has an affiliate that is registered as a broker or dealer under section 15(a) of the Act (15 U.S.C. 78o(a));

(3) The affiliate has no officers (or persons performing similar functions) or employees (other than clerical, ministerial, or support personnel) in common with the financial advisor that direct, effect, or recommend transactions in the subject securities or related securities who also will be involved in providing the offeror or subject company with financial advisory services or dealer-manager services; and

(4) The purchases or arrangements to purchase are not made to facilitate the tender offer.

(ii) The provisions of paragraph (b)(12)(i) of this section shall not apply

to risk arbitrage trading by an affiliate of a financial advisor.

(c) *Definitions.* * * *

(8) *Subject company* has the same meaning as in § 229.1000 of this chapter.

(9) *Home jurisdiction* has the same meaning as in the Instructions to paragraphs (c) and (d) of § 240.14d-1.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

19. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a *et. seq.*, 7202, 7233, 7241, 7262, 7264, and 7265; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

20. Amend Form CB (referenced in § 239.800 and § 249.480) by:

a. Removing the line “Filed or submitted in paper if permitted by Regulation S–T Rule 101(b)(8) []” and the corresponding Note on the cover page;

b. Revising General Instruction II.A.(1);

c. Removing General Instruction II.A.(2) and redesignating General Instruction II.A.(3) and (4) as General Instruction II.A.(2) and (3); and

d. Revising General Instructions B and D.

Note: The text of Form CB does not and this amendment will not appear in the Code of Federal Regulations.

Form CB

TENDER OFFER/RIGHTS OFFERING NOTIFICATION FORM

(AMENDMENT NO. ____)

* * * * *

General Instructions

* * * * *

II. Instructions for Submitting Form

A. (1) Regulation S–T Rule 101(a)(1)(vi) (17 CFR 232.101(a)(1)(vi))

requires a party to submit the Form CB in electronic format via the Commission's Electronic Data Gathering, Analysis, and Retrieval system (EDGAR) in accordance with the EDGAR rules set forth in Regulation S–T (17 CFR Part 232). For assistance with technical questions about EDGAR or to request an access code, call the EDGAR Filer Support Office at (202) 551–8900.

* * * * *

B. When submitting the Form CB in electronic format, the persons specified in Part IV must provide signatures in accordance with Regulation S–T Rule 302 (17 CFR 232.302). When submitting the Form CB in paper in accordance with a hardship exemption, the persons specified in Part IV must sign the original and at least one copy of the Form and any amendments. You must conform any unsigned copies. The specified persons may provide typed or facsimile signatures in accordance with Securities Act Rule 402(e) (17 CFR 230.402(e)) or Exchange Act Rule 12b–11(d) (17 CFR 240.12b–11(d)) as long as the filer retains copies of signatures manually signed by each of the specified persons for five years.

* * * * *

D. If filing in paper pursuant to a hardship exemption, in addition to any internal numbering you may include, sequentially number the signed original of the Form and any amendments by handwritten, typed, printed or other legible form of notation from the first page of the document through the last page of the document and any exhibits or attachments. Further, you must set forth the total number of pages contained in a numbered original on the first page of the document.

* * * * *

Dated: May 6, 2008.

By the Commission.

Nancy M. Morris,

Secretary.

[FR Doc. E8–10388 Filed 5–8–08; 8:45 am]

BILLING CODE 8010–01–P



Federal Register

**Friday,
May 9, 2008**

Part V

United States Sentencing Commission

**Sentencing Guidelines for United States
Courts; Notice**

UNITED STATES SENTENCING COMMISSION**Sentencing Guidelines for United States Courts**

AGENCY: United States Sentencing Commission.

ACTION: Notice of submission to Congress of amendments to the sentencing guidelines effective November 1, 2008.

SUMMARY: Pursuant to its authority under 28 U.S.C. § 994(p), the Commission has promulgated amendments to the sentencing guidelines, policy statements, commentary, and statutory index. This notice sets forth the amendments and the reason for each amendment.

DATES: The Commission has specified an effective date of November 1, 2008, for the amendments set forth in this notice.

FOR FURTHER INFORMATION CONTACT: Michael Courlander, Public Affairs Officer, 202–502–4590. The amendments set forth in this notice also may be accessed through the Commission's Web site at <http://www.ussc.gov>.

SUPPLEMENTARY INFORMATION: The United States Sentencing Commission is an independent agency in the judicial branch of the United States Government. The Commission promulgates sentencing guidelines and policy statements for federal sentencing courts pursuant to 28 U.S.C. § 994(a). The Commission also periodically reviews and revises previously promulgated guidelines pursuant to 28 U.S.C. § 994(o) and generally submits guideline amendments to Congress pursuant to 28 U.S.C. § 994(p) not later than the first day of May each year. Absent action of Congress to the contrary, submitted amendments become effective by operation of law on the date specified by the Commission (generally November 1 of the year in which the amendments are submitted to Congress).

Notice of proposed amendments was published in the **Federal Register** on January 28, 2008 (*see* 73 FR 4931). The Commission held a public hearing on the proposed amendments in Washington, D.C., on March 13, 2008. On May 1, 2008, the Commission submitted these amendments to Congress and specified an effective date of November 1, 2008.

Authority: 28 U.S.C. § 994(a), (o), and (p); USSC Rule of Practice and Procedure 4.1.

Ricardo H. Hinojosa,
Chair.

1. Introduction to Chapter One

Amendment: Chapter One is amended in the heading by inserting "Introduction," before "Authority and General"; and by striking Part A, including the Editorial Note, in its entirety and inserting:

"PART A—INTRODUCTION AND AUTHORITY**Introductory Commentary**

Subparts 1 and 2 of this Part provide an introduction to the Guidelines Manual describing the historical development and evolution of the federal sentencing guidelines. Subpart 1 sets forth the original introduction to the Guidelines Manual as it first appeared in 1987, with the inclusion of amendments made occasionally thereto between 1987 and 2000. The original introduction, as so amended, explained a number of policy decisions made by the United States Sentencing Commission ('Commission') when it promulgated the initial set of guidelines and therefore provides a useful reference for contextual and historical purposes. Subpart 2 further describes the evolution of the federal sentencing guidelines after the initial guidelines were promulgated.

Subpart 3 of this Part states the authority of the Commission to promulgate federal sentencing guidelines, policy statements, and commentary.

1. ORIGINAL INTRODUCTION TO THE GUIDELINES MANUAL

The following provisions of this Subpart set forth the original introduction to this manual, effective November 1, 1987, and as amended through November 1, 2000:

1. Authority

The United States Sentencing Commission ('Commission') is an independent agency in the judicial branch composed of seven voting and two non-voting, ex officio members. Its principal purpose is to establish sentencing policies and practices for the federal criminal justice system that will assure the ends of justice by promulgating detailed guidelines prescribing the appropriate sentences for offenders convicted of federal crimes.

The guidelines and policy statements promulgated by the Commission are

issued pursuant to Section 994(a) of Title 28, United States Code.

2. The Statutory Mission

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: Deterrence, incapacitation, just punishment, and rehabilitation. The Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of 'bank robbery/committed with a gun/\$2500 taken.' An offender characteristic category might be 'offender with one prior conviction not resulting in imprisonment.' The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: The maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. § 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. § 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. § 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1987, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular Congressional session and May 1. Such amendments automatically take effect

180 days after submission unless a law is enacted to the contrary. 28 U.S.C. § 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

3. The Basic Approach (Policy Statement)

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve in enacting the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress first sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress sought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

Honesty is easy to achieve: The abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity—sentencing every offender to five years—destroys proportionality. Having only a few simple categories of crimes would

make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: A bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover, complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts

were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the simple, broad category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of 'just deserts.' Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical 'crime control' considerations. This theory calls for sentences that most effectively lessen the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions. Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just deserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and

mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, proportional, and therefore effective sentencing system.

4. The Guidelines' Resolution of Major Issues (Policy Statement)

The guideline-drafting process required the Commission to resolve a host of important policy questions typically involving rather evenly balanced sets of competing considerations. As an aid to understanding the guidelines, this introduction briefly discusses several of those issues; commentary in the guidelines explains others.

(a) Real Offense vs. Charge Offense Sentencing

One of the most important questions for the Commission to decide was whether to base sentences upon the actual conduct in which the defendant engaged regardless of the charges for which he was indicted or convicted ('real offense' sentencing), or upon the conduct that constitutes the elements of the offense for which the defendant was charged and of which he was convicted ('charge offense' sentencing). A bank robber, for example, might have used a gun, frightened bystanders, taken \$50,000, injured a teller, refused to stop when ordered, and raced away damaging property during his escape. A pure real offense system would sentence on the basis of all identifiable conduct. A pure charge offense system would overlook some of the harms that did not constitute statutory elements of the

offenses of which the defendant was convicted.

The Commission initially sought to develop a pure real offense system. After all, the pre-guidelines sentencing system was, in a sense, this type of system. The sentencing court and the parole commission took account of the conduct in which the defendant actually engaged, as determined in a presentence report, at the sentencing hearing, or before a parole commission hearing officer. The Commission's initial efforts in this direction, carried out in the spring and early summer of 1986, proved unproductive, mostly for practical reasons. To make such a system work, even to formalize and rationalize the status quo, would have required the Commission to decide precisely which harms to take into account, how to add them up, and what kinds of procedures the courts should use to determine the presence or absence of disputed factual elements. The Commission found no practical way to combine and account for the large number of diverse harms arising in different circumstances; nor did it find a practical way to reconcile the need for a fair adjudicatory procedure with the need for a speedy sentencing process given the potential existence of hosts of adjudicated 'real harm' facts in many typical cases. The effort proposed as a solution to these problems required the use of, for example, quadratic roots and other mathematical operations that the Commission considered too complex to be workable. In the Commission's view, such a system risked return to wide disparity in sentencing practice.

In its initial set of guidelines submitted to Congress in April 1987, the Commission moved closer to a charge offense system. This system, however, does contain a significant number of real offense elements. For one thing, the hundreds of overlapping and duplicative statutory provisions that make up the federal criminal law forced the Commission to write guidelines that are descriptive of generic conduct rather than guidelines that track purely statutory language. For another, the guidelines take account of a number of important, commonly occurring real offense elements such as role in the offense, the presence of a gun, or the amount of money actually taken, through alternative base offense levels, specific offense characteristics, cross references, and adjustments.

The Commission recognized that a charge offense system has drawbacks of its own. One of the most important is the potential it affords prosecutors to influence sentences by increasing or decreasing the number of counts in an

indictment. Of course, the defendant's actual conduct (that which the prosecutor can prove in court) imposes a natural limit upon the prosecutor's ability to increase a defendant's sentence. Moreover, the Commission has written its rules for the treatment of multicount convictions with an eye toward eliminating unfair treatment that might flow from count manipulation. For example, the guidelines treat a three-count indictment, each count of which charges sale of 100 grams of heroin or theft of \$10,000, the same as a single-count indictment charging sale of 300 grams of heroin or theft of \$30,000. Furthermore, a sentencing court may control any inappropriate manipulation of the indictment through use of its departure power. Finally, the Commission will closely monitor charging and plea agreement practices and will make appropriate adjustments should they become necessary.

(b) Departures

The sentencing statute permits a court to depart from a guideline-specified sentence only when it finds 'an aggravating or mitigating circumstance of a kind, or to a degree, not adequately taken into consideration by the Sentencing Commission in formulating the guidelines that should result in a sentence different from that described.' 18 U.S.C. § 3553(b). The Commission intends the sentencing courts to treat each guideline as carving out a 'heartland,' a set of typical cases embodying the conduct that each guideline describes. When a court finds an atypical case, one to which a particular guideline linguistically applies but where conduct significantly differs from the norm, the court may consider whether a departure is warranted. Section 5H1.10 (Race, Sex, National Origin, Creed, Religion, and Socio-Economic Status), § 5H1.12 (Lack of Guidance as a Youth and Similar Circumstances), the third sentence of § 5H1.4 (Physical Condition, Including Drug or Alcohol Dependence or Abuse), the last sentence of § 5K2.12 (Coercion and Duress), and § 5K2.19 (Post-Sentencing Rehabilitative Efforts) list several factors that the court cannot take into account as grounds for departure. With those specific exceptions, however, the Commission does not intend to limit the kinds of factors, whether or not mentioned anywhere else in the guidelines, that could constitute grounds for departure in an unusual case.

The Commission has adopted this departure policy for two reasons. First, it is difficult to prescribe a single set of guidelines that encompasses the vast

range of human conduct potentially relevant to a sentencing decision. The Commission also recognizes that the initial set of guidelines need not do so. The Commission is a permanent body, empowered by law to write and rewrite guidelines, with progressive changes, over many years. By monitoring when courts depart from the guidelines and by analyzing their stated reasons for doing so and court decisions with references thereto, the Commission, over time, will be able to refine the guidelines to specify more precisely when departures should and should not be permitted.

Second, the Commission believes that despite the courts' legal freedom to depart from the guidelines, they will not do so very often. This is because the guidelines, offense by offense, seek to take account of those factors that the Commission's data indicate made a significant difference in pre-guidelines sentencing practice. Thus, for example, where the presence of physical injury made an important difference in pre-guidelines sentencing practice (as in the case of robbery or assault), the guidelines specifically include this factor to enhance the sentence. Where the guidelines do not specify an augmentation or diminution, this is generally because the sentencing data did not permit the Commission to conclude that the factor was empirically important in relation to the particular offense. Of course, an important factor (e.g., physical injury) may infrequently occur in connection with a particular crime (e.g., fraud). Such rare occurrences are precisely the type of events that the courts' departure powers were designed to cover—unusual cases outside the range of the more typical offenses for which the guidelines were designed.

It is important to note that the guidelines refer to two different kinds of departure. The first involves instances in which the guidelines provide specific guidance for departure by analogy or by other numerical or non-numerical suggestions. The Commission intends such suggestions as policy guidance for the courts. The Commission expects that most departures will reflect the suggestions and that the courts of appeals may prove more likely to find departures 'unreasonable' where they fall outside suggested levels.

A second type of departure will remain unguided. It may rest upon grounds referred to in Chapter Five, Part K (Departures) or on grounds not mentioned in the guidelines. While Chapter Five, Part K lists factors that the Commission believes may constitute grounds for departure, the list is not exhaustive. The Commission recognizes

that there may be other grounds for departure that are not mentioned; it also believes there may be cases in which a departure outside suggested levels is warranted. In its view, however, such cases will be highly infrequent.

(c) Plea Agreements

Nearly ninety percent of all federal criminal cases involve guilty pleas and many of these cases involve some form of plea agreement. Some commentators on early Commission guideline drafts urged the Commission not to attempt any major reforms of the plea agreement process on the grounds that any set of guidelines that threatened to change pre-guidelines practice radically also threatened to make the federal system unmanageable. Others argued that guidelines that failed to control and limit plea agreements would leave untouched a 'loophole' large enough to undo the good that sentencing guidelines would bring.

The Commission decided not to make major changes in plea agreement practices in the initial guidelines, but rather to provide guidance by issuing general policy statements concerning the acceptance of plea agreements in Chapter Six, Part B (Plea Agreements). The rules set forth in Fed. R. Crim. P. 11(e) govern the acceptance or rejection of such agreements. The Commission will collect data on the courts' plea practices and will analyze this information to determine when and why the courts accept or reject plea agreements and whether plea agreement practices are undermining the intent of the Sentencing Reform Act. In light of this information and analysis, the Commission will seek to further regulate the plea agreement process as appropriate. Importantly, if the policy statements relating to plea agreements are followed, circumvention of the Sentencing Reform Act and the guidelines should not occur.

The Commission expects the guidelines to have a positive, rationalizing impact upon plea agreements for two reasons. First, the guidelines create a clear, definite expectation in respect to the sentence that a court will impose if a trial takes place. In the event a prosecutor and defense attorney explore the possibility of a negotiated plea, they will no longer work in the dark. This fact alone should help to reduce irrationality in respect to actual sentencing outcomes. Second, the guidelines create a norm to which courts will likely refer when they decide whether, under Rule 11(e), to accept or to reject a plea agreement or recommendation.

(d) Probation and Split Sentences

The statute provides that the guidelines are to 'reflect the general appropriateness of imposing a sentence other than imprisonment in cases in which the defendant is a first offender who has not been convicted of a crime of violence or an otherwise serious offense.' * * * 28 U.S.C. § 994(j). Under pre-guidelines sentencing practice, courts sentenced to probation an inappropriately high percentage of offenders guilty of certain economic crimes, such as theft, tax evasion, antitrust offenses, insider trading, fraud, and embezzlement, that in the Commission's view are 'serious.'

The Commission's solution to this problem has been to write guidelines that classify as serious many offenses for which probation previously was frequently given and provide for at least a short period of imprisonment in such cases. The Commission concluded that the definite prospect of prison, even though the term may be short, will serve as a significant deterrent, particularly when compared with pre-guidelines practice where probation, not prison, was the norm.

More specifically, the guidelines work as follows in respect to a first offender. For offense levels one through eight, the sentencing court may elect to sentence the offender to probation (with or without confinement conditions) or to a prison term. For offense levels nine and ten, the court may substitute probation for a prison term, but the probation must include confinement conditions (community confinement, intermittent confinement, or home detention). For offense levels eleven and twelve, the court must impose at least one-half the minimum confinement sentence in the form of prison confinement, the remainder to be served on supervised release with a condition of community confinement or home detention. The Commission, of course, has not dealt with the single acts of aberrant behavior that still may justify probation at higher offense levels through departures.*

* **Note:** Although the Commission had not addressed 'single acts of aberrant behavior' at the time the Introduction to the Guidelines Manual originally was written, it subsequently addressed the issue in Amendment 603, effective November 1, 2000. (See Supplement to Appendix C, amendment 603.)

(e) Multi-Count Convictions

The Commission, like several state sentencing commissions, has found it particularly difficult to develop guidelines for sentencing defendants convicted of multiple violations of law, each of which makes up a separate

count in an indictment. The difficulty is that when a defendant engages in conduct that causes several harms, each additional harm, even if it increases the extent to which punishment is warranted, does not necessarily warrant a proportionate increase in punishment. A defendant who assaults others during a fight, for example, may warrant more punishment if he injures ten people than if he injures one, but his conduct does not necessarily warrant ten times the punishment. If it did, many of the simplest offenses, for reasons that are often fortuitous, would lead to sentences of life imprisonment—sentences that neither just deserts nor crime control theories of punishment would justify.

Several individual guidelines provide special instructions for increasing punishment when the conduct that is the subject of that count involves multiple occurrences or has caused several harms. The guidelines also provide general rules for aggravating punishment in light of multiple harms charged separately in separate counts. These rules may produce occasional anomalies, but normally they will permit an appropriate degree of aggravation of punishment for multiple offenses that are the subjects of separate counts.

These rules are set out in Chapter Three, Part D (Multiple Counts). They essentially provide: (1) When the conduct involves fungible items (e.g., separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount; (2) when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction. The guidelines have been written in order to minimize the possibility that an arbitrary casting of a single transaction into several counts will produce a longer sentence. In addition, the sentencing court will have adequate power to prevent such a result through departures.

(f) Regulatory Offenses

Regulatory statutes, though primarily civil in nature, sometimes contain criminal provisions in respect to particularly harmful activity. Such criminal provisions often describe not only substantive offenses, but also more technical, administratively-related offenses such as failure to keep accurate records or to provide requested information. These statutes pose two problems: First, which criminal regulatory provisions should the Commission initially consider, and

second, how should it treat technical or administratively-related criminal violations?

In respect to the first problem, the Commission found that it could not comprehensively treat all regulatory violations in the initial set of guidelines. There are hundreds of such provisions scattered throughout the United States Code. To find all potential violations would involve examination of each individual federal regulation. Because of this practical difficulty, the Commission sought to determine, with the assistance of the Department of Justice and several regulatory agencies, which criminal regulatory offenses were particularly important in light of the need for enforcement of the general regulatory scheme. The Commission addressed these offenses in the initial guidelines.

In respect to the second problem, the Commission has developed a system for treating technical recordkeeping and reporting offenses that divides them into four categories. First, in the simplest of cases, the offender may have failed to fill out a form intentionally, but without knowledge or intent that substantive harm would likely follow. He might fail, for example, to keep an accurate record of toxic substance transport, but that failure may not lead, nor be likely to lead, to the release or improper handling of any toxic substance. Second, the same failure may be accompanied by a significant likelihood that substantive harm will occur; it may make a release of a toxic substance more likely. Third, the same failure may have led to substantive harm. Fourth, the failure may represent an effort to conceal a substantive harm that has occurred.

The structure of a typical guideline for a regulatory offense provides a low base offense level (e.g., 6) aimed at the first type of recordkeeping or reporting offense. Specific offense characteristics designed to reflect substantive harms that do occur in respect to some regulatory offenses, or that are likely to occur, increase the offense level. A specific offense characteristic also provides that a recordkeeping or reporting offense that conceals a substantive offense will have the same offense level as the substantive offense.

(g) Sentencing Ranges

In determining the appropriate sentencing ranges for each offense, the Commission estimated the average sentences served within each category under the pre-guidelines sentencing system. It also examined the sentences specified in federal statutes, in the parole guidelines, and in other relevant, analogous sources. The Commission's

Supplementary Report on the Initial Sentencing Guidelines (1987) contains a comparison between estimates of pre-guidelines sentencing practice and sentences under the guidelines.

While the Commission has not considered itself bound by pre-guidelines sentencing practice, it has not attempted to develop an entirely new system of sentencing on the basis of theory alone. Guideline sentences, in many instances, will approximate average pre-guidelines practice and adherence to the guidelines will help to eliminate wide disparity. For example, where a high percentage of persons received probation under pre-guidelines practice, a guideline may include one or more specific offense characteristics in an effort to distinguish those types of defendants who received probation from those who received more severe sentences. In some instances, short sentences of incarceration for all offenders in a category have been substituted for a pre-guidelines sentencing practice of very wide variability in which some defendants received probation while others received several years in prison for the same offense. Moreover, inasmuch as those who pleaded guilty under pre-guidelines practice often received lesser sentences, the guidelines permit the court to impose lesser sentences on those defendants who accept responsibility for their misconduct. For defendants who provide substantial assistance to the government in the investigation or prosecution of others, a downward departure may be warranted.

The Commission has also examined its sentencing ranges in light of their likely impact upon prison population. Specific legislation, such as the Anti-Drug Abuse Act of 1986 and the career offender provisions of the Sentencing Reform Act of 1984 (28 U.S.C. § 994(h)), required the Commission to promulgate guidelines that will lead to substantial prison population increases. These increases will occur irrespective of the guidelines. The guidelines themselves, insofar as they reflect policy decisions made by the Commission (rather than legislated mandatory minimum or career offender sentences), are projected to lead to an increase in prison population that computer models, produced by the Commission and the Bureau of Prisons in 1987, estimated at approximately 10 percent over a period of ten years.

(h) The Sentencing Table

The Commission has established a sentencing table that for technical and practical reasons contains 43 levels. Each level in the table prescribes ranges

that overlap with the ranges in the preceding and succeeding levels. By overlapping the ranges, the table should discourage unnecessary litigation. Both prosecution and defense will realize that the difference between one level and another will not necessarily make a difference in the sentence that the court imposes. Thus, little purpose will be served in protracted litigation trying to determine, for example, whether \$10,000 or \$11,000 was obtained as a result of a fraud. At the same time, the levels work to increase a sentence proportionately. A change of six levels roughly doubles the sentence irrespective of the level at which one starts. The guidelines, in keeping with the statutory requirement that the maximum of any range cannot exceed the minimum by more than the greater of 25 percent or six months (28 U.S.C. § 994(b)(2)), permit courts to exercise the greatest permissible range of sentencing discretion. The table overlaps offense levels meaningfully, works proportionately, and at the same time preserves the maximum degree of allowable discretion for the court within each level.

Similarly, many of the individual guidelines refer to tables that correlate amounts of money with offense levels. These tables often have many rather than a few levels. Again, the reason is to minimize the likelihood of unnecessary litigation. If a money table were to make only a few distinctions, each distinction would become more important and litigation over which category an offender fell within would become more likely. Where a table has many small monetary distinctions, it minimizes the likelihood of litigation because the precise amount of money involved is of considerably less importance.

5. A Concluding Note

The Commission emphasizes that it drafted the initial guidelines with considerable caution. It examined the many hundreds of criminal statutes in the United States Code. It began with those that were the basis for a significant number of prosecutions and sought to place them in a rational order. It developed additional distinctions relevant to the application of these provisions and it applied sentencing ranges to each resulting category. In doing so, it relied upon pre-guidelines sentencing practice as revealed by its own statistical analyses based on summary reports of some 40,000 convictions, a sample of 10,000 augmented presentence reports, the parole guidelines, and policy judgments.

The Commission recognizes that some will criticize this approach as overly cautious, as representing too little a departure from pre-guidelines sentencing practice. Yet, it will cure wide disparity. The Commission is a permanent body that can amend the guidelines each year. Although the data available to it, like all data, are imperfect, experience with the guidelines will lead to additional information and provide a firm empirical basis for consideration of revisions.

Finally, the guidelines will apply to more than 90 percent of all felony and Class A misdemeanor cases in the federal courts. Because of time constraints and the nonexistence of statistical information, some offenses that occur infrequently are not considered in the guidelines. Their exclusion does not reflect any judgment regarding their seriousness and they will be addressed as the Commission refines the guidelines over time.

2. CONTINUING EVOLUTION AND ROLE OF THE GUIDELINES

The Sentencing Reform Act of 1984 changed the course of federal sentencing. Among other things, the Act created the United States Sentencing Commission as an independent agency in the Judicial Branch, and directed it to develop guidelines and policy statements for sentencing courts to use when sentencing offenders convicted of federal crimes. Moreover, it empowered the Commission with ongoing responsibilities to monitor the guidelines, submit to Congress appropriate modifications of the guidelines and recommended changes in criminal statutes, and establish education and research programs. The mandate rested on congressional awareness that sentencing is a dynamic field that requires continuing review by an expert body to revise sentencing policies, in light of application experience, as new criminal statutes are enacted, and as more is learned about what motivates and controls criminal behavior.

This statement finds resonance in a line of Supreme Court cases that, taken together, echo two themes. The first theme is that the guidelines are the product of a deliberative process that seeks to embody the purposes of sentencing set forth in the Sentencing Reform Act, and as such they continue to play an important role in the sentencing court's determination of an appropriate sentence in a particular case. The Supreme Court alluded to this in *Mistretta v. United States*, 488 U.S. 361 (1989), which upheld the

constitutionality of both the federal sentencing guidelines and the Commission against nondelegation and separation of powers challenges. Therein the Court stated:

Developing proportionate penalties for hundreds of different crimes by a virtually limitless array of offenders is precisely the sort of intricate, labor-intensive task for which delegation to an expert body is especially appropriate. Although Congress has delegated significant discretion to the Commission to draw judgments from its analysis of existing sentencing practice and alternative sentencing models, * * * [w]e have no doubt that in the hands of the Commission ‘the criteria which Congress has supplied are wholly adequate for carrying out the general policy and purpose’ of the Act. *Id.* at 379 (internal quotation marks and citations omitted).

The continuing importance of the guidelines in federal sentencing was further acknowledged by the Court in *United States v. Booker*, 543 U.S. 220 (2005), even as that case rendered the guidelines advisory in nature. In *Booker*, the Court held that the imposition of an enhanced sentence under the federal sentencing guidelines based on the sentencing judge’s determination of a fact (other than a prior conviction) that was not found by the jury or admitted by the defendant violated the Sixth Amendment. The Court reasoned that an advisory guideline system, while lacking the mandatory features that Congress enacted, retains other features that help to further congressional objectives, including providing certainty and fairness in meeting the purposes of sentencing, avoiding unwarranted sentencing disparities, and maintaining sufficient flexibility to permit individualized sentences when warranted. The Court concluded that an advisory guideline system would ‘continue to move sentencing in Congress’ preferred direction, helping to avoid excessive sentencing disparities while maintaining flexibility sufficient to individualize sentences where necessary.’ *Id.* at 264–65. An advisory guideline system continues to assure transparency by requiring that sentences be based on articulated reasons stated in open court that are subject to appellate review. An advisory guideline system also continues to promote certainty and predictability in sentencing, thereby enabling the parties to better anticipate the likely sentence based on the individualized facts of the case.

The continuing importance of the guidelines in the sentencing

determination is predicated in large part on the Sentencing Reform Act’s intent that, in promulgating guidelines, the Commission must take into account the purposes of sentencing as set forth in 18 U.S.C. § 3553(a). See 28 U.S.C. §§ 994(f), 991(b)(1). The Supreme Court reinforced this view in *Rita v. United States*, 127 S. Ct. 2456 (2007), which held that a court of appeals may apply a presumption of reasonableness to a sentence imposed by a district court within a properly calculated guideline range without violating the Sixth Amendment. In *Rita*, the Court relied heavily on the complementary roles of the Commission and the sentencing court in federal sentencing, stating:

[T]he presumption reflects the nature of the Guidelines-writing task that Congress set for the Commission and the manner in which the Commission carried out that task. In instructing both the sentencing judge and the Commission what to do, Congress referred to the basic sentencing objectives that the statute sets forth in 18 U.S.C. § 3553(a). * * * The provision also tells the sentencing judge to ‘impose a sentence sufficient, but not greater than necessary, to comply with’ the basic aims of sentencing as set out above. Congressional statutes then tell the Commission to write Guidelines that will carry out these same § 3553(a) objectives.

Id. at 2463 (emphasis in original). The Court concluded that ‘[t]he upshot is that the sentencing statutes envision both the sentencing judge and the Commission as carrying out the same basic § 3553(a) objectives, the one, at retail, the other at wholesale,’ *id.*, and that the Commission’s process for promulgating guidelines results in ‘a set of Guidelines that seek to embody the § 3553(a) considerations, both in principle and in practice.’ *Id.* at 2464.

Consequently, district courts are required to properly calculate and consider the guidelines when sentencing, even in an advisory guideline system. See 18 U.S.C. § 3553(a)(4), (a)(5); *Booker*, 543 U.S. at 264 (‘The district courts, while not bound to apply the Guidelines, must * * * take them into account when sentencing.’); *Rita*, 127 S. Ct. at 2465 (stating that a district court should begin all sentencing proceedings by correctly calculating the applicable Guidelines range); *Gall v. United States*, 128 S. Ct. 586, 596 (2007) (‘As a matter of administration and to secure nationwide consistency, the Guidelines should be the starting point and the initial benchmark.’). The district court, in determining the appropriate sentence in

a particular case, therefore, must consider the properly calculated guideline range, the grounds for departure provided in the policy statements, and then the factors under 18 U.S.C. § 3553(a). See *Rita*, 127 S. Ct. at 2465. The appellate court engages in a two-step process upon review. The appellate court ‘first ensure[s] that the district court committed no significant procedural error, such as failing to calculate (or improperly calculating) the Guidelines range * * * [and] then consider[s] the substantive reasonableness of the sentence imposed under an abuse-of-discretion standard[.] * * * tak[ing] into account the totality of the circumstances, including the extent of any variance from the Guidelines range.’ *Gall*, 128 S. Ct. at 597.

The second and related theme resonant in this line of Supreme Court cases is that, as contemplated by the Sentencing Reform Act, the guidelines are evolutionary in nature. They are the product of the Commission’s fulfillment of its statutory duties to monitor federal sentencing law and practices, to seek public input on the operation of the guidelines, and to revise the guidelines accordingly. As the Court acknowledged in *Rita*:

The Commission’s work is ongoing. The statutes and the Guidelines themselves foresee continuous evolution helped by the sentencing courts and courts of appeals in that process. The sentencing courts, applying the Guidelines in individual cases may depart (either pursuant to the Guidelines or, since *Booker*, by imposing a non-Guidelines sentence). The judges will set forth their reasons. The Courts of Appeals will determine the reasonableness of the resulting sentence. The Commission will collect and examine the results. In doing so, it may obtain advice from prosecutors, defenders, law enforcement groups, civil liberties associations, experts in penology, and others. And it can revise the Guidelines accordingly.

Id. at 2464; see also *Booker*, 543 U.S. at 264 ([‘T]he Sentencing Commission remains in place, writing Guidelines, collecting information about actual district court sentencing decisions, undertaking research, and revising the Guidelines accordingly.’); *Gall*, 128 S. Ct. at 594 ([‘E]ven though the Guidelines are advisory rather than mandatory, they are, as we pointed out in *Rita*, the product of careful study based on extensive empirical evidence derived from the review of thousands of individual sentencing decisions.’).

Provisions of the Sentencing Reform Act promote and facilitate this evolutionary process. For example, pursuant to 28 U.S.C. § 994(x), the Commission publishes guideline amendment proposals in the **Federal Register** and conducts hearings to solicit input on those proposals from experts and other members of the public. Pursuant to 28 U.S.C. § 994(o), the Commission periodically reviews and revises the guidelines in consideration of comments it receives from members of the federal criminal justice system, including the courts, probation officers, the Department of Justice, the Bureau of Prisons, defense attorneys and the federal public defenders, and in consideration of data it receives from sentencing courts and other sources. Statutory mechanisms such as these bolster the Commission's ability to take into account fully the purposes of sentencing set forth in 18 U.S.C. § 3553(a)(2) in its promulgation of the guidelines.

Congress retains authority to require certain sentencing practices and may exercise its authority through specific directives to the Commission with respect to the guidelines. As the Supreme Court noted in *Kimbrough v. United States*, 128 S. Ct. 558 (2007), 'Congress has shown that it knows how to direct sentencing practices in express terms. For example, Congress has specifically required the Sentencing Commission to set Guideline sentences for serious recidivist offenders 'at or near' the statutory maximum.' *Id.* at 571; 28 U.S.C. § 994(h).

As envisioned by Congress, implemented by the Commission, and reaffirmed by the Supreme Court, the guidelines are the product of a deliberative and dynamic process that seeks to embody within federal sentencing policy the purposes of sentencing set forth in the Sentencing Reform Act. As such, the guidelines continue to be a key component of federal sentencing and to play an important role in the sentencing court's determination of an appropriate sentence in any particular case.

3. AUTHORITY

§ 1A3.1. Authority.

The guidelines, policy statements, and commentary set forth in this Guidelines Manual, including amendments thereto, are promulgated by the United States Sentencing Commission pursuant to: (1) Section 994(a) of title 28, United States Code; and (2) with respect to guidelines, policy statements, and commentary promulgated or amended pursuant to specific congressional directive,

pursuant to the authority contained in that directive in addition to the authority under section 994(a) of title 28, United States Code."

Reason for Amendment: This amendment sets forth the introduction to the Guidelines Manual as it first appeared in 1987, with the inclusion of amendments occasionally made thereto between 1987 and 2000, in Subpart 1 of Chapter One. In 2003, the introduction was moved to an editorial note. (See USSC, Guidelines Manual, Supplement to Appendix C, Amendment 651.) This amendment removes the introduction from the editorial note to Subpart 1 of Chapter One, representing the original introduction as it first appeared in 1987, as amended by Amendments 67, 68, 307, 466, 534, 538, 602, and 603.

The amendment also supplements the original introduction with an updated discussion of the role of the guidelines, their evolution, and Supreme Court case law, and redesignates § 1A1.1 (Authority) as § 1A3.1.

2. Court Security Improvement Act of 2007

Amendment: Section 2A6.1 is amended in the heading by adding at the end "; False Liens".

Section 2A6.1(b) is amended by striking subdivision (2) and inserting the following:

"(2) If (A) the offense involved more than two threats; or (B) the defendant is convicted under 18 U.S.C. § 1521 and the offense involved more than two false liens or encumbrances, increase by 2 levels."

The Commentary to § 2A6.1 captioned "Statutory Provisions" is amended by inserting "1521," after "1038,".

The Commentary to § 2A6.1 captioned "Application Notes" is amended by redesignating Notes 2 and 3 as Notes 3 and 4, respectively; and by inserting after Note 1 the following:

"2. Applicability of Chapter Three Adjustments.—If the defendant is convicted under 18 U.S.C. § 1521, apply § 3A1.2 (Official Victim)."

The Commentary to § 2A6.1 captioned "Application Notes" is amended in Note 4, as redesignated by this amendment, by striking subdivision (B) and inserting the following:

"(B) Multiple Threats, False Liens or Encumbrances, or Victims; Pecuniary Harm.—If the offense involved (i) substantially more than two threatening communications to the same victim, (ii) a prolonged period of making harassing communications to the same victim, (iii) substantially more than two false liens or encumbrances against the real or personal property of the same victim, (iv) multiple victims, or (v) substantial

pecuniary harm to a victim, an upward departure may be warranted."

Section 2H3.1(b) is amended by striking "Characteristic" and inserting "Characteristics"; and by adding at the end the following:

"(2) (Apply the greater) If—

(A) The defendant is convicted under 18 U.S.C. § 119, increase by 8 levels; or

(B) The defendant is convicted under 18 U.S.C. § 119, and the offense involved the use of a computer or an interactive computer service to make restricted personal information about a covered person publicly available, increase by 10 levels."

The Commentary to § 2H3.1 captioned "Statutory Provisions" is amended by inserting "119," before "1039,".

The Commentary to § 2H3.1 captioned "Application Notes" is amended by redesignating Note 3 as Note 5 and inserting after Note 2 the following:

"3. Inapplicability of Chapter Three (Adjustments).—If the enhancement under subsection (b)(2) applies, do not apply § 3A1.2 (Official Victim).

4. Definitions.—For purposes of subsection (b)(2)(B):

'Computer' has the meaning given that term in 18 U.S.C. § 1030(e)(1).

'Covered person' has the meaning given that term in 18 U.S.C. § 119(b).

'Interactive computer service' has the meaning given that term in section 230(e)(2) of the Communications Act of 1934 (47 U.S.C. § 230(f)(2)).

'Restricted personal information' has the meaning given that term in 18 U.S.C. § 119(b)."

Appendix A (Statutory Index) is amended by inserting after the line reference to 18 U.S.C. § 115(b)(4) the following:

"18 U.S.C. § 119 2H3.1"; and

By inserting after the line reference to 18 U.S.C. § 1520 the following:

"18 U.S.C. § 1521 2A6.1".

Reason for Amendment: This amendment responds to two new offenses created by the Court Security Improvement Act of 2007 (the "Act"), Public Law 110-177.

First, the amendment addresses section 201 of the Act, which created a new offense at 18 U.S.C. § 1521 prohibiting the filing of, attempts, or conspiracies to file any false lien or encumbrance against the real or personal property of officers or employees of the United States Government, on account of that individual's performance of official duties. The offense is punishable by a statutory maximum term of imprisonment of ten years. The amendment references the new offense to § 2A6.1 (Threatening or Harassing Communications; Hoaxes), and expands

the heading of § 2A6.1 accordingly. The Commission determined that referencing offenses under 18 U.S.C. § 1521 to § 2A6.1 is appropriate because the harassment and threatening of an official by the filing of fraudulent encumbrances is analogous to conduct covered by other statutes referenced to this guideline.

The amendment also makes a number of modifications to § 2A6.1 to address specific harms associated with violations of 18 U.S.C. § 1521. Specifically, the amendment expands the scope of the two-level enhancement at subsection (b)(2) to apply if the defendant is convicted under 18 U.S.C. § 1521 and the offense involved more than two false liens or encumbrances, and also provides an upward departure provision that may apply if the offense involved substantially more than two false liens or encumbrances against the real or personal property of the same victim. These modifications reflect the additional time and resources required to remove multiple false liens or encumbrances and provide proportionality between such offenses and other offenses referenced to this guideline that involve more than two threats.

The amendment also provides an upward departure provision that may apply if the offense involved substantial pecuniary harm to a victim. The upward departure provision reflects the increased seriousness of those offenses that result in substantial costs.

In addition, the amendment adds a new application note specifying that if the defendant is convicted under 18 U.S.C. § 1521, the adjustment under § 3A1.2 (Official Victim) shall apply. The addition of this note clarifies that the official status of the victim is not taken into account in the base offense level.

Second, the amendment addresses section 202 of the Act, which created a new offense at 18 U.S.C. § 119 prohibiting the public disclosure of restricted personal information about a federal officer or employee, witness, juror, or immediate family member of such a person, with the intent to threaten or facilitate a crime of violence against such a person. The offense is punishable by a statutory maximum term of imprisonment of five years.

The amendment references the new offense to § 2H3.1 (Interception of Communications; Eavesdropping; Disclosure of Certain Private or Protected Information). The Commission determined that referencing offenses under 18 U.S.C. § 119 to § 2H3.1 is appropriate because the prohibited conduct is analogous to

conduct covered by other statutes referenced to this guideline.

The amendment also creates a two-pronged enhancement at subsection (b)(2), the greater of which applies. The first prong, at subsection (b)(2)(A), is an eight-level enhancement applicable if the defendant is convicted under 18 U.S.C. § 119. A corresponding application note provides that § 3A1.2 shall not apply in such cases. Thus, the enhancement at subsection (b)(2)(A) accounts for the official victim adjustment under § 3A1.2 that would otherwise apply in many offenses under 18 U.S.C. § 119. Incorporating the official victim adjustment into subsection (b)(2)(A) was appropriate because the adjustment in § 3A1.2 does not apply to some individuals, such as witnesses and jurors, who are covered by 18 U.S.C. § 119. The enhancement at subsection (b)(2)(A) also reflects the intent to threaten or facilitate a crime of violence, which is an element of an offense under 18 U.S.C. § 119. The cross reference at subsection (c)(1) will apply, however, if the purpose of the offense was to facilitate another offense and the guideline applicable to an attempt to commit that other offense results in a greater offense level.

The second prong, at subsection (b)(2)(B), is a ten-level enhancement applicable if the defendant is convicted under 18 U.S.C. § 119 and the offense involved the use of a computer or an interactive computer service to make restricted personal information about a covered person publicly available. This greater enhancement accounts for the more substantial risk of harm posed by widely disseminating such protected information via the Internet.

3. Repromulgation of the Emergency and Disaster Assistance Fraud Amendment

Amendment: Section 2B1.1, effective February 6, 2008 (see USSC Guidelines Manual Supplement to the 2007 Supplement to Appendix C, Amendment 714), is repromulgated with the following changes:

Section 2B1.1(b) is amended by striking subdivision (16); by redesignating subdivisions (11) through (15) as subdivisions (12) through (16), respectively; by inserting after subdivision (10) the following:

“(11) If the offense involved conduct described in 18 U.S.C. § 1040, increase by 2 levels. If the resulting offense level is less than level 12, increase to level 12.”;

In subdivision (12), as redesignated by this amendment, by inserting “resulting” before “offense level”; and

In subdivision (14), as redesignated by this amendment, by striking “(b)(13)(B)” and inserting “(b)(14)(B)”.

The Commentary to § 2B1.1 captioned “Statutory Provisions” is amended by inserting “1040,” before “1341–1344.”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 3 by striking subdivision (A)(v)(IV).

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 10 by striking “(b)(11)” and inserting “(b)(12)” each place it appears.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 11 by striking “(b)(13)(A)” and inserting “(b)(14)(A)” each place it appears.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 12 by striking “(b)(13)(B)” and inserting “(b)(14)(B)”;

by striking “(b)(13)(B)(i)” and inserting “(b)(14)(B)(i)”;

and by striking “(b)(13)(B)(ii)” and inserting “(b)(14)(B)(ii)”.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 13 by striking “(b)(14)” and inserting “(b)(15)” each place it appears; by striking “(b)(14)(iii)” and inserting “(b)(15)(iii)” each place it appears; and by striking “(b)(13)(B)” and inserting “(b)(14)(B)” each place it appears.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 14 by striking “(b)(15)” and inserting “(b)(16)” each place it appears.

The Commentary to § 2B1.1 captioned “Application Notes” is amended by striking Note 15 in its entirety; and by redesignating Notes 16 through 20 as Notes 15 through 19, respectively.

The Commentary to § 2B1.1 captioned “Application Notes” is amended in Note 19, as redesignated by this amendment, by striking “(b)(14)(iii)” and inserting “(b)(15)(iii)”;

and by adding at the end the following:

“(D) Downward Departure for Major Disaster or Emergency Victims.—If (i) the minimum offense level of level 12 in subsection (b)(11) applies; (ii) the defendant sustained damage, loss, hardship, or suffering caused by a major disaster or an emergency as those terms are defined in 42 U.S.C. § 5122; and (iii) the benefits received illegally were only an extension or overpayment of benefits received legitimately, a downward departure may be warranted.”.

The Commentary to § 2B1.1 captioned “Background” is amended by inserting after the paragraph that begins “Subsection (b)(10)(C)” the following: “Subsection (b)(11) implements the directive in section 5 of Public Law 110–179.”.

The Commentary to § 2B1.1 captioned “Background” is amended in the paragraph that begins “Subsection (b)(12)(B)” by striking “(b)(12)(B)” and inserting “(b)(13)(B)”;

In the paragraph that begins “Subsection (b)(13)(A)” by striking “(b)(13)(A)” and inserting “(b)(14)(A)”;

In the paragraph that begins “Subsection (b)(13)(B)(i)” by striking “(b)(13)(B)(i)” and inserting “(b)(14)(B)(i)”;

In the paragraph that begins “Subsection (b)(14)” by striking “(b)(14)” and inserting “(b)(15)”;

By striking “(b)(14)(B)” and inserting “(b)(15)(B)”;

By striking the paragraph that begins “Subsection (b)(16) implements”.

Reason for Amendment: This amendment re-promulgates as permanent the temporary, emergency amendment (effective Feb. 6, 2008) that implemented the emergency directive in section 5 of the “Emergency and Disaster Assistance Fraud Penalty Enhancement Act of 2007,” Public Law 110–179 (the “Act”). The directive, which required the Commission to promulgate an amendment under emergency amendment authority by February 6, 2008, directed that the Commission forthwith shall—promulgate sentencing guidelines or amend existing sentencing guidelines to provide for increased penalties for persons convicted of fraud or theft offenses in connection with a major disaster declaration under section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170) or an emergency declaration under section 501 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5191). * * *

Section 5(b) of the Act further required the Commission to—

(1) Ensure that the sentencing guidelines and policy statements reflect the serious nature of the offenses described in subsection (a) and the need for aggressive and appropriate law enforcement action to prevent such offenses;

(2) Assure reasonable consistency with other relevant directives and with other guidelines;

(3) Account for any aggravating or mitigating circumstances that might justify exceptions, including circumstances for which the sentencing guidelines currently provide sentencing enhancements;

(4) Make any necessary conforming changes to the sentencing guidelines; and

(5) Assure that the guidelines adequately meet the purposes of

sentencing as set forth in section 3553(a)(2) of title 18, United States Code.

The emergency amendment addressed concerns that disaster fraud involves harms not adequately addressed by § 2B1.1 (Larceny, Embezzlement, and Other Forms of Theft; Offenses Involving Stolen Property; Property Damage or Destruction; Fraud and Deceit; Forgery; Offenses Involving Altered or Counterfeit Instruments Other than Counterfeit Bearer Obligations of the United States) by (1) adding a two-level enhancement if the offense involved fraud or theft involving any benefit authorized, transported, transmitted, transferred, disbursed, or paid in connection with a declaration of a major disaster or an emergency; (2) modifying the commentary to the guideline as it relates to the calculation of loss; and (3) providing a reference to § 2B1.1 in Appendix A (Statutory Index) for the offense at 18 U.S.C. § 1040 (Fraud in connection with major disaster or emergency benefits) created by the Act.

This amendment repromulgates the temporary, emergency amendment as permanent, with the following changes. First, the amendment expands the scope of the two-level enhancement to include all conduct described in 18 U.S.C. § 1040. Thus, the amendment expands the scope of the enhancement to include fraud or theft involving procurement of property or services as a contractor, subcontractor or supplier, rather than limiting it to the conduct described in the emergency directive. The limited emergency amendment authority did not permit the Commission to include such conduct in the enhancement promulgated in the emergency amendment. However, the directive in section 5 of the Act covers all “fraud or theft offenses in connection with a major disaster declaration” and, therefore, expansion of the scope of the enhancement to apply to all conduct described in 18 U.S.C. § 1040 is appropriate.

Second, the amendment modifies the enhancement to include a minimum offense level of 12. The Commission frequently adopts a minimum offense level in circumstances in which, as in these cases, loss as calculated by the guidelines is difficult to compute or does not adequately account for the harm caused by the offense. The Commission studied a sample of disaster fraud cases and compared those cases to other cases of defrauding government programs. This analysis supported claims made in testimony to the Commission that the majority of the disaster fraud cases resulted in

probationary sentences because the amount of loss calculated under subsection (b)(1) of § 2B1.1 had little impact on the sentences. The Commission also received testimony and public comment identifying various harms unique to disaster fraud cases. For example, charitable institutions may have a more difficult time soliciting contributions because fraud in connection with disasters may erode public trust in these institutions. Moreover, the pool of funds available to aid legitimate disaster victims is adversely affected when fraud occurs. Further, the inherent tension between the imposition of fraud controls and the need to provide aid to disaster victims quickly makes it difficult for relief agencies and charitable institutions to prevent disaster fraud. All of these factors provide support for a minimum offense level.

Third, the amendment adds a downward departure provision that may apply in a case in which the minimum offense level applies, the defendant is a victim of a major disaster or emergency, and the benefits received illegally were only an extension or overpayment of benefits received legitimately. This provision recognizes that a defendant’s legitimate status as a disaster victim may be a mitigating factor warranting a downward departure in certain cases involving relatively small amounts of loss.

Fourth, the amendment deletes certain commentary relating to the definition of loss that was promulgated in the emergency amendment. Specifically, the emergency amendment added subdivision (IV) to Application Note 3(A)(v) of § 2B1.1 providing that in disaster fraud cases, “reasonably foreseeable pecuniary harm includes the administrative costs to any federal, state, or local government entity or any commercial or not-for-profit entity of recovering the benefit from any recipient thereof who obtained the benefit through fraud or was otherwise ineligible for the benefit that were reasonably foreseeable.” The amendment deletes this provision because of concerns that administrative costs might be difficult to determine or in some instances could over-represent the harm caused by the offense.

Finally, the amendment makes conforming changes to the guideline and the commentary.

4. Honest Leadership and Open Government Act of 2007

Amendment: The Commentary to § 2C1.1 captioned “Statutory Provisions” is amended by inserting “227,” after “226.”

Appendix A (Statutory Index) is amended by inserting after the line reference to 18 U.S.C. § 226 the following:

“18 U.S.C. § 227 2C1.1”.

Reason for Amendment: This amendment responds to the Honest Leadership and Open Government Act of 2007, Public Law 110–81 (“the Act”). The Act created a criminal offense at 18 U.S.C. § 227 prohibiting a member or employee of Congress from influencing or attempting to influence, on the basis of political affiliation, employment decisions or practices of a private entity. The offense is punishable by a 15-year statutory maximum term of imprisonment.

The amendment modifies Appendix A (Statutory Index) to reference offenses under 18 U.S.C. § 227 to § 2C1.1 (Offering, Giving, Soliciting, or Receiving a Bribe; Extortion Under Color of Official Right; Fraud Involving the Deprivation of the Intangible Right to Honest Services of Public Officials; Conspiracy to Defraud by Interference with Governmental Functions) because this guideline covers similar offenses.

5. Animal Fighting Prohibition Enforcement Act of 2007

Amendment: Section 2E3.1 is amended in the heading by adding at the end “; Animal Fighting Offenses”.

Section 2E3.1(a) is amended by inserting “(Apply the greatest)” after “Level.”; by redesignating subdivision (2) as subdivision (3); and by inserting after subdivision (1) the following:

“(2) 10, if the offense involved an animal fighting venture; or”.

The Commentary to § 2E3.1 captioned “Statutory Provisions” is amended by inserting “7 U.S.C. § 2156;” before “15 U.S.C. §§”.

The Commentary to § 2E3.1 is amended by adding at the end the following:

“Application Notes:

1. Definition.—For purposes of this guideline: ‘Animal fighting venture’ has the meaning given that term in 7 U.S.C. § 2156(g).

2. Upward Departure Provision.—If the offense involved extraordinary cruelty to an animal that resulted in, for example, maiming or death to an animal, an upward departure may be warranted.”.

The Commentary to § 2X5.2 captioned “Statutory Provisions” is amended by striking “7 U.S.C. § 2156;”.

Appendix A (Statutory Index) is amended in the line reference to 7 U.S.C. § 2156 by striking “2X5.2” and inserting “2E3.1”.

Reason for Amendment: This amendment implements the Animal

Fighting Prohibition Enforcement Act of 2007, Public Law 110–22 (the “Act”). The Act amended the Animal Welfare Act, 7 U.S.C. § 2156, to increase penalties for existing offenses and to create a new offense. Specifically, the Act increased penalties for criminal violations of 7 U.S.C. § 2156 from a one-year statutory maximum term of imprisonment to a three-year statutory maximum term of imprisonment. The penalties are set forth in section 49 of title 18, United States Code. In addition, the Act created an offense at 7 U.S.C. § 2156(e) making it unlawful to “sell, buy, transport, or deliver in interstate or foreign commerce a knife, a gaff, or any other sharp instrument attached, or designed or intended to be attached, to the leg of a bird for use in an animal fighting venture.” This new offense also carries a three-year statutory maximum term of imprisonment.

Because 7 U.S.C. § 2156 is now a felony offense, the amendment deletes the reference of 7 U.S.C. § 2156 to § 2X5.2 (Class A Misdemeanors) in Appendix A (Statutory Index), and deletes the listing of 7 U.S.C. § 2156 from the statutory provisions listed in the commentary to § 2X5.2. The amendment references offenses under 7 U.S.C. § 2156 to § 2E3.1 (Gambling Offenses) as the legislative history and public comment indicate that such offenses often involve gambling. Accordingly, the amendment expands the title of § 2E3.1 to include animal fighting offenses.

The amendment also creates a new alternative base offense level at § 2E3.1(a)(2) that provides a base offense level of level 10 if the offense involved an “animal fighting venture,” which is defined in Application Note 1 as having the meaning given that term in 7 U.S.C. § 2156(g), i.e., “any event which involves a fight between at least two animals and is conducted for purposes of sport, wagering, or entertainment.” The alternative base offense level reflects the increased harm, i.e., cruelty to animals, resulting from offenses under 7 U.S.C. § 2156(g) that is not associated with offenses that typically receive a base offense level of level 6 under the guideline. Additionally, the amendment adds an instruction to apply the greatest applicable base offense level at § 2E3.1(a) because an offense involving an animal fighting venture may also involve conduct covered by subsection (a)(1) and, therefore, should receive the higher base offense level provided by that subsection.

The amendment also provides an upward departure provision that may apply if an offense involves extraordinary cruelty to an animal that

resulted in, for example, maiming or death to an animal.

6. Immigration

Amendment: The Commentary to § 2L1.2 captioned “Application Notes” is amended in Note 1 by striking subdivision (B)(iii) and inserting the following:

“(iii) ‘Crime of violence’ means any of the following offenses under federal, state, or local law: Murder, manslaughter, kidnapping, aggravated assault, forcible sex offenses (including where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced), statutory rape, sexual abuse of a minor, robbery, arson, extortion, extortionate extension of credit, burglary of a dwelling, or any other offense under federal, state, or local law that has as an element the use, attempted use, or threatened use of physical force against the person of another.”;

And in subdivision (B)(iv) by inserting “, or offer to sell” after “dispensing of”.

The Commentary to § 2L1.2 captioned “Application Notes” is amended by adding at the end the following:

“7. Departure Consideration.—There may be cases in which the applicable offense level substantially overstates or understates the seriousness of a prior conviction. In such a case, a departure may be warranted. Examples: (A) In a case in which subsection (b)(1)(A) or (b)(1)(B) does not apply and the defendant has a prior conviction for possessing or transporting a quantity of a controlled substance that exceeds a quantity consistent with personal use, an upward departure may be warranted. (B) In a case in which subsection (b)(1)(A) applies, and the prior conviction does not meet the definition of aggravated felony at 8 U.S.C. § 1101(a)(43), a downward departure may be warranted.”.

Reason for Amendment: This amendment addresses certain discrete issues that have arisen in the application of § 2L1.2 (Unlawfully Entering or Remaining in the United States). The amendment reflects input the Commission has received from federal judges, prosecutors, defense attorneys, and probation officers at several roundtable discussions and public hearings on the operation of § 2L1.2.

First, the amendment clarifies the scope of the term “forcible sex offense” as that term is used in the definition of “crime of violence” in § 2L1.2, Application Note 1(B)(iii). The amendment provides that the term

“forcible sex offense” includes crimes “where consent to the conduct is not given or is not legally valid, such as where consent to the conduct is involuntary, incompetent, or coerced.” The amendment makes clear that forcible sex offenses, like all offenses enumerated in Application Note 1(B)(iii), “are always classified as ‘crimes of violence,’ regardless of whether the prior offense expressly has as an element the use, attempted use, or threatened use of physical force against the person of another,” USSC, Guideline Manual, Supplement to Appendix C, Amendment 658. Application of the amendment, therefore, would result in an outcome that is contrary to cases excluding crimes in which “there may be assent in fact but no legally valid consent” from the scope of “forcible sex offenses.” See, e.g., *United States v. Gomez-Gomez*, 493 F.3d 562, 567 (5th Cir. 2007) (holding that a rape conviction was not a forcible sex offense because it could have been based on assent given in response to a threat “to reveal embarrassing secrets” or after “an employer threatened to fire a subordinate”); *United States v. Luciano-Rodriguez*, 442 F.3d 320, 322–23 (5th Cir. 2006) (holding that a conviction for a sexual assault was not a forcible sex offense because it could have been based on assent when “the actor knows that as a result of mental disease or defect the other person is at the time of the sexual assault incapable either of appraising the nature of the act or of resisting it,” when “the actor is a public servant who coerces the other person to submit or participate,” or when “the actor is a member of the clergy or is a mental health service provider who exploits the emotional dependency engendered by their position”); *United States v. Sarmiento-Funes*, 374 F.3d 336, 341 (5th Cir. 2004) (holding that a conviction for sexual assault was not a forcible sex offense because it could have been based on assent that is “the product of deception or a judgment impaired by intoxication”).

Second, the amendment clarifies that an “offer to sell” a controlled substance is a “drug trafficking offense” for purposes of subsection (b)(1) of § 2L1.2 by adding “offer to sell” to the conduct listed in Application Note 1(B)(iv).

Finally, the amendment addresses the concern that in some cases the categorical enhancements in subsection (b) may not adequately reflect the seriousness of a prior offense. The amendment adds a departure provision that may apply in a case “in which the applicable offense level substantially overstates or understates the seriousness of a prior conviction.” The amendment

provides two examples of cases that may warrant such a departure. The first example suggests that an upward departure may be warranted in a case in which “subsection (b)(1)(A) or (b)(1)(B) does not apply and the defendant has a prior conviction for possessing or transporting a quantity of a controlled substance that exceeds a quantity consistent with personal use.” The second example suggests that a downward departure may be warranted in a case in which “subsection (b)(1)(A) applies, and the prior conviction does not meet the definition of aggravated felony at 8 U.S.C. § 1101(a)(43).”

7. Miscellaneous Food and Drug Offenses

Amendment: Section 2N2.1 is amended by redesignating subsection (b) as subsection (c) and inserting after subsection (a) the following:

“(b) Specific Offense Characteristic

(1) If the defendant was convicted under 21 U.S.C. § 331 after sustaining a prior conviction under 21 U.S.C. § 331, increase by 4 levels.”

The Commentary to § 2N2.1 captioned “Application Notes” is amended in Note 2 by striking “(b)(1)” and inserting “(c)(1)”; and by striking “(b)(2)” and inserting “(c)(2)”.

The Commentary to § 2N2.1 captioned “Application Notes” is amended in Note 3 by striking “Death” and inserting “The offense created a substantial risk of bodily injury or death;”; by inserting “death,” before “extreme”; and by inserting “from the offense” after “resulted”.

Reason for Amendment: This amendment makes two changes to § 2N2.1 (Violations of Statutes and Regulations Dealing With Any Food, Drug, Biological Product, Device, Cosmetic, or Agricultural Product) to address offenses under the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. §§ 301 *et seq.* (the “FDCA”) and the Prescription Drug Marketing Act of 1987, Public Law 100–293 (the “PDMA”). First, the amendment adds a specific offense characteristic at subsection (b)(1) of § 2N2.1 that provides a four-level enhancement for repeat violations of the FDCA. First time violations of the FDCA, absent fraud, carry a maximum term of imprisonment of one year. 21 U.S.C. § 333(a)(1). In contrast, second or subsequent violations of the FDCA carry a maximum term of imprisonment of three years. 21 U.S.C. § 333(a)(2). The Commission determined based on public comment and testimony that an enhancement is appropriate to account for the increased statutory maximum

penalties provided for second or subsequent FDCA violations.

Second, the amendment expands the upward departure provision at Application Note 3(A) of § 2N2.1 to include an offense that created a substantial risk of bodily injury or death. Public comment and testimony indicated that § 2N2.1 may not adequately account for the substantial risk of bodily injury or death created by certain offenses. The PDMA, for example, includes certain offenses that may create such risks, such as the re-importation into the United States of any previously exported prescription drug, except by the drug’s manufacturer; the sale or purchase of any prescription drug sample or coupon; and the wholesale distribution of prescription drugs without the necessary state or federal licenses. 21 U.S.C. § 353(c), (d), (e). Thus, the amendment expanded the scope of the upward departure provision to address such risks.

8. Technical Amendment

Amendment: The Commentary to § 2E4.1 captioned “Application Note” is amended in Note 1 by inserting “and local” before “excise”; and by striking “tax” and inserting “taxes”.

The Commentary to § 2E4.1 captioned “Background” is amended by inserting “and local” before “excise”.

Section 2X7.1 is amended in subsection (a) by striking “554” and inserting “555” each place it appears.

The Commentary to § 2X7.1 captioned “Statutory Provision” is amended by striking “554” and inserting “555”.

Section 3C1.4 is amended by striking “3559(f)(1)” and inserting “3559(g)(1)”.

Appendix A (Statutory Index) is amended by striking both line references to 18 U.S.C. § 554 and inserting the following:

“18 U.S.C. § 554 2B1.5, 2M5.2, 2Q2.1

18 U.S.C. § 555 2X7.1”;

In the line reference to 18 U.S.C. § 1091 by striking “2H1.3” and inserting “2H1.1”;

In the line reference to 18 U.S.C. § 1512(a) by inserting “, 2A2.2, 2A2.3, 2J1.2” after “2A2.1”; and

In the line reference to 18 U.S.C. § 1512(b) by striking “2A1.2, 2A2.2,”.

Reason for Amendment: This amendment makes various technical and conforming changes to the guidelines.

First, the amendment addresses section 121 of the USA PATRIOT Improvement and Reauthorization Act of 2005, Public Law 109–177, which expanded the definition of “contraband cigarette” in subsection (2) of 18 U.S.C. § 2341 to include the failure to pay local

cigarette taxes. The amendment reflects this statutory change by expanding the scope of Application Note 1 of § 2E4.1 (Unlawful Conduct Relating to Contraband Cigarettes and Smokeless Tobacco) to include local excise taxes within the meaning of “taxes evaded.” The amendment also amends the background commentary to § 2E4.1 to include local excise taxes.

Second, the amendment implements technical corrections made by section 553 of Public Law 110–161 by changing the statutory references in § 2X7.1 (Border Tunnels and Subterranean Passages) from “18 U.S.C. § 554” to “18 U.S.C. § 555,” and by amending Appendix A (Statutory Index) to refer violations of 18 U.S.C. § 555 to § 2X7.1.

Third, the amendment addresses a statutory redesignation made by section 202 of the Adam Walsh Child Protection and Safety Act of 2006, Public Law 109–248, by changing statutory references in § 3C1.4 (False Registration of Domain Name) from “18 U.S.C. § 3559(f)(1)” to “18 U.S.C. § 3559(g)(1).”

Fourth, the amendment addresses statutory changes to 18 U.S.C. § 1512 (Tampering with a witness, victim, or an informant) made by the 21st Century Department of Justice Appropriations Act, Public Law 107–273, by deleting in Appendix A the references to §§ 2A1.2 (Second Degree Murder) and 2A2.2 (Aggravated Assault) for violations of 18 U.S.C. § 1512(b), and adding those guidelines as references for violations of 18 U.S.C. § 1512(a). The amendment

also adds a reference to § 2J1.2 (Obstruction of Justice) for a violation of 18 U.S.C. § 1512(a) to reflect the broad range of obstructive conduct, including the use of physical force against a witness, covered by that subsection.

Fifth, the amendment changes the reference in Appendix A for offenses under 18 U.S.C. § 1091 (Genocide) from § 2H1.3 (Use of Force or Threat of Force to Deny Benefits or Rights in Furtherance of Discrimination; Damage to Religious Real Property), which no longer exists as a result of a guideline consolidation (see USSC, Guidelines Manual, Appendix C, Amendment 521), to § 2H1.1 (Offenses Involving Individual Rights).

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Federal Register

**Friday,
May 9, 2008**

Part VI

The President

**Notice of May 7, 2008—Continuation of
the National Emergency Blocking
Property of Certain Persons and
Prohibiting the Export of Certain Goods
to Syria**

Presidential Documents

Title 3—**Notice of May 7, 2008****The President****Continuation of the National Emergency Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria**

On May 11, 2004, pursuant to my authority under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) and the Syria Accountability and Lebanese Sovereignty Restoration Act of 2003 (Public Law 108–175), I issued Executive Order 13338, in which I declared a national emergency with respect to the actions of the Government of Syria. To deal with this national emergency, Executive Order 13338 authorized the blocking of property of certain persons and prohibited the exportation or re-exportation of certain goods to Syria. On April 25, 2006, and February 13, 2008, I issued Executive Order 13399 and Executive Order 13460, respectively, to take additional steps with respect to this national emergency.

I took these actions to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the actions of the Government of Syria in supporting terrorism, maintaining its then-existing occupation of Lebanon, pursuing weapons of mass destruction and missile programs including the recent revelation of illicit nuclear cooperation with North Korea, and undermining U.S. and international efforts with respect to the stabilization and reconstruction of Iraq.

Because the actions and policies of the Government of Syria continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States, the national emergency declared on May 11, 2004, and the measures adopted on that date and on April 25, 2006, in Executive Order 13399, and on February 13, 2008, in Executive Order 13460, to deal with that emergency, must continue in effect beyond May 11, 2008. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency authorizing the blocking of property of certain persons and prohibiting the exportation or re-exportation of certain goods to Syria.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

A handwritten signature in black ink, appearing to be "George W. Bush", written in a cursive style.

THE WHITE HOUSE,
May 7, 2008.

[FR Doc. 08-1248

Filed 5-8-08; 9:26 am]

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