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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WHEN: Tuesday, January 27, 2009
9:00 a.m.–12:30 p.m.

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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Rules and Regulations

Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2008–0438]

RIN 3150–AI48

List of Approved Spent Fuel Storage Casks: NAC–UMS Revision 5, Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule: Confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of January 12, 2009 for the direct final rule that was published in the **Federal Register** on October 27, 2008 (73 FR 63621). This direct final rule amended the NRC's regulations to revise the NAC–UMS cask system listing to include Amendment No. 5 to Certificate of Compliance (CoC) No. 1015.

DATES: *Effective Date:* The effective date of January 12, 2009 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including any comments received, may be examined at the NRC Public Document Room, Room O–1F23, 11555 Rockville Pike, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219, e-mail *Jayne.McCausland@nrc.gov*.

SUPPLEMENTARY INFORMATION: On October 27, 2008 (73 FR 63621), the NRC published a direct final rule amending its regulations at 10 CFR 72.214 to revise the NAC–UMS cask system listing within the ''List of Approved Spent Fuel Storage Casks'' to include Amendment No. 5 to CoC No. 1015. This amendment modified the CoC and Technical Specifications (TS) to incorporate certain high burnup pressurized water reactor fuel as approved contents and make changes to the TS and the Final Safety Analysis Report to enhance the loading and storage operation of the NAC–UMS storage system. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on January 12, 2009. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 6th day of January 2009.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rulemaking, Directives and Editing Branch, Division of Administrative Services, Office of Administration.

[FR Doc. E9–346 Filed 1–9–09; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM397; Special Conditions No. 25–378–SC]

Special Conditions: Boeing Model 757 Series Airplanes; Seats with Non-Traditional, Large, Non-Metallic Panels

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for Boeing Model 757 series airplanes. These airplanes, as modified by American Airlines, Inc., will have a novel or unusual design feature associated with seats that include non-traditional, large, non-metallic panels that would affect survivability during a post-crash fire event. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is December 24, 2008. We must receive your comments by February 26, 2009.

ADDRESSES: You must mail two copies of your comments to: Federal Aviation Administration, Transport Airplane Directorate, Attn: Rules Docket (ANM–113), Docket No. NM397, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356. You may deliver two copies to the Transport Airplane Directorate at the above address. You must mark your comments: Docket No. NM397. You can inspect comments in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: John Shelden, FAA, Airframe/Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue, SW., Renton, Washington, 98057–3356; telephone (425) 227–2785; facsimile (425) 227–1232.

SUPPLEMENTARY INFORMATION:

Future Requests for Installation of Seats With Non-Traditional, Large, Non-Metallic Panels

The FAA has determined that notice of, and opportunity for prior public comment on, these special conditions are impracticable because these procedures would significantly delay issuance of the design approval and thus return to service of the affected aircraft. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

We anticipate that seats with non-traditional, large, non-metallic panels will be installed in other makes and models of airplanes. We have made the determination to require special conditions for all applications requesting the installation of seats with non-traditional, large, non-metallic panels until the airworthiness requirements can be revised to address this issue. Having the same standards across the range of airplane makes and models will ensure consistent ruling for the aviation industry.

Comments Invited

We invite interested people to take part in this rulemaking by sending

written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel about these special conditions. You can inspect the docket before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

We will consider all comments we receive by the closing date for comments. We may change these special conditions based on the comments we receive.

If you want us to acknowledge receipt of your comments on these special conditions, include with your comments a self-addressed, stamped postcard on which you have written the docket number. We will stamp the date on the postcard and mail it back to you.

Background

On October 15, 2008, American Airlines, Inc., 3900 Mingo Rd, MD 208, Tulsa, OK 74116, applied for a supplemental type certificate for installing seats that include non-traditional, large, non-metallic panels in a Boeing Model 757 series airplane. The Boeing Model 757 series airplanes, currently approved under Type Certificate No. A2NM, are swept-wing, conventional-tail, twin-engine, turbofan-powered, single-aisle, medium-sized, transport-category airplanes.

The applicable regulations to airplanes currently approved under Type Certificate No. A2NM do not require seats to meet the more stringent flammability standards required of large, non-metallic panels in the cabin interior. At the time the applicable rules were written, seats were designed with a metal frame covered by fabric, not with large, non-metallic panels. Seats also met the then-recently adopted standards for flammability of seat cushions. With the seat design being mostly fabric and metal, their contribution to a fire in the cabin had been minimized and was not considered a threat. For these reasons, seats did not need to be tested to heat-release and smoke-emission requirements.

Seat designs have now evolved to occasionally include non-traditional, large, non-metallic panels. Taken in total, the surface area of these panels is on the same order as the sidewall and overhead-stowage-bin interior panels. To provide the level of passenger protection intended by the airworthiness standards, these non-traditional, large, non-metallic panels in the cabin must meet the standards of Title 14 Code of Federal Regulations (CFR), part 25, Appendix F, parts IV and V, heat-release and smoke-emission requirements.

Type Certification Basis

Under the provisions of 14 CFR 21.101, American Airlines, Inc., must show that the Boeing Model 757 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A2NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the ''original type certification basis.'' The regulations incorporated by reference in Type Certificate No. A2NM are as follows:

- For Model 757–200 airplanes: Part 25, as amended by Amendment 25–1 through Amendment 25–45. In addition, an equivalent safety finding exists with respect to § 25.853(c), Compartment interiors.
- For Model 757–300 airplanes: Part 25, as amended by Amendment 25–1 through Amendment 25–85 with the exception listed: § 25.853(d)(3), Compartment interiors, at Amendment 25–72.

In addition, the certification basis includes certain special conditions, exemptions, or later amended sections of the applicable part that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25) do not contain adequate or appropriate safety standards for the Boeing Model 757 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 757 series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in §§ 11.19 and 11.38, and they become part of the type certification basis under § 21.101.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same or similar novel or unusual design feature, the special conditions would also apply to the other model under § 21.101.

Novel or Unusual Design Features

The Boeing Model 757 series airplanes will incorporate the following novel or unusual design feature: These models offer interior arrangements that include passenger seats that incorporate non-traditional, large, non-metallic panels in lieu of the traditional metal frame covered by fabric. The flammability properties of these panels have been shown to significantly affect the survivability of the cabin in the case of fire. These seats are considered a novel design for transport category airplanes that include Amendment 25–61 and Amendment 25–66 in the certification basis, and were not considered when those airworthiness standards were established.

The existing regulations do not provide adequate or appropriate safety standards for seat designs that incorporate non-traditional, large, non-metallic panels in their designs. To provide a level of safety that is equivalent to that afforded to the balance of the cabin, additional airworthiness standards, in the form of special conditions, are necessary. These special conditions supplement § 25.853. The requirements contained in these special conditions consist of applying the identical test conditions, required of all other large panels in the cabin, to seats with non-traditional, large, non-metallic panels.

A non-traditional, large, non-metallic panel, in this case, is defined as a panel with exposed-surface areas greater than 1.5 square feet installed per seat place. The panel may consist of either a single component or multiple components in a concentrated area. Examples of parts of the seat where these non-traditional panels are installed include, but are not limited to: Seat backs, bottoms and leg/foot rests, kick panels, back shells, credenzas, and associated furniture. Examples of traditional exempted parts of the seat include: Arm caps, armrest close-outs such as end bays and armrest-styled center consoles, food trays, video monitors, and shrouds.

Clarification of ''Exposed''

''Exposed'' is considered to include panels that are directly exposed to the passenger cabin in the traditional sense, and panels that are enveloped, such as by a dress cover. Traditional fabrics or leathers currently used on seats are

excluded from these special conditions. These materials must still comply with § 25.853(a) and § 25.853(c) if used as a covering for a seat cushion, or § 25.853(a) if installed elsewhere on the seat. Non-traditional, large, non-metallic panels covered with traditional fabrics or leathers will be tested without their coverings or covering attachments.

Discussion

In the early 1980s, the FAA conducted extensive research on the effects of post-crash flammability in the passenger cabin. As a result of this research and service experience, we adopted new standards for interior surfaces associated with large surface-area parts. Specifically, the rules require measurement of heat release and smoke emission (part 25, Appendix F, parts IV and V) for the affected parts. Heat release has been shown to have a direct correlation with post-crash fire-survival time. Materials that comply with the standards (i.e., § 25.853 entitled ''Compartment interiors'' as amended by Amendment 25–61 and Amendment 25–66) extend survival time by approximately 2 minutes over materials that do not comply.

At the time these standards were written, the potential application of the requirements of heat release and smoke emission to seats was explored. The seat frame itself was not a concern because it was primarily made of aluminum and included only small amounts of non-metallic materials. We determined that the overall effect of these materials on survivability was negligible, whether or not the food trays met the heat-release and smoke-emission requirements. The requirements therefore did not address seats. The preambles to both the Notice of Proposed Rule Making (NPRM), Notice No. 85–10 (50 FR 15038, April 16, 1985), and the Final Rule at Amendment 25–61 (51 FR 26206, July 21, 1986), specifically note that seats were excluded ''because the recently-adopted standards for flammability of seat cushions will greatly inhibit involvement of the seats.''

Subsequently, the Final Rule at Amendment 25–83 (60 FR 6615, March 6, 1995) clarified the definition of minimum panel size: ''It is not possible to cite a specific size that will apply in all installations; however, as a general rule, components with exposed-surface areas of one square foot or less may be considered small enough that they do not have to meet the new standards. Components with exposed-surface areas greater than two square feet may be considered large enough that they do have to meet the new standards. Those with exposed-surface areas greater than one square foot, but less than two square feet, must be considered in conjunction with the areas of the cabin in which they are installed before a determination could be made.''

On October 17, 1997, the FAA issued Policy Memorandum 97–112–39, *Guidance for Flammability Testing of Seat/Console Installations* (*http://rgl.faa.gov*). That memo was issued when it became clear that seat designs were evolving to include large, non-metallic panels with surface areas that would impact survivability during a cabin-fire event, comparable to partitions or galleys. The memo noted that large-surface-area panels must comply with heat-release and smoke-emission requirements, even if they were attached to a seat. If the FAA had not issued such policy, seat designs could have been viewed as a loophole to the airworthiness standards that would result in an unacceptable decrease in survivability during a cabin-fire event.

In October 2004, we focused attention on the appropriate flammability standards for passenger seats that incorporated non-traditional, large, non-metallic panels in lieu of the traditional fabric-covered metal. The Seattle Aircraft Certification Office and Transport Standards Staff reviewed this design and determined that it represented the kind and quantity of material that should be required to pass the heat-release and smoke-emissions requirements. We have determined that special conditions would be issued to apply the standards defined in § 25.853(d) to seats designed with large, non-metallic panels.

Applicability

As discussed above, these special conditions are applicable to Boeing Model 757 series airplanes. It is not our intent, however, to require seats with large, non-metallic panels to meet § 25.853, Appendix F, parts IV and V, if they are installed in cabins of airplanes that otherwise are not required to meet these standards. Because the heat-release and smoke-emission testing requirements of § 25.853 per Appendix F, parts IV and V, are not part of the type-certification basis of the Model 757, these special conditions are only applicable if the Model 757 series airplanes are in 14 CFR part 121 operations. Section 121.312 requires compliance with the heat-release and smoke-emission testing requirements of § 25.853, for certain airplanes, irrespective of the type-certification bases of those airplanes. For Model 757 series airplanes, these are the airplanes that would be affected by these special conditions. Should American Airlines, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A2NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on one model series of airplanes. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

Under standard practice, the effective date of final special conditions would be 30 days after the date of publication in the **Federal Register**; however, as the return-to-service date for the Boeing Model 757 series airplane, modified by American Airlines, Inc., is imminent, the FAA finds that good cause exists to make these special conditions effective upon issuance.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

■ The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

■ Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type-certification basis for Boeing Model 757 series airplanes modified by American Airlines, Inc.

1. Except as provided in paragraph 3 of these special conditions, compliance with Title 14 CFR part 25, Appendix F, parts IV and V, heat release and smoke emission, is required for seats that incorporate non-traditional, large, non-metallic panels that may either be a single component or multiple components in a concentrated area in their design.

2. The applicant may designate up to and including 1.5 square feet of non-traditional, non-metallic panel material per seat place that does not have to comply with special condition (1), above. A triple-seat assembly may have a total of 4.5 square feet excluded on any portion of the assembly (e.g., outboard-seat place 1 square foot;

middle, 1 square foot; and inboard, 2.5 square feet).

3. Seats do not have to meet the test requirements of Title 14 CFR part 25, Appendix F, parts IV and V, when installed in compartments that are not otherwise required to meet these requirements. Examples include:

a. Airplanes with passenger capacities of 19 or less,

b. Airplanes that do not have § 25.853, Amendment 25–61 or later, in their certification basis and do not need to comply with the requirements of 14 CFR 121.312, and

c. Airplanes exempted from § 25.853, Amendment 25–61 or later.

Issued in Renton, Washington, on December 24, 2008.

Linda Navarro,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–328 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

[Docket No. FDA–2008–N–0039]

Oral Dosage Form New Animal Drugs; Phenylbutazone Tablets and Boluses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by First Priority, Inc. The supplemental application provides for revising the description of a 1-gram oral dosage form of phenylbutazone from tablet to bolus.

DATES: This rule is effective January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–276–8337, e-mail: *melanie.berson@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION: First Priority, Inc., 1585 Todd Farm Dr., Elgin, IL 60123, filed a supplement to NADA 48–647 for the veterinary prescription use of PRIBUTAZONE (phenylbutazone) Tablets in horses for the relief of inflammatory conditions associated with the musculoskeletal system. The supplemental application provides for revising the description of this 1-gram oral dosage form of phenylbutazone from tablet to bolus. The supplemental NADA is approved as of December 10, 2008, and 21 CFR 520.1720a is amended to reflect the approval.

Approval of this supplemental NADA did not require review of additional safety or effectiveness data or information. Therefore, a freedom of information summary is not required.

The agency has determined under 21 CFR 25.33(d)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of ''rule'' in 5 U.S.C. 804(3)(A) because it is a rule of ''particular applicability.'' Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 520

Animal drugs.

■ Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

■ 1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: 21 U.S.C. 360b.

■ 2. In § 520.1720a, revise paragraphs (a) and (b)(3); and add paragraph (b)(6) to read as follows:

§ 520.1720a Phenylbutazone tablets and boluses.

(a) *Specifications*. Each tablet contains 100, 200, or 400 milligrams (mg), or 1 gram (g) of phenylbutazone. Each bolus contains 1, 2, or 4 gram g of phenylbutazone.

(b) * * *

(3) Nos. 000856 and 061623 for use of 100-mg or 1-g tablets in dogs and horses.

* * * * *

(6) No. 058829 for use of 100-mg or 1-g tablets in dogs and horses, or 1-g boluses in horses.

* * * * *

Dated: January 5, 2009.

Steven D. Vaughn,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. E9–265 Filed 1–9–09; 8:45 am]

BILLING CODE 4160–01–S

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2008–0736; FRL–8759–7]

Approval and Promulgation of Air Quality Implementation Plans; the Metropolitan Washington Nonattainment Area; Determination of Attainment of the Fine Particle Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is determining that the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 fine particle ($PM_{2.5}$) National Ambient Air Quality Standard (NAAQS) has attained the 1997 $PM_{2.5}$ NAAQS.

DATES: *Effective Date:* This final rule is effective on January 12, 2009.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2008–0736. All documents in the docket are listed in the *www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.*, confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103.

FOR FURTHER INFORMATION CONTACT: Melissa Linden, (215) 814–2096, or by e-mail at *linden.melissa@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA.

Organization of this document. The following outline is provided to aid in locating information in this preamble.

I. What Action Is EPA Taking?
II. What Is the Effect of This Action?
III. When Is This Action Effective?
IV. Final Action
V. Statutory and Executive Order Reviews

I. What Action Is EPA Taking?

EPA is determining that the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$

NAAQS. This determination is based upon quality assured, quality controlled and certified ambient air monitoring data that show the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and monitoring data that continue to show attainment of the 1997 $PM_{2.5}$ NAAQS based on the 2005–2007 data. In addition, quality controlled and quality assured monitoring data submitted during the calendar year 2008, which are available in the EPA Air Quality System (AQS) database, but not yet certified, show this area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Other specific requirements of the determination and the rationale for EPA's proposed action are explained in the notice of proposed rulemaking (NPR) published on October 22, 2008 (73 FR 62945) and will not be restated here. A public comment was received supporting the determination proposed in the NPR.

II. What Is the Effect of This Action?

This final action, in accordance with 40 CFR 51.1004(c), suspends the requirements for this area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning state implementation plans (SIPs) related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

III. When Is the Action Effective?

EPA finds that there is good cause for this approval to become effective on the date of publication of this action in the **Federal Register**, because a delayed effective date is unnecessary due to the nature of the approval. The expedited effective date for this action is authorized under both 5 U.S.C. 553(d)(1), which provides that rule actions may become effective less than 30 days after publication if the rule ''grants or recognizes an exemption or relieves a restriction'' and 5 U.S.C. 553(d)(3), which allows an effective date less than 30 days after publication ''as otherwise provided by the agency for good cause found and published with the rule.'' As noted above, this determination of attainment suspends the requirements for the Washington Metropolitan nonattainment area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and any other planning SIPs related to attainment of the standard for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS. The suspension of these requirements is sufficient reason to allow an expedited effective date of this rule under 5 U.S.C. 553(d)(1). In addition, the Metropolitan Washington, DC–MD–VA nonattainment area's suspension from these requirements provide good cause to make this rule effective on the date of publication of this action in the **Federal Register**, pursuant to 5 U.S.C. 553(d)(3). The purpose of the 30-day waiting period prescribed in 5 U.S.C. 553(d) is to give affected parties a reasonable time to adjust their behavior and prepare before the final rule takes effect. Where, as here, the final rule suspends requirements rather than imposing obligations, affected parties, such as the Commonwealth of Virginia, the District of Columbia and the State of Maryland do not need time to adjust and prepare before the rule takes effect.

IV. Final Action

EPA is determining that the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination is based upon quality assured, quality controlled, and certified ambient air monitoring data that show that the area has monitored attainment of the 1997 $PM_{2.5}$ NAAQS since the 2004–2006 monitoring period, and continues to monitor attainment of the standard based on the 2005–2007 data. This final action, in accordance with 40 CFR 51.1004(c), will suspend the requirements for this area to submit attainment demonstrations and associated reasonably available control measures, reasonable further progress plans, contingency measures, and other planning SIPs related to attainment of the 1997 $PM_{2.5}$ NAAQS for so long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

V. Statutory and Executive Order Reviews

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action makes a determination based on air quality data, and would, if finalized, result in the suspension of certain Federal requirements. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule makes a determination based on air quality data, and results in the suspension of certain Federal requirements, it 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).

This rule also does not have tribal applications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have 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, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely makes a determination based on air quality data and results in the suspension of certain Federal requirements, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks'' (62 FR 19885, April 23, 1997) because it determines that air quality in the affected area is meeting Federal standards.

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply because it would be inconsistent with applicable law for EPA, when determining the attainment status of an area, to use voluntary consensus standards in place of promulgated air quality standards and monitoring procedures that other wise satisfy the provisions of the CAA.

This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Under Executive Order 12898, EPA finds that this rule involves a determination of attainment based on air quality data and will not have disproportionately high and adverse human health or environmental effects on any communities in the area,

including minority and low-income communities.

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 13, 2009. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action.

This action, pertaining to the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS, may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Particulate matter, Reporting and recordkeeping requirements.

Dated: December 19, 2008.

Donald S. Welsh,

Regional Administrator, Region III.

■ 40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

■ 1. The authority citation for part 52 continues to read as follows:

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

Subpart J—District of Columbia

■ 2. Section 52.477 is added to read as follows:

§ 52.477 Control strategy: Particulate matter.

Determination of Attainment. EPA has determined, as of January 12, 2009, the District of Columbia portion of the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Subpart V—Maryland

■ 3. Section 52.1081 is added to read as follows:

§ 52.1081 Control strategy: Particulate matter.

Determination of Attainment. EPA has determined, as of January 12, 2009, the Maryland portion of the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

Subpart VV—Virginia

■ 4. Section 52.2429 is added to read as follows:

§ 52.2429 Control strategy: Particulate matter.

Determination of Attainment. EPA has determined, as of January 12, 2009, the Virginia portion of the Metropolitan Washington, DC–MD–VA nonattainment area for the 1997 $PM_{2.5}$ NAAQS has attained the 1997 $PM_{2.5}$ NAAQS. This determination, in accordance with 40 CFR 52.1004(c), suspends the requirements for this area to submit an attainment demonstration and associated reasonably available control measures, a reasonable further progress plan, contingency measures, and other planning SIPs related to attainment of the standard for as long as the area continues to attain the 1997 $PM_{2.5}$ NAAQS.

[FR Doc. E8–31305 Filed 1–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[EPA–R10–OAR–2007–0915; FRL–8747–7]

Approval and Promulgation of State Implementation Plans: Oregon; Salem Carbon Monoxide Nonattainment Area; Designation of Areas for Air Quality Planning Purposes

Correction

In rule document E8–30825 beginning on page 79655 in the issue of Tuesday, December 30, 2008, make the following corrections:

1. On page 79655, in the third column, in the **DATES** section, in the fourth line, ''January 29, 2008'' should read ''January 29, 2009''.

§81.338 [Corrected]

2. On page 79661, in § 81.338, in the table ''OREGON—CARBON MONOXIDE'', in the ''Date'' column, both instances of ''3/2/08'' should read ''3/2/09''

[FR Doc. Z8–30825 Filed 1–9–09; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 622 and 640

[Docket No. 070717349–81641–03]

RIN 0648–AV61

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Amendments to the Spiny Lobster Fishery Management Plans for the Caribbean and Gulf of Mexico and South Atlantic

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 4 to the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (Caribbean FMP) prepared by the Caribbean Fishery Management Council (Caribbean

Council) and Amendment 8 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (Gulf and South Atlantic FMP) prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Gulf and South Atlantic Councils). This final rule establishes two minimum size restrictions for importation of spiny lobster into the United States -one applicable to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands. In addition, this final rule prohibits importation of egg-bearing spiny lobsters and importation of spiny lobster tail meat that is not in whole tail form with the exoskeleton attached. The intended effect of this final rule is to enhance the conservation of the spiny lobster resource and improve effectiveness of law enforcement related to such conservation.

DATES: This final rule is effective February 11, 2009.

ADDRESSES: Copies of the Final Environmental Impact Statement (FEIS), Initial Regulatory Flexibility Analysis (IRFA), and the Record of Decision (ROD) may be obtained from Jason Rueter, Southeast Regional Office, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701; telephone 727–824–5305; fax 727–824–5308; e-mail *jason.rueter@noaa.gov*.

FOR FURTHER INFORMATION CONTACT: Jason Rueter, telephone 727–824–5305; fax 727–824–5308; e-mail *jason.rueter@noaa.gov*.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Caribbean is managed under the Caribbean FMP prepared by the Caribbean Council and is implemented through regulations at 50 CFR part 622. The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the Gulf and South Atlantic FMP prepared by the Gulf and South Atlantic Councils and is implemented through regulations at 50 CFR part 640. Both regulations are implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On October 15, 2008, NMFS published a notice of availability of Amendments 4 and 8 and requested public comments (73 FR 61015). On October 29, 2008, NMFS published the proposed rule to implement Amendments 4 and 8 and requested public comments (73 FR 64295). NMFS approved Amendments 4 and 8 on December 22, 2008. The rationale for the measures in Amendments 4 and 8 is provided in the amendments and in the preamble to the proposed rule and is not repeated here.

Comments and Responses

NMFS received four comments on the proposed rule from two individuals, a conservation organization,, and a governmental agency. Three of the comments supported all of the actions contained in the proposed rule. One comment opposed one aspect of the proposed rule. The opposing comment and NMFS' response are provided below.

Comment 1: One commenter opposed the wording of the prohibition of spiny lobster imports smaller than the proposed minimum size limits. The commenter believed the smaller 5–ounce (142–gram) tail weight minimum size limit applicable to the continental United States could undermine the effectiveness of the 6–ounce (170–gram) tail weight minimum size limit applicable to Puerto Rico and the U.S. Virgin Islands, i.e., that the smaller minimum size spiny lobster from the continental United States could legally be subsequently imported into Puerto Rico or the U.S. Virgin Islands.

Response: This rule defines ''import'' to mean to land on, bring into, or introduce into Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the custom laws of the United States. This rule will prohibit any person from importing a spiny lobster, as defined by the rule, into Puerto Rico or the U.S. Virgin Islands that is less than the applicable 6–ounce (170–gram) tail weight minimum size limit. Thus, spiny lobster legally imported into the continental United States at a size less than a 6–ounce (170–gram) tail weight could not be legally imported into Puerto Rico or the U.S. Virgin Islands.

Classification

The Administrator, Southeast Region, NMFS, determined that Amendments 4 and 8 are necessary for the conservation and management of the spiny lobster fishery and are consistent with the Magnuson-Stevens Act, and other applicable laws.

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

NMFS prepared an FEIS for this amendment. A notice of availability for the FEIS was published on October 24, 2008 (73 FR 63470). A copy of the ROD is available from NMFS (see **ADDRESSES**).

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification follows:

This rule will implement importation standards for spiny lobster, *Panulirus argus*. These standards will increase law enforcement's ability to effectively prevent the importation of undersized spiny lobster, spiny lobster with eggs or from which eggs have been removed, and spiny lobster tail meat in any form other than a whole tail with the exoskeleton attached.

The primary entities that are expected to be affected by this rule are businesses that import spiny lobster into the United States from countries: (1) Without legal minimum size standards or with legal minimum size standards that are less than those of this rule, (2) without legal prohibitions against harvesting female lobsters with eggs, detaching their eggs and/or removing pleopods (swimmerets), or (3) without prohibitions on marketing spiny lobster tail meat in a form other than a whole tail with the exoskeleton attached.

Businesses that import spiny lobster are expected to be within the following industries: Fish and Seafood Merchant Wholesalers (NAICS 424460), Fish and Seafood Markets (NAICS 445220), Fish and Frozen Seafood Processing (NAICS 311712), Packaged Frozen Food Merchant Wholesalers (NAICS 424420), and Supermarkets and Other Grocery, Except Convenience, Stores (NAICS 445110). The Small Business Administration (SBA) has established that a business in one of these industries is a small business if it is independently owned and operated, not dominant in its field of operation (including its affiliates), and if it has no more than 100 employees (NAICS 424460 and 424420), 500 employees (NAICS 311712), $6.5 million in annual receipts (NAICS 445220) or $25 million in annual receipts (NAICS 445110). According to Firm Size Data (*www.sba.gov/advo/research/data.html*), in 2005 there were: 2,243 firms in NAICS 424460 and at least 1,935 of those firms were small businesses; 2,761 firms in NAICS 424420 and at least 2,113 of them were small businesses; 504 firms in NAICS 311712 and 482 of them were small businesses; 43,686 firms in NAICS 445110 and at least 35,511 of them were small businesses; and 2,118 firms in NAICS 445220 and at least 2,008 were small businesses.

The U.S. is the largest importer of spiny lobster. From 2002 through 2007, U.S. rock lobster imports, which includes spiny lobster, originated from 17 countries that harvest spiny lobster (Brazil, Bahamas, Belize, Colombia, Costa Rica, Dominican Republic, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Trinidad and Tobago, Turks and Caicos Islands, and Venezuela), and of these countries, only Costa Rica, Guatemala, Panama, and Trinidad and Tobago have no harvest-size standards for spiny lobster. Of the 13 countries with known harvest-size standards, 7 have legal size standards for spiny lobster that meet or exceed the 5–ounce (142–gram) minimum tail weight specified by the rule that will apply anywhere subject to U.S. jurisdiction, except Puerto Rico and the U.S. Virgin Islands where a more restrictive 6–ounce (170–gram) minimum tail weight will apply. These countries are: The Bahamas, Colombia, Dominican Republic, Honduras, Nicaragua, Turks and Caicos Islands, and Venezuela. Three countries, Belize, Brazil, and Mexico, have standards similar to the minimum tail weight in this rule and the imports from these countries are expected to be subject to little or no impact. Thus, the 5–ounce (142–gram) minimum tail weight specified by this rule could affect small businesses that import frozen spiny lobster from the following countries of origin into areas subject to U.S. jurisdiction, excluding Puerto Rico or the U.S. Virgin Islands: Costa Rica, Guatemala, Guyana, Haiti, Jamaica, Panama, and Trinidad and Tobago.

Among the 17 countries of origin that harvest spiny lobster, the following countries prohibit the harvest of berried (egg-bearing) lobsters: The Bahamas, Brazil, Belize, Colombia, Costa Rica, Dominican Republic, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, the Turks and Caicos Islands, and Venezuela. Hence, the prohibition against importation of berried lobsters will not affect legal imports from these countries. However, the prohibition against importation of berried lobsters could affect spiny lobster imports from Guatemala, Martinique and Trinidad and Tobago. Among the 17 countries of origin listed above, only the Bahamas and Belize have laws that prohibit the removal of pleopods. Consequently, the prohibition against importation of spiny lobster with their pleopods removed may affect imports from Brazil, Colombia, Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Martinique, Mexico, Nicaragua, Panama, Trinidad and Tobago, Turks and Caicos Islands, and Venezuela.

Most imports of spiny lobster into the U.S. (excluding Puerto Rico and the U.S. Virgin Islands) are parts of or whole lobster with the meat attached to the exoskeleton. Hence, the prohibition against imports of meat without the exoskeleton attached is expected to affect a small minority of imports.

U.S. Customs data show there were no imports of rock lobster into the U.S. Virgin Islands from 2001 through 2007. Consequently, no small businesses that import spiny lobster into the U.S. Virgin Islands are expected to be affected by this rule. The same data show imports of rock lobster into Puerto Rico originated from The Bahamas, Dominican Republic and Honduras, which have legal size standards less than the minimum legal standards of Puerto Rico and the U.S. Virgin Islands. Both Puerto Rico and the U.S. Virgin Islands, however, prohibit the possession of spiny lobster with a carapace less than 3.5 inches (8.89 cm), which, in turn, prohibits the importation of lobsters that do not meet their size standard. Puerto Rico also prohibits possession of berried lobsters. Furthermore, data suggest little to none of the spiny lobster imports into Puerto Rico include meat with the exoskeleton removed. Therefore, because of existing restrictions and the absence of or minimal spiny lobster meat imports, this rule is not expected to affect small businesses that import spiny lobster into Puerto Rico.

Despite existing regulations in the respective countries, the Western Central Atlantic Fishery Commission has reported that harvesting and trading of spiny lobster below the minimum legal size is a problem in Brazil, Nicaragua, Honduras, and the Bahamas. Frozen imports of rock lobster represent the large majority of rock lobster imports. Of the top four countries of origin of imported frozen rock lobster and other sea crawfish (HS 030611000) that harvest spiny lobster, approximately 32 percent of frozen rock lobster and other sea crawfish by value imported from 2002 through 2007 were from Brazil, followed by approximately 21 percent from the Bahamas, 18 percent from Honduras, and 16 percent from Nicaragua, for a total of about 86 percent of the frozen rock lobster imports from countries that harvest spiny lobster. The remaining countries of origin are Colombia (4 percent), Belize (3 percent), Mexico (3 percent), Jamaica (2 percent), Panama (1 percent), and Dominican Republic, Turks and Caicos Islands, Haiti, Costa Rica, Guatemala, Venezuela, Trinidad and Tobago, and Martinique, all under one percent.

During the same period, 2002 through 2007, U.S. imports of non-frozen rock lobster and other sea crawfish (HS 030621000) from countries of origin that also harvest spiny lobster were Costa Rica, Guatemala, Honduras, Jamaica, Mexico, Nicaragua, Turks and Caicos Islands, and Venezuela. Because Honduras, Nicaragua, Turks and Caicos Islands, and Venezuela have minimum size standards that are equivalent to the size standards that will apply anywhere subject to the U.S. jurisdiction, except Puerto Rico or the U.S. Virgin Islands, this rule will affect small businesses that import non-frozen spiny lobster from the following countries of origin: Costa Rica, Guatemala, Jamaica, and Mexico. About 93 percent of the non-frozen rock lobster imports by value from countries of origin that harvest spiny lobster are from Mexico, and increasingly these imports from Mexico have been live lobsters. Collectively, the imports of non-frozen rock lobster from these four countries of origin (Costa Rica, Guatemala, Jamaica, and Mexico) represent about 94 percent of the non-frozen imports by value for countries that harvest spiny lobster.

Customs data from January 22, 2004, through December 31, 2007, for frozen rock lobster imports from the top four countries of origin (Brazil, Bahamas, Honduras, and Nicaragua), indicate 98 businesses imported frozen rock lobster from these 4 countries. Thirteen of these businesses are foreign-based, and at least 3 are subsidiaries of much larger companies. Of the remaining 82 businesses, 45 of them imported frozen rock lobster in 1 year, followed by 17 businesses in 2 years, 10 in 3 years, and 10 in 4 years. The number of small businesses in any 1 year that imported frozen rock lobster from one or more of these countries ranged from 47 to 32 from 2004 through 2007, with an average of 38 annually. Therefore, 86 percent of the annual imports of frozen rock lobster from countries that harvest spiny lobster are brought in by an average of 38 small businesses.

The information provided above supports a determination that this rule will not have a significant economic impact on a substantial number of small or large business entities. An Initial Regulatory Flexibility Act Analysis was prepared for the proposed rule, and the resultant analysis concluded the same finding of no significant economic impact. Public comment was solicited on this determination through the proposed rule. No challenge of this determination or other substantive issue was received through public comment

on the proposed rule and, thus, no changes were made in the rule. Accordingly, a final regulatory flexibility analysis was not required or prepared. Copies of the RIR and IRFA available (see **ADDRESSES**).

List of Subjects

50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

50 CFR Part 640

Fisheries, Fishing, Incorporation by reference, Reporting and recordkeeping requirements.

Dated: January 6, 2009.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

■ For the reasons set out in the preamble, 50 CFR parts 622 and 640 are amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

■ 1. The authority citation for part 622 continues to read as follows:

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

■ 2. In § 622.1, a sentence is added to the end of paragraph (b) to read as follows:

§ 622.1 Purpose and scope.

* * * * *

(b) * * * This part also governs importation of Caribbean spiny lobster into Puerto Rico or the U.S. Virgin Islands.

* * * * *

■ 3. In § 622.2, the definition of ''Import'' is added in alphabetical order to read as follows:

§ 622.2 Definitions and acronyms.

* * * * *

Import means, for the purpose of §§ 622.1(b) and 622.50 only,—

(1) To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, Puerto Rico or the U.S. Virgin Islands, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

* * * * *

■ 4. In § 622.3, paragraph (a) is revised and paragraph (f) is added to read as follows:

§ 622.3 Relation to other laws and regulations.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) through (f) of this section.

* * * * *

(f) Regulations pertaining to additional prohibitions on importation of spiny lobster into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands are set forth in part 640 of this chapter.

■ 5. In § 622.7, paragraph (ii) is added to read as follows:

§ 622.7 Prohibitions.

* * * * *

(ii) Fail to comply with the Caribbean spiny lobster import prohibitions, as specified in § 622.50.

■ 6. Section 622.50 is added to subpart C to read as follows:

§ 622.50 Caribbean spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* There are two minimum size limits that apply to importation of spiny lobster into the United States -one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a Caribbean spiny lobster with less than a 6–ounce (170–gram) tail weight into Puerto Rico or the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 6–ounce (170–gram) tail weight is defined as a tail that weighs 5.9–6.4 ounces (167–181 grams). If the documentation accompanying an imported Caribbean spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster actually does satisfy the minimum tail-weight requirement or that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such Caribbean spiny lobster has the burden to prove that such Caribbean spiny lobster has a tail length of 6.2 inches (15.75 cm) or greater or that such Caribbean spiny lobster has or had a carapace length of 3.5 inches (8.89 cm) or greater. If the burden is satisfied such Caribbean spiny lobster will be considered to be in compliance with the minimum 6–ounce (170–gram) tail-weight requirement.

(2) See § 640.27 of this chapter regarding the minimum size limit that applies to spiny lobster imported into any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands.

(b) *Additional Caribbean spiny lobster import prohibitions*—(1) *Prohibition related to tail meat.* No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States Caribbean spiny lobster with eggs attached or Caribbean spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

■ 7. The authority citation for part 640 continues to read as follows:

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

■ 8. Section 640.1 is revised to read as follows:

§ 640.1 Purpose and scope.

(a) The purpose of this part is to implement the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic prepared by the South Atlantic and Gulf of Mexico Fishery Management Councils under the Magnuson-Stevens Act.

(b) This part governs conservation and management of spiny lobster and slipper (Spanish) lobster in the EEZ in the Atlantic Ocean and Gulf of Mexico off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border south and through the Gulf of Mexico. This part also governs importation of spiny lobster into any place subject to the jurisdiction of the United States.

(c) An owner or operator of a vessel that has legally harvested spiny lobsters in the waters of a foreign nation and possesses spiny lobster, or separated

tails, in the EEZ incidental to such foreign harvesting is exempt from the requirements of this part 640, except for § 640.27 with which such an owner or operator must comply, provided proof of lawful harvest in the waters of a foreign nation accompanies such lobsters or tails.

■ 9. In § 640.2, the definition for ''Regional Director'' is removed, the definition for ''Spiny lobster'' is revised, and definitions for ''Import'' and ''Regional Administrator'' are added in alphabetical order to read as follows:

§ 640.2 Definitions.

* * * * *

Import means—

(1) To land on, bring into, or introduce into, or attempt to land on, bring into, or introduce into, any place subject to the jurisdiction of the United States, whether or not such landing, bringing, or introduction constitutes an importation within the meaning of the customs laws of the United States; but

(2) Does not include any activity described in paragraph (1) of this definition with respect to fish caught in the U.S. exclusive economic zone by a vessel of the United States.

* * * * *

Regional Administrator (RA), for the purposes of this part, means the Administrator, Southeast Region, NMFS, 263 13th Avenue South, St. Petersburg, FL 33701, or a designee.

* * * * *

Spiny lobster means the species *Panulirus argus*, or a part thereof.

* * * * *

■ 10. In § 640.3, paragraph (a) is revised, and paragraph (c) is added to read as follows:

§ 640.3 Relation to other laws.

(a) The relation of this part to other laws is set forth in § 600.705 of this chapter and paragraphs (b) and (c) of this section.

* * * * *

(c) Regulations pertaining to additional prohibitions on importation of spiny lobster into Puerto Rico or the U.S. Virgin Islands are set forth in part 622 of this chapter.

■ 11. In § 640.7, introductory text is revised, and paragraph (w) is added to read as follows:

§ 640.7 Prohibitions.

In addition to the general prohibitions specified in § 600.725 of this chapter, it is unlawful for any person to do any of the following:

* * * * *

(w) Fail to comply with the spiny lobster import prohibitions, as specified in § 640.27.

■ 12. Section 640.8 is revised to read as follows:

§ 640.8 Facilitation of enforcement.

See § 600.730 of this chapter.

■ 13. Section 640.9 is revised to read as follows:

§ 640.9 Penalties.

See § 600.735 of this chapter.

■ 14. Section 640.27 is added to subpart B to read as follows:

§ 640.27 Spiny lobster import prohibitions.

(a) *Minimum size limits for imported spiny lobster.* There are two minimum size limits that apply to importation of spiny lobster into the United States -one that applies any place subject to the jurisdiction of the United States other than Puerto Rico or the U.S. Virgin Islands, and a more restrictive minimum size limit that applies to Puerto Rico and the U.S. Virgin Islands.

(1) No person may import a spiny lobster with less than a 5–ounce (142–gram) tail weight into any place subject to the jurisdiction of the United States excluding Puerto Rico and the U.S. Virgin Islands. For the purposes of paragraph (a) of this section, a 5–ounce (142–gram) tail weight is defined as a tail that weighs 4.2–5.4 ounces (119–153 grams). If the documentation accompanying an imported spiny lobster (including but not limited to product packaging, customs entry forms, bills of lading, brokerage forms, or commercial invoices) indicates that the product does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster actually does satisfy the minimum tail-weight requirement or that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the imported product itself does not satisfy the minimum tail-weight requirement, the person importing such spiny lobster has the burden to prove that such spiny lobster has a tail length of 5.5 inches (13.97 cm) or greater or that such spiny lobster has or had a carapace length of greater than 3.0 inches (7.62 cm). If the burden is satisfied, such spiny lobster will be considered to be in compliance with the minimum 5–ounce (142–gram) tail-weight requirement.

(2) See § 622.50 of this chapter regarding a more restrictive minimum size limit that applies to spiny lobster imported into Puerto Rico or the U.S. Virgin Islands.

(b) *Additional spiny lobster import prohibitions* —(1) *Prohibition related to tail meat.* No person may import into any place subject to the jurisdiction of the United States spiny lobster tail meat that is not in whole tail form with the exoskeleton attached.

(2) *Prohibitions related to egg-bearing spiny lobster.* No person may import into any place subject to the jurisdiction of the United States spiny lobster with eggs attached or spiny lobster from which eggs or pleopods (swimmerets) have been removed or stripped. Pleopods (swimmerets) are the first five pairs of abdominal appendages.

PART 640 [AMENDED]

■ 15. In addition to the amendments set forth above, in 50 CFR part 640, remove the words ''Magnuson Act'' and ''Regional Director'' and add in their places the words ''Magnuson-Stevens Act'' and ''Regional Administrator'', respectively, wherever they occur.

[FR Doc. E9–372 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–22–S

Proposed Rules

Federal Register
Vol. 74, No. 7
Monday, January 12, 2009

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.

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 121, 125, 127 and 134

RIN 3245–AF80

The Women-Owned Small Business Federal Contract Assistance Procedures—Eligible Industries

AGENCY: U.S. Small Business Administration (SBA).

ACTION: Proposed rule, notice of reopening of comment period.

SUMMARY: SBA is reopening the comment period for an additional 60 days.

DATES: Comments on the proposed rule on The Women-Owned Small Business Federal Contract Assistance Procedures—Eligible Industries, must be received on or before March 13, 2009.

ADDRESSES: You may submit comments, identified by 3245–AF80, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Mail, Hand Delivery/Courier:* Dean Koppel, Assistant Director, Policy, Planning and Research, Office of Government Contracting, (202) 205–6460, U.S. Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.
- All comments will be posted on *http://www.regulations.gov*. If you wish to submit confidential business information (CBI) as defined in the User Notice at *http://www.regulations.gov*, please submit the comments to Dean Koppel and highlight the information that you consider to be CBI and explain why you believe this information should be held confidential. SBA will make a final determination as to whether the comments will be published or not.

FOR FURTHER INFORMATION CONTACT: Dean Koppel, Assistant Director, Policy, Planning and Research, Office of Government Contracting, (202) 205–6460.

SUPPLEMENTARY INFORMATION: On October 1, 2008, SBA published in the **Federal Register** a proposed rule on The Women-Owned Small Business Federal Contract Assistance Procedures—Eligible Industries (73 FR 57014). The proposed rule sought comments from the public on a data issue involving the Women-Owned Small Business (WOSB) Federal Contract Assistance Procedures, which were finalized on October 1, 2008 (73 FR 56940). Specifically, SBA was seeking comments on two data sets: (1) The Central Contractor Registration (CCR) data set which was used in the RAND report to determine the representation of WOSBs in Federal procurement in the various industries, and (2) a non-public Survey of Business Owners (SBO) data set from the Economic Census, which was not previously used in the RAND report to determine the representation of WOSBs in Federal procurement in the various industries. This request for comments was intended to stimulate dialogue on available data sets and would be evaluated to determine which data set will provide the soundest basis to identify industries in which WOSBs are underrepresented in Federal procurement.

The original comment period was from October 1, 2008, through October 31, 2008. There is significant Congressional and public interest in extending the comment period. In addition, SBA is reviewing the relevance of the standard for disparity studies discussed in the Federal Circuit's decision in *Rothe Development Corporation* v. *Department of Defense*. Therefore, SBA is reopening the comment period until March 13, 2009. SBA believes that all affected parties would find it beneficial to have more time to review the proposed rule and prepare their comments.

Authority: 15 U.S.C. 634.

Calvin Jenkins,

Acting Associate Administrator for Government Contracting and Business Development.

[FR Doc. E9–407 Filed 1–9–09; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1364; Directorate Identifier 2008–NM–103–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 737–300, –400, and –500 series airplanes. This proposed AD would require modifying the control power wiring of the normal supply fan and the low flow sensor for the equipment cooling system of the electronic flight instrument system (EFIS). This proposed AD results from a report of loss of both the normal EFIS cooling supply and the indication of EFIS cooling loss due to a single failure of the battery bus, causing eventual power-down of the EFIS displays; the standby attitude indication is also powered by this battery bus. We are proposing this AD to prevent loss of all attitude indications from both the standby indicator and EFIS displays, which could decrease the ability of the flightcrew to maintain the safe flight and landing of the airplane.

DATES: We must receive comments on this proposed AD by February 26, 2009.

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.

For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1, fax 206–766–5680; e-mail *me.boecom@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Suk Jang, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6511; fax (425) 917–6590.

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–2008–1364; Directorate Identifier 2008–NM–103–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

We received a report of loss of both the normal electronic flight instrument system (EFIS) cooling supply and the indication of EFIS cooling loss due to a single failure of the battery bus, causing eventual power-down of the EFIS displays; the standby attitude indication is also powered by this battery bus. A single failure of the battery bus can cause loss of attitude indications from both the standby attitude indicator and EFIS displays. An indication of battery bus failure is not displayed on Boeing Model 737–300, –400, and –500 airplanes. The battery bus energizes the standby horizon, the normal supply fan for the equipment cooling system for the EFIS, and the cooling air flow sensor. If the fan does not operate, the EFIS will start to get hot, and when it gets too hot it will automatically stop operation by first going to mono-chromatic, and then, after 60 minutes or more, it will power-down. The supply fan off light will not illuminate to indicate that the fan has failed because it is also powered by the battery bus, which lost power. When this condition occurs, the flightcrew could be left without any attitude indication. Loss of all attitude indications from both the standby indicator and EFIS displays could decrease the ability of the flightcrew to maintain safe flight and landing of the airplane.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008. The service bulletin describes procedures for modifying the control power wiring of the normal supply fan and the low flow sensor for the equipment cooling system of the EFIS. The modification includes the following procedures:

- Rerouting the wire for Group 1 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1, on which the length of the wire in the W018 wire bundle at the P18 load control center is adequate. If the length of the wire is inadequate, install new wire.
- Rerouting the wire for Group 2 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1, on which the length of the wire in the W018 wire bundle at the P18 load control center is adequate. If the length of the wire is inadequate, install new wire.
- Modifying wire bundle W044 between the P6 top disconnect panel and the P6–1 panel for Group 3 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1.
- Modifying wire bundle W036 between the P5 forward overhead panel and the mid-center ceiling panel for Group 4 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 263 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action/airplane group	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Groups 1 & 2 modification	3	$80	0	$240	153	$36,720
Group 4 modification	2	80	0	160	113	18,080

Currently, there are no Group 3 airplanes on the U.S. Register. However, if an affected airplane is imported and placed on the U.S. Register in the future, the required actions would take about 5 work hours, at an average labor rate of $80 per work hour. Based on these figures, we estimate the cost of this AD for Group 3 airplanes to be $400 per airplane.

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, 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:

Boeing: Docket No. FAA–2008–1364; Directorate Identifier 2008–NM–103–AD.

Comments Due Date

(a) We must receive comments by February 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 737–300, –400, and –500 series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008.

Unsafe Condition

(d) This AD results from a report of loss of both the normal electronic flight instrument system (EFIS) cooling supply and the indication of EFIS cooling loss due to a single failure of the battery bus, causing eventual power-down of the EFIS displays; the standby attitude indication is also powered by this battery bus. We are issuing this AD to prevent loss of all attitude indications from both the standby indicator and EFIS displays, which could decrease the ability of the flightcrew to maintain the safe flight and landing of the airplane.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Modification

(f) Within 24 months after the effective date of this AD: Modify the control power wiring of the normal supply fan and the low flow sensor for the equipment cooling system of the EFIS, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 737–21A1156, Revision 2, dated December 11, 2008.

Credit for Actions Done Using Previous Service Information

(g)(1) Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–21A1156, Revision 1, dated October 23, 2007, are acceptable for compliance with the corresponding requirements of this AD.

(2) For Groups 1 and 2 airplanes identified in Boeing Alert Service Bulletin 737–21A1156, Revision 1, dated October 23, 2007: Actions done before the effective date of this AD in accordance with Boeing Alert Service Bulletin 737–21A1156, dated June 20, 2006, are acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Suk Jang, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6511; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on December 18, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–314 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1363; Directorate Identifier 2008–NM–104–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767–200, –300, and –300F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 767–200, –300, and –300F series airplanes. This proposed AD would require repetitive inspections for fatigue cracking and corrosion of the upper link fuse pin of the nacelle struts, and related investigative and corrective actions if necessary. This proposed AD would also provide terminating action for the repetitive inspections. This proposed AD results from two reports of cracked upper link fuse pins. We are proposing this AD to prevent fatigue cracking or corrosion of the upper link fuse pin, which could result in failure of the fuse pin and consequent reduced structural integrity of the nacelle strut and possible separation of the strut and engine from the airplane during flight.

DATES: We must receive comments on this proposed AD by February 26, 2009.

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.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office (ACO), 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590.

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–2008–1363; Directorate Identifier 2008–NM–104–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.

Other Relevant Rulemaking

On September 21, 2000, we issued AD 2000–19–09, amendment 39–11910 (65 FR 58641, October 2, 2000), applicable to certain Boeing Model 767 series airplanes powered by Rolls-Royce RB211 series engines. AD 2000–19–09 requires modification of the nacelle strut and wing structure, and addresses fatigue cracking in primary strut structure and consequent reduced structural integrity of the strut.

On July 29, 2004, we issued AD 2004–16–12, amendment 39–13768 (69 FR 51002, August 17, 2004), applicable to certain Boeing Model 767–200, –300, and –300F series airplanes powered by Pratt & Whitney engines and General Electric engines. That AD supersedes three existing airworthiness directives and requires modification of the nacelle strut and wing structure. For certain airplanes, that AD also requires reworking the aft pitch load fitting, and installing a new diagonal brace fuse pin; for certain other airplanes, that AD requires replacing the outboard pitch load fitting of the wing front spar with a new, improved fitting, which terminates certain repetitive inspections. That AD addresses fatigue cracking in primary strut structure, which could result in separation of the strut and engine from the airplane.

Discussion

Since we issued AD 2000–19–09 and AD 2004–16–12, we received two reports of cracked upper link fuse pins. The two airplanes had accumulated 11,573 total flight cycles and 14,780 total flight cycles and are powered by Pratt & Whitney PW4000 engines. Boeing analysis found cracks in the longitudinal direction of the fuse pins. The longitudinal cracks were the result of fatigue loads. No material anomalies were found. Fatigue cracking or corrosion of the upper link fuse pin could result in failure of the fuse pin and consequent reduced structural integrity of the nacelle strut and possible separation of the strut and engine from the airplane during flight.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 767–54A0074, Revision 1, dated April 24, 2008. The service bulletin describes procedures for repetitive detailed inspections of the upper link fuse pin of the nacelle struts for corrosion, and related investigative and corrective actions if necessary. The related investigative and corrective actions include replacing the fuse pin with a new fuse pin if corrosion is found; doing a high frequency eddy current (HFEC) inspection for cracking if no fuse pin corrosion is found; doing a magnetic particle inspection of the inside surface of the upper link fuse pin for cracking; and replacing the fuse pin with a new fuse pin if cracking is found, and applying corrosion preventive compound on the upper link fuse pin before further flight.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of these same type designs. This proposed AD would require accomplishing the actions specified in the service information described previously. Accomplishing the modifications required by AD 2000–19–09 and AD 2004–16–12 would terminate the repetitive inspections required by paragraph (f) of this proposed AD.

Costs of Compliance

We estimate that this proposed AD would affect 354 airplanes of U.S. registry. We also estimate that it would take about 4 work-hours per product to comply with this proposed AD. The average labor rate is $80 per work-hour. Based on these figures, we estimate the cost of this proposed AD to the U.S. operators to be $113,280, or $320 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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, 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:

Boeing: Docket No. FAA–2008–1363; Directorate Identifier 2008–NM–104–AD.

Comments Due Date

(a) We must receive comments by February 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 767–200, –300, and –300F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 767–54A0074, Revision 1, dated April 24, 2008.

Unsafe Condition

(d) This AD results from two reports of cracked upper link fuse pins. We are issuing this AD to prevent fatigue cracking or corrosion of the upper link fuse pin, which could result in failure of the fuse pin and consequent reduced structural integrity of the nacelle strut and possible separation of the strut and engine from the airplane during flight.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Initial and Repetitive Inspections/ Investigative and Corrective Actions

(f) Inspect the upper link fuse pin of the nacelle struts for fatigue cracking and corrosion at the applicable time specified in Table 1 of this AD. Do the applicable inspection by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 767–54A0074, Revision 1, dated April 24, 2008; and do all applicable related investigative and corrective actions before further flight. Repeat the applicable inspection at intervals not to exceed 3,000 flight cycles or 24 months, whichever is first, until paragraph (g) of this AD has been done.

TABLE 1—COMPLIANCE TIMES

Engine type	At the later of: Initial inspection threshold	Grace period
JT9D	14,000 total flight cycles	Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever is first.
CF6–80A	24,000 total flight cycles	Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever is first.
PW4000	8,000 total flight cycles	Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever is first.
CF6–80C2	10,000 total flight cycles	Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever is first.
RB211	24,000 total flight cycles	Within 3,000 flight cycles or 18 months after the effective date of this AD, whichever is first.

Terminating Action in AD 2000–19–09 and AD 2004–16–12

(g) Accomplishment of the modification specified in paragraph (g)(1) or (g)(2) of this AD, as applicable, terminates the inspections required by paragraph (f) of this AD.

(1) For Model 767 series airplanes powered by Rolls-Royce RB211 series engines, as identified in AD 2000–19–09: Modification of the nacelle strut and wing structure, as required by paragraphs (a) and (b) of AD 2000–19–09.

(2) For Model 767–200, –300, and –300F series airplanes powered by Pratt & Whitney and General Electric engines, as identified in AD 2004–16–12: Modification of the nacelle strut and wing structure, as required by paragraphs (a), (b), (d), and (e) of AD 2004–16–12.

Credit for Actions Done Using Previous Service Information

(h) Replacement of the fuse pins with new fuse pins before the effective date of this AD in accordance with Boeing Service Bulletin 767–54–0074, dated March 27, 1997, is acceptable for compliance with the corresponding requirements of this AD.

Alternative Methods of Compliance (AMOCs)

(i)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Tamara Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle ACO, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6421; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD, if it is approved by an Authorized Representative for the Boeing Commercial Airplanes Delegation Option Authorization Organization who has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

Issued in Renton, Washington, on December 18, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–313 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1362; Directorate Identifier 2008–NM–150–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200C and 747–200F Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Boeing Model 747–200C and 747–200F series airplanes. This proposed AD would require installing larger moisture shrouds and additional drain lines in the electrical/electronic equipment center. This proposed AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are proposing this AD to prevent water contamination in the electrical/electronic units in the main equipment center, which could result in an electrical short and potential loss of several functions essential for safe flight.

DATES: We must receive comments on this proposed AD by February 26, 2009.

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.

For service information identified in this AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207; telephone 206–544–9990; fax 206–766–5682; e-mail *DDCS@boeing.com*; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

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: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590.

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–2008–1362; Directorate Identifier 2008–NM–150–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

We have received reports of water contamination in the electrical/electronic units in the main equipment center. Loading cargo in rain or snow conditions can allow a large amount of water into the airplane on the cargo or open main deck doors. The water can spill onto the main deck cargo floor and flow through the power drive units (PDUs). If the amount of water exceeds the drain capacity of the PDUs located above the main equipment center, water can spill onto the electrical/electronic units. Water contamination in the electrical/electronic units in the main equipment center could result in an electrical short and potential loss of several functions essential for safe flight.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008. This service bulletin describes procedures for installing larger moisture shrouds and additional drain lines in the electrical/electronic equipment center that provide protection from water contamination in the main equipment center. The procedures include:

- Changing the PDU drain tubes;
- Changing the pitot static tubes;
- Replacing moisture curtains and support brackets;
- Reworking base line (BL) 11 intercostals;
- Installing new moisture shrouds; and
- Relocating the wire bundle, lights, ground bracket, and disconnect bracket of the main equipment center.

Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007, is necessary to be accomplished prior to or concurrent with Boeing Alert Service Bulletin 747–25A3431. Boeing Alert Service Bulletin 747–25A3430 describes procedures for installing protective moisture curtains in the main equipment center.

Accomplishing the actions specified in the service information is intended to adequately address the unsafe condition.

Related AD

AD 2007–26–03, amendment 39–15305 (72 FR 71218, December 17, 2007), applies to the airplanes affected by this NPRM. That AD requires, among other actions, installation of mounting brackets, support angles, and moisture curtains in the main equipment center in accordance with Boeing Alert Service Bulletin 747–25A3430.

FAA's Determination and Requirements of This Proposed AD

We are proposing this AD because we evaluated all relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design. This proposed AD would require accomplishing the actions specified in the service information described previously.

Costs of Compliance

We estimate that this proposed AD would affect 25 airplanes of U.S. registry. The following table provides the estimated costs for U.S. operators to comply with this proposed AD.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per product	Number of U.S.-registered airplanes	Fleet cost
Installation	Up to 75	$80	Up to $28,405	Up to $34,405	25	Up to $860,125.

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.

You can find our regulatory evaluation and the estimated costs of compliance in the AD Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by Reference, 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:

Boeing: Docket No. FAA–2008–1362; Directorate Identifier 2008–NM–150–AD.

Comments Due Date

(a) We must receive comments by February 26, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to Boeing Model 747–200C and 747–200F series airplanes, certificated in any category; as identified in Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008.

Unsafe Condition

(d) This AD results from reports of water contamination in the electrical/electronic units in the main equipment center. We are issuing this AD to prevent water contamination in the electrical/electronic units in the main equipment center, which could result in an electrical short and potential loss of several functions essential for safe flight.

Compliance

(e) Comply with this AD within the compliance times specified, unless already done.

Installation

(f) Within 72 months after the effective date of this AD, install larger moisture shrouds and additional drain lines, by doing all the applicable actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3431, dated March 6, 2008.

Prior or Concurrent Action

(g) Prior to or concurrently with accomplishing the actions required by paragraph (f) of this AD: Install protective moisture curtains in the main equipment center in accordance with Boeing Alert Service Bulletin 747–25A3430, dated February 15, 2007.

Note 1: The installation required by paragraph (g) of this AD is also required by paragraph (f) of AD 2007–26–03, amendment 39–15305, for Boeing Model 747–200C and –200F series airplanes.

Alternative Methods of Compliance (AMOCs)

(h)(1) The Manager, Seattle Aircraft Certification Office (ACO), FAA, ATTN: Marcia Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 917–6484; fax (425) 917–6590; has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on December 18, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–312 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–12–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900, and 747–400 Series Airplanes; and Model 757, 767, and 777 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier supplemental notice of proposed

rulemaking (NPRM), applicable to certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900, and 747–400 series airplanes; and Model 757, 767, and 777 airplanes. The first supplemental NPRM would have required modifying the static inverter by replacing resistor R170 with a new resistor and relocating the new resistor. This new action revises the first supplemental NPRM by adding certain airplanes to the applicability, changing certain airplane groups, and adding certain part numbers. The actions specified by this second supplemental NPRM are intended to prevent a standby static inverter from overheating, which could result in smoke in the flight deck and cabin and loss of the electrical standby power system. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by February 6, 2009.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98057–3356. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain ''Docket No. 2002–NM–12–AD'' in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 or 2000 or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Binh V. Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6485; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: ''Comments to Docket Number 2002–NM–12–AD.'' The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–12–AD, 1601 Lind Avenue, SW., Renton, Washington 98057–3356.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Boeing Model 737–300, –400, –500, –600, –700, –700C, –800, and –900, and 747–400 series airplanes; and Model 757, 767, and 777 airplanes, was published as a supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on May 26, 2006 (71 FR 30331). The first supplemental NPRM would have required modifying the static inverter by replacing resistor R170 with a new resistor and relocating the new resistor. The first supplemental NPRM was prompted by further evaluation of the carbon resistor, which revealed a failure mode that can cause the resistor to ignite, involving adjacent capacitors as well. Those conditions, if not corrected, could result in smoke in the flight deck and cabin and loss of the electrical standby power system.

Actions Since Issuance of First Supplemental NPRM

Since issuance of the first supplemental NPRM, Boeing has revised the service bulletins listed in the following table:

REVISED SERVICE BULLETINS

Action	Service bulletin	Model
Modification ...	Boeing Alert Service Bulletin 737–24A1166, Revision 2, dated January 29, 2007.	737–300, –400, –500 series airplanes.
Modification ...	Boeing Alert Service Bulletin 737–24A1166, Revision 3, dated July 25, 2007.	737–300, –400, –500 series airplanes.
Modification ...	Boeing Service Bulletin 747–24–2254, Revision 1, dated March 5, 2007.	747–400, –400D, –400F series airplanes.
Modification ...	Boeing Service Bulletin 777–24–0095, Revision 1, dated January 3, 2007.	777–200, –300, –300ER series airplanes.

The changes in these revisions are minor and no additional work is necessary for certain airplanes modified by the previous issues. However, more work is necessary on airplanes with certain static inverters installed. In addition, the revisions all add airplanes to those specified in the effectivity or move airplanes to different groups. Alert

Service Bulletin 737–24A1166, Revision 2, also adds two missing supplier part numbers, which are related to the existing Boeing part numbers, for the static inverters. Airplanes that were modified by installing the correct static inverter having the correct part number, as specified in Service Bulletin 737–24A1166, Revision 1, dated October 20, 2005, or 747–24–2254, dated July 21, 2005, are not affected by the modification in the revised service information. Airplanes that were modified as specified in Service Bulletin 777–24–0095, dated June 30, 2005, are not affected by the modification specified in Revision 1 of that bulletin. We have changed the second supplemental NPRM to refer to this revised service information as the appropriate source of service information for accomplishing the specified modification.

The revised service bulletins refer to Avionic Instruments Inc. Service Bulletin 1–002–0102–1000–24–28, Revision B, dated July 24, 2006, as an additional source of service information for modifying the static inverter.

Comments on First Supplemental NPRM

Due consideration has been given to the comments received in response to the first supplemental NPRM.

Support for the First Supplemental NPRM

The National Transportation Safety Board, Northwest Airlines, and Alaska Airlines support the intent of the first supplemental NPRM.

Request To Approve Revised Avionic Instruments Inc. (AII) Service Bulletin

United Airlines (UA) asks that we approve the latest AII Service Bulletin 1–002–0102–1000–24–28; Revision A, dated June 22, 2005, was referenced in the first supplemental NPRM as an additional source of service information for doing the modification. UA adds that certain references to service information related to this AD on the Boeing Web site do not have cross references to the AII service bulletin. UA suggests that, to avoid confusion, Revision A remain as an additional source of service information for the rework.

We agree to leave Revision A of the referenced service bulletin in the note in the second supplemental NPRM. We have reviewed AII Service Bulletin 1–002–0102–1000–24–28, Revision B, dated July 24, 2006 (hereafter referred to as the AII service bulletin). We find that both Revision A and Revision B of the AII service bulletin are still acceptable as additional sources of service information for modifying the static inverter. We have changed Note 1 of the second supplemental NPRM to include Revision B of the service bulletin; Revision A remains in Note 1.

Request for Work Instructions To Apply To Both Airplane Groups

UA suggests that the group separation specified in the Work Instructions in Boeing Service Bulletin 757–24–0110, dated April 28, 2005, be disregarded, and the Group 1 Work Instructions apply to all airplanes. That service bulletin was referred to in the first supplemental NPRM as the appropriate source of service information for accomplishing the modification for Model 757–200, –200CB, –200PF airplanes. UA states that the Work Instructions are divided into Group 1 and Group 2, based on the inverter part number as delivered configuration. UA adds that the current Boeing Illustrated Parts Catalog shows inverter part numbers are applicable to the entire 757 fleet, which conflicts with the purpose of the service bulletin in separating the Work Instructions into two airplane groups.

We acknowledge UA's request; however, Boeing has informed us that Service Bulletin 757–24–0110 will not be revised to incorporate the requested changes. Under the provisions of paragraph (b) of the second supplemental NPRM, however, we could consider requests for combining the Work Instructions if data are submitted to substantiate that using the Group 1 Work Instructions for all airplanes would provide an acceptable level of safety. We have made no change to the second supplemental NPRM in this regard.

Request To Include Certain Part Numbers

UA states that the FAA response to the comment ''Request for Clarification of Part Number'' specified in the first supplemental NPRM indicates that supplier part number 1–001–0102–0265 is not an inverter part number; UA disagrees with the response. UA adds that Boeing Illustrated Parts Catalog, for Model 737–300/400/500 and Model 747–400, indicates that Specification Number S282T004–5 corresponds to both part numbers 1–001–0102–0265 and 1–002–0102–0265. UA asks that, in order to avoid confusion, the second supplemental NPRM clarify the existence and applicability of both part numbers.

We agree with the request. Revision B of AII Service Bulletin 1–002–0102–1000–24–28, dated July 24, 2006, includes the subject part numbers, and we have included Revision B in the second supplemental NPRM as an additional source of service information for modifying the static inverter.

Request To Include Future Revisions of Service Information

Boeing asks that we address imminent revisions of the service bulletins identified in the first supplemental NPRM, as well as possible future revisions to any of the identified bulletins. Boeing states that revisions to the 747 and 777 service bulletins, which will add several airplanes to the effectivity lists in the bulletins, are imminent. Boeing notes that, as written, the applicability paragraph in the first supplemental NPRM will not include the added airplanes. Boeing suggests the applicability paragraph be changed to read ''* * * the applicable service bulletin specified in Table 1 of this AD or subsequent revision(s) to that bulletin.''

We understand the commenter's concern, and we have included the revised service information specified under ''Actions Since Issuance of First Supplemental NPRM,'' which adds airplanes to the applicability section of this AD. However, we cannot use the phrase, ''or later FAA-approved revisions'' in an AD because doing so violates Office of the Federal Register (OFR) regulations for approval of materials ''incorporated by reference'' in rules. In general terms, we are required by these OFR regulations either to publish the service document contents as part of the actual AD language; or to submit the service document to the OFR for approval as ''referenced'' material, in which case we may refer to such material in the text of an AD. The AD may refer to the service document only if the OFR approved it for ''incorporation by reference.'' To allow operators to use later revisions of the referenced documents (issued after publication of the AD), Boeing or operators must request approval to use later revisions as an alternative method of compliance with the AD under the provisions of paragraph (b) of the AD.

Request To Remove Model 747 and 777 Airplanes From the Applicability

Air Transport Association (ATA), on behalf of its member American Airlines (AA), and Boeing, asks that we remove Model 747 and 777 airplanes from the applicability of the first supplemental NPRM. ATA and AA state that we should delete Model 777 airplanes from the applicability of the first supplemental NPRM because the inverters on those airplanes have a different configuration and are not

susceptible to the subject unsafe condition. Boeing Safety Review Board made a finding of ''Not Safety'' for the Model 747 and 777 airplanes. Boeing adds that there have been no failures on these models, and the inverters on these models are not running during normal operations.

We do not agree with the requests. Model 747 and 777 airplanes have the same type of static inverters that were installed on the airplanes specified in the first supplemental NPRM. Those static inverters could overheat at anytime during operation due to a faulty resistor. As stated in Boeing Service Bulletins 747–24–2254 and 777–24–0095, the static inverter change will prevent the possible unwanted smoke and fire from a faulty resistor in the static inverter. Therefore, Model 747 and 777 airplanes will remain in the applicability of the second supplemental NPRM. We acknowledge that the static inverters are not running during normal operations, but they could overheat during emergency operations (standby conditions). However, we have determined that due to the reduced risk on Model 747 and 777 airplanes, the compliance time for those airplanes can be extended to 60 months. We have revised paragraph (a) of this AD accordingly.

Requests To Extend Compliance Time

ATA, on behalf of its member American Airlines, asks that we extend the proposed compliance time to 10 years for airplanes on which the AII service bulletin has been incorporated. AA asks that, due to existing maintenance intervals, the compliance time be extended to 60 months for operators that accomplished the first supplemental NPRM. AA adds that its justification stems from the heat being reduced in the area of the capacitors C50 and C51, with the resistor R170 on the solder side of the printed circuit board.

We do not agree with the request. As stated in ''Actions Since Issuance of Previous Proposal,'' in the first supplemental NPRM, recent in-service experience has shown that simply relocating the carbon composition-style resistor, which was installed in production until late 1999, did not prevent the overheat condition. Further evaluation of the carbon resistor has shown a failure mode that can cause the resistor to ignite. Incorporation of the AII service bulletin will not mitigate the safety concern. In developing an appropriate compliance time for this action, we considered the urgency associated with the subject unsafe condition, the availability of required parts, and the practical aspect of accomplishing the required modification within a period of time that corresponds to the normal scheduled maintenance for most affected operators. According to the manufacturer, an ample number of required parts will be available to modify the U.S. fleet within the proposed compliance time. Therefore, we find that 42 months is sufficient time in which to do the modification. However, according to the provisions of paragraph (b) of the second supplemental NPRM, we could approve requests to adjust the compliance time if the request includes data that prove that the new compliance time would provide an acceptable level of safety.

Request for Component AD

AirTran Airways Inc. (AirTran) reiterates the comments under ''Request for a Component AD'' specified in the first supplemental NPRM and states that this second supplemental NPRM should be a ''component AD'' rather than an aircraft AD. AirTran states that once an aircraft delivers from the factory with a component installed, that component is likely to be replaced due to failure and subsequently installed on another aircraft outside of the effectivity range. AirTran notes that it is unrealistic to expect that a component that has qualified interchangeables will still be installed on the aircraft on which it was delivered. AirTran states that the AD should be written in a manner that best ensures the safety of the flying public; this involves considering how operators use the aircraft and not necessarily how the manufacturer built the aircraft. AirTran adds that by making the AD applicable to the part number unit, operators are more likely to identify all affected units and remove them from their system, including spares that are not addressed in the first supplemental NPRM, than if the AD is effective to aircraft line or serial numbers.

We do not agree with the request. We have confirmed with Boeing that the service bulletins cited in the applicability list all the airplanes on which the parts addressed by this AD are eligible for installation. We have also confirmed with Boeing that the Illustrated Parts Catalogs have been properly updated. For these reasons, there is no need to further define the applicability. We have made no change to the second supplemental NPRM in this regard.

Request To Change Cost Impact Section

ATA, on behalf of its member American Airlines, asks that the cost impact section be changed. ATA states that the proposed modification could be accomplished by either a repair facility or the operator. ATA adds that the FAA should amend the cost impact to include both of these alternatives. Both commenters recommend adding 2 hours of labor and the value of materials for the modification of the inverter to the cost section.

We acknowledge the commenters' concerns. We recognize that, in accomplishing the requirements of any AD, operators might incur ''incidental'' costs in addition to the ''direct'' costs that are reflected in the cost analysis presented in the AD preamble. However, the cost analysis in AD rulemaking actions typically does not include incidental costs.

Further, because ADs require specific actions to address specific unsafe conditions (*i.e.*, using a repair facility) they appear to impose costs that would not otherwise be borne by operators. However, because of the general obligation of operators to maintain and operate their airplanes in an airworthy condition, this appearance is deceptive. Attributing those costs solely to the issuance of this AD is unrealistic because, in the interest of maintaining and operating safe airplanes, prudent operators would accomplish the required actions even if they were not required to do so by the AD. In any case, we have determined that direct and incidental costs are still outweighed by the safety benefits of the AD. We have made no change to the second supplemental NPRM in this regard.

Clarification of Alternative Methods of Compliance (AMOC) Paragraph

We have revised this action to clarify the appropriate procedure for notifying the principal inspector before using any approved AMOC on any airplane to which the AMOC applies.

Conclusion

Since certain changes expand the scope of the first supplemental NPRM, we have determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

There are approximately 3,856 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,882 airplanes of U.S. registry would be affected by the second supplemental NPRM. The following table provides the estimated costs for U.S. operators to comply with the second supplemental NPRM.

ESTIMATED COSTS

Action	Work hours	Average labor rate per hour	Parts	Cost per airplane	Number of U.S.-registered airplanes	Fleet cost
Modification	Up to 2 hours, depending on airplane configuration.	$80	$0	Between $80 and $160.	1,882	Up to $301,120.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if the second supplemental NPRM were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

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 Impact

The regulations proposed herein 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. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that 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) if promulgated, 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. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 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 the following new airworthiness directive:

Boeing: Docket 2002–NM–12–AD.

Applicability: This AD applies to the following airplanes, certificated in any category, as identified in the applicable Boeing service bulletin specified in Table 1 of this AD:

TABLE 1—APPLICABILITY

Airplane model	Boeing service bulletin
737–600, –700, –700C, –800, –900 series airplanes	Special Attention Service Bulletin 737–24–1165, Revision 1, dated October 20, 2005.
737–300, –400, –500 series airplanes	Alert Service Bulletin 737–24A1166, Revision 3, dated July 25, 2007.
747–400, –400D, –400F series airplanes	Service Bulletin 747–24–2254, Revision 1, dated March 5, 2007.
757–200, –200CB, –200PF series airplanes	Special Attention Service Bulletin 757–24–0110, dated April 28, 2005.
757–300 series airplanes	Special Attention Service Bulletin 757–24–0111, dated April 28, 2005.
767–200, –300, –300F series airplanes	Special Attention Service Bulletin 767–24–0160, dated June 30, 2005.
767–400ER series airplanes	Special Attention Service Bulletin 767–24–0161, dated June 30, 2005.
777–200, –300, –300ER series airplanes	Service Bulletin 777–24–0095, Revision 1, dated January 3, 2007.

Compliance: Required as indicated, unless accomplished previously.

To prevent a standby static inverter from overheating, which could result in smoke in the flight deck and cabin and loss of the electrical standby power system, accomplish the following:

Modification

(a) At the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable: Modify the static inverter by removing resistor R170 from the logic control card assembly and replacing it with a new resistor, and relocating the new resistor to the solder side of the printed circuit board in accordance with the Accomplishment Instructions of the applicable service bulletin specified in Table 1 of this AD.

(1) *For Model 737, 757, and 767 airplanes:* Within 42 months after the effective date of this AD.

(2) *For Model 747 and 777 airplanes:* Within 60 months after the effective date of this AD.

Note 1: The Boeing service bulletins specified in Table 1 of this AD refer to Avionic Instruments Inc. Service Bulletins 1–002–0102–1000–24–28, Revision A, dated June 22, 2005; and Revision B, dated July 24, 2006, as additional sources of service information for accomplishing the

modification required by paragraph (a) of this AD.

Alternative Methods of Compliance

(b)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) To request a different method of compliance or a different compliance time for this AD, follow the procedures in 14 CFR 39.19. 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.

Issued in Renton, Washington, on December 18, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–322 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2008–1361; Directorate Identifier 2008–NM–140–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–102, –103, and –106 Airplanes and DHC–8–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), 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:

A fuselage spoiler cable disconnect sensing device was installed in production on later DHC–8 Series 100/200/300 aircraft, and on all DHC–8 Series 400 aircraft. On earlier DHC–8 Series 100/200/300 aircraft, its installation was mandated by [Canadian] Airworthiness Directive CF–2006–13 [which corresponds to FAA AD 2007–21–16].

However, several incorrectly assembled spoiler cable disconnect sensing devices have recently been discovered on in-service aircraft. A pulley and plastic spacer had been inadvertently interchanged during assembly of the device in production, resulting in the spoiler cable sliding on the spacer rather than on the pulley, as designed.

Continued operation with an incorrectly assembled spoiler cable disconnect sensing device could result in impaired operation of the sensing device and/or an eventual fuselage spoiler cable disconnect, with possible reduced controllability of the aircraft.

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 February 11, 2009.

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 W12–40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–5000; fax 514–855–7401; e-mail *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221 or 425–227–1152.

Examining the AD Docket

You may examine the AD docket 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 AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations 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: Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531.

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–2008–1361; Directorate Identifier 2008–NM–140–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 based on 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

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2008–28, dated July 10, 2008 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

A fuselage spoiler cable disconnect sensing device was installed in production on later DHC–8 Series 100/200/300 aircraft, and on all DHC–8 Series 400 aircraft. On earlier DHC–8 Series 100/200/300 aircraft, its installation was mandated by [Canadian] Airworthiness Directive CF–2006–13 [which corresponds to FAA AD 2007–21–16].

However, several incorrectly assembled spoiler cable disconnect sensing devices have recently been discovered on in-service aircraft. A pulley and plastic spacer had been inadvertently interchanged during assembly of the device in production, resulting in the spoiler cable sliding on the spacer rather than on the pulley, as designed.

Continued operation with an incorrectly assembled spoiler cable disconnect sensing device could result in impaired operation of the sensing device and/or an eventual fuselage spoiler cable disconnect, with possible reduced controllability of the aircraft.

Required actions include inspecting the fuselage spoiler cable disconnect sensing device and, if necessary, inspecting components for wear and damage, replacing worn or damaged components, and correctly re-assembling the sensing device. You may obtain further information by examining the MCAI in the AD docket.

Relevant Service Information

Bombardier has issued Service Bulletins 84–27–34, dated October 3, 2007, and 8–27–107, dated October 16, 2007. The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This 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 the State of Design Authority, we have been notified of the unsafe condition described in the MCAI and service information referenced above. We are proposing this AD because we evaluated all pertinent information and determined an unsafe condition exists and is likely to exist or develop on other products of the same type design.

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 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

Based on the service information, we estimate that this proposed AD would affect about 145 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 $11,600, 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, Incorporation by reference, 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:

Bombardier, Inc. (Formerly de Havilland, Inc.): Docket No. FAA–2008–1361; Directorate Identifier 2008–NM–140–AD.

Comments Due Date

(a) We must receive comments by February 11, 2009.

Affected ADs

(b) None.

Applicability

(c) This AD applies to the following Bombardier Model DHC–8 airplanes, certificated in any category.

(1) Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 003 through 644 inclusive.

(2) Model DHC–8–400, –401 and –402 airplanes, serial numbers 4003, 4004, 4006, and 4008 through 4164 inclusive.

Subject

(d) Air Transport Association (ATA) of America Code 27: Flight controls.

Reason

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

A fuselage spoiler cable disconnect sensing device was installed in production on later DHC–8 Series 100/200/300 aircraft, and on all DHC–8 Series 400 aircraft. On earlier DHC–8 Series 100/200/300 aircraft, its installation was mandated by [Canadian] Airworthiness Directive CF–2006–13 [which corresponds to FAA AD 2007–21–16].

However, several incorrectly assembled spoiler cable disconnect sensing devices have recently been discovered on in-service aircraft. A pulley and plastic spacer had been inadvertently interchanged during assembly of the device in production, resulting in the spoiler cable sliding on the spacer rather than on the pulley, as designed.

Continued operation with an incorrectly assembled spoiler cable disconnect sensing device could result in impaired operation of the sensing device and/or an eventual fuselage spoiler cable disconnect, with possible reduced controllability of the aircraft.

Required actions include inspecting the fuselage spoiler cable disconnect sensing device and, if necessary, inspecting components for wear and damage, replacing worn or damaged components, and correctly re-assembling the sensing device.

Actions and Compliance

(f) Unless already done, do the following.

(1) For Bombardier Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 003 through 561 inclusive: Do the actions required by paragraph (f)(1)(i) or (f)(1)(ii) of this AD, as applicable, in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 8–27–107, dated October 16, 2007.

(i) For airplanes on which fuselage spoiler cable disconnect sensing device, Modsum 8Q100898, has been installed as of the effective date of this AD: Within 1,000 flight hours after the effective date of this AD, inspect the fuselage spoiler cable disconnect sensing device for correct assembly.

(ii) For airplanes on which fuselage spoiler cable disconnect sensing device, Modsum 8Q100898, has not been installed as of the effective date of this AD: Concurrently with

the installation of Modsum 8Q100898, inspect the fuselage spoiler cable disconnect sensing device for correct assembly.

Note 1: AD 2007–21–16 requires the installation of Modsum 8Q100898.

(2) For Bombardier Model –102, –103, –106, –201, –202, –301, –311, and –315 airplanes, serial numbers 562 through 644 inclusive: Within 1,000 flight hours after the effective date of this AD, inspect the fuselage spoiler cable disconnect sensing device for correct assembly in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 8–27–107, dated October 16, 2007.

Note 2: The fuselage spoiler cable disconnect sensing device was installed in production on the airplanes identified in paragraph (f)(2) of this AD.

(3) For Bombardier Model DHC 8–400, –401, and –402 airplanes, serial numbers 4003, 4004, 4006, and 4008 through 4164 inclusive: Within 1,000 flight hours after the effective date of this AD, inspect the fuselage spoiler cable disconnect sensing device for correct assembly in accordance with paragraph 3.B., Part A, of Bombardier Service Bulletin 84–27–34 dated October 3, 2007.

Note 3: The fuselage spoiler cable disconnect sensing device was installed in production on the airplanes identified in paragraph (f)(3) of this AD.

(4) For all airplanes: If an incorrectly assembled sensing device is detected during any inspection required by paragraphs (f)(1), (f)(2), or (f)(3) of this AD, before further flight, inspect the components, replace worn or damaged components, and correctly re-assemble the sensing device. Do the actions in accordance with paragraph 3.B., Part B, of Bombardier Service Bulletin 8–27–107, dated October 16, 2007; or Bombardier Service Bulletin 84–27–34, dated October 3, 2007; as applicable.

FAA AD Differences

Note 4: This AD differs from the MCAI and/or service information as follows: No difference.

Other FAA AD Provisions

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

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York Aircraft Certification 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: Dan Parrillo, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7305; fax (516) 794–5531. 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, 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 Canadian Airworthiness Directive CF–2008–28, dated July 10, 2008; Bombardier Service Bulletin 84–27–34, dated October 3, 2007; and Bombardier Service Bulletin 8–27–107 dated October 16, 2007; for related information.

Issued in Renton, Washington, on December 18, 2008.

Stephen P. Boyd,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E9–323 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

Notices

Federal Register
Vol. 74, No. 7
Monday, January 12, 2009

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.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 6, 2009.

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.

Animal and Plant Health Inspection Service

Title: Importation of Pork-Filled Pasta.

OMB Control Number: 0579–0214.

Summary of Collection: The Animal Health Protection Act (AHPA) of 2002 is the primary Federal law governing the protection of animal health. The law gives the Secretary of Agriculture broad authority to detect, control, and eradicate pests or diseases of livestock or poultry. The Animal and Plant Health Inspection Service (APHIS) is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of serious diseases and pests of livestock and for eradicating such diseases from the United States when feasible.

Need and Use of the Information: A certificate must be completed and signed by the issuing official, and contains such information as the origin of the meat used in the product, the name and location of the facility that processed the product, and the product's intended destination. Without the information, it would significantly cripple APHIS' ability to ensure that pork-filled pasta from certain regions pose a minimal risk of introducing swine vesicular disease into the United States.

Description of Respondents: Federal Government.

Number of Respondents: 1.

Frequency of Responses: Recordkeeping; Reporting: On occasion.

Total Burden Hours: 2.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. E9–300 Filed 1–9–09; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

January 6, 2009.

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.

Risk Management Agency

Title: General Administrative Regulations; Interpretations of Statutory and Regulatory Provisions.

OMB Control Number: 0563–0055.

Summary of Collection: Section 533 of the Agricultural Research, Extension, and Education Reform Act of 1998 (1998 Research Act) requires the Federal Crop Insurance Corporation (FCIC) to publish regulation on how FCIC will provide a final agency determination in response to certain inquiries. This section provides procedures when FCIC fails to respond in the established time, the interpretation of the requested is considered correct for the crop year. It becomes necessary for the requester, or respondent, to identify himself so he

can be provided a response and also to state his interpretation of the regulation for which he is seeking a final agency interpretation.

Need and Use of the Information: FCIC will use the requester's name and address to provide a response. The identification and quotation of the specific provision in the 1998 Research Act or regulations allows FCIC to research and respond to the specific identified provision. The respondent's detailed interpretation of the regulation is required to comply with the requirements of Sec. 533 of the 1998 Research Act and to clarify the boundaries of the request to FCIC. If the requested information is not collected with each submission, FCIC would not be able to comply with the statutory mandates.

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

Number of Respondents: 45.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 78.

Risk Management Agency

Title: Request for Applications for Research Partnerships.

OMB Control Number: 0563–0065.

Summary of Collection: The Federal Crop Insurance Act of 2002 authorizes the Federal Crop Insurance Corporation to enter into partnerships with public and private entities for the purpose of increasing the availability of risk management tools for producers of agricultural commodities. The Risk Management Agency (RMA) has developed procedures for the preparation, submission and evaluation of applications.

Need and Use of the Information: RMA and a review panel of independent reviewers will use the information to determine applicant eligibility and to evaluate the applications. The qualifying applicants will be scored on each of five criteria: Research objectives; RMA involvement/non-financial benefits; research methodology, development, and implementation; management; and bonus points for proposals that address RMA priorities and/or are submitted by applicants representing a geographically diverse area. Scores are totaled, listed in rank order and are used for the final decision on awards. If the information is not collected, the consequences would be a missed opportunity to improve and or develop new risk management tools for agricultural producers. The impact would affect those segments of agriculture lacking access to existing risk management tools.

Description of Respondents: State, Local, or Tribal Government; Not-for-profit Institutions.

Number of Respondents: 100.

Frequency of Responses: Reporting: Occasion.

Total Burden Hours: 3,533.

Risk Management Agency

Title: Risk Management and Crop Insurance Education; Request for Applications.

OMB Control Number: 0563–0067.

Summary of Collection: The Federal Crop Insurance Act, Title 7 U.S.C. Chapter 36 Section 1508(k) authorizes the Federal Crop Insurance Corporation (FCIC) to provide reinsurance to insurers approved by FCIC that insure producers of any agricultural commodity under one or more plans acceptable to FCIC. FCIC operating through the Risk Management Agency (RMA) has two application programs to carryout certain risk management education provisions of the Federal Crop Insurance Act. The two educational programs requiring application are: To establish crop insurance education and information programs in States that have been historically underserved by the Federal Crop Insurance Program; and to provide agricultural producers with training opportunities in risk management with a priority given to producers of specialty crops and underserved commodities. Funds are available to fund parties willing to assist RMA in carrying out local and regional risk management can crop insurance education programs.

Need and Use of the Information: Applicants are required to submit completed application packages in hard copy to RMA. RMA and review panel will evaluate and rank applicants as well as use the information to properly document and protect the integrity of the process used to select applications for funding. For applicants that are selected, the information will be used to create the terms of cooperative agreements between the applicant and the agency and will not be shared outside of RMA.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local, or Tribal Government.

Number of Respondents: 220.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,256.

Charlene Parker,

Departmental Information Clearance Officer.

[FR Doc. E9–301 Filed 1–9–09; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Forest Service

Modoc County Resource Advisory Committee Meeting

AGENCY: Modoc County Resource Advisory Committee, USDA Forest Service.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committees Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 110–343) the Modoc National Forest's Modoc County Resource Advisory Committee will meet Monday, February 2, 2009, March 9, 2009 and May 4, 2009 in Alturas, California 96101, for a business meeting. The meetings are open to the public.

SUPPLEMENTARY INFORMATION: The business meeting on February 2, March 9 and May 4, 2009 will begin at 4 pm., at the Modoc National Forest Office, Conference Room, 800 West 12th St., Alturas, California 96101. Agenda topics will include election of Chairperson, review of Charter and Guidelines, and discussion of the process for receiving project proposals that meet the intent of Public Law 110–343. Time will also be set aside for public comments at the beginning of the meeting.

FOR FURTHER INFORMATION: Contact Stan Sylva, Forest Supervisor and Designated Federal Officer, at (530) 233–8700; or Rural Development and Partnership Specialist Dina McElwain at (530) 233–8723.

Stanley G. Sylva,

Forest Supervisor.

[FR Doc. E9–318 Filed 1–9–09; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Ouachita-Ozark Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Meeting notice for the Ouachita-Ozark Resource Advisory Committee under Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000 (Pub. L. 106–393).

SUMMARY: This notice is published in accordance with section 10(a)(2) of the Federal Advisory Committee Act. Meeting notice is hereby given for the Ouachita-Ozark Resource Advisory

Committee pursuant to Section 205 of the Secure Rural Schools and Community Self Determination Act of 2000, Public Law 106–393. Topics to be discussed include: General information, updates on current or completed Title II projects, and next meeting agenda.

DATES: The meeting will be held on January 20, 2009, beginning at 6 p.m. and ending at approximately 9 p.m.

ADDRESSES: The meeting will be held at the Scott County Memorial Hall, 96 South Main Street (across from Scott County Courthouse), Waldron, AR 71958.

FOR FURTHER INFORMATION CONTACT: Caroline Mitchell, Committee Coordinator, USDA, Ouachita National Forest, P.O. Box 1270, Hot Springs, AR 71902. (501–321–5318).

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Committee discussion is limited to Forest Service staff, Committee members, and elected officials. However, persons who wish to bring matters to the attention of the Committee may file written statements with the Committee staff before or after the meeting. Individuals wishing to speak or propose agenda items must send their names and proposals to Bill Pell, DFO, P.O. Box 1270, Hot Springs, AR 71902.

Dated: January 5, 2009.

Caroline Mitchell,

Designated Federal Official.

[FR Doc. E9–220 Filed 1–9–09; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Southwest Idaho Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000, as amended (Pub. L. 110–343), the Boise and Payette National Forests' Southwest Idaho Resource Advisory Committee will conduct a business meeting. The meeting is open to the public.

DATES: Wednesday, January 21, beginning at 10:30 a.m.

ADDRESSES: Idaho Counties Risk Management Program Building, 3100 South Vista Avenue, Boise, Idaho.

SUPPLEMENTARY INFORMATION: Agenda topics will include review and approval of project proposals, and is an open public forum.

FOR FURTHER INFORMATION CONTACT: Kimberly Brandel, Designated Federal Official, at (208) 347–0301 or e-mail *kbrandel@fs.fed.us.*

Dated: January 5, 2009.

Suzanne C. Rainville,

Forest Supervisor, Payette National Forest.

[FR Doc. E9–339 Filed 1–9–09; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: Wednesday, January 14, 2009; 1 p.m.–3:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b.(c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

FOR FURTHER INFORMATION CONTACT: Persons interested in obtaining more information should contact Timi Nickerson Kenealy at (202) 203–4545.

Timi Nickerson Kenealy,

Acting Legal Counsel.

[FR Doc. E9–481 Filed 1–8–09; 4:15 pm]

BILLING CODE 8610–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Generic Request for Customer Service-Related Data Collections.

OMB Control Number: 0693–0031.

Form Number(s): None.

Type of Request: Extension of a currently approved collection.

Burden Hours: 3,022.

Number of Respondents: 6,000.

Average Hours per Response: Less than 2 minutes for a response card; 2 hours for focus group participation. The average response time is expected to be less than 30 minutes.

Needs and Uses: NIST conducts surveys, focus groups, and other customer satisfaction/service data collections. The collected information is needed and will be used to determine the kind and the quality of products, services, and information our customers want and expect, as well as their satisfaction with and awareness or existing products, services, and information.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Jasmeet Seehra, (202) 395–3123.

Copies of the above information collection proposal can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482–0266, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Jasmeet Seehra, OMB Desk Officer, FAX number (202) 395–5806 or via the Internet at *Jasmeet_K._Seehra@omb.eop.gov*.

Dated: January 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–230 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Survey of Local Government Finances (School Systems)

AGENCY: U.S. Census Bureau.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before March 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Wendy Stralow-Owens, U.S. Census Bureau, Governments Division, 4600 Silver Hill Road, Washington, DC 20233–6800; (301) 763–1510.

SUPPLEMENTARY INFORMATION:

I. Abstract

The U.S. Census Bureau plans to request an extension to the current Office of Management and Budget clearance for the Survey of Local Government Finances (School Systems).

The Census Bureau collects education finance data as part of its Annual Survey of State and Local Governments. This survey is the only comprehensive source of public fiscal data collected on a nationwide scale using uniform definitions, concepts and procedures. The collection covers the revenues, expenditures, debt, and assets of all public school systems. This data collection has been coordinated with the National Center for Education Statistics (NCES). The NCES uses this collection to satisfy its need for school system-level finance data.

Information on the finance of our public schools is vital to assessing their effectiveness. The products of this data collection make it possible for users to search a single data base to obtain information on such things as per pupil expenditures and the percent of state, local, and federal funding for each school system. Since the passing of the No Child Left Behind Act, there has been an increased demand for data on the Nation's public schools. This survey provides the needed information on the financial aspects of local school districts.

The five forms used in the school finance portion of the survey are:

Form F–33. This form contains item descriptions and definitions of the elementary-secondary education finance items collected jointly by the Census Bureau and the NCES. It is used primarily as a worksheet and instruction guide by the state education agencies that provide school finance data centrally for all of the school systems in their respective states. All states supply their data by electronic means.

Form F–33–1. This electronic form is used at the beginning of each survey period to solicit the assistance of the state education agencies. It establishes the conditions by which the state education agencies provide their school finance data to the Census Bureau.

Form F–33–L1. This is a supplemental letter sent directly to school systems in states where the state education agencies cannot provide information on the assets of individual school systems.

Form F–33–L2. This is a supplemental letter sent directly to school systems in states where the state education agency cannot provide information on the indebtedness of individual school systems.

Form F–33–L3. This is a supplemental letter sent directly to school systems in states where the state education agency cannot provide information on either indebtedness or assets. This letter combines the items requested on Forms F–33–L1 and F–33–L2.

The data collection is identical to the previous collections.

II. Method of Collection

The U.S. Census Bureau collects almost all of the finance data for local school systems from state education agency databases through central collection arrangements with the state education agencies. The states transfer most of this information in electronic format over the Internet via file transfer protocol. The Census Bureau has facilitated central collection of school finance data by accepting data in whatever formats the states elect to transmit.

III. Data

OMB Control Number: 0607–0700.

Form Number: F–33, F–33–1, F–33–L1, F–33–L2, and F–33–L3.

Type of Review: Regular submission.

Affected Public: State and local governments.

Estimated Number of Respondents: 3,249.

Estimated Time per Response: 1.29 hours.

Estimated Total Annual Burden Hours: 4,185.

Estimated Total Annual Cost: $96,000.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 U.S.C., Sections 161 and 182.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–305 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign–Trade Zones Board

Adopted Proposal for Available Alternative Site–Designation and Management Framework

SUMMARY: The Foreign–Trade Zones (FTZ) Board has adopted a final staff proposal to make available an alternative framework (for grantees that choose to participate) for designating and managing general–purpose FTZ sites. An initial proposal was published for comment on May 8, 2008 (73 FR 26077–26078). Based on comments received, a revised proposal was published on September 11, 2008 (73 FR 52817–52822). The final staff proposal

takes into account comments received on the revised proposal.

The comments received on the revised proposal and the FTZ Staff's analysis of legal and practical aspects of the proposal are contained in a staff report available on the FTZ Board's web site, which can be accessed via *www.trade.gov/ftz*. The final proposal is delineated below.

Final Proposal:

The fundamental trade–off addressed in this proposal is greater flexibility and increased predictability for approval of FTZ sites through simple and rapid ''minor boundary modification'' actions in exchange for a grantee maximizing the linkage between designation of FTZ space and actual use of that space for FTZ activity (after ''activation'' by CBP). The major benefit would likely be for existing FTZ grantees, which would have the option of applying to reorganize their FTZ by incorporating in an application for FTZ Board action elements from the following framework:

1. An initial limit of up to 2,000 acres would be authorized for FTZ activation within a specific geographic area. The proposal is focused on linking FTZ designation more closely to FTZ activity, and the 2,000–acre limit reflects the Board's existing practice of limiting any FTZ grantee to activation of 2,000 acres unless further approval is obtained from the FTZ Board. Acreage within the 2,000–acre limit which had not been allotted to specific designated sites would be considered ''reserve'' acreage available for activation at future sites within the general geographic area approved for the zone to serve (see ''service area'' below).
2. Enhanced flexibility by allowing site–specific activation limits that may represent only a portion of the acreage encompassed by the sites' boundaries (as has been the FTZ Board's practice with certain applications to date). For example, the boundaries of a site might encompass a 700–acre port facility but the grantee could request that a 100–acre activation limit apply to the site. The precise 100 (or fewer acres) that would be used within the site's boundaries would be pinpointed at the time of CBP activation(s) of the specific area(s) within the site.
3. The ''service area'' within which the grantee intends to be able to propose general–purpose FTZ sites (*e.g.*, specific counties, with documented support from new counties if the service area reflected a broader focus than the FTZ's current area served) using its standard 2,000–acre activation limit. The term ''service area'' applies a name to a concept which already exists in certain approved FTZ applications in which a grantee organization has named the localities it intends to serve. It should be noted that any service area must meet the ''adjacency'' requirement of the FTZ Board's regulations (60 miles/90 minutes driving time from CBP Port of Entry boundaries). A grantee's proposed service area would need to be consistent with enabling legislation and the grantee organization's charter. The FTZ Board's evaluation of a proposed service area could potentially involve examination of issues related to the ''convenience of commerce'' (19 U.S.C. 81b(b)) in regions served by more than one FTZ grantee. Also, designation of a service area for one grantee would not preclude other grantees from proposing to the FTZ Board a service area (or a site) that includes some or all of the same geographic area; the Board would evaluate the specific facts and circumstances on a case–by-case basis (including relative to the previously cited ''convenience of commerce'' standard).
4. Designation of a limited number of ''magnet'' sites selected by the grantee—often as a result of local public processes—for ability and readiness to attract multiple FTZ uses. An individual magnet site would generally be proposed with an allotment of no more than 200 acres for activation, although a larger proposed activation limit for a magnet site could be justified based on factors such as the nature of the site (e.g., a major harbor facility) or a specific type of projected FTZ activity that would tend to require an unusually large number of acres in simultaneous ''activated'' status at the specific site. A magnet site could only be designated through an application for FTZ Board action.
5. Possible designation of ''usage–driven'' sites to serve companies which are not located in a magnet site but which are ready to pursue conducting activity under FTZ procedures. In the general interest of maximizing the linkage between FTZ site designation and FTZ activity at the site, a usage–driven site would be limited—in the context of a larger industrial park or business district where other companies interested in FTZ procedures might be able to locate in the future—to the area(s) required for the company(ies) specifically identified as ready to pursue conducting FTZ activity at the site.
6. Unlike magnet sites, usage–driven sites could be designated through the current minor boundary modification (MBM) mechanism—a rapid administrative action by the Board's staff—in addition to through FTZ Board action. (It should be noted that usage–driven MBM actions could conceivably be used to designate additional acreage where needed at magnet site locations.) A simplification of the MBM process would result from elimination of the need to ''swap'' like amounts of acreage from existing sites because the total allotted acreage for activation of existing and proposed sites would remain within the standard 2,000–acre limit. Requests for MBM actions would continue to require concurrence from the appropriate CBP port director.
7. No specific limit on the number of usage–driven sites (although subject to the zone's overall 2,000–acre activation limit). However, it should be noted that such usage–driven sites are by definition focused on only the specific physical area(s) required for company(ies) conducting FTZ activity or ready to pursue conducting FTZ activity. Therefore, with regard to numbers of usage–driven sites, the definition of such sites and the standard sunset limits (and resetting) described below inherently function to limit usage–driven sites on an ongoing basis to the number of specific areas required for activity by (or on behalf of) FTZ users.
8. Regarding numbers of magnet sites, the framework would reflect a general goal—after any transition period, as outlined below—of focusing each FTZ on six or fewer simultaneously existing magnet sites. Special circumstances of regional (multi–county) FTZs could be taken into account based on factors which could justify a larger number of magnet sites (*e.g.*, population size, level of trade–related activity). Also, a grantee seeking over a longer term to justify to the FTZ Board proposed authority for a larger number of magnet sites could provide evidence of multi–user FTZ

activity—as reflected in the grantee's annual reports to the FTZ Board—at a significant percentage of the grantee's already designated magnet sites. (It should be noted that a grantee with an approved magnet site where only a single user activates over time will be able to consider requesting usage–driven designation for the active portion of that magnet site, thereby helping to retain focus and enabling the grantee to consider whether a different site would be more appropriate for magnet designation while remaining consistent with the goal outlined above for total number of magnet sites.)

9. Magnet sites and usage–driven sites would be subject to ''sunset'' time limits which would self–remove FTZ designation from a site not used for FTZ purposes before the site's sunset date. For magnet sites, the default sunset period would be five years with sunset based on whether a site had been activated by CBP. However, the FTZ Board could take a range of factors into account in determining the appropriate sunset period for a given site (*e.g.*, nature of the site, public ownership of the site). For a usage–driven site, the sunset limit would require within three years of approval admission into the site of foreign non–duty paid material for a *bona fide* customs purpose. Experience in administering the framework could also reveal a need to adjust practice for usage–driven sites to implement intermediate benchmarks (such as progress towards activation) rather than a single deadline date at the end of a three-year period.

10. Magnet sites and usage–driven sites would also be subject to ongoing ''resetting'' whereby activation at a site during the site's initial sunset period would serve to push back the sunset date by another five years for magnet sites and by another three years for usage–driven sites (at which point the sunset test would again apply). Finally, if all of a grantee's sites were due to sunset based on lack of activation, the grantee would need to apply to the FTZ Board at least 12 months in advance of the ultimate sunset termination to request designation of at least one site for the period beyond the sunset of the previously approved sites.

11. An optional five-year transitional phase would be available for grantees of zones with more than six existing magnet–style sites. For the optional transitional phase, an individual grantee could apply to reorganize its zone and request continued FTZ designation for existing sites that the grantee determines warrant further opportunity to demonstrate a need for FTZ status. For the transition period, there would be no specific goal in terms of numbers of existing sites which could be proposed for magnet designation. However, sites proposed for a zone's transitional phase would need to comply with the framework's limit of a 2,000–acre activation limit within the zone's service area (see further discussion below).

12. For the transitional phase for a particular zone, the grantee would have the option of requesting usage–driven designation for any site where a single entity is conducting (or ready to conduct) FTZ activity. For sites that the grantee believes are better suited to a magnet (multi–user) role, the grantee could request magnet designation. Any usage–driven sites would have the standard three-year sunset period for such sites. The FTZ Board would establish sunset limits for individual magnet sites based on the facts of the case (particularly as they pertain to each site). For the transition phase, the default sunset limit for magnet sites would be five years but the FTZ Board would be able to establish longer sunset limits for specific sites if warranted by the facts and circumstances present.

13. The five-year transition period for a specific grantee would begin with approval of the grantee's reorganization application by the FTZ Board. During the final year of the transition period, the FTZ Board staff would initiate a review of all of the zone's sites for which the sunset limits align with the end of the transition period. The staff review would examine whether each of those sites had been activated during the transition period and, for activated sites, the specific FTZ activity which had taken place (including the operator(s)/user(s) for each site). The staff review of a zone's transition period would result in a report noting any sites subject to the review which had remained unactivated during the period (for which FTZ designation would self–remove at the end of the period). The staff report would also make preliminary recommendations regarding magnet or usage–driven designation going forward for sites activated during the period. The FTZ Board staff would provide its preliminary recommendations to the zone's grantee and allow a period of 30 days for the grantee to provide any response to the staff's recommendations. After the end of the 30-day period, the staff would create a final report taking into account any response from the grantee regarding the preliminary recommendations. The FTZ Board would be able to take action, as appropriate, on the FTZ Staff's final recommendations, and the grantee would be notified of any ultimate action.

14. The transitional phase for any zone would be limited by the 2,000–acre activation limit inherent in the proposed framework. In this context, if existing sites which a grantee wishes to propose for a transitional phase cumulatively exceed 2,000 acres in their current configuration, the grantee would need to determine the specific activation limit to propose allotting to each such existing site. (For example, if an existing site is the 340–acre Acme Industrial Park, the grantee could propose an activation limit of 100 acres within the 340–acre Acme Industrial Park.) A grantee might opt for a simple mechanism to apportion a certain total amount of its activation limit among sites it is proposing for the transitional phase (after making allowance for the amount of acreage the grantee determines it needs to keep in reserve for possible future minor boundary modifications; a grantee retaining a minimum of 200 acres in reserve is advisable).

It is important to note that the elements of the proposal support each other in furthering the goals of flexibility and focus for FTZ site designation (with important resulting resource- and efficiency–related benefits for the government). As such, a framework incorporating these types of elements would include the package of elements as an available alternative to the Board's current practice. As is currently the case, minor boundary modification actions would be approved by the Board's staff while modifications to a zone's ''plan'' (*e.g.*, increase in authorized activation limit, modifications to service area) would be matters for the FTZ Board's consideration. FTZ grantees opting to manage their zones under the Board's

current framework would be unaffected by this proposal.

Finally, in order to help the FTZ Board evaluate the effectiveness and appropriateness of the alternative framework after actual experience with FTZ grantees, the FTZ staff would report to the Board on a periodic basis regarding the actual usage of the alternative framework. The staff's reporting regarding implementation of the framework at individual participating FTZs would result from staff–initiated reviews and would not require any request or application from the grantee.

Dated: January 5, 2009.

Andrew McGilvray,

Executive Secretary.

[FR Doc. E9–352 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[A–475–818]

Certain Pasta from Italy: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement of Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Eric B. Greynolds, AD/CVD Operations, Office 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4014, 14th Street and Constitution Ave., NW., Washington, DC 20230, telephone: (202) 482–6071.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 2007, the Department of Commerce (the Department) published its notice of initiation of antidumping duty (AD) changed circumstances review (CCR). *See Certain Pasta from Italy: Notice of Initiation of Antidumping Duty Changed Circumstances Review*, 72 FR 65010 (November 19, 2007). On February 22, 2008, the Department published its notice of preliminary results of AD CCR and intent to reinstate the AD order. *See Certain Pasta From Italy: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review and Intent To Reinstate the Antidumping Duty Order*, 73 FR 9769 (February 22, 2008). On December 22, 2008, the Department extended the due date of the final results of the AD CCR until January 2, 2009. *See Certain Pasta from Italy: Notice of Extension of Final Results of Antidumping Duty Change Circumstances Review*, 73 FR 80365 (December 31, 2008).

Scope of the Order

Imports covered by the order are shipments of certain non–egg dry pasta in packages of five pounds four ounces or less, whether or not enriched or fortified or containing milk or other optional ingredients such as chopped vegetables, vegetable purees, milk, gluten, diastasis, vitamins, coloring and flavorings, and up to two percent egg white. The pasta covered by this scope is typically sold in the retail market, in fiberboard or cardboard cartons, or polyethylene or polypropylene bags of varying dimensions.

Excluded from the scope of the order are refrigerated, frozen, or canned pastas, as well as all forms of egg pasta, with the exception of non–egg dry pasta containing up to two percent egg white. Also excluded are imports of organic pasta from Italy that are accompanied by the appropriate certificate issued by the Instituto Mediterraneo Di Certificazione, by Bioagricoop Scrl, by QC&I International Services, by Ecocert Italia, by Consorzio per il Controllo dei Prodotti Biologici, by Associazione Italiana per l'Agricoltura Biologica, or by Instituto per la Certificazione Etica e Ambientale (ICEA) are also excluded from the order.

The merchandise subject to the order is currently classifiable under items 1902.19.20 and 1901.90.9095 of the *Harmonized Tariff Schedule of the United States (HTSUS).* Although the *HTSUS* subheading is provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this changed circumstances review are addressed in the *Issues and Decision Memorandum*, which is hereby adopted by this notice. A list of the issues which parties have raised, and to which we have responded in the *Issues and Decision Memorandum*, is attached to this notice as an Appendix. The *Issues and Decision Memorandum* is available in the Central Records Unit, room 1117, of the main Commerce building. In addition, a complete version of the *Issues and Decision Memorandum* can be accessed directly on the Web at *http://ia.ita.doc.gov/frn*. The paper copy and electronic version of the *Issues and Decision Memorandum* are identical in content.

Final Results of Changed Circumstances Review

We determine that Pasta Lensi S.r.l. (Lensi) made sales at less than normal value (NV) during the 2002–2003 period of review (POR), and that, consequently, Lensi no longer qualifies for revocation based upon three consecutive reviews resulting in *de minimis* margins, and that the order should be reinstated on certain pasta from Italy related to subject merchandise produced and exported by Lensi. For the reasons stated in the *Preliminary Results* and in the *Issues and Decision Memorandum* we continue to determine to base Lensi's margin of dumping in the seventh review and its cash deposit rate on adverse facts available (AFA). The Department continues to select as AFA the weighted average margin of 45.59 percent *ad valorem*. We will instruct U.S. Customs and Border Protection to continue to suspend liquidation of all entries of subject merchandise produced and exported by Lensi entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register** and to require a cash deposit of 45.59 percent. This deposit requirement shall remain in effect until further notice.

This notice is in accordance with sections 751(b)(1) and 777(i) of the Tariff Act of 1930, as amended, and 19 CFR 351.216 and 351.222.

Dated: January 2, 2009.

David M. Spooner,

Assistant Secretary for Import Administration.

APPENDIX

Comment 1: Whether Lensi's Disclosure Of A Certain Data Discrepancy Should Be Considered As A Mitigating Factor When Assigning The Cash Deposit Rate At Which Lensi Should Be Reinstated

Comment 2: Whether The Adverse Facts Available Cash Deposit Rate Applied to Lensi Was In Accordance With The Department's Practice And The Law

Comment 3: The Cash Deposit Rate At Which Lensi Should Be Reinstated Into the Antidumping Duty Order

Comment 4: Whether The Department's Application Of An Adverse Facts Available Rate Represents A Poor Policy Choice

[FR Doc. E9–354 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–816]

Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Final Results and Final Rescission in Part of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On July 8, 2008, the Department of Commerce (''Department'') published in the **Federal Register** the preliminary results of the administrative review of the antidumping duty order on certain stainless steel butt-weld pipe fittings from Taiwan. *See Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent to Rescind in Part*, 73 FR 38972 (July 8, 2008) (''*Preliminary Results*''). The merchandise covered by the order is certain stainless steel butt-weld pipe fittings from Taiwan as described in the ''Scope of the Order'' section of this notice. The period of review (''POR'') is June 1, 2006, through May 31, 2007. We provided interested parties an opportunity to comment on our *Preliminary Results*. Based upon our analysis of the comments received, we made changes to the margin calculation. The final weighted-average dumping margin is listed below in the section titled ''Final Results of Review.''

EFFECTIVE DATE: January 12, 2009.

FOR FURTHER INFORMATION CONTACT: John Drury or Angelica Mendoza, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0195 or (202) 482–3019, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department's preliminary results of review were published on July 8, 2008. *See Preliminary Results*. We invited parties to comment on the *Preliminary Results*. We received case briefs from Markovitz Enterprises, Inc. (Flowline Division), Gerlin, Inc., Shaw Alloy Piping Products, Inc., and Taylor Forge Stainless, Inc. (collectively, ''Petitioners'') (''Petitioners' Brief'') and from Ta Chen Stainless Pipe Co., Ltd. (''Ta Chen's Brief'') on August 7, 2008. We received rebuttal briefs from Petitioners on August 14, 2008 and Ta Chen on August 15, 2008 (''Petitioners' Rebuttal Brief'' and ''Ta Chen's Rebuttal Brief,'' respectively). Petitioners requested a public hearing, which was conducted on August 19, 2008. On August 20, 2008, Ta Chen submitted a letter asking that the Department solicit additional information on Ta Chen's costs of production. On August 22, 2008, Petitioners submitted a letter urging the Department to deny Ta Chen's request. On August 25, 2008, Ta Chen submitted a letter answering Petitioners' letter of August 22, 2008.

Scope of the Order

The products subject to the order are certain stainless steel butt-weld pipe fittings, whether finished or unfinished, under 14 inches inside diameter. Certain welded stainless steel butt-weld pipe fittings (''pipe fittings'') are used to connect pipe sections in piping systems where conditions require welded connections. The subject merchandise is used where one or more of the following conditions is a factor in designing the piping system: (1) Corrosion of the piping system will occur if material other than stainless steel is used; (2) contamination of the material in the system by the system itself must be prevented; (3) high temperatures are present; (4) extreme low temperatures are present; and (5) high pressures are contained within the system. Pipe fittings come in a variety of shapes, with the following five shapes the most basic: ''elbows,'' ''tees,'' ''reducers,'' ''stub ends,'' and ''caps.'' The edges of finished pipe fittings are beveled. Threaded, grooved, and bolted fittings are excluded from the order. The pipe fittings subject to the order are classifiable under subheading 7307.23.00 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of the order is dispositive. Pipe fittings manufactured to American Society of Testing and Materials specification A774 are included in the scope of the order.

Partial Rescission of Review

In the *Preliminary Results*, the Department issued a notice of intent to rescind the review with respect to Liang Feng Stainless Steel Fitting Co., Ltd. (''Liang Feng''), Tru-Flow Industrial Co., Ltd. (''Tru-Flow''), Censor International Corporation (''Censor'') and PFP Taiwan Co., Ltd. (''PFP''), because we found they had no entries of subject merchandise during the POR. *See Preliminary Results* at 38974. As the Department received no comments on our intent to rescind, we continue to find that rescission of the review concerning Liang Feng, Tru-Flow, Censor, and PFP is appropriate. Therefore, the Department is rescinding the review with respect to Liang Feng, Tru-Flow, Censor, and PFP.

Analysis of Comments Received

All issues raised in the case briefs, as well as the Department's findings, in this administrative review are addressed in the Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review of Certain Stainless Steel Butt-Weld Pipe Fittings from Taiwan (''Decision Memorandum''), dated January 5, 2009, which is hereby adopted by this notice. A list of the issues raised and to which we have responded is found in the Decision Memorandum, appended to this notice. The Decision Memorandum is on file in the Central Records Unit in room 1117 of the main Commerce building, and can also be accessed directly on the Web at *http://ia.ita.doc.gov*. The paper copy and electronic version of the public version of the Decision Memorandum are identical in content.

Final Results of Review

As a result of our review, we determine that the following weighted-average margin exists for the period June 1, 2006, through May 31, 2007:

Manufacturer	Weighted-Average Margin
Ta Chen Stainless Pipe Co., Ltd	2.45 percent

Assessment Rates

The Department will determine, and U.S. Customs and Border Protection (''CBP'') shall assess, antidumping duties on all appropriate entries, pursuant to section 751(a)(1)(B) of the Tariff Act of 1930, as Amended (''the Act'') and 19 CFR 351.212(b). The Department calculated importer-specific duty assessment rates on the basis of the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the examined sales for that importer. Where the assessment rate is above *de minimis*, we will instruct CBP to assess duties on all entries of subject merchandise manufactured or exported by Ta Chen. Antidumping duties for the rescinded companies, Liang Feng, Tru-Flow, Censor, and PFP, shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i). The Department

intends to issue appropriate assessment instructions to CBP 15 days after the date of publication of these final results of review.

The Department clarified its ''automatic assessment'' regulation on May 6, 2003. *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003). This clarification applies to POR entries of subject merchandise produced by companies examined in this review (*i.e.*, companies for which a dumping margin was calculated) where the companies did not know that their merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of certain stainless steel butt-weld pipe fittings from Taiwan entered, or withdrawn from warehouse, for consumption on or after the publication date of these final results, as provided by section 751(a) of the Act: (1) for the company covered by this review, the cash deposit rate will be the rate listed above; (2) for merchandise exported by producers or exporters not covered in this review but covered in the less-than-fair-value investigation or a prior review, the cash deposit rate will continue to be the company-specific rate from the most recent review; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, the cash deposit rate will be that established for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will be 51.01 percent, the all-others rate established in the less-than-fair-value investigation. These deposit requirements shall remain in effect until further notice.

Notification to Interested Parties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred, and in the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Orders

This notice also is the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing these results and notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: January 5, 2009.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

APPENDIX

Issues in Decision Memorandum

1. Calculation of Revised Cost of Production (''COP'')
2. Calculation of Storage Expenses
3. Constructed Export Price (''CEP'') Offset
4. Identification of Manufacturer
5. Ta Chen's Raw Material Cost
6. Calculation of CEP Profit Ratio

[FR Doc. E9–356 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Coastal and Estuarine Land Conservation Planning, Protection or Restoration

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Elaine Vaudreuil, (301) 713–3155 ext. 103 or *Elaine.Vaudreuil@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

The FY 2002 Commerce, Justice, State Appropriations Act directed the Secretary of Commerce to establish a Coastal and Estuarine Land Conservation Program (CELCP) to protect important coastal and estuarine areas that have significant conservation, recreation, ecological, historical, or aesthetic values, or that are threatened by conversion, and to issue guidelines for this program delineating the criteria for grant awards. The guidelines establish procedures for eligible applicants who choose to participate in the program to use when developing state conservation plans, proposing or soliciting projects under this program, applying for funds, and carrying out projects under this program in a manner that is consistent with the purposes of the program. Guidelines for the CELCP can be found on NOAA's Web site at: *http://coastalmanagement.noaa.gov/land/* or may be obtained upon request via the contact information listed above. NOAA also has, or is given, authority under the Coastal Zone Management Act, annual appropriations or other authorities, to issue funds to coastal states, localities or other recipients for planning, conservation, acquisition, protection, restoration, or construction projects. The required information enables NOAA to implement the CELCP, under its current or future authorization, and facilitate the review of similar projects under different, but related, authorities.

II. Method of Collection

Respondents have a choice of electronic or paper formats for submitting CELCP plans, project applications, performance reports and other required materials. Project applications may be submitted electronically via Grants.gov or by mail in paper form. Methods of submittal for plans, performance reports or other

required materials include electronic submittal via e-mail or NOAA Grants Online, mail and facsimile transmission of paper forms, or submittal of electronic files on compact disc.

III. Data

OMB Control Number: 0648–0459.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, Local, or Tribal Government; not-for-profit institutions.

Estimated Number of Respondents: 50.

Estimated Time per Response: CELCP Plans, 120 hours to develop or 35 hours to revise; project application and checklist, 15 hours; and final grant applications and semi-annual and annual reporting, 5 hours.

Estimated Total Annual Burden Hours: 1,508.

Estimated Total Annual Cost to Public: $493.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–247 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Mandatory Shrimp Vessel and Gear Characterization Survey

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824–5350 or *Jason.Rueter@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the shrimp fishery in the waters of the Gulf of Mexico under the Shrimp Fishery Management Plan (FMP). The regulations implementing the FMP appear at 50 CFR part 680, and regulations at 50 CFR part 697 and subpart H of 50 CFR part 600 also pertain. The corresponding regulations established completion of a mandatory vessel and gear characterization form by participants in the shrimp fishery.

Collection of vessel and gear characterization and fishing effort information is necessary, supplemental information to the economic, social, and biological information regarding the fishery (collected by other means) that is vital to the Optimum Yield (OY) management of marine fishery resources as mandated under the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802 M–S Act § 3). The term ''Optimum'' is defined under section 104–297 of the Act, as: (A) Will provide the greatest overall benefit to the Nation, particularly with respect to food production and recreational opportunities, and taking into account the protection of marine ecosystems; (B) is prescribed as such on the basis of the maximum sustainable yield from the fishery, as reduced by any relevant economic, social, or ecological factors; and (C) in the case of an overfished fishery, provides for the rebuilding to a level consistent with producing the maximum sustainable yield in such a fishery.

The currently approved application and reporting requirements are being revised to incorporate necessary information identified during the first three years of data collection. These changes are not expected to alter burden or costs for the collection of information.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0542.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 3,000.

Estimated Time per Response: Reports, 20 minutes.

Estimated Total Annual Burden Hours: 1,000.

Estimated Total Annual Cost to Public: $0 in recordkeeping/reporting costs.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–273 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; StormReady and TsunamiReady/StormReady Application Forms

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Donna Franklin, 301–713–0090 ext 141 or *Donna.Franklin@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Abstract

StormReady and TsunamiReady are voluntary programs offered to provide guidance and incentive to officials who wish to improve their hazardous weather operations—not only the equipment needed for reception of hazardous weather warnings, but overall planning, education and awareness. Applicants will use the StormReady Application form and TsunamiReady/StormReady Application form to apply for initial StormReady or TsunamiReady/StormReady recognition and renewal of that recognition every three years; thus, a typical StormReady community would use this form 3 times every 10 years. The government will use the information collected by application to determine whether a community has met all of the guidelines, e.g. for community preparedness and local warning dissemination, to receive StormReady and/or TsunamiReady recognition.

II. Method of Collection

Applications will be submitted on paper (faxed or mailed) or electronically.

III. Data

OMB Control Number: 0648–0419.

Form Number: None.

Type of Review: Regular submission.

Affected Public: State, local, or tribal government.

Estimated Number of Respondents: 120.

Estimated Time per Response: Two hours.

Estimated Total Annual Burden Hours: 240.

Estimated Total Annual Cost to Public: $120 in recordkeeping/reporting costs.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–275 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–KE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Proposed Information Collection; Comment Request; Southeast Region Vessel Monitoring System (VMS) and Related Requirements

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted on or before March 13, 2009.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 7845, 14th and Constitution Avenue, NW., Washington, DC 20230 (or via the Internet at *dHynek@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Jason Rueter, (727) 824–5350 or *Jason.Rueter@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) authorizes the Gulf of Mexico Fishery Management Council (Council) to prepare and amend fishery management plans for any fishery in waters under its jurisdiction. National Marine Fisheries Service (NMFS) manages the reef fish fishery in the waters of the Gulf of Mexico under the Reef Fish Fishery Management Plan (FMP). The regulations implementing the FMP appear at 50 CFR part 622, and regulations at 50 CFR part 697 and subpart H of 50 CFR part 600 also pertain. The corresponding regulations established a mandatory VMS requirement.

The Reef Fish FMP contains several area-specific regulations where fishing is restricted or prohibited in order to protect habitat or spawning aggregations, or to reduce fishing pressure in areas that are heavily fished. Unlike size, bag, and trip limits, where the catch can be monitored onshore when a vessel returns to port, area restrictions require at-sea enforcement.

However, at-sea enforcement of offshore area restrictions is difficult due to the distance from shore and the limited number of patrol vessels, resulting in a need to improve enforceability of area fishing restrictions through remote sensing methods. In addition, all fishing gears are subject to some area fishing restrictions. Because of the sizes of these areas and the distances from shore, the effectiveness of enforcement through over flights and at-sea interception is limited. An electronic VMS allows a more effective means to monitor vessels for intrusions into restricted areas.

The VMS provides effort data and would significantly aid in enforcement of areas closed to fishing. All position reports are treated in accordance with NMFS existing guidelines for confidential data. As a condition of authorized fishing for or possession of Reef Fish in or from the Gulf of Mexico Exclusive Economic Zone (EEZ), a vessel owner or operator subject to the requirements for a VMS in this section must allow NMFS, the United States Coast Guard (USCG), and their authorized officers and designees access to the vessel's position data obtained from the VMS.

The currently approved reporting requirements are being renewed without change. The burden estimates, however, do have changes due to programmatic changes and attrition in the fishery.

II. Method of Collection

Respondents have a choice of either electronic or paper forms. Methods of submittal include e-mail of electronic forms, and mail and facsimile transmission of paper forms.

III. Data

OMB Control Number: 0648–0544.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 882.

Estimated Time per Response: Installation, 4 hours; installation and activation checklist, 15 minutes; transmission of position reports, 1 second; and annual maintenance, 2 hours.

Estimated Total Annual Burden Hours: 1,780.

Estimated Total Annual Cost to Public: $544,194 in operations and maintenance costs.

IV. Request for 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 (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: January 6, 2009.

Gwellnar Banks,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. E9–276 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM58

Gulf of Mexico Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Outreach and Education Advisory Panel (AP).

DATES: The Outreach and Education AP meeting is scheduled to begin at 1 pm on Monday, February 2, 2009 and end by 3 pm on Tuesday, February 3, 2009.

ADDRESSES: The meeting will be held at the Four Points by Sheraton, 6401 Veterans Memorial Hwy., Metairie, LA 70003.

Council address: Gulf of Mexico Fishery Management Council, 2203 North Lois Avenue, Suite 1100, Tampa, FL 33607.

FOR FURTHER INFORMATION CONTACT: Charlene Ponce, Public Information Officer; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: During this organizational meeting, the Outreach and Education AP will elect its officers; develop a charge; and receive overviews on both the Fishery Management Process and the current outreach methods used by the Gulf Council. The AP will also develop a list of issues to consider and discuss during its next meeting. The AP may develop recommendations to the Council regarding Outreach and Education.

Although other non-emergency issues not on the agenda may come before the Outreach and Education AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), those issues may not be the subject of formal action during these meetings. Actions of the Outreach and Education AP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling (813) 348–1630.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Tina O'Hern at the Council (see **ADDRESSES**) at least 5 working days prior to the meeting.

Dated: January 7, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–309 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM64

New England Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The New England Fishery Management Council(s (Council) Groundfish Oversight Committee will meet to consider actions affecting New England fisheries in the exclusive economic zone (EEZ).

DATES: The meeting will be held on Thursday, January 29, 2009 at 9 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; telephone: (978) 465–0492.

SUPPLEMENTARY INFORMATION: The items of discussion in the committee(s agenda are as follows:

1. The Groundfish Oversight Committee will meet to continue work on Amendment 16 to the Northeast Multispecies Fishery Management Plan. Amendment 16 is under development to adjust management measures as necessary to continue stock rebuilding. At this meeting, the Committee will review the draft amendment document. They may develop recommendations for any of the management measures under development. Specific items likely to be addressed include, but are not limited to, annual catch limit and accountability measures for the commercial and recreational fisheries, effort control measures, sector administration, monitoring, and policy issues, and gear requirements to reduce incidental catches of regulated groundfish (including requirements for small mesh fisheries in the southern New England and Mid-Atlantic regulated mesh areas).

2. The Committee may also develop recommendations for the identification of preferred alternatives.

3. Other business.

Recommendations from the Committee will be considered by the Council at its meeting, on February 9–11, 2009, in Portsmouth, NH.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council(s intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

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

Dated: January 7, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–310 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XM66

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: The Joint Canada-U.S. Review Panel for Pacific hake/whiting will hold a work session which is open to the public.

DATES: The Joint Canada-U.S. Review Panel will meet beginning at 9 a.m., Tuesday, February 3, 2009 and will continue through 12 p.m., Friday, February 6, 2009. The meetings will begin at 9 a.m. and end at 5:30 p.m. each day or until business for each day is completed and will adjourn at 12 noon on Friday, February 6.

ADDRESSES: The Joint Canada-U.S. Review Panel for Pacific hake/ whiting will be held at the Hotel Deca, 4507 Brooklyn Avenue N.E., Seattle WA 98105; telephone: 1–800–899–0251.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Ms. Stacey Miller, NMFS Northwest Fisheries Science Center; telephone: (206) 437–5670; or Mr. John DeVore, Pacific Fishery Management Council; telephone: (503) 820–2280.

SUPPLEMENTARY INFORMATION: The purpose of the Joint Canada-U.S. Review Panel for Pacific hake/whiting is to review draft 2009 stock assessment documents and any other pertinent information for Pacific whiting, work with the Stock Assessment Team to make necessary revisions, and produce a Joint Canada-U.S. Review Panel report for use by the Council family and other interested persons for developing management recommendations for 2009 fisheries. No management actions will be decided by the Panel. The Panel(s role will be development of recommendations and reports for consideration by the Council at its March meeting in Seattle, WA.

Although non-emergency issues not contained in the meeting agenda may come before the Panel participants for discussion, those issues may not be the subject of formal Joint Canada-U.S. Review Panel action during this meeting. Panel action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Panel participants(intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 820–2280 at least 5 days prior to the meeting date.

Dated: January 7, 2009.

Tracey L. Thompson,

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

[FR Doc. E9–326 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–22–S

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Statutory Invention Registration.

Form Number(s): PTO/SB/94.

Agency Approval Number: 0651–0036.

Type of Request: Extension of a currently approved collection.

Burden: 4 hours annually.

Number of Respondents: 8 responses per year.

Average Hours per Response: The USPTO estimates that it will take 24 minutes (0.4 hours) to submit a statutory invention registration request, a petition to review a final refusal to publish, and a request to withdraw a publication request. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: 35 U.S.C. 157, administered by the USPTO through 37 CFR 1.293–1.297, authorizes the USPTO to publish a statutory invention registration containing the specifications and drawings of a regularly filed application for a patent without examination, providing the applicant meets all the requirements for printing, waives the right to receive a patent on the invention within a certain period of time prescribed by the USPTO, and pays all application, publication, and other processing fees. This collection includes information needed by the USPTO to review and approve and/or deny such requests. The applicant may petition the USPTO to review final refusal to publish or to withdraw a request to publish a statutory invention registration prior to the date of the notice of the intent to publish.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review at *http://www.reginfo.gov*.

Paper copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0036 Statutory Invention Registration copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be submitted on or before February 11, 2009, to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov* or by fax (202) 395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 5, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9–329 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–16–P

PATENT AND TRADEMARK OFFICE

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: United States Patent and Trademark Office (USPTO).

Title: Fastener Quality Act Insignia Recordal Process.

Form Number(s): PTO–1611.

Agency Approval Number: 0651–0028.

Type of Request: Extension of a currently approved collection.

Burden: 33 hours annually.

Number of Respondents: 130 responses per year.

Average Hours per Response: The USPTO estimates that it will take 15 minutes (0.25 hours) to submit an application for recordal of insignia or renewal/reactivation of recordal under the Fastener Quality Act. This includes time to gather the necessary information, create the documents, and submit the completed request.

Needs and Uses: The public uses this information collection to comply with the insignia recordal provisions of the Fastener Quality Act (FQA). It includes one form, the Application for Recordal of Insignia or Renewal/Reactivation of Recordal Under the Fastener Quality Act (PTO–1611), which provides manufacturers with a convenient way to submit a request for the recordal of a fastener insignia or to renew or reactivate an existing Certificate of Recordal. Use of this form is not mandatory, and applicants may instead prepare requests for recordal using their own paper formats.

The USPTO uses the information to record or renew insignias under the FQA and to maintain the Fastener Insignia Register, which is open to public inspection. The public may download the Fastener Insignia Register from the USPTO Web site or purchase printed copies from the USPTO.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Nicholas A. Fraser, e-mail *Nicholas_A._Fraser@omb.eop.gov*.

Once submitted, the request will be publicly available in electronic format through the Information Collection Review at *www.reginfo.gov.*

Paper copies of the above information collection proposal can be obtained by any of the following methods:

- *E-mail: Susan.Fawcett@uspto.gov*. Include ''0651–0028 Fastener Quality Act Insignia Recordal Process copy request'' in the subject line of the message.
- *Fax:* 571–273–0112, marked to the attention of Susan K. Fawcett.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division, U.S. Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.

Written comments and recommendations for the proposed information collection should be submitted on or before February 11, 2009, to Nicholas A. Fraser, OMB Desk Officer, via e-mail at *Nicholas_A._Fraser@omb.eop.gov* or by fax (202) 395–5167, marked to the attention of Nicholas A. Fraser.

Dated: January 5, 2009.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer, Customer Information Services Group, Public Information Services Division.

[FR Doc. E9–331 Filed 1–9–09; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Base Closure and Realignment

AGENCY: Department of Defense, Office of Economic Adjustment.

ACTION: Notice.

SUMMARY: This Notice is provided pursuant to section 2905(b)(7)(B)(ii) of the Defense Base Closure and Realignment Act of 1990. It provides a partial list of military installations closing or realigning pursuant to the 2005 Defense Base Closure and Realignment (BRAC) Report. It also provides a corresponding listing of the Local Redevelopment Authority (LRA) for Umatilla Chemical Depot, Hermiston, Oregon recognized by the Secretary of Defense, acting through the Department of Defense Office of Economic Adjustment (OEA), as well as the point of contact, address, and telephone number for the LRA for this installation. Representatives of state and local governments, homeless providers, and other parties interested in the redevelopment of the installation

should contact the person or organization listed. The following information will also be published simultaneously in a newspaper of general circulation in the area of the installation. There will be additional Notices providing this same information about LRAs for other closing or realigning installations where surplus government property is available as those LRAs are recognized by the OEA.

DATES: *Effective Date:* January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Director, Office of Economic Adjustment, Office of the Secretary of Defense, 400 Army Navy Drive, Suite 200, Arlington, VA 22202–4704, (703) 604–6020.

Local Redevelopment Authorities (LRAs) for Closing and Realigning Military Installations

Oregon

Installation Name: Umatilla Chemical Depot.

LRA Name: Umatilla Army Depot Reuse Authority.

Point of Contact: Connie Caplinger, Executive Assistant to the Umatilla County Board of County Commissioners.

Address: 216 SE. 4th Street, Pendleton, OR 97801.

Phone: (541) 278–6293.

Dated: January 5, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–238 Filed 1–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Advisory Committee on Military Personnel Testing

AGENCY: Under Secretary of Defense for Personnel and Readiness, DoD.

ACTION: Notice of meeting.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Advisory Committee on Military Personnel Testing will take place:

DATES: Wednesday, February 5, 2009 (8:30 a.m. to 4 p.m.) and Thursday, February 6, 2009 (8:30 a.m. to Noon).

ADDRESSES: The meeting will be held at The Pine Inn, Ocean Avenue, between Lincoln and Monte Verde Street, Carmel, California 93923.

FOR FURTHER INFORMATION CONTACT: Committee's Designated Federal Officer, Dr. Jane M. Arabian, Assistant Director, Accession Policy, Office of the Under Secretary of Defense (Personnel and Readiness), Room 2B271, The Pentagon, Washington, DC 20301–4000, telephone (703) 697–9271.

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of the meeting is to review planned changes and progress in developing computerized and paper-and-pencil enlistment tests.

Agenda: The agenda includes an overview of current enlistment test development timelines and planned research for the next three years.

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public.

Oral Presentations or Written Statements: Persons desiring to make oral presentations or submit written statements for consideration at the Committee meeting must contact Dr. Jane M. Arabian at the address or telephone number above no later than January 14, 2009.

Dated: January 5, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–239 Filed 1–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

U.S. Court of Appeals for the Armed Forces Code Committee Meeting

AGENCY: Department of Defense.

ACTION: Notice of public meeting.

SUMMARY: This notice announces the forthcoming public meeting of the Code Committee established by Article 146(a), Uniform Code of Military Justice, 10 U.S.C. 946(a). The agenda for this meeting will include consideration of proposed changes to the Uniform Code of Military Justice and the Manual for Courts-Martial, United States, and other matters relating to the operation of the Uniform Code of Military Justice throughout the Armed Forces.

DATES: Tuesday, March 3, 2009 at 10 a.m.

ADDRESSES: Courthouse of the United States Court of Appeals for the Armed Forces, 450 E Street, NW., Washington, DC 20442–0001.

FOR FURTHER INFORMATION CONTACT: William A. DeCicco, Clerk of Court, United States Court of Appeals for the Armed Forces, 450 E Street, Northwest, Washington, DC 20442–000l, telephone (202) 761–1448.

Dated: January 5, 2009.

Patricia L. Toppings,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. E9–236 Filed 1–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2009–OS–0001]

Privacy Act of 1974; System of Records

AGENCY: Defense Finance and Accounting Service, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Defense Finance and Accounting Service is proposing to amend a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The proposed action will be effective without further notice on February 11, 2009 unless comments are received which would result in a contrary determination.

ADDRESSES: Defense Finance and Accounting Service, Freedom of Information Act/Privacy Act Program Manager, 8899 E. 56th Street, Indianapolis, IN 46249–0150.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Krabbenhoft at (303) 589–3510.

SUPPLEMENTARY INFORMATION: The Defense Finance and Accounting Service's system of record notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendment is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: January 6, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

T7901a

SYSTEM NAME:

Standard Negotiable Instrument Processing System (June 4, 2007, 72 FR 30786).

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of the Treasury to provide information on check issues and electronic funds transfers.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices apply to this system.''

* * * * *

SAFEGUARDS:

Delete entry and replace with ''Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.''

RETENTION AND DISPOSAL:

Delete entry and replace with ''Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, or destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing.''

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–1050.

Written requests should contain individual's full name, Social Security Number (SSN), current address and telephone number.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–1050.

Written request should contain individual's full name, Social Security Number (SSN), current address and telephone number.''

* * * * *

T7901a

SYSTEM NAME:

Standard Negotiable Instrument Processing System.

SYSTEM LOCATION:

Defense Information Systems Agency, Defense Enterprise Computing Center—Ogden, 7879 Wardleigh Road, Building 891, Hill Air Force Base, UT 84056–5997.

Defense Finance and Accounting Service—Indianapolis, 8899 E. 56th Street, Indianapolis, IN 46249–2700.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States Army Active and Reserve military members.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's name, Social Security Number (SSN), home and mailing address, military branch of service, member's status, check payment information such as check numbers, and payee names.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; Department of Defense Financial Management Regulation (DoDFMR) 7000.14–R, Volume 5; 5 U.S.C. Sections 3512 and 3513 and E.O. 9397 (SSN).

PURPOSE(S):

A processing system, designed to process checks for U.S. Army Active and Reserve military members. As a management tool it will produce reports for reconciliation of these checks.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of the Treasury to provide information on check issues and electronic funds transfers.

To Federal Reserve banks to distribute payments made through the direct deposit system to financial organizations or their processing agents authorized by individuals to receive and deposit payments in their accounts.

The DoD ''Blanket Routine Uses'' published at the beginning of the DFAS compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Name, Social Security Number (SSN), and check number.

SAFEGUARDS:

Records are stored in an office building protected by guards, controlled screening, use of visitor registers, electronic access, and/or locks. Access to records is limited to individuals who are properly screened and cleared on a need to know basis in the performance of their duties. Passwords and digital signatures are used to control access to the system data, and procedures are in place to deter and detect browsing and unauthorized access. Physical and electronic access are limited to persons responsible for servicing and authorized to use the system.

RETENTION AND DISPOSAL:

Records may be temporary in nature and deleted when actions are completed, superseded, obsolete, or no longer needed. Other records may be cut off at the end of the payroll year, or

destroyed up to 6 years and 3 months after cutoff. Records are destroyed by degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Defense Finance and Accounting Service—Indianapolis, Information Technology Directorate, Systems Manager, 8899 E. 56th Street, Indianapolis, IN 46249–2700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–1050.

Written requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address inquiries to Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 8899 E. 56th Street, Indianapolis, IN 46249–1050.

Written requests should contain individual's full name, Social Security Number (SSN), current address, and telephone number.

CONTESTING RECORD PROCEDURES:

The DFAS rules for accessing records, for contesting contents and appealing initial agency determinations are published in DFAS Regulation 5400.11–R; 32 CFR part 324; or may be obtained from Defense Finance and Accounting Service, Freedom of Information/Privacy Act Program Manager, Corporate Communications and Legislative Liaison, 6760 E. Irvington Place, Denver, CO 80279–8000.

RECORD SOURCE CATEGORIES:

The individual, DFAS Defense Joint Military Payroll System, and the U.S. Army active and reserve members.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–243 Filed 1–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0001]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Amend a System of Records.

SUMMARY: The Department of Air Force proposes to amend a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The changes will be effective on February 11, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800. January 12, 2009

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 6, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 AFPC Q

SYSTEM NAME:

Educational Delay Action Notification (June 11, 1997, 62 FR 31793).

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with ''Air Force Personnel Center, Chief, Line Officer Accessions Branch, (HQ AFPC/DPSIP), Randolph Air Force Base, TX 78150–4712.''

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with ''Air Force Reserve Officers' Training Corps Cadets and/or Air Force Reserve Officers' Training Corps graduates (officers); Air Force Institute of Technology, and Air Force Reserve Personnel Center. Does not apply to Air National Guard personnel.''

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Applications from Air Force Reserve Officer Training Corps Cadets for delay in entering extended active duty status to pursue advanced degrees. Members remain in the Inactive Obligated Reserves until called to active duty.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''10 U.S.C. 2108, Advanced standing; interruption of training; delay in starting obligated service; release from program; Department of Defense Directive (DoDD) 1215.8, Senior Reserve Officers Training Corps Programs; Air Force Policy Directive 36–29, Accession of Air Force Military Personnel as implemented by Air Force Instruction 36–2009, Delay in Active Duty for AFROTC Graduates and E.O. 9397 (SSN).''

PURPOSE(S):

Delete entry and replace with ''Used to inform and explain procedures for delaying the entry to extended active duty of Air Force Reserve Officer Training Corps graduates commissioned as second lieutenants in the Inactive Obligated Air Force Reserves.''

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with ''Tracks cadet application for delays to Entry on Active Duty for the purpose of pursuing graduate or professional studies.

In addition to those disclosures generally permitted under 5 U.S.C. 552a (b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a (b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.''

* * * * *

STORAGE:

Delete entry and replace with ''Maintained in visible file binders/cabinets and electronic storage media.''

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Air Force Personnel Center, Line Officer Accessions Branch, (HQ AFPC/DPSIP), 550 C Street West, Ste 10 Randolph Air Force Base, TX 78150–4712.''

NOTIFICATION PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Air Force Personnel Center, Line Officer Accessions Branch, (HQ AFPC/DPSIP), 550 C Street West Ste 10, Randolph Air Force Base, TX 78150–4712.

Inquiries should have complete name, address, telephone number and signature certified by a notary public.''

RECORDS ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Air Force Personnel Center, Line Officer Accessions Branch, (HQ AFPC/DPSIP), 550 C Street West, Ste 10, Randolph Air Force Base, TX 78150–4712.

Inquiries should have complete name, address, telephone number and signature certified by a notary public.''

CONTESTING RECORDS PROCEDURES:

Delete entry and replace with ''The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332,Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.''

* * * * *

F036 AFPC Q

SYSTEM NAME:

Educational Delay Action Notification.

SYSTEM LOCATION:

Air Force Personnel Center, Chief, Line Officer Accessions Branch, (HQ AFPC/DPSIP), Randolph Air Force Base, TX 78150–4712.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve Officers' Training Corps Cadets and/or Air Force Reserve Officers' Training Corps graduates (officers); Air Force Institute of Technology, and Air Force Reserve Personnel Center. Does not apply to Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Applications from Air Force Reserve Officer Training Corps Cadets for delay in entering extended active duty status to pursue advanced degrees. Members remain in the Inactive Obligated Reserves until called to active duty.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 2108, Advanced standing; interruption of training; delay in starting obligated service; release from program; Department of Defense Directive (DoDD) 1215.8, Senior Reserve Officers Training Corps Programs; Air Force Policy Directive 36–29, Accession of Air Force Military Personnel as implemented by Air Force Instruction 36–2009, Delay in Active Duty for AFROTC Graduates and E.O 9397 (SSN).

PURPOSE(S):

Used to inform and explain procedures for delaying the entry to extended active duty of Air Force Reserve Officer Training Corps graduates commissioned as second lieutenants in the Inactive Obligated Air Force Reserves.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Tracks cadet application for delays to Entry on Active Duty (EAD) for the purpose of pursuing graduate or professional studies.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and electronic storage media.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Disapproved applications are destroyed after 6 months; approved applications are destroyed on completion of delay.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Air Force Personnel Center, Line Officer Accessions Branch, (HQ AFPC/DPSIP), 550 C Street West, Ste. 10 Randolph Air Force Base, TX 78150–4712.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Air Force Personnel Center, Line Officer Accessions Branch, (HQ AFPC/DPSIP), 550 C Street West Ste. 10, Randolph Air Force Base, TX 78150–4712.

Inquiries should have complete name, address, telephone number and signature certified by a notary public.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Air Force Personnel Center, Line Officer Accessions Branch, (HQ AFPC/DPSIP), 550 C Street West, Ste. 10, Randolph Air Force Base, TX 78150–4712.

Inquiries should have complete name, address, telephone number and signature certified by a notary public.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 33–332, Privacy Act Program; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–235 Filed 1–9–09; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID USAF–2009–0002]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to Reinstate a System of Records.

SUMMARY: The Department of Air Force proposes to reinstate a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

After review, it has been determined that the records covered under this

previously deleted notice (*see* 73 FR 66872, November 12, 2008) are not covered elsewhere as stated; therefore, this notice is being reinstated.

DATES: This action will be effective on February 11, 2009 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Privacy Act Officer, Office of Warfighting Integration and Chief Information Officer, SAF/XCPPI, 1800 Air Force Pentagon, Washington, DC 20330–1800.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Brodie at (703) 696–6488.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of Air Force proposes to reinstate a system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The previous system of records notice is being republished in its entirety, below. The reinstatement is not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: January 6, 2009.

Morgan E. Frazier,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F031 AFMC A

SYSTEM NAME:

AFMC Badge and Vehicle Control Records.

SYSTEM LOCATION:

Headquarters Air Force Materiel Command/SP, Wright-Patterson Air Force Base, OH 45433–5320 and Air Force Materiel Command bases. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Materiel Command (AFMC) military and civilian personnel and visitors to AFMC headquarters and installations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Badge and vehicle control records to include name; home address; home telephone; citizenship; grade or rank; Social Security Number; clearance level; company employed by; military address; vehicle state license tag data; vehicle make, year, type and color; decal number; revoked license status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and E.O. 9397 (SSN).

PURPOSE(S):

Badge records are used to record building/area entry credential information, including information on the loss or theft of these credentials.

Motor vehicle records are used to identify vehicles parked in an unsafe manner, enforce vehicle flow plan, notify owners in case of evacuation and maintain effective security plan.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and computer output products, and in paper form.

RETRIEVABILITY:

Records are retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by persons responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets, locked rooms, or buildings with controlled entry. Computer records are controlled by computer system software.

RETENTION AND DISPOSAL:

Badge records are destroyed immediately after badge is permanently surrendered or confiscated. Vehicle records are destroyed immediately after termination of registration. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Materiel Command/SP, Wright-Patterson Air Force Base, OH 45433–5320, or Chief of Security Police at AFMC installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to Headquarters Air Force Materiel Command/SP, Wright-Patterson Air Force Base, OH 45433–5320, or Chief of Security Police at AFMC installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to Headquarters Air Force Materiel Command/SP, Wright-Patterson Air Force Base, OH 45433–5320, or Chief of Security Police at AFMC installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals and from automated system interface.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. E9–242 Filed 1–9–09; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Director, Information Collection Clearance Division, 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 February 11, 2009.

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, New Executive Office Building, Washington, DC 20503 or faxed to (202) 395–6974.

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: January 6, 2009.

Angela C. Arrington,

IC Clearance Official, Regulatory Information Management Services, Office of Management.

Office of Innovation and Improvement

Type of Review: New Collection.

Title: School Leadership Program (SLP) Annual Performance Report.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 22.

Burden Hours: 880.

Abstract: To implement a data collection process for a new annual reporting for Government Performance Results Act (GPRA) purposes for the School Leadership Program. These data are necessary to assess the performance of the SLP grantees in meeting their stated goals and objectives and to report to ED's Budget Service.

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 3875. 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 the Internet address *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. E9–244 Filed 1–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Arbitration Panel Decision Under the Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel decision under the Randolph-Sheppard Act.

SUMMARY: The Department of Education (Department) gives notice that on August 2, 2008, an arbitration panel rendered a decision in the matter of *Janet Dickey* v. *Wisconsin Department of Workforce Development, Case no. R–S/07–10).* This panel was convened by the Department under 20 U.S.C. 107d–1(a), after the Department received a complaint filed by the petitioner, Janet Dickey.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the full text of the arbitration panel decision from Suzette E. Haynes, U.S. Department of Education, 400 Maryland Avenue, SW., room 5022, Potomac Center Plaza, Washington, DC 20202–2800. Telephone: (202) 245–7374. 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 accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT**.

SUPPLEMENTARY INFORMATION: Under section 6(c) of the Randolph-Sheppard Act (the Act), 20 U.S.C. 107d–2(c), the Secretary publishes in the **Federal Register** a synopsis of each arbitration panel decision affecting the administration of vending facilities on Federal and other property.

Background

Ms. Janet Dickey (Complainant) alleged that the Wisconsin Department of Workforce Development, Division of Vocational Rehabilitation, the state licensing agency (SLA) improperly administered the Act and the implementing regulations in 34 CFR part 395 concerning her management of an Army cafeteria at Fort McCoy, Wisconsin from April 1, 2003 until September 30, 2006. Specifically, Complainant alleged that the SLA failed to provide her with adequate training and management support services to operate the cafeteria.

Following the award of the cafeteria contract to the SLA, the SLA entered into a management service agreement with Blackstone Consulting Inc. (BCI). BCI is a full service contractor who has experience with military dining food service contracts and with teaming partnership agreements. The management service agreement between the SLA and BCI provided that the SLA and the Complainant would rely on BCI's experience and expertise to manage the cafeteria. Also, the management service agreement provided that BCI would provide Complainant with training for the life of the contract.

Thereafter, the Complainant and BCI entered into a joint venture agreement, which stated that BCI would provide: (a) Consulting services to the SLA and the Complainant by directly negotiating the bidding performance criteria for the cafeteria contract at Fort McCoy, (b) food service in accordance with the cafeteria contract with the Army, and (c) on-the-job training for the Complainant in coordination with the SLA so that Complainant would be prepared to carry out the management responsibilities of the cafeteria contract.

By letter dated July 20, 2006, the Army's Fort McCoy Contract Officer (Contract Officer) contacted the SLA's Business Enterprise Program (BEP) Manager to notify the SLA that there had been numerous problems concerning the cafeteria contract. The Contract Officer alleged problems with such things as: opening the cafeteria late or not at all, running out of food, and

food service staff not reporting for work. The Contract Officer also stated in the letter that the SLA had fifteen days to correct the deficiencies.

On August 1, 2006, the Contract Officer sent another letter to the SLA indicating that the problems with the cafeteria had become worse. The letter also stated that unless the SLA took steps to correct the problems by August 11, 2006, the Army was considering terminating the cafeteria contract. On August 2, 2006, the SLA responded, stating that Complainant was the interim on-site manager and would be responsible for the overall management and coordination of the contract.

On August 14, 2006, the Contract Officer sent a follow up letter to the SLA, withdrawing the Army's earlier letter of intent to renew the contract for option year four due to continued contract deficiencies. The next day the SLA responded to the Contract Officer's letter acknowledging receipt of the withdrawal letter. The SLA also stated that it would not seek to exercise option year four of the contract.

During 2006, Complainant received two deficiency notices from the Army and brought her concerns to the attention of BEP Manager. However, Complainant alleged that the BEP Manager informed her that her role was to work with BCI, the teaming partner, and that BCI was responsible for the provision of food services under the contract. Subsequently, Complainant requested a state fair hearing on this matter.

A hearing was held on March 14, 2007. On March 31, 2007, the hearing officer affirmed the SLA's decision not to renew the cafeteria contract at Fort McCoy. On April 18, 2007, the SLA adopted the hearing officer's decision as final agency action. It was this decision that Complainant sought review by a Federal arbitration panel. A Federal arbitration hearing was held on May 22, 2008.

According to the arbitration panel, the issue to be resolved was: Whether the Wisconsin Department of Workforce Development complied with its responsibilities to blind vendors under the Act and Chapter 47 of the Wisconsin Statute in relation to the contract in effect at Fort McCoy between April 1, 2003, and September 30, 2006.

Arbitration Panel Decision

After reviewing all of the records and hearing testimony of witnesses, the panel ruled that the Army, after due notice and an opportunity to correct the deficiencies, was poised to cancel the food service contract at Fort McCoy because of repeated failures by the SLA to provide full service as required, inadequate staffing, and missed meals. The panel further concluded that while Army had detailed its complaint explicitly, the SLA had failed to properly respond. However, rather than correct the deficiencies, the SLA decided not to exercise its option for the fourth year of the contract. Accordingly, the panel ruled that the SLA failed in its responsibility to the Complainant regarding her management of the cafeteria at Fort McCoy.

Complainant requested that the Federal arbitration panel award her $550,000 to make her whole. The panel ruled that this amount was excessive. Instead, the panel averaged the amounts on Complainant's W–2 statements from 2003 to 2006. The total of the average amounts on the W–2 statements equaled $237,234.68. However, the panel reduced the award to $225,000 considering the fact that Complainant did not manage the cafeteria during the entire contract period. Additionally, the panel directed the SLA to help Complainant in expanding and upgrading her present facility.

The views and opinions expressed by the panel do not necessarily represent the views and opinions of the Department.

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.*

Dated: January 6, 2009.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–365 Filed 1–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Safe and Drug-Free Schools; Overview Information; Grants for the Integration of Schools and Mental Health Systems; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Number: 84.215M.

Dates:

Applications Available: January 12, 2009.

Deadline for Transmittal of Applications: February 23, 2009.

Deadline for Intergovernmental Review: April 24, 2009.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: Grants for the Integration of Schools and Mental Health Systems will provide funds to increase student access to high-quality mental health care by developing innovative approaches that link school systems with the local mental health system.

Priority: In accordance with 34 CFR 75.105(b)(2)(iv), this priority is from section 5541 of the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7269).

Absolute Priority: For FY 2009 and any subsequent year in which we make awards from the list of unfunded applicants from this competition, this priority is an absolute priority. Under 34 CFR 75.105(c)(3) we consider only applications that meet this priority.

This priority is:

Increasing student access to quality mental health care by developing innovative approaches to link local school systems with the local mental health system. A program funded under this absolute priority must include all of the following activities:

(1) Enhancing, improving, or developing collaborative efforts between school-based service systems and mental health service systems to provide, enhance, or improve prevention, diagnosis, and treatment services to students.

(2) Enhancing the availability of crisis intervention services, appropriate referrals for students potentially in need of mental health services, and ongoing mental health services.

(3) Providing training for the school personnel and mental health professionals who will participate in the program.

(4) Providing technical assistance and consultation to school systems and mental health agencies and families participating in the program.

(5) Providing linguistically appropriate and culturally competent services.

(6) Evaluating the effectiveness of the program in increasing student access to quality mental health services, and making recommendations to the Secretary about sustainability of the program.

Additional Requirements: The following requirements are from the notice of final requirements for this program, published in the **Federal Register** on May 30, 2006 (71 FR 30778).

Requirement 1—Coordination of Activities

Recipients of a grant under the Grants for the Integration of Schools and Mental Health Systems program are required to coordinate project activities with projects funded under the Department of Health and Human Services' Substance Abuse and Mental Health Services Administration's Mental Health Transformation State Infrastructure Grants (MHTSIG) program (CFDA 93.243), if a grantee's State receives a MHTSIG award. If a recipient of a grant under the Grants for the Integration of Schools and Mental Health Systems program has received or receives a grant under the Department of Education's Readiness and Emergency Management for Schools (REMS) program (CFDA 84.184E), formerly known as the Emergency Response and Crisis Management program, the recipient must coordinate mental health service activities under this grant with those planned under its REMS grant. Projects funded by this program must complement, rather than duplicate, existing or ongoing efforts.

Requirement 2—Safe Schools/Healthy Students Recipients Excluded From Receiving Awards

Former or current recipients under the Safe Schools/Healthy Students program (CFDA 84.184L) are not eligible to receive a Grant for the Integration of Schools and Mental Health Systems. Recipients of Safe Schools/Healthy Students awards are responsible for completing a scope of work under that program that is very similar to the activities required under the Grants for the Integration of Schools and Mental Health Systems program. By restricting the applicant pool to eliminate former or current grantees under the Safe Schools/Healthy Students program, we will be able to focus Federal funds on entities that have not yet received Federal support to develop and implement strong linkages with other entities in their communities for the provision of mental health services to students.

Applicants may compete for both the Grants for the Integration of Schools and Mental Health Systems and Safe Schools/Healthy Students programs in the same year; if applicants are deemed eligible for funding in both grant competitions, the applicant will receive the larger and more comprehensive of the awards.

Requirement 3—Preliminary Interagency Agreement

Applicants for an award under the Grants for the Integration of Schools and Mental Health Systems program must develop and submit with their applications a preliminary interagency agreement (IAA). The IAA must contain the signatures of an authorized representative of at least (1) one or more State or local educational agencies or Indian tribes; (2) one or more juvenile justice authorities; and (3) one or more State or local public mental health agencies. This preliminary IAA would confirm the commitment of these partners to complete the work under the proposed project, if funded. If the applicant is funded, recipients will complete a final IAA as required by section 5541(e) of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The final IAA must be completed and submitted to us, signed by all parties, no later than 12 months after the award date.

Applications that do not include the proposed preliminary IAA with all of the required signatures will be rejected and not be considered for funding.

Requirement 4—Inclusion of Parental Consent Considerations in Final IAA

The final Interagency Agreement (IAA) must include a description of policies and procedures that would ensure appropriate parental or caregiver consent for any planned services, pursuant to State or local laws or other requirements.

Requirement 5—Provision of Direct Services

Grant funds under this program must not be used to provide direct services to students.

Program Authority: 20 U.S.C. 7269.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 77, 79, 80, 81, 82, 84, 85, 97, 98, 99, and 299. (b) The notice of final requirements for this program, published in the **Federal Register** on May 30, 2006 (71 FR 30778).

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: The Administration's budget request for FY 2009 does not include funds for this program. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2010 from the list of unfunded applicants from this competition.

Estimated Range of Awards: $150,000–$400,000.

Estimated Average Size of Awards: $325,000.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 24 months. Budgets should be developed for a single award with a project period of up to 24 months. No continuation awards will be provided.

III. Eligibility Information

1. *Eligible Applicants:* State educational agencies (SEAs), local educational agencies (LEAs), including charter schools that are considered LEAs under State law, and Indian tribes. Additional eligibility requirements are listed elsewhere in this notice under section I. Funding Opportunity Description, *Additional Requirements*.

2. a. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

b. *Supplement-Not-Supplant:* This program involves supplement-not-supplant funding requirements in accordance with section 5541(i) of the ESEA.

IV. Application and Submission Information

1. *Address to Request Application Package:* You can obtain an application package via the Internet or from the Education Publications Center (ED Pubs). To obtain a copy via the Internet, use the following address: *http://www.ed.gov/programs/mentalhealth/applicant.html*. To obtain a copy from ED Pubs, write, fax, or call the following: Education Publications Center, P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *http://www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov*.

If you request an application from ED Pubs, be sure to identify this program or competition as follows: CFDA number 84.215M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:*

Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this program.

3. *Submission Dates and Times:*

Applications Available: January 12, 2009.

Deadline for Transmittal of Applications: February 23, 2009.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: April 24, 2009.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this program.

5. *Funding Restrictions:* Grant funds under this program must not be used to provide direct services to students or families. We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements*:

Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications*.

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Grants for the Integration of Schools and Mental Health Systems, 84.215M, is included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *http://www.Grants.gov*. Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Grants for the Integration of Schools and Mental Health Systems at *http://www.Grants.gov*. You must search for the downloadable application package for this program by the CFDA number. Do not include the CFDA number's alpha suffix in your search (e.g., search for 84.215, not 84.215M).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this program to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *http://e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf*.
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *http://www.grants.gov/applicants/get_registered.jsp)*. These steps include (1) Registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *http://www.grants.gov/section910/Grants.govRegistrationBrochure.pdf*). You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this

paragraph or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215M), LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, *Attention:* (CFDA Number 84.215M), 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package.

2. *Review and Selection Process:* Additional factors we consider in selecting an application for an award are the equitable distribution of grants among the geographical regions of the United States and among urban, suburban, and rural populations.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. You must also submit an interim progress report twelve months after the award date. This report should provide the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting,

please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

4. *Performance Measures:* The Secretary has established the following key performance measures for assessing the effectiveness of the Grants for the Integration of Schools and Mental Health Systems program:

a. The percentage of schools served by the grant that have comprehensive, detailed linkage protocols in place; and

b. The percentage of school personnel served by the grant who are trained to make appropriate referrals to mental health services.

These two measures constitute the Department's measures of success for this program. Consequently, applicants for a grant under this program are advised to give careful consideration to these two measures in conceptualizing the approach and evaluation of their proposed project. If funded, applicants will be asked to collect and report data in their performance and final reports about progress toward these measures. The Secretary will also use this information to respond to the evaluation requirements concerning this program established in section 5541(f) of the ESEA. For specific requirements on grantee reporting, please go to *http://www.ed.gov/fund/grant/apply/appforms/appforms.html*.

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: Sarah Allen, U.S. Department of Education, 400 Maryland Avenue, SW., room 10079, Potomac Center Plaza (PCP), Washington, DC 20202–6450. Telephone: (202) 245–7875 or by e-mail: *sarah.allen@ed.gov*.

If you use a TDD, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (e.g., braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. *Electronic Access to This Document:* You can view this document, as well as all other documents of this Department 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.*

Dated: January 6, 2009.

Deborah A. Price,

Assistant Deputy Secretary for the Office of Safe and Drug-Free Schools.

[FR Doc. E9–364 Filed 1–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Public Hearing

AGENCY: U.S. Department of Education, National Assessment Governing Board.

ACTION: Notice of Public Hearing.

SUMMARY: The National Assessment Governing Board is announcing a public hearing on January 30, 2009 to obtain comment on policy options for testing and reporting of Students with Disabilities (SD) and English Language Learners (ELL) on the National Assessment of Educational Progress (NAEP).

Public and private parties and organizations are invited to present written and/or oral testimony. The hearing will be held at the University of Texas at El Paso (UTEP) in the El Paso Natural Gas Conference Center, Wiggins Road, across from the UTEP Library, El Paso, TX 79968 from 9:30 a.m. to 3 p.m. MST.

This notice sets forth the schedule and proposed agenda of a forthcoming public hearing of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to provide comment. Individuals who will need special accommodations in order to attend the hearing (such as interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than January 23, 2009. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: January 30, 2009.

Location: El Paso, Texas. University of Texas at El Paso (UTEP) in the El Paso Natural Gas Conference Center, Wiggins Road, across from the UTEP Library, El Paso, TX 79968.

Time: 9:30 a.m. to 3 p.m. MST.

Background

Under Public Law 107–279, the National Assessment Governing Board (NAGB) is responsible for determining the content and methodology of the National Assessment of Educational Progress (NAEP). The assessment is required to provide a fair and accurate measurement of student academic achievement through a random sampling process that produces representative data for the nation, the states, and other participating jurisdictions.

Despite changes in policy during the past decade, variations in inclusion and accommodation rates continue for students with disabilities and English language learners among states and urban districts participating in the National Assessment. These differences—both between jurisdictions and over time—continue to prompt concern about the fairness and comparability of NAEP results.

The Governing Board has established an Ad Hoc Committee of Board members to conduct a comprehensive examination of NAEP testing and reporting of these two student groups. The Committee is considering a range of possible options in formulating recommendations to better assure that NAEP samples are fully representative and produce comparable results. The Committee is also considering whether changes are needed in NAEP reporting to alert the public to significant variations that persist and the impact they may have on reported results.

In carrying out its work the Ad Hoc Committee plans to consult widely with state and local officials and representatives of groups concerned with the populations and issues involved. It intends to draw on persons with strong research, policy, and practical backgrounds.

The policy options being considered are available under supplementary information in this notice and on the Web site of the Governing Board at *http://www.nagb.org*. Other related material on the Governing Board and NAEP may be found at this Web site and at *http://www.nces.ed.gov/nationsreportcard*.

The Board is seeking comment from policymakers, teachers, researchers, state and local school administrators, specialists in SD and ELL students, parents of children in elementary and

secondary schools, representatives of interested organizations, and members of the public. Representatives of the Governing Board will conduct the hearing to receive testimony, and may ask clarifying questions or respond to presentations. Oral presentations should not exceed ten minutes. Testimony will become part of the public record.

All views will be considered by the Ad Hoc Committee and the full Board. It is anticipated that the Committee will make recommendations to the Governing Board at the Board meetings in March and May 2009.

To register to present oral testimony on January 30, 2009 at the Conference Center at the University of El Paso at El Paso, please call Tessa Regis, of the National Assessment Governing Board staff, at 202–357–7500 or send an e-mail to *Tessa.Regis@ed.gov* by 4 p.m. (Eastern Time) on Monday, January 26, 2009. Written testimony should be sent by mail, fax or e-mail for receipt in the Board office by February 6, 2009.

The Board will make an effort to hear testimony from all persons who wish to address it at the hearing without prior registration. Speakers are encouraged to bring written statements for distribution at the hearing.

Testimony should be sent to: National Assessment Governing Board, 800 North Capitol Street, NW.—Suite 825, Washington, DC 20002, *Attention:* Lawrence Feinberg, *Fax:* (202) 357–6945, *e-mail: larry.feinberg@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Lawrence Feinberg, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 20002–4233, *Telephone:* (202) 357–6942.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended. The Board formulates policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, designing the methodology of the assessment, developing appropriate student achievement levels for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

The policy options being considered by the Ad Hoc Committee are presented below. They are not mutually exclusive. Some could go into effect quickly while others would be for medium-term or long-range implementation. NAEP is a representative-sample survey, designed to produce valid, comparable data on the academic achievement of large groups of students. It is prohibited by law from providing results for individual children or schools. The options are being considered because of concern that variations in exclusion and accommodation rates may jeopardize the fairness and comparability of NAEP results.

The options on which public comment is sought are as follows:

(1) *Retain current procedures*—Testing conditions on NAEP for SD and ELL students follow those on state tests with limited exceptions. Accommodation and exclusion rates are posted in the appendix of NAEP reports. No adjusted scores or cautionary flags.

(2) *Adopt uniform national rules for accommodations and exclusions:*

(a) For Students with Disabilities—Determine testing conditions according to the severity, category, and/or nature of disability or based on brief screener exam.

(b) For English Language Learners—Determine whether to take NAEP in English by English language proficiency screener. Provide NAEP in Spanish if below cut-score.

(c) Provide incentive for schools to encourage testing of SD and ELL students by scoring excluded students at the 5th percentile nationwide instead of the current practice of exclusions not affecting group average. Incentive may be needed to accept uniform rules because student participation in NAEP is voluntary by law.

(3) *Conduct targeted testing at ability level:*

(a) Offer to all students, using assessment booklets at different levels of difficulty—low, medium, and high.

(b) Offer less difficult or ''accessible'' booklets to SD and ELL only. Might be similar in concept to NCLB ''alternate assessments'' but must be on NAEP scale.

Determine level by brief locator test or percentile score on state assessment. Follow standard testing procedures.

(4) *Adjust scores*—Use full population estimates or variant to adjust for exclusions. Present as principal means of reporting in NAEP Report Cards, alternate presentation in appendix, or prominently displayed on NAEP Web site.

(5) *Add cautionary flags:*

(a) For exclusions, if 5 percent or more of sample is excluded from NAEP testing, a cautionary flag would accompany a state's scores. This would be similar to rule in the TIMSS and PIRLS international assessments. Might also flag if exclusion rate changed more than 3 percentage points from prior assessment year.

(b) For accommodations, flag if 10 percent or more of sample is tested under non-standard conditions OR accommodation rate changed more than 5 percentage points from prior assessment year.

(c) Use ''reasonable'' target exclusion rates (rather than a uniform rate) that vary by demography and testing practice of states. Flag if actual rates exceed targets or change by a defined margin.

(6) *Research validity of accommodations most widely-used on state tests*—Results may expand or reduce the list of accommodations prohibited by NAEP because they alter a fundamental attribute of the assessment, e.g. reading-aloud the reading assessment or allowing calculators on all sections of math. Studies may include extended time to help determine if time should be deemed fundamental.

(7) *Offer a screener exam to determine whether students can ''meaningfully participate''* in the National Assessment without an accommodation that is provided on state tests but is not permitted by NAEP. Currently, these students are routinely excused from the National Assessment.

(8) *Change rules for IEPs to have NAEP considered separately from state tests*—Rules for preparing individualized education programs (IEPs) for SD students may be altered by state action or revised by federal regulation, guidance, or law. Separate consideration for participating in NAEP from IEP for state tests because the National Assessment is required to produce valid representative-sample group results for the nation, states, and urban districts and may not provide data or impose consequences on individual students and schools.

(9) *Make minor changes* in NAEP report language and placement of information about exclusions and accommodations.

In addition to commenting on these options, members of the public are also encouraged to present other relevant views and recommendations.

A detailed summary of the hearing that is informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC,

from 9 a.m. to 5 p.m. Eastern Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department 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/index.html*. 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*.

Dated: *January 6, 2009.*

Mary Crovo,

Interim Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. E9–261 Filed 1–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Public Hearing

AGENCY: U.S. Department of Education, National Assessment Governing Board.

ACTION: Notice of Public Hearing.

SUMMARY: The National Assessment Governing Board is announcing a public hearing on February 4, 2009 to obtain comment on policy options for testing and reporting of Students with Disabilities (SD) and English Language Learners (ELL) on the National Assessment of Educational Progress (NAEP).

Public and private parties and organizations are invited to present written and/or oral testimony. The hearing will be held in the Great Hall at the Charles Sumner School, 1201 17th Street, NW., Washington, DC from 9:30 a.m. to 3:00 p.m. est.

This notice sets forth the schedule and proposed agenda of a forthcoming public hearing of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under Section 10 (a) (2) of the Federal Advisory Committee Act. This document is intended to notify members of the general public of their opportunity to provide comment. Individuals who will need special accommodations in order to attend the hearing (such as interpreting services, assistive listening devices, materials in alternative format) should notify Munira Mwalimu at 202–357–6938 or at *Munira.Mwalimu@ed.gov* no later than January 28, 2009. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities.

DATES: February 4, 2009.

Location: Washington, DC Charles Sumner School, 1201 17th Street, NW., Washington, DC 20036.

Time: 9:30 a.m. to 3:00 p.m. est.

Background

Under Public Law 107–279, the National Assessment Governing Board (NAGB) is responsible for determining the content and methodology of the National Assessment of Educational Progress. The assessment is required to provide a fair and accurate measurement of student academic achievement through a random sampling process that produces representative data for the nation, the states, and other participating jurisdictions.

Despite changes in policy during the past decade, variations in inclusion and accommodation rates continue for students with disabilities and English language learners among states and urban districts participating in the National Assessment. These differences—both between jurisdictions and over time—continue to prompt concern about the fairness and comparability of NAEP results.

The Governing Board has established an Ad Hoc Committee of Board members to conduct a comprehensive examination of NAEP testing and reporting of these two student groups. The Committee is considering a range of possible options in formulating recommendations to better assure that NAEP samples are fully representative and produce comparable results. The Committee is also considering whether changes are needed in NAEP reporting to alert the public to significant variations that persist and the impact they may have on reported results.

In carrying out its work the Ad Hoc Committee is to consult widely with state and local officials and representatives of groups concerned with the populations and issues involved. It intends to draw on persons with strong research, policy, and practical backgrounds.

The policy options being considered are available under supplementary information in this notice and on the Web site of the Governing Board at *www.nagb.org*. Other related material on the Governing Board and the National Assessment of Educational Progress may be found at this Web site and at *www.nces.ed.gov/nationsreportcard*.

The Board is seeking comment from policymakers, teachers, researchers, state and local school administrators, specialists in SD and ELL students, parents of children in elementary and secondary schools, representatives of interested organizations, and members of the public. Representatives of the Governing Board will conduct the hearing to receive testimony, and may ask clarifying questions or respond to presentations. Oral presentations should not exceed ten minutes. Testimony will become part of the public record.

All views will be considered by the Ad Committee and by the full Board. It is anticipated that the Committee will make recommendations to the Governing Board at the NAGB meetings in March and May 2009.

To register to present oral testimony on February 4, 2009 at the Charles Sumner School in Washington, DC, please call Tessa Regis, of the NAGB staff, at 202–357–7500 or send an e-mail to *Tessa.Regis@ed.gov* by Friday, January 30, 2009. Written testimony should be sent by mail, fax or e-mail for receipt in the Board office by February 6, 2009.

The Board will make an effort to hear testimony from all persons who wish to address it at the hearing without prior registration. Speakers are encouraged to bring written statements for distribution at the hearing.

Testimony should be sent to: National Assessment Governing Board, 800 North Capitol Street, NW.—Suite 825, Washington, DC 20002, *Attn:* Lawrence Feinberg, *Fax:* (202) 357–6945, *E-mail: Larry.Feinberg@ed.gov*.

FOR FURTHER INFORMATION CONTACT: Lawrence Feinberg, National Assessment Governing Board, 800 North Capitol Street, NW., Suite 825, Washington, DC, 20002–4233, Telephone: (202) 357–6942.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 412 of the National Education Statistics Act of 1994, as amended. The Board formulates policy guidelines for the National Assessment of Educational Progress (NAEP). The Board's responsibilities include selecting subject areas to be assessed, developing assessment specifications and frameworks, designing the methodology of the assessment, developing appropriate student achievement levels

for each grade and subject tested, developing standards and procedures for interstate and national comparisons, developing guidelines for reporting and disseminating results, and releasing initial NAEP results to the public.

The policy options being considered by the Ad Hoc Committee are presented below. They are not mutually exclusive. Some could go into effect quickly while others would be for medium-term or long-range implementation. NAEP is a representative-sample survey, designed to produce valid, comparable data on the academic achievement of large groups of students. It is prohibited by law from providing results for individual children or schools. The options are being considered because of concern that variations in exclusion and accommodation rates may jeopardize the fairness and comparability of NAEP results.

The options on which public comment is sought are as follows:

(1) *Retain current procedures*—Testing conditions on NAEP for SD and ELL students follow those on state tests with limited exceptions. Accommodation and exclusion rates are posted in the appendix of NAEP reports. No adjusted scores or cautionary flags.

(2) *Adopt uniform national rules for accommodations and exclusions*

(a) For Students with Disabilities—Determine testing conditions according to the severity, category, and/or nature of disability or based on brief screener exam.

(b) For English Language Learners—Determine whether to take NAEP in English by English language proficiency screener. Provide NAEP in Spanish if below cut-score.

(c) Provide incentive for schools to encourage testing of SD and ELL students by scoring excluded students at the 5th percentile nationwide instead of the current practice of exclusions not affecting group average. Incentive may be needed to accept uniform rules because student participation in NAEP is voluntary by law.

(3) *Conduct targeted testing at ability level*

(a) Offer to all students, using assessment booklets at different levels of difficulty—low, medium, and high.

(b) Offer less difficult or ''accessible'' booklets to SD and ELL only. Might be similar in concept to NCLB ''alternate assessments'' but must be on NAEP scale.

Determine level by brief locator test or percentile score on state assessment. Follow standard testing procedures.

(4) *Adjust scores*—Use full population estimates or variant to adjust for exclusions. Present as principal means of reporting in NAEP Report Cards, alternate presentation in appendix, or prominently displayed on NAEP Web site.

(5) *Add cautionary flags*

(a) For exclusions, if 5 percent or more of sample is excluded from NAEP testing, a cautionary flag would accompany a state's scores. This would be similar to rule in the TIMSS and PIRLS international assessments. Might also flag if exclusion rate changed more than 3 percentage points from prior assessment year.

(b) For accommodations, flag if 10 percent or more of sample is tested under non-standard conditions OR accommodation rate changed more than 5 percentage points from prior assessment year.

(c) Use ''reasonable'' target exclusion rates (rather than a uniform rate) that vary by demography and testing practice of states. Flag if actual rates exceed targets or change by a defined margin.

(6) *Research validity of accommodations most widely-used on state tests*—Results may expand or reduce the list of accommodations prohibited by NAEP because they alter a fundamental attribute of the assessment, *e.g.* reading-aloud the reading assessment or allowing calculators on all sections of math. Studies may include extended time to help determine if time should be deemed fundamental.

(7) *Offer a screener exam to determine whether students can ''meaningfully participate''* in the National Assessment without an accommodation that is provided on state tests but is not permitted by NAEP. Currently, these students are routinely excused from the National Assessment.

(8) *Change rules for IEPs to have NAEP considered separately from state tests*—Rules for preparing individualized education programs (IEPs) for SD students may be altered by state action or revised by federal regulation, guidance, or law. Separate consideration for participating in NAEP from IEP for state tests because the National Assessment is required to produce valid representative-sample group results for the nation, states, and urban districts and may not provide data or impose consequences on individual students and schools.

(9) *Make minor changes* in NAEP report language and placement of information about exclusions and accommodations.

In addition to commenting on the options, members of the public are also encouraged to present other relevant views and recommendations.

A detailed summary of the hearing that is informative to the public and consistent with the policy of section 5 U.S.C. 552b(c) will be available to the public within 14 days of the meeting. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite #825, 800 North Capitol Street, NW., Washington, DC, from 9:00 a.m. to 5:00 p.m. Eastern Time, Monday through Friday.

Electronic Access to This Document: You may view this document, as well as all other documents of this Department 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/index.html* 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: *www.gpoaccess.gov/nara/index.html*.

Dated: January 6, 2009.

Mary Crovo,

Interim Executive Director, National Assessment Governing Board, U.S. Department of Education.

[FR Doc. E9–262 Filed 1–9–09; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; Overview Information: Training and Information for Parents of Children With Disabilities; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2009

Catalog of Federal Domestic Assistance (CFDA) Numbers: 84.328C and 84.328M.

Note: This notice invites applications for two separate competitions. For key dates, contact person information, and funding information regarding each competition, see the chart in the *Award Information* section of this notice.

Dates: *Applications Available:* See chart.

Deadline for Transmittal of Applications: See chart.

Deadline for Intergovernmental Review: See chart.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of this program is to ensure that parents of children with disabilities receive training and information to help improve results for their children.

Priorities: In accordance with 34 CFR 75.105(b)(2)(iv) and (v), these priorities are from allowable activities specified in the statute, or otherwise authorized in the statute (see sections 671, 672 and 681(d) of the Individuals with Disabilities Education Act (IDEA)). Each of the absolute priorities announced in this notice corresponds to a separate competition as follows:

Absolute priority	Competition CFDA No.
Community Parent Resource Centers	84.328C
Parent Training and Information Centers	84.328M

Absolute Priorities: For FY 2009 and any subsequent year in which we make awards based on the list of unfunded applications from these competitions, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), for each competition, we consider only applications that meet the absolute priority for that competition.

These priorities are:

Absolute Priority 1—Community Parent Resource Centers (84.328C).

Background:

This priority supports community parent resource centers (CPRCs) in targeted communities that will provide underserved parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities in that community, with the training and information they need to enable them to participate cooperatively and effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

For further information on the work of previously-funded centers, *see http://www.taalliance.org.*

Priority:

To be considered for funding under the Community Parent Resource Centers (CPRCs) absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

Application Requirements. An applicant must include in its application—

(a) A plan to implement the activities described in the *Project Activities* section of this priority; and

(b) A budget for attendance at the following:

(1) A three-day National Technical Assistance for Parent Centers Conference in Washington, DC during each year of the project period.

(2) A two-day Regional Technical Assistance for Parent Centers Conference, in the region in which the CPRC is located, during each year of the project period. Applicants should refer to *http://www.taalliance.org* for a list of regions.

Project Activities. To meet the requirements of this priority, the CPRC, at a minimum, must:

(a) Provide training and information that meets the training and information needs of parents of children with disabilities within the proposed targeted community to be served by the CPRC, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities.

Note: For purposes of this priority, ''targeted community to be served'' refers to a geographically defined, local community whose members experience significant isolation from available sources of information and support as a result of cultural, economic, linguistic, or other circumstances deemed appropriate by the Secretary.

(b) Carry out the following activities required of parent training and information centers:

(1) Serve the parents of infants, toddlers, and children, from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA.

(2) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children.

(3) Assist parents to—

(i) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(ii) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(iii) Participate in decision making processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(iv) Obtain appropriate information about the range, type, and quality of—

(A) Options, programs, services, technologies, practices, and interventions that are based on scientifically based research, to the extent practicable; and

(B) Resources available to assist children with disabilities and their families in school and at home, including information available through the Office of Special Education Programs' (OSEP) technical assistance and dissemination centers (*http://www.ed.gov/parents/needs/speced/resources.html*), and communities of practice (*http://www.tacommunities.org*);

(v) Understand the requirements of IDEA related to the provision of education and early intervention services to children with disabilities;

(vi) Participate in activities at the school level that benefit their children; and

(vii) Participate in school reform activities.

(4) In States where the State elects to contract with the CPRCs, contract with the State educational agencies (SEAs) to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process.

(5) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA.

(6) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law).

(7) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA.

(8) Assist parents in understanding, preparing for, and participating in, the resolution session described in section 615(f)(1)(B) of IDEA.

(c) Establish cooperative partnerships with any Parent Training and Information Centers (PTIs) and any other CPRCs funded in the State under sections 671 and 672 of IDEA, respectively.

(d) Be designed to meet the specific needs of families who experience significant isolation from available sources of information and support.

(e) Be familiar with the provision of special education, related services, and early intervention services in the CPRC's targeted community to be served to help ensure that children with disabilities are receiving appropriate services.

(f) Annually report to the Department on—

(1) The number and demographics of parents to whom the CPRC provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and the levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively.

(g) Respond to requests from the OSEP-funded National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs), and use the technical assistance services of the NTAC and Regional PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. Regional PTACS are charged with assisting parent centers with administrative and programmatic issues.

(h) In collaboration with OSEP and NTAC, participate in an annual collection of program data for the PTIs and CPRCs funded under sections 671 and 672 of IDEA, respectively.

(i) If the CPRC maintains a Web site, ensure that the Web site meets a government or industry-recognized standard for accessibility.

(j) Maintain ongoing communication with the OSEP Project Officer through phone conversations and e-mail communication.

Competitive Preference Priorities: Within this absolute priority, we give competitive preference to applications that address the following two priorities. Under 34 CFR 75.105(c)(2)(i), we will award up to 10 additional points to an application that meets these priorities.

Note: The 10 points an applicant can earn under these competitive preference priorities are in addition to those points awarded under the selection criteria for this competition (see *Selection Criteria* in section V in this notice). That is, an applicant meeting the competitive preference priorities could earn a maximum total of 110 points. These priorities are:

Competitive Preference Priority 1—Empowerment Zones, Enterprise Communities, or Renewal Communities.

We will award five points to an application that proposes to provide services to one or more Empowerment Zones, Enterprise Communities, or Renewal Communities that are designated within the areas served by the center. (A list of areas that have been selected as Empowerment Zones, Enterprise Communities, or Renewal Communities can be found at *http://egis.hud.gov/egis/cpd/rcezec/ezec_open.htm*)

To meet this priority, an applicant must indicate that it will—

(1) Either (i) design a program that includes special activities focused on the unique needs of one or more Empowerment Zones, Enterprise Communities, or Renewal Communities; or (ii) devote a substantial portion of program resources to providing services within, or meeting the needs of residents of, these zones and communities; and

(2) As appropriate, contribute to the strategic plan of the Empowerment Zones, Enterprise Communities, or Renewal Communities and become an integral component of the Empowerment Zone, Enterprise Community, or Renewal Community activities.

Competitive Preference Priority 2—Novice Applicants.

We will award an additional five points to an application from a novice applicant. This priority is from 34 CFR 75.225. The term ''novice applicant'' means any applicant for a grant from the U.S. Department of Education that—

(1) Has never received a grant or subgrant under the program from which it seeks funding;

(2) Has never been a member of a group application, submitted in accordance with 34 CFR 75.127 through 75.129, that received a grant under the program from which it seeks funding; and

(3) Has not had an active discretionary grant from the Federal Government in the five years before the deadline date for applications under this program (Training and Information for Parents of Children with Disabilities—Community Parent Resource Centers). For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127 through 75.129, all group members must meet the requirements described in this priority to qualify as a novice applicant.

Absolute Priority 2—Parent Training and Information Centers (84.328M).

Background:

This priority supports parent training and information centers (PTIs) in the areas to be served by the centers that will provide parents of children with disabilities, including low-income parents, parents of limited English proficient children, and parents with disabilities, with the training and information they need to enable them to participate cooperatively and effectively in helping their children with disabilities to—

(a) Meet developmental and functional goals, and challenging academic achievement goals that have been established for all children; and

(b) Be prepared to lead productive, independent adult lives, to the maximum extent possible.

For further information on the work of previously funded centers, see *http://www.taalliance.org.*

Priority:

To be considered for funding under the Parent Training and Information Centers (PTIs) absolute priority, applicants must meet the application requirements contained in the priority. All projects funded under the absolute priority also must meet the programmatic and administrative requirements specified in the priority.

In addition to awards for States under this absolute priority, the Secretary intends to fund one award that focuses on the needs of Native American families who have children with disabilities and one award that focuses on the needs of military families who have children with disabilities. In addition to meeting the other requirements specified in this absolute priority, an eligible entity applying for either of these awards must propose a project that will focus nationally on the provision of services that meet the unique training and information needs of its specific population. A project funded under either of these awards also must work with the National and Regional Parent Technical Assistance Centers and the individual PTIs and Community Parent Resource Centers (CPRCs) to increase the capacity of the PTIs and CPRCs to carry out their required activities when working with these unique populations.

Application Requirements. An applicant must include in its application—

(a) A plan to implement the activities described in the *Project Activities* section of this priority;

(b) A budget for attendance at the following:

(1) A three-day National Technical Assistance for Parent Centers Conference in Washington, DC during each year of the project period.

(2) A two-day Regional Technical Assistance for Parent Centers Conference, in the region in which the PTI is located, during each year of the project period. Applicants should refer to *http://www.taalliance.org* for a list of regions; and

(c) A description specifying the special efforts the PTI will make to—

(1) Ensure that the needs for training and information of underserved parents of children with disabilities in the area to be served are effectively met; and

(2) Work with community based organizations, including those that work with low-income parents and parents of limited English proficient children.

Project Activities. To meet the requirements of this priority, the PTI, at a minimum, must:

(a) Provide training and information that meets the training and information needs of parents of children with disabilities living in the area served by the PTI, particularly underserved parents and parents of children who may be inappropriately identified as having disabilities.

(b) Serve the parents of infants, toddlers, and children from ages birth through 26, with the full range of disabilities described in section 602(3) of IDEA.

(c) Ensure that the training and information provided meets the needs of low-income parents and parents of limited English proficient children.

(d) Assist parents to—

(1) Better understand the nature of their children's disabilities and their educational, developmental, and transitional needs;

(2) Communicate effectively and work collaboratively with personnel responsible for providing special education, early intervention services, transition services, and related services;

(3) Participate in decisionmaking processes, including those regarding participation in State and local assessments, and the development of individualized education programs under Part B of IDEA and individualized family service plans under Part C of IDEA;

(4) Obtain appropriate information about the range, type and quality of—

(i) Options, programs, services, technologies, practices, and interventions that are based on scientifically based research, to the extent practicable; and

(ii) Resources available to assist children with disabilities and their families in school and at home, including information available through OSEP's technical assistance and dissemination centers (*http://www.ed.gov/parents/needs/speced/resources.html*), and communities of practice (*http://www.tacommunities.org*);

(5) Understand the requirements of IDEA related to the provision of education and early intervention services to children with disabilities;

(6) Participate in activities at the school level that benefit their children; and

(7) Participate in school reform activities.

(e) In States where the State elects to contract with the PTIs, contract with the State educational agencies (SEAs) to provide, consistent with paragraphs (B) and (D) of section 615(e)(2) of IDEA, individuals to meet with parents in order to explain the mediation process.

(f) Assist parents in resolving disputes in the most expeditious and effective way possible, including encouraging the use, and explaining the benefits, of alternative methods of dispute resolution, such as the mediation process described in section 615(e) of IDEA.

(g) Assist parents and students with disabilities to understand their rights and responsibilities under IDEA, including those under section 615(m) of IDEA upon the student's reaching the age of majority (as appropriate under State law).

(h) Assist parents to understand the availability of, and how to effectively use, procedural safeguards under IDEA.

(i) Assist parents in understanding, preparing for, and participating in, the resolution session described in section 615(f)(1)(B) of IDEA.

(j) Establish cooperative partnerships with any CPRCs and any other PTIs funded in the State under sections 672 and 671 of IDEA, respectively.

(k) Network with appropriate clearinghouses, including organizations conducting national dissemination activities under section 663 of IDEA and the Institute of Education Sciences, and with other national, State, and local organizations and agencies, such as protection and advocacy agencies, that serve parents and families of children with the full range of disabilities described in section 602(3) of IDEA.

(l) Annually report to the Department on—

(1) The number and demographics of parents to whom the PTI provided information and training in the most recently concluded fiscal year, including additional information regarding their unique needs and the levels of service provided to them; and

(2) The effectiveness of strategies used to reach and serve parents, including underserved parents of children with disabilities, by providing evidence of how those parents were served effectively.

(m) Respond to requests from the OSEP-funded National Technical Assistance Center (NTAC) and Regional Parent Technical Assistance Centers (PTACs), and use the technical assistance services of the NTAC and Regional PTACs in order to serve the families of infants, toddlers, and children with disabilities as efficiently as possible. Regional PTACs are charged with assisting parent centers with administrative and programmatic issues.

(n) In collaboration with OSEP and NTAC, participate in an annual collection of program data for the PTIs and CPRCs funded under sections 671 and 672 of IDEA, respectively.

(o) Ensure that the PTI's board of directors meets not less than once in each calendar quarter to review the activities for which the award was made.

(p) Ensure that the PTI's board of directors submits to the Secretary a written review of the PTI's activities conducted during the preceding fiscal year.

(q) If the PTI maintains a Web site, ensure that the Web site meets a government or industry-recognized standard for accessibility.

(r) Maintain ongoing communication with the OSEP Project Officer through phone conversations and e-mail communication.

Waiver of Proposed Rulemaking: Under the Administrative Procedure Act (APA) (5 U.S.C. 553) the Department generally offers interested parties the opportunity to comment on proposed priorities and requirements. Section 681(d) of IDEA, however, makes the public comment requirements of the APA inapplicable to the priorities in this notice.

Program Authority: 20 U.S.C. 1472, 1473 and 1481.

Applicable Regulations: The Education Department General Administrative Regulations in 34 CFR parts 74, 75, 77, 79, 81, 82, 84, 85, 97, 98, and 99.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

II. Award Information

Type of Awards: Discretionary grants.

Estimated Available Funds: The Administration has requested $26,528,000 for the Training and Information for Parents of Children with

Disabilities program for FY 2009, of which we intend to use an estimated $6,002,237 for the competitions announced in this notice. The actual level of funding, if any, depends on final congressional action. However, we are inviting applications to allow enough time to complete the grant process if Congress appropriates funds for this program. Please refer to the ''Estimated Available Funds'' column of the chart in this section for the estimated dollar amounts for individual competitions Information concerning funding amounts for individual States and target populations for the 84.328M competition is provided in the ''Maximum Award'' column of the chart in this section of this notice.

Estimated Average Size of Awards: See chart.

Maximum Award: See chart.

Estimated Number of Awards: See chart.

Project Period: See chart.

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INDIVIDUALS WITH DISABILITIES EDUCATION ACT
TRAINING AND INFORMATION FOR PARENTS OF CHILDREN WITH DISABILITIES PROGRAM
APPLICATION NOTICE FOR FISCAL YEAR 2009

CFDA Number and Name	Applications Available	Deadline for Transmittal of Applications	Deadline for Intergovern -mental Review	Estimated Available Funds (See Note 2)	Estimated Average Size of Awards (See Note 2)	Maximum Award (See Note 1)	Estimated Number of Awards (See Note 2)	Project Period	Page Limit	Contact Person
84.328C Community Parent Resource Centers	01/12/09	02/26/09	04/27/09	$1,000,000	$100,000	$100,000	10	Up to 36 mos.	50	Carmen Sanchez (202) 245-6595 PCP -4055
84.328M Parent Training and Information Centers	01/12/09	02/26/09	04/27/09	$5,002,237	$289,837		17	Up to 60 mos. See Note 3	70	Marsha Goldberg (202) 245-6468 PCP -4052
Arizona						$364,556				
Delaware						$208,975				
District of Columbia						$182,061				
Indiana						$360,626				
Iowa						$251,929				
Massachusetts						$358,318				
Michigan:										
Region 1						$239,170				
Region 2						$403,970				
Minnesota						$338,572				
Mississippi						$266,988				
Missouri						$342,171				
South Dakota						$204,562				
Virginia						$392,689				
Washington						$350,567				
Wyoming						$174,507				
Native American Families						$243,788				
Military Families						$243,788				
Outlying Areas										
American Samoa						$ 25,000				
Guam						$ 25,000				
Northern Marianas						$ 25,000				

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Note 1: We will reject any application that proposes a budget exceeding the maximum award for a single budget period of 12 months. The Assistant Secretary for Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Note 2: The Department is not bound by any estimates in this notice.

Note 3: For the *Parent Training and Information Centers,* 84.328M competition:

Project Period: In order to allocate resources equitably, create a unified system of service delivery, and provide the broadest coverage for the parents and families in every State, the Assistant Secretary is making awards in five-year cycles for each State. In FY 2009, applications for 5-year awards will be accepted for the following States: Arizona, Delaware, Indiana, Iowa, Massachusetts, Minnesota, Mississippi, Missouri, South Dakota, Virginia, Washington, and Wyoming, and the District of Columbia. Awards also may be made to eligible applicants in American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands. These projects will be funded for a period up to 60 months.

In FY 2009, applications for 3-year awards will be accepted for Regions 1 and 2 in Michigan. We are proposing shorter project periods for Regions 1 and 2 in Michigan in order to align the funding cycle for these areas with those of other States in their groups.

Estimated Project Awards: Project award amounts are for a single budget period of 12 months. To ensure maximum coverage for this competition, the Assistant Secretary has adopted regional designations established by Michigan and has identified corresponding maximum award amounts for each region. Michigan applicants must complete a separate application for each region.

The Assistant Secretary took into consideration current funding levels, population distribution, poverty rates, and low-density enrollment when determining the award amounts for grants under this competition. In the following States, one award may be made for up to the amounts listed in the chart to a qualified applicant for a PTI Center to serve the entire State or District of Columbia.

Arizona	364,556
Delaware	208,975
District of Columbia	182,061
Indiana	360,626
Iowa	251,929
Massachusetts	358,318
Minnesota	338,572
Mississippi	266,988
Missouri	342,171
South Dakota	204,562
Virginia	392,689
Washington	350,567
Wyoming	174,507

In the following State one award up to the amount listed will be made to a qualified applicant for a PTI Center to serve each identified region. A list of the counties that are included in each region also follows.

Michigan:	
Region 1 (Oakland, Macomb, Wayne Counties)	239,170
Region 2 (All other counties in Michigan)	403,970

In addition, one award up to the amount listed will be made to a qualified applicant for a National PTI Center to serve families in each identified category.

Military Families	243,788
Native American Families	243,788

One award up to the amount listed may be made to a qualified applicant from the outlying areas as follows:

American Samoa	25,000
Guam	25,000
Commonwealth of the Northern Mariana Islands	25,000

Consistent with 34 CFR 75.104(b), we will reject any application that proposes a project funding level for any year that exceeds the stated maximum award amount for that year.

III. Eligibility Information

1. *Eligible Applicants:*

Absolute priority	Eligible applicants
Community Parent Resource Centers (84.328C).	Local parent organizations.
Parent Training and Information Centers (84.328M).	Parent organizations.

Note: Under section 672(a)(2) of IDEA, a ''local parent organization'' is a parent organization (as that term is defined in section 671(a)(2) of IDEA) that—

(a) Has a board of directors, the majority of whom are parents of children with disabilities ages birth through 26 from the community to be served.

(b) Has as its mission serving parents of children with disabilities from that community who (1) are ages birth through 26, and (2) have the full range of disabilities as defined in section 602(3) of IDEA.

Section 671(a)(2) of IDEA defines a ''parent organization'' as a private nonprofit organization (other than an institution of higher education) that—

(a) Has a board of directors—

(1) The majority of whom are parents of children with disabilities ages birth through 26;

(2) That includes—

(i) Individuals working in the fields of special education, related services, and early intervention;

(ii) Individuals with disabilities; and

(iii) The parent and professional members of which are broadly representative of the population to be served, including low-income parents and parents of limited English proficient children; and

(b) Has as its mission serving families of children with disabilities who are ages birth through 26, and have the full range of disabilities described in section 602(3) of IDEA.

2. *Cost Sharing or Matching:* This program does not require cost sharing or matching.

3. *Other: General Requirements*—(a) The projects funded under this program must make positive efforts to employ and advance in employment qualified individuals with disabilities (see section 606 of IDEA).

(b) Applicants and grant recipients funded under this program must involve individuals with disabilities or parents of individuals with disabilities ages birth through 26 in planning, implementing, and evaluating the projects (see section 682(a)(1)(A) of IDEA).

IV. Application and Submission Information

1. *Address to Request Application Package:* Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone, toll free: 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), call, toll free: 1–877–576–7734.

You can contact ED Pubs at its Web site, also: *www.ed.gov/pubs/edpubs.html* or at its e-mail address: *edpubs@inet.ed.gov.*

If you request an application package from ED Pubs, be sure to identify the competition to which you want to apply, as follows: CFDA Number 84.328C or 84.328M.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the person or team listed under *Accessible Format* in section VIII of this notice.

2. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for each competition announced in this notice.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than the number of pages listed under ''Page Limit'' for that competition in the chart under *Award Information,* using the following standards:

- A ''page'' is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger, or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; the two-page abstract, the resumes, the bibliography, the references, or the letters of support. The page limit, however, does apply to all of the application narrative section [Part III].

We will reject your application if you exceed the page limit or if you apply other standards and exceed the equivalent of the page limit.

3. *Submission Dates and Times:*

Applications Available: See chart.

Deadline for Transmittal of Applications: See chart.

Applications for grants under this program may be submitted electronically using the Grants.gov Apply site (Grants.gov), or in paper format by mail or hand delivery. For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery, please refer to section IV. 6. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application

process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: See chart.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* We reference regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Other Submission Requirements:* Applications for grants under this program may be submitted electronically or in paper format by mail or hand delivery.

a. *Electronic Submission of Applications.*

We are participating as a partner in the Governmentwide Grants.gov Apply site. The Training and Information for Parents of Children with Disabilities competitions, CFDA Numbers 84.328C and 84.328M, announced in this notice are included in this project. We request your participation in Grants.gov.

If you choose to submit your application electronically, you must use the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not e-mail an electronic copy of a grant application to us.

You may access the electronic grant application for the Training and Information for Parents of Children with Disabilities program competitions—CFDA numbers 84.328C and 84.328M at *www.Grants.gov.* You must search for the downloadable application package for these competitions by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.*, search for 84.328, not 84.328C or 84.328M).

Please note the following:

- Your participation in Grants.gov is voluntary.
- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for the competition to which you are applying to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov at *e-Grants.ed.gov/help/GrantsgovSubmissionProcedures.pdf.*
- To submit your application via Grants.gov, you must complete all steps in the Grants.gov registration process (see *www.grants.gov/applicants/get_registered.jsp*). These steps include (1) registering your organization, a multi-part process that includes registration with the Central Contractor Registry (CCR); (2) registering yourself as an Authorized Organization Representative (AOR); and (3) getting authorized as an AOR by your organization. Details on these steps are outlined in the Grants.gov 3-Step Registration Guide (see *www.grants.gov/section910/Grants.govRegistrationBrochure.pdf).* You also must provide on your application the same D-U-N-S Number used with this registration. Please note that the registration process may take five or more business days to complete, and you must have completed all registration steps to allow you to submit successfully an application via Grants.gov. In addition you will need to update your CCR registration on an annual basis. This may take three or more business days to complete.
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you submit your application in paper format.
- If you submit your application electronically, you must submit all documents electronically, including all information you typically provide on the following forms: Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- If you submit your application electronically, you must attach any narrative sections of your application as files in a .DOC (document), .RTF (rich text), or .PDF (Portable Document) format. If you upload a file type other than the three file types specified in this paragraph or submit a password-protected file, we will not review that material.
- Your electronic application must comply with any page-limit requirements described in this notice.
- After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by e-mail. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).
- We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30 p.m., Washington, DC time, on the

application deadline date, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice and provide an explanation of the technical problem you experienced with Grants.gov, along with the Grants.gov Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

b. *Submission of Paper Applications by Mail.*

If you submit your application in paper format by mail (through the U.S. Postal Service or a commercial carrier), you must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C or 84.328M) LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you submit your application in paper format by hand delivery, you (or a courier service) must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: (CFDA Number 84.328C or 84.328M) 550 12th Street, SW., Room 7041, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Selection Criteria:* The selection criteria for this program are from 34 CFR 75.210 and are listed in the application package for each competition announced in this notice.

2. *Peer Review:* In the past, the Department has had difficulty finding peer reviewers for certain competitions, because so many individuals who are eligible to serve as peer reviewers have conflicts of interest. The Standing Panel requirements under IDEA also have placed additional constraints on the availability of reviewers. Therefore, the Department has determined that, for some discretionary grant competitions, applications may be separated into two or more groups and ranked and selected for funding within specific groups. This procedure will make it easier for the Department to find peer reviewers, by ensuring that greater numbers of individuals who are eligible to serve as reviewers for any particular group of applicants will not have conflicts of interest. It also will increase the quality, independence, and fairness of the review process while permitting panel members to review applications under discretionary grant competitions for which they also have submitted applications. However, if the Department decides to select an equal number of applications in each group for funding, this may result in different cut-off points for fundable applications in each group.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN). We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:* Under the Government Performance and Results Act of 1993, the Department has established a set of performance measures, including long-term measures, that are designed to yield information on various aspects of the effectiveness and quality of the Training and Information for Parents of Children with Disabilities program. The measures focus on the extent to which projects provide high-quality materials, the relevance of project products and services to educational and early intervention policy and practice, and the usefulness of products and services to improve educational and early intervention policy and practice.

Grantees will be required to provide information related to these measures in annual reports submitted to the Department.

Grantees also will be required to report information on their projects' performance in annual reports to the Department (34 CFR 75.590).

VII. Agency Contact

FOR FURTHER INFORMATION CONTACT: See the chart in the *Award Information* section in this notice for the name, room number, and telephone number of the contact person for each competition. You can write to the contact person at the following address: U.S. Department of Education, 400 Maryland Avenue, SW., Potomac Center Plaza (PCP), Washington, DC 20202–2550.

If you use a TDD, call the Federal Relay Service (FRS), toll-free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.*, braille, large print, audiotape, or computer diskette) by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5075, PCP, Washington, DC 20202–2550. *Telephone:* (202) 245–7363. If you use a TDD, call the FRS, toll-free, at 1–800–877–8339.

Electronic Access to This Document: You can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *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: *www.gpoaccess.gov/nara/index.html.*

Dated: January 7, 2009.

Tracy R. Justesen,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. E9–360 Filed 1–9–09; 8:45 am]

BILLING CODE 4000–01–P

ELECTION ASSISTANCE COMMISSION

Sunshine Act Notice

AGENCY: U.S. Election Assistance Commission.

ACTION: Notice of public meeting.

DATE & TIME: Thursday, January 15, 2009, 3–5 p.m.

PLACE: U.S. Election Assistance Commission, 1201 New York Ave, NW., Washington, DC 20005, (Metro Stop: Metro Center).

AGENDA: Commissioners will hold a closed session discussion of the appointment of the EAC General Counsel.

This meeting will be closed to the public.

PERSON TO CONTACT FOR INFORMATION: Bryan Whitener, Telephone: (202) 566–3100.

Thomas R. Wilkey,

Election Director, U.S. Election Assistance Commission.

[FR Doc. E9–432 Filed 1–8–09; 11:15 am]

BILLING CODE 6820–KF–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP07–398–004; CP07–402–001]

Gulf Crossing Pipeline Company LLC; Gulf South Pipeline Company, LP; Notice of Amended Certificate

January 6, 2009.

Take notice that on December 19, 2008, Gulf Crossing Pipeline Company LLC (Gulf Crossing), and Gulf South Pipeline Company, LP (Gulf South) filed an amendment to its certificate of public convenience and necessity pursuant to section 7 (c) of the Natural Gas Act (NGA) which authorized the siting, construction, and operation of facilities on April 30, 2008. In its amendment, the applicants seek to amend an operating lease agreement between the two parties to increase the Maximum Lease Quantity Gulf Crossing leases on Gulf South from 1.05 Bcf/day to 1.1 Bcf/day, and to add primary delivery points, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The Commission staff will determine if this amendment will have an effect on the schedule for the environmental review of this project. If necessary, a revised Notice of Schedule for Environmental Review will be issued within 90 days of this Notice. The instant filing may be also viewed on the Web 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 (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application may be directed to Nell Guitierrez, Manager, Certificates and Tariffs, Boardwalk Pipeline Partners, LP, 3800 Frederica Street, Owensboro, Kentucky, 42301 or by telephone at 270–688–6825 or telecopy to 270–688–5871.

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 below listed comment date, 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 commenters 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 commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenters 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.

Motions to intervene, protests and comments 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.

Comment Date: January 27, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–338 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Project Nos. 935–090; 2071–041; 2111–037]

PacifiCorp; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 5, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Shoreline Management Plan (SMP).

b. *Project Nos:* 935–090, 2071–041, 2111–037.

c. *Date Filed:* December 18, 2008.

d. *Applicant:* PacifiCorp.

e. *Name of Projects:* Merwin, Yale, and Swift No. 1 Hydroelectric Projects.

f. *Location:* The Merwin and Yale Hydroelectric Projects are located on the North Fork Lewis River in Cowlitz and Clark Counties, Washington, and the Swift No. 1 Hydroelectric Project is located on the North Fork Lewis River in Cowlitz and Skamania Counties, Washington.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Todd Olsen, PacifiCorp, 825 NE. Multnomah, Suite 1500, Portland, OR 97232, (503) 813–6657.

i. *FERC Contact:* Shana High, (202) 502–8674.

j. *Deadline for filing comments, motions to intervene, and protest:* February 6, 2009. 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:* PacifiCorp filed a shoreline management plan for the Merwin, Yale, and Swift No. 1 Hydroelectric Projects (known as the Lewis River Hydroelectric Projects). The SMP applies to the reservoir shorelines of the Lewis River Hydroelectric Projects, and provides for the management these shorelines.

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 e-mail 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. A copy is also available for inspection and reproduction at the address in item (h) above.

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 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. E9–248 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–38–000]

Transcontinental Gas Pipe Line Corporation; Copano Field Services/Central Gulf Coast, L.P.; Notice of Application

January 6, 2009.

Take notice that on December 19, 2008, Transcontinental Gas Pipe Line Corporation (Transco), PO Box 1396, Houston, Texas 77251–1396 and Copano Field Services/Central Gulf Coast, L.P. (Copano), 2727 Allen Parkway, Suite 1200, Houston, Texas 77019, filed in Docket No. CP09–38–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA) requesting that the Commission grant Transco approval to abandon by sale to Copano certain natural gas pipelines facilities in South Texas, including the McMullen Lateral. Additionally, Copano requests that the Commission finds that such facilities will perform gathering function upon their abandonment by

sale from Transco to Copano and will be exempt from the Commission's jurisdiction pursuant to section 1(b) of the NGA, as well as the two natural gas pipelines Copano is proposing to construct to connect the McMullen Lateral to its processing plant, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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 TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to Scott Turkington, Director, Rates & Regulatory, Transcontinental Gas Pipe Line Corporation, PO Box 1396, Houston, Texas, 77251–1396 at (713) 215–3391 or by e-mail at *scott.c.turkington@williams.com,* or to Brian D. Eckhart, Senior Vice President, Transportation and Supply, Copano Energy, 2727 Allen Parkway, Suite 1200, Houston, Texas 77019 at (713) 621–9547 or by e-mail at *Brian.Eckhart@copanoenergy.com.*

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 commentors 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 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: January 27, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–333 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2009–128]

Virginia Electric and Power Company; Notice of Application for Amendment of License and Soliciting Comments, Motions To Intervene, and Protests

January 6, 2009.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Application for Non-Project Use of Project Lands and Waters.

b. *Project No:* 2009–128.

c. *Date Filed:* November 28, 2008.

d. *Applicant:* Virginia Electric and Power Company.

e. *Name of Project:* Roanoke Rapids and Gaston Project.

f. *Location:* The project is located on the Roanoke River, in Brunswick and Mecklenburg Counties, Virginia and Halifax, Warren, and Northampton Counties, North Carolina.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jim Thornton, Technical Consultant, Dominion Virginia Power, 5000 Dominion Blvd., 1NE, Glen Allen, VA 23060, *Telephone:* (804) 273–3257, and *e-mail: james.thornton@dom.com.*

i. *FERC Contact:* Shana High, (202) 502–8674.

j. *Deadline for filing comments, motions to intervene, and protest:* February 6, 2009. 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 Proposed Amendment:* Virginia Electric and Power Company requests approval to permit East Oaks, LLC to expand an existing public marina on Lake Gaston. East Oaks, LLC does not have direct water access for its existing off-water storage facility and is proposing the addition of a forklift boat loading facility. The number of boat storage slots within the area of the marina would not increase.

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 e-mail of new filings and issuances related to this or other pending projects. For assistance, call 1–866–208–3372 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. 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 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. E9–337 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–440–000]

Madison Paper Industries; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 5, 2009.

This is a supplemental notice in the above-referenced proceeding of Madison Paper Industries' application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–252 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–429–000]

Sheldon Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 5, 2009.

This is a supplemental notice in the above-referenced proceeding of Sheldon Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888

First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St., NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–249 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–42–000]

Tennessee Gas Pipeline Company; Notice of Request Under Blanket Authorization

January 6, 2009.

Take notice that on December 23, 2008, Tennessee Gas Pipeline Company (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in Docket No. CP09–42–000, an application pursuant to sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (NGA) as amended, to abandon by sale certain natural gas supply facilities located in Vermilion Blocks 65, 67, and 76, offshore Louisiana, to Nexen Petroleum U.S.A. Inc. (Nexen), under Tennessee's blanket certificate issued in Docket No. CP82–413–000,[1] all as more fully set forth in the application which is on file with the Commission and open to the public for inspection.

Tennessee states that it proposes to abandon in place and by sale to Nexen a receipt meter, approximately 2.2 miles of 6-inch diameter pipeline, and 5.2 miles of 4-inch diameter pipeline, located in Vermilion Blocks 65, 67, and 76, offshore Louisiana. Tennessee also states that Nexen would continue to operate the facilities following the closing of the purchase and sales transaction.

Any questions concerning this application may be directed to Jacquelyne M. Rocan, Senior Counsel, Tennessee Gas Pipeline Company, 1001 Louisiana Street, Houston, Texas 77002, via telephone at (713) 420–4544, or facsimile (713) 420–1601 or Debbie Kalisek, Analyst, Certificates & Regulatory Compliance via telephone at (713) 420–3292 or facsimile (713) 420–1605.

This filing is available for review at the Commission 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 filed to access the document. For assistance, please contact FERC Online Support at FERC *OnlineSupport@ferc.gov* or call toll-free at (866) 206–3676, or, for TTY, contact (202) 502–8659. 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 intervenors to file electronically.

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

[1] 20 FERC ¶62,409 (1982).

Kimberly D. Bose,

Secretary.

[FR Doc. E9–334 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–430–00]

Willow Creek Energy LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

January 5, 2009.

This is a supplemental notice in the above-referenced proceeding of Willow Creek Energy LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR Part 34, of future issuances of securities and assumptions of liability, is January 27, 2009.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov*. To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–250 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings # 1

December 31, 2008.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER99–3427–007; ER00–2398–009.
Applicants: SOWEGA Power LLC; Baconton Power LLC.
Description: SOWEGA Power LLC *et al* submits request for determination of category one status and submission of amendments to market based sales tariffs.
Filed Date: 12/23/2008.
Accession Number: 20081229–0157.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER02–669–008; ER03–623–008; ER98–3566–015;
Applicants: Bayswater Peaking Facility, LLC; Jamaica Bay Peaking Facility, LLC; FPL Energy Power Marketing, Inc.
Description: Bayswater Peaking Facility, LLC *et al* submits tariff amendments in accordance with Order Nos. 697 and 697A.
Filed Date: 12/23/2008.
Accession Number: 20081230–0008.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER02–1600–005.
Applicants: Green Mountain Energy Company.
Description: Green Mountain Energy Company submits revisions to its market-based rate wholesale power sales at that time.
Filed Date: 12/22/2008.
Accession Number: 20081230–0009.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER03–329–009; ER07–597–004.
Applicants: NORTHWESTERN CORP, Montana Generation, LLC.
Description: Updated Market Power Analysis.
Filed Date: 12/30/2008.
Accession Number: 20081230–5114.
Comment Date: 5 p.m. Eastern Time on Monday, March 2, 2009.

Docket Numbers: ER04–374–010; ER99–2341–012.
Applicants: Invenergy TN LLC; Hardee Power Partners Limited.
Description: Invenergy TN LLC *et al* submits filing indicating their status as category one sellers as defined in the Commissions regulations.
Filed Date: 12/23/2008.
Accession Number: 20081230–0046.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER04–944–004.
Applicants: Orion Power Midwest, L.P., Reliant Energy Mid-Atlantic Pwr Holdings, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Seward, LLC, Reliant Energy Wholesale Generation, LLC.
Description: Reliant Energy Wholesale Generation, LLC submits a supplement to the June 30, 2008 Triennial Market Update.
Filed Date: 12/30/2008.
Accession Number: 20081230–5112.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: ER04–1181–003; ER04–1182–003; ER04–1184–003; ER04–1186–003.
Applicants: KGEN Hinds LLC, KGen Hot Spring LLC, KGEN Murray I and II LLC, KGEN SANDERSVILLE LLC.
Description: KGen Hinds LLC *et al.* submits revised market based rate tariffs pursuant to Commissions Order 697 and 697–A.
Filed Date: 12/23/2008.
Accession Number: 20081230–0044.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER05–143–004; ER99–1801–011; ER04–944–006.
Applicants: Reliant Energy Florida, LLC; Reliant Energy Services, Inc., Reliant Energy Wholesale Generation, LLC.
Description: Reliant SE MBR Entities submits its triennial market power analysis and revisions to certain of their market-based rate tariffs.
Filed Date: 12/23/2008.
Accession Number: 20081230–0047.
Comment Date: 5 p.m. Eastern Time on Friday, February 20, 2009.

Docket Numbers: ER07–521–007.
Applicants: New York Independent System Operator, Inc
Description: New York Independent System Operator, Inc submits compliance filing.
Filed Date: 12/22/2008.
Accession Number: 20081224–0100.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER07–650–001.
Applicants: Integrys Energy Services Inc.
Description: Integrys Energy Services, Inc submits a request for category one seller classification for the Southeast region.
Filed Date: 12/23/2008.
Accession Number: 20081229–0156.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER07–1223–001; ER07–1222–001; ER07–1208–002; ER07–1202–002; ER07–1246–002.
Applicants: Cow Branch Wind Power, LLC, CR Clearing, LLC, Wind Capital Holdings, LLC, Harvest WindFarm, LLC, JD WIND 4, LLC.
Description: Cow Branch Wind Power, LLC et al. submit request for classification as a category one seller and compliance filings.
Filed Date: 12/23/2008.
Accession Number: 20081230–0040.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER08–237–003.
Applicants: Forward Energy, LLC.
Description: Forward Energy LLC submits revisions to its market based rate tariff.
Filed Date: 12/23/2008.
Accession Number: 20081229–0159.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER08–1172–003.
Applicants: Grand Ridge Energy LLC.
Description: Grand Ridge Energy LLC submits revisions to its market based rate tariff.
Filed Date: 12/23/2008.
Accession Number: 20081229–0158.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER08–1237–001; ER08–1288–002; ER07–357–005; ER05–41–001; ER03–1340–004.
Applicants: Shiloh Wind Project 2, LLC; Wapsipinicon Wind Project, LLC; Fenton Power Partners I, LLC; Oasis Power Partners, LLC; Chanarambie Power Partners LLC.
Description: The ENXco Companies submits notice of non-material change in status to comply with Order 697 etc.

Filed Date: 12/23/2008.
Accession Number: 20081230–0045.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009

Docket Numbers: ER08–1567–001.
Applicants: Southern California Edison Company.
Description: Southern California Edison Company submits amended rate sheets to its Clustering Large Generator Interconnection Procedure that is part of SCR's Wholesale Distribution Access Tariff pursuant to FERC's 11/20/08 Order.
Filed Date: 12/22/2008.
Accession Number: 20081229–0154.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–393–001.
Applicants: West Oaks Energy, LLC.
Description: West Oaks Energy, LLC submits a revised application for Market-Based Rate Authority, filed on 12/10/08.
Filed Date: 12/23/2008.
Accession Number: 20081229–0115.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–394–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits proposed revisions to its Open Access Transmission Tariff.
Filed Date: 12/23/2008.
Accession Number: 20081230–0007.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–442–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits an executed Large Generator Interconnection Agreement between SPP as Transmission Provider, *et al.* as Interconnection Customer.
Filed Date: 12/22/2008.
Accession Number: 20081229–0117.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–443–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc request for Waiver of Tariff Provision and Expedited Treatment.
Filed Date: 12/22/2008.
Accession Number: 20081229–0118.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–444–000.
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc submits revisions to its Open Access Transmission tariff in order to adopt changes to its Credit Policy.
Filed Date: 12/22/2008.
Accession Number: 20081229–0116.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–451–000.
Applicants: San Diego Gas & Electric Company.
Description: San Diego Gas & Electric Co submits revisions to its Transmission Owner Tariff, FERC Electric Tariff, Original Volume 11 pertaining to their Reliability Services Revenue Requirements and Reliability Services Rate Schedule, effective 1/1/09.
Filed Date: 12/23/2008.
Accession Number: 20081230–0147.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–452–000.
Applicants: San Diego Gas & Electric Company
Description: San Diego Gas & Electric Co submits changes in rates in its Transmission Owner Tariff to reflect annual updates to the retail Transmission Revenue Balancing Account Adjustment Rates for service on and after 1/1/09 etc.
Filed Date: 12/23/2008.
Accession Number: 20081229–0120
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–453–000.
Applicants: Desert Generation & Trans Co-Oper., Inc.
Description: Desert Generation & Transmission Co-operative, Inc submits an amendment to its service agreement for wholesale requirements service to one of its members, Dixie-Escalante Rural Electric Association, Inc.
Filed Date: 12/23/2008.
Accession Number: 20081229–0114.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–454–000.
Applicants: ISO New England Inc. & New England Power.
Description: ISO New England Inc et al. submits amendments to the ISO Financial Assurance Policy for Market Participants that is Exhibit 1A to Section I of the ISO Tariff and to the ISO Billing Policy that is Exhibit 1D to Section I of the ISO Tariff etc.
Filed Date: 12/23/2008.
Accession Number: 20081229–0113.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–455–000.
Applicants: Portland General Electric Company.
Description: Portland General Electric Co submits their First Revised Rate Schedule 49, a Long Term Power Sale Agreement with San Diego Gas & Electric Co.
Filed Date: 12/22/2008.
Accession Number: 20081229–0119.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–457–000.
Applicants: Midwest Independent System Transmission.
Description: Midwest Independent System Operator, Inc submit proposed revisions to its Open Access Transmission, Energy and Operating Reserve Markets Tariff.
Filed Date: 12/22/2008.
Accession Number: 20081229–0111.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–458–000.
Applicants: Calpine Energy Services, L.P.
Description: Calpine Energy Services, LP submits proposed revisions to its market-based rate tariff to permit the sale or reassignment of transmission capacity or transmission rights.
Filed Date: 12/17/2008.
Accession Number: 20081229–0110.
Comment Date: 5 p.m. Eastern Time on Wednesday, January 07, 2009.

Docket Numbers: ER09–459–000.
Applicants: American Transmission Systems, Incorpora.
Description: American Transmission System, Incorporated submits Wholesale Distribution Service Agreement between ATSI as agent for Pennsylvania Power Company and the Borough of Wampum, PA.
Filed Date: 12/22/2008.
Accession Number: 20081229–0108.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–460–000.
Applicants: Arizona Public Service Company.
Description: Arizona Public Service Company submits proposed revisions to APS's FERC Electric Tariff, Volume 3 APS's Market Rate Tariff.
Filed Date: 12/22/2008.
Accession Number: 20081229–0109.
Comment Date: 5 p.m. Eastern Time on Monday, January 12, 2009.

Docket Numbers: ER09–461–000.
Applicants: Global Energy Investments Group, LLC.
Description: Global Energy Investments Group, LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume 1.
Filed Date: 12/23/2008.
Accession Number: 20081229–0107.
Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–462–000.
Applicants: California Independent System Operator C.
Description: California Independent System Operator Corporation (Southern

Cities) submits an amendment to the Transmission Control Agreement and Participating Transmission Owners.

Filed Date: 12/23/2008.

Accession Number: 20081229–0106.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–463–000.

Applicants: Southwest Power Pool, Inc.

Description: Southwest Power Pool, Inc submits an executed Large Generator Interconnection Agreement with Southwestern Public Service Co.

Filed Date: 12/23/2008.

Accession Number: 20081229–0105.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–464–000.

Applicants: PEAK Capital Management, LLC.

Description: Peak Capital Management, LLC submits notice of cancellation of its FERC Electric Tariff, Original Volume 1.

Filed Date: 12/23/2008.

Accession Number: 20081229–0104.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–465–000.

Applicants: American Electric Power Service Corporation.

Description: AEP Operating Companies submits a second revision to the Interconnection and Local Delivery Service Agreement 1428 between the Village of Shiloh and AEP.

Filed Date: 12/23/2008.

Accession Number: 20081229–0103.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–466–000.

Applicants: New York Independent System Operator, Inc.

Description: New York Independent System Operator, Inc submits tariff revisions to its Market Administration and Control Area Services Tariff and its Open Access Transmission Tariff etc.

Filed Date: 12/23/2008.

Accession Number: 20081229–0102.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–467–000.

Applicants: ISO New England Inc.

Description: ISO New England, Inc submits their Forward Capacity Auction Results Filing.

Filed Date: 12/23/2008.

Accession Number: 20081229–0101.

Comment Date: 5 p.m. Eastern Time on Tuesday, January 13, 2009.

Docket Numbers: ER09–468–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submits proposed revisions to their Joint Operating Agreement and Congestion Management Process as part of the RTOs' 2008 initiative to update their JOA.

Filed Date: 12/19/2008.

Accession Number: 20081229–0100.

Comment Date: 5 p.m. Eastern Time on Friday, January 09, 2009.

Docket Numbers: ER09–469–000.

Applicants: Midwest Independent Transmission System.

Description: Midwest Independent Transmission System Operator, Inc *et al.* submit revisions to their Joint Operating Agreement and Congestion Management Process as part of the RTOs' 2008 initiative to update their JOA.

Filed Date: 12/19/2008.

Accession Number: 20081229–0099.

Comment Date: 5 p.m. Eastern Time on Friday, January 9, 2009.

Take notice that the Commission received the following electric reliability filings:

Docket Numbers: RR08–4–003.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 76 of the Order on Rehearing and Clarification and Accepting Compliance Filing.

Filed Date: 12/19/2008.

Accession Number: 20081219–5161.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Docket Numbers: RR08–4–004.

Applicants: North American Electric Reliability Corp.

Description: Compliance Filing of the North American Electric Reliability Corporation in Response to Paragraph 47 of the Order on Violation Severity Levels Proposed by the Electric Reliability Organization.

Filed Date: 12/19/2008.

Accession Number: 20081219–5162.

Comment Date: 5 p.m. Eastern Time on Wednesday, January 21, 2009.

Any person desiring to intervene or to protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. It is not necessary to separately intervene again in a subdocket related to a compliance filing if you have previously intervened in the same docket. 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. Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant. In reference to filings initiating a new proceeding, interventions or protests submitted on or before the comment deadline need not be served on persons other than the Applicant.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 14 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First St. NE., Washington, DC 20426.

The filings in the above proceedings are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also 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 dockets(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.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. E9–304 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9988–015]

Augusta Canal Authority; Notice of Availability of Environmental Assessment

January 6, 2009.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for a subsequent license for the 2.125-megawatt King Mill Project, located on the Augusta Canal in

Richmond County, Augusta, Georgia, and issued an Environmental Assessment (EA) on December 11, 2008. In the EA, Commission staff analyze the potential environmental effects of relicensing the project and conclude that issuing a subsequent 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 documents. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, 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.

Comments on the EA 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 King Mill Project No. 9988–015 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 Sarah Florentino at (202) 502–6863.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–332 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5948–000]

Forsee, Gary D.; Notice of Filing

January 5, 2009.

Take notice that on January 2, 2009, Gary D. Foresee submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b)(2008), Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR Part 45 (2008), and Commission Order No. 664 (2005).

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: 5 p.m. Eastern Time on January 23, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–254 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2179–042]

Merced Irrigation District; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

January 5, 2009.

a. *Type of Filing:* Notice of Intent to File License Application for a New License and Commencing Licensing Proceeding.

b. *Project No.:* 2179–042.

c. *Dated Filed:* January 5, 2009.

d. *Submitted By:* Merced Irrigation District.

e. *Name of Project:* Merced River Hydroelectric.

f. *Location:* On the Merced River in Mariposa County, California, about 23 miles northeast of the City of Merced. The project occupies 2,941.84 acres of United States lands under the jurisdiction of the Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Mr. Dan Pope, General Manager, Merced Irrigation District, P.O. Box 2288, Merced, CA 95344, Attn. Dan Pope.

i. *FERC Contact:* Matt Buhyoff at (202) 502–6824 or e-mail at *matt.buhyoff@ferc.gov*.

j. We are asking federal, state, local, and tribal agencies 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 paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See*, 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating Merced Irrigation District as the Commission's non-federal representative for carrying out informal consultation, pursuant to section 7 of the Endangered Species Act and section 106 of the National Historic Preservation Act.

m. Merced Irrigation District filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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 paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

o. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name (Merced River Hydroelectric Project) and number (P–2179–042), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 3, 2009.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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 ''e-filing'' link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Wednesday, January 28, 2009.
Time: 10 a.m. (PST).
Location: Merced County Farm Bureau, 646 South Highway 59, Merced, CA 95340.
Phone: (209) 722–3814.

Evening Scoping Meeting

Date: Wednesday, January 28, 2009.
Time: 6:30 p.m. (PST).
Location: Merced County Farm Bureau, 646 South Highway 59, Merced, CA 95340.
Phone: (209) 722–3814.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web at *http://www.ferc.gov*, using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Site Visit

The potential applicant and Commission staff will conduct a site visit of the proposed project on Thursday, January 29, 2009, starting at 10 a.m. All participants should meet at Merced Irrigation District Project Headquarters located at 9188 Village Drive, Snelling, CA. All participants are responsible for their own transportation. Anyone with questions about the site visit should contact Mr. Randy Anthony on or before Wednesday, January 14th at (209) 378–2422 or by e-mail at *ranthony@mercedid.org*; or Barb Deibler at (209) 378–2421 ext. 244 or by e-mail at *bdeibler@mercedid.org*.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item n. of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–256 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL09–24–000]

Petition for Waiver of National Grid USA; Notice of Filing

January 6, 2009.

Take notice that on December 17, 2008, pursuant to Rule 207(a)(5) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission, National Grid USA hereby submits this petition for waiver of certain of the Commission's pricing rules for affiliate transactions established in Order Nos. 707 and 707–A.

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: 5 pm Eastern Time on January 14, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–336 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ID–5947–000]

Schwirtz, Mark W.; Notice of Filing

January 5, 2009.

Take notice that on December 31, 2008, Mark W. Schwirtz submitted for filing, an application for authority to hold interlocking positions, pursuant to section 305(b) of the Federal Power Act, 16 U.S.C. 825d(b)(2008), Part 45 of Title 18 of the Code of Federal Regulations, 18 CFR Part 45 (2008), and Commission Order No. 664 (2005).

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: 5 p.m. Eastern Time on January 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–253 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EF09–4021–000]

Southwestern Power Administration; Notice of Filing

January 6, 2009.

Take notice that on December 22, 2008, the Acting Deputy Secretary, U.S. Department of Energy, pursuant to the authority vested by the Department of Energy's Delegation Order Nos. 00–001.00C and 00–037.00, and by sections 302(a) and 301(b), 402(e), 641, 642, 643, and 644 of the Department of Energy Organization Act (Pub. L. 95–91), submitted for confirmation and approval on a final basis, Rate Order SWPA–60, which increases the power rate for Sam Rayburn Dam pursuant to Rate Schedule SRD–08, Wholesale Rates for Hydropower and Energy Sold to Sam Rayburn Dam Electric Cooperative, Inc., (Contract No. DE–PM75–92SW00215), effective January 1, 2009 through September 30, 2012.

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: 5 p.m. Eastern Time on January 21, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–335 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 12958–001; 12962–001]

Symbiotics, LLC; Notice of Intent To File License Application, Filing of Pre-Application Document, Commencement of Licensing Proceeding, and Scoping; Request for Comments on the Pad and Scoping Document, and Identification of Issues and Associated Study Requests

January 5, 2009.

a. *Type of Filing:* Notice of Intent to File License Application for an Original License and Commencing Licensing Proceeding.

b. *Project Nos.:* 12958–001 and 12962–001.

c. *Dated Filed:* October 31, 2008.

d. *Submitted By:* Symbiotics, LLC.

e. *Name of Project:* Uniontown Hydroelectric Project and Newburgh Hydroelectric Project.

f. *Location:* Both projects would be located on the Ohio River at existing U.S. Army Corps of Engineers locks and dams. The Uniontown Project would be located at the John T. Myers Locks and Dam, in Union County, Kentucky and Posey County, Indiana. The Newburgh Project would be located at the Newburgh Locks and Dam, in Henderson County, Kentucky and Warrick County, Indiana.

g. *Filed Pursuant to:* 18 CFR Part 5 of the Commission's Regulations.

h. *Potential Applicant Contact:* Brent L. Smith, COO, P.O. Box 535, Rigby, Idaho 83442.

i. *FERC Contact:* Jennifer Adams at (202) 502–8087 or e-mail at *jennifer.adams@ferc.gov.*

j. We are asking federal, state, local, and tribal agencies 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 paragraph o below. Cooperating agencies should note the Commission's policy that agencies that cooperate in the preparation of the environmental document cannot also intervene. *See,* 94 FERC ¶ 61,076 (2001).

k. With this notice, we are initiating informal consultation with: (a) The U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR, Part 402 and (b) the State Historic Preservation Officer, as required by Section 106, National Historical Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. Symbiotics, LLC filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

m. A copy of the PAD is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site (*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, of for TTY, (202) 502–8659. A copy is also available for inspection and reproduction at the address in paragraph h.

Register online at *http://ferc.gov/esubscribenow.htm* to be notified via e-mail of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

n. With this notice, we are soliciting comments on the PAD and Scoping Document 1 (SD1), as well as study requests. All comments on the PAD and SD1, and study requests should be sent to the address above in paragraph h. In addition, all comments on the PAD and SD1, study requests, requests for cooperating agency status, and all communications to and from Commission staff related to the merits of the potential application (original and eight copies) must be filed with the Commission at the following address: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. All filings with the Commission must include on the first page, the project name(s) (Uniontown Hydroelectric Project and/or Newburgh Hydroelectric Project) and number(s) (No. 12958–001 and/or No. 12962–001), and bear the heading ''Comments on Pre-Application Document,'' ''Study Requests,'' ''Comments on Scoping Document 1,'' ''Request for Cooperating Agency Status,'' or ''Communications to and from Commission Staff.'' Any individual or entity interested in submitting study requests, commenting on the PAD or SD1, and any agency requesting cooperating status must do so by March 2, 2009.

Comments on the PAD and SD1, study requests, requests for cooperating agency status, and other permissible forms of communications with the Commission 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 ''e-filing'' link.

p. Although our current intent is to prepare an environmental assessment (EA), there is the possibility that an Environmental Impact Statement (EIS) will be required. Nevertheless, this meeting will satisfy the NEPA scoping requirements, irrespective of whether an EA or EIS is issued by the Commission.

Scoping Meetings

Commission staff will hold two scoping meetings in the vicinity of the project at the time and place noted below. The daytime meeting will focus on resource agency, Indian tribes, and non-governmental organization concerns, while the evening meeting is primarily for receiving input from the public. We invite all interested individuals, organizations, and agencies to attend one or both of the meetings, and to assist staff in identifying particular study needs, as well as the scope of environmental issues to be addressed in the environmental document. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Friday, January 30, 2009.

Time: 9 a.m. to 11 a.m. (CST).

Location: Browning Events Room. Evansville Vanderburgh Public Library, 200 South East Martin Luther King Boulevard, Evansville, Indiana 47713.

Evening Scoping Meeting

Date: Thursday, January 29, 2009.

Time: 7 p.m. to 9 p.m. (CST).

Location: Browning Events Room, Evansville Vanderburgh Public Library, 200 South East Martin Luther King Boulevard, Evansville, Indiana 47713.

Scoping Document 1 (SD1), which outlines the subject areas to be addressed in the environmental document, was mailed to the individuals and entities on the Commission's mailing list. Copies of SD1 will be available at the scoping meetings, or may be viewed on the Web

at *http://www.ferc.gov,* using the ''eLibrary'' link. Follow the directions for accessing information in paragraph n. Based on all oral and written comments, a Scoping Document 2 (SD2) may be issued. SD2 may include a revised process plan and schedule, as well as a list of issues, identified through the scoping process.

Meeting Objectives

At the scoping meetings, staff will: (1) Initiate scoping of the issues; (2) review and discuss existing conditions and resource management objectives; (3) review and discuss existing information and identify preliminary information and study needs; (4) review and discuss the process plan and schedule for pre-filing activity that incorporates the time frames provided for in Part 5 of the Commission's regulations and, to the extent possible, maximizes coordination of federal, state, and tribal permitting and certification processes; and (5) discuss the appropriateness of any federal or state agency or Indian tribe acting as a cooperating agency for development of an environmental document.

Meeting participants should come prepared to discuss their issues and/or concerns. Please review the PAD in preparation for the scoping meetings. Directions on how to obtain a copy of the PAD and SD1 are included in item m of this document.

Meeting Procedures

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–255 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER09–431–000]

The United Illuminating Company; Notice of Filing

January 5, 2009.

Take notice that on December 19, 2008, The United Illuminating Company (United Illuminating), pursuant to section 205 of the Federal Power Act, filed an Interconnection Agreement, with Wheelabrator Bridgeport, L.P., Service Agreement No. 24 under United Illuminating's FERC Electric Tariff Second Revised Volume 4.

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 online 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 January 12, 2009.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–251 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP09–39–000]

Williston Basin Interstate Pipeline Company; Notice of Request Under Blanket Authorization

January 5, 2009.

Take notice that on December 18, 2008, Williston Basin Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, filed a prior notice request pursuant to Parts 157.205 and 157.210 of the Commission's regulations under the Natural Gas Act (NGA) and Williston Basin's blanket certificate issued in Docket Nos. CP82–487–000, *et al.*, for authorization for the construction and operation of mainline gas compression facilities and appurtenances in Carter County, Montana and Golden Valley County and Dunn County, North Dakota, all as more fully set forth in the application, which is on file with the Commission and open to public inspection. The filing may also be viewed on the Web 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@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Specifically, Williston Basin states that the proposed project will include an increase of compressor horsepower by adding one unit at Williston Basin's existing Manning Compressor Station in Dunn County, North Dakota; a new two-unit compressor station (Golva Compressor Station) in Golden Valley County, North Dakota; and a new two-unit compressor station (Willow Creek Compressor Station) in Carter County, Montana. Williston Basin proposes to install a new 4,735 horsepower (HP) compressor at the Manning Compressor Station, making the total design flow rate through the station 213,000 thousand cubic feet per day (Mcf/d). Williston Basin states that the proposed Golva Compressor Station will consist of two identical 3,550 HP compressors. Williston Basin asserts that that total design flow rate for the Golva Compressor Station will be 214,448 Mcf/d. Williston Basin states that the proposed Willow Creek Compressor Station will consist of two identical 3,500 HP compressors. Williston Basin asserts that the total design flow rate for the Willow Creek Compressor Station will be 139,100 Mcf/d. Williston Basin states that it has entered into binding Precedent Agreements which provide that Williston Basin will deliver a Maximum Daily Delivery Quantity (MDQ) of 75,000 Mcf/d firm transportation service during the proposed project's first in-service year. Williston Basin asserts that it projects an in-service date for the subject facilities of August 1, 2009. Williston Basin states that the estimated cost to construct the proposed facilities is approximately $28.3 million.

Any questions regarding the application should be directed to Keith A. Tiggelaar, Director of Regulatory Affairs, Williston Basin Interstate Pipeline Company, 1250 West Century

Avenue, Bismarck, North Dakota 58503, at (701) 530–1560.

Any person may, within 60 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention. Any person filing to intervene or the Commission's staff may, pursuant to section 157.205 of the Commission's regulations under the NGA (18 CFR 157.205) file a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

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 site (*http://www.ferc.gov*) under the ''e-Filing'' link.

Kimberly D. Bose,

Secretary.

[FR Doc. E9–257 Filed 1–9–09; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8760–7]

Notice of Availability of the Final White Paper on Integrated Modeling for Integrated Environmental Decision Making

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Document Availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final White Paper on Integrated Modeling for Integrated Environmental Decision Making (EPA 100/R–08/010, November 2008.

In pursuing its mission to protect human health and to safeguard the natural environment, the U.S. Environmental Protection Agency often relies on environmental models. The EPA defines a model as a ''simplification of reality that is constructed to gain insights into select attributes of a particular physical, biological, economic, or social system.'' While traditionally environmental modeling has focused on considering a single pollutant in a single environmental medium, this approach is no longer viewed as sufficient for effective environmental management decision support. It is increasingly recognized that a holistic approach to modeling the environment and the mechanisms governing the fate and transport of pollutants through the different environmental media as well as the multiple exposure pathways and the consequent responses of humans and ecosystems, is required to adequately assess and address environmental problems. Integrated modeling is thus of importance to helping EPA consider the environment as a ''single, interrelated system''. Integrated modeling encompasses a broad range of approaches and configurations of models, data and assessment methods to describe and analyze complex environmental problems, often in a multimedia and multidisciplinary manner.

This staff white paper recommends a commitment to a new direction in environmental modeling and decision making, one that adopts a systems thinking approach. This approach EPA will be able to significantly improve its ability to conduct scientific analyses in support of integrated decision making. The result will be implementing more efficient, effective and equitable policies and programs to advance environmental protection as well as economic prosperity. This white paper: (1) Outlines the need for and value of integrated modeling for EPA science and decision-making; (2) analyzes the state of the art and practice of integrated modeling and include examples of how this approach has been successfully applied and the lessons learned; (3) identifies the challenges to more fully implementing this approach in the future; and (4) presents a plan to create an enabling environment to facilitate a concerted, systematic, and stable approach to the development and application of integrated modeling for integrated decision making.

ADDRESSES: The final document is available electronically through the CREM Web site at: *http://www.epa.gov/crem/integrated-model-paper.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Noha Gaber, Council for Regulatory Environmental Modeling, Office of the Science Advisor, 1200 Pennsylvania Ave., NW., Mail Code: 8105R, Washington, DC 20460; by telephone/voice mail at (202) 564–2179; Fax: (202) 564–2070; or via e-mail at *gaber.noha@epa.gov*.

SUPPLEMENTARY INFORMATION: To achieve its mission of protecting human health and safeguarding the natural environment, the U.S. EPA often employs mathematical models to study environmental systems and processes and to inform regulatory decision making. The U.S. EPA established the Council for Regulatory Environmental Modeling (CREM) in 2000 in an effort to improve the quality, consistency and transparency of EPA models. Recognizing the policy demand for systems integration, the CREM initiated a series of activities to foster the development and application of integrated modeling. The CREM kicked off this series of integrated modeling-focused activities by convening an EPA-wide workshop on Integrated Modeling for Integrated Environmental Decision Making, held in January 2007. The workshop discussions highlighted the need for a coordinated and harmonized approach to integrated modeling and an institutional vision and workplan to help overcome the scientific, technological and organizational challenges impeding the effective use of integrated models. Building on this successful workshop, an Agency White Paper on ''Integrated Modeling for Integrated Environmental Decision Making'' (hereafter White Paper) was developed. The strategic vision and action plan proposed in the White Paper outline a set of recommended activities to overcome the science, information technology and organizational challenges facing a more consistent and coordinated implementation of integrated modeling to inform decision making at EPA.

In addition to internal review within Agency offices and regions, the White Paper was also evaluated and approved by the EPA's Science Policy Council, the Agency's forum for senior level policy deliberation and coordination on significant science issues. It has also undergone an independent external review process through the National Advisory Council on Environmental Policy and Technology (NACEPT). In its advice letter to the Agency NACEPT highlighted their finding that ''integrated modeling is a significant cross-cutting science and technology tool'', endorsed the White Paper and offered some recommendations for the Agency to move forward to implement the action plan proposed in the White Paper. The NACEPT advice letter may be found here: *http://www.epa.gov/ocem/nacept/reports/pdf/nacept-im-final-advice-letter-092208.pdf*.

Dated: January 5, 2009.

George Gray,

EPA Science Advisor.

[FR Doc. E9–355 Filed 1–9–09; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8761–3]

Farm, Ranch, and Rural Communities Committee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the Farm, Ranch, and Rural Communities Committee (FRRCC). The purpose of the FRRCC is to provide advice to the Administrator of EPA on environmental issues and programs that impact, or are of concern to, farms, ranches, and rural communities. The FRRCC is a part of EPA's efforts to expand cooperative working relationships with the agriculture industry and others who are interested in agricultural issues and to achieve greater progress in environmental protection.

The purpose of the meeting is to further advance: (1) Discussion of the impacts of Agency agriculture-related programs, policies, and regulations regarding climate change and renewable energy; (2) identification and development of a comprehensive environmental strategy for livestock operations; and (3) development of a constructive approach or framework to address areas of common interest between sustainable agriculture and protection of the environment. A copy of the meeting agenda will be posted at *http://www.epa.gov/ocem/frrcc*.

DATES: The Farm, Ranch, and Rural Communities Committee will hold an open meeting on Monday, February 23, 2009, from 8:30 a.m. (registration at 8 a.m.) until 5:45 p.m., and Tuesday, February 24, 2009, from 8:30 a.m. until 1 p.m. Eastern Standard Time.

ADDRESSES: The meeting will be held at the Mandarin Oriental, Washington DC Hotel, 1330 Maryland Ave., SW., Washington, DC 20024, telephone: 202–554–8588. The meeting is open to the public, with limited seating on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Alicia Kaiser, Designated Federal Officer, *kaiser.alicia@epa.gov*, 202–564–7273, U.S. EPA, Office of the Administrator (1101A), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or Christopher Ashcraft, Junior Designated Federal Officer, *ashcraft.christopher@epa.gov*, 202–564–2432, U.S. EPA, Office of the Administrator (1601M), 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION: Requests to make brief oral comments or provide written statements to the FRRCC should be sent to Alicia Kaiser, Designated Federal Officer, at the contact information above. All requests must be submitted no later than February 16, 2009.

Meeting Access: For information on access or services for individuals with disabilities, please contact Alicia Kaiser at 202–564–7273 or *kaiser.alicia@epa.gov*. To request accommodation of a disability, please contact Alicia Kaiser, preferably at least 10 days prior to the meeting, to give EPA as much time as possible to process your request.

Dated: January 6, 2009.

Alicia Kaiser,

Designated Federal Officer.

[FR Doc. E9–358 Filed 1–9–09; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT SYSTEM INSURANCE CORPORATION

Farm Credit System Insurance Corporation Board; Regular Meeting

SUMMARY: Notice is hereby given of the regular meeting of the Farm Credit System Insurance Corporation Board (Board).

Date and Time: The meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 15, 2009, from 9 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Roland E. Smith, Secretary to the Farm Credit System Insurance Corporation Board, (703) 883–4009, TTY (703) 883–4056.

ADDRESSES: Farm Credit System Insurance Corporation, 1501 Farm Credit Drive, McLean, Virginia 22102.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public (limited space available). In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. *Approval of Minutes*

- December 11, 2008 (Open and Closed).

B. *New Business*

- Review of Insurance Premium Rates.
- Premium Regulation.

Dated: January 6, 2009.

Roland E. Smith,

Secretary, Farm Credit System Insurance Corporation Board.

[FR Doc. E9–351 Filed 1–9–09; 8:45 am]

BILLING CODE 6710–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. 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 the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 5, 2009.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. FA Capital, LLC and Community Bank Investors of America, L.P., both of Richmond, Virginia, to retain 8.64 percent, and to acquire up to 18 percent, of the voting shares of Gateway Bank, FSB, San Leandro, California, and thereby engage in operating a savings association, pursuant to section 225.28(b)(4)(ii) of Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.E9–260 Filed 1–9–09; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

Trans No.	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—12/15/2008			
20090154	Eli Lilly and Company	United Therapeutics Corporation	United Therapeutics Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—12/16/2008			
20090194	BB&T Corporation	Mr. Tapley 0. Johnson, III	Charleston Premium Finance Company. Charleston Premium Finance Company of California, Inc. TAPCO Underwriters, Inc.
20090195	Mr. Tapley 0. Johnson, III	BB&T Corporation	BB&T Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—12/17/2008			
20090181	Lifespan Corporation	Care New England Health System	Care New England Health System.
20090204	State Automobile Mutual Insurance Company.	HBK Offshore Fund Ltd.	Rockhill Holding Company.
TRANSACTIONS GRANTED EARLY TERMINATION—12/18/2008			
20090171	Welsh, Carson, Anderson & Stowe X, L.P.	Bruce E. Toll and Robbi S. Toll	National Renal Alliance, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—12/19/2008			
20081575	Teva Pharmaceutical Industries Limited.	Barr Pharmaceuticals, Inc.	Barr Pharmaceuticals, Inc.
20090203	Nelson Peltz	Wendy's/Arby's Group, Inc.	Wendy's/Arby's Group, Inc.
20090205	United Farmers of Alberta Co-operative Limited.	Stuart Utgaard	Sportsman's Warehouse Holdings, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—12/24/2008			
20081692	King Pharmaceuticals, Inc.	Alpharma, Inc.	Alpharma, Inc.
20090185	Wells Fargo & Company	New Omaha Holdings L.P.	Wells Fargo Merchant Services, LLC.
TRANSACTIONS GRANTED EARLY TERMINATION—12/30/2008			
20090206	Wilton Re Holdings Limited	MetLife, Inc	Cova Corporation.
20090218	Bank of America Corporation	Yum! Brands, Inc	Pizza Hut, Inc.
20090222	NuVision Federal Credit Union	El Financial Credit Union	El Financial Credit Union.
TRANSACTIONS GRANTED EARLY TERMINATION—12/31/2008			
20090221	MiTAC Inter-national Corporation	Magellan Investors LLC.	Magellan Navigation, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay, Contact Representative or Renee Hallman, Contact Representative. Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. E9–240 Filed 1–9–09; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221]

Civilian Board of Contract Appeals; Information Collection; Civilian Board of Contract Appeals Rules of Procedure

AGENCY: Civilian Board of Contract Appeals, GSA.

ACTION: Notice; correction.

SUMMARY: The General Services Administration published a document in the **Federal Register** of December 9, 2008, concerning OMB Control No. 3090–0221 requesting comments on whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected. The document contained an incorrect date.

FOR FURTHER INFORMATION CONTACT: Hada Flowers at (202) 208–7282, or by e-mail at *hada.flowers@gsa.gov*, General Services Administration, FAR Secretariat, Washington, DC 20405.

Correction

In the **Federal Register** of December 9, 2008, in FR Doc. 73–237, on page 74720, in the second column, correct the ''Summary'' caption, to read as follows:

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement regarding the Civilian Board of Contract Appeals (CBCA) Rules of Procedure. A request for public comments was published at 72 FR 65341, November 20, 2007. No comments were received. The clearance currently expires on April 30, 2009.

Public comments are particularly invited on: Whether this collection of information is necessary and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected.

Dated: January 6, 2009.

Al Matera,

Director, Office of Acquisition Policy.

[FR Doc. E9–299 Filed 1–9–09; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2009 through September 30, 2010; Correction

AGENCY: Office of the Secretary (OS), DHHS.

ACTION: Notice; correction.

SUMMARY: This document corrects a technical error that appeared in the notice published in the November 26, 2008 **Federal Register** entitled ''Federal Financial Participation in State Assistance Expenditures; Federal Matching Shares for Medicaid, the State Children's Health Insurance Program, and Aid to Needy Aged, Blind, or Disabled Persons for October 1, 2009 through September 30, 2010.''

FOR FURTHER INFORMATION CONTACT: Thomas Musco or Carrie Shelton, Office of Health Policy, Office of the Assistant Secretary for Planning and Evaluation, Room 447D—Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, (202) 690–6870.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. E8–28233 of November 26, 2008 (73 FR 72051) there was a technical error in the second footnote to the table that appeared in the notice that is identified and corrected in the Correction of Errors section below.

II. Correction of Errors

In FR Doc. E8–28233 of November 26, 2008 (73 FR 72051), make the following correction:

On page 72052, at the bottom of the page, in the second footnote for the table entitled ''Federal Medical Assistance Percentages and Enhanced Federal Medical Assistance Percentages, Effective October 1, 2009–September 30, 2010 (Fiscal year 2010)'', the second sentence, ''For other purposes, including programs remaining in Title IV of the Act, the percentage for D.C. is 50.00.'' is corrected to read ''For other purposes, the percentage for D.C. is 50.00, unless otherwise specified by law.''

(Catalog of Federal Domestic Assistance Program Nos. 93.558: TANF Contingency Funds; 93.563: Child Support Enforcement; 93–596: Child Care Mandatory and Matching Funds of the Child Care and Development Fund; 93.658: Foster Care Title IV–E; 93.659: Adoption Assistance; 93.769: Ticket-to-Work and Work Incentives Improvement Act (TWWIIA) Demonstrations to Maintain Independence and Employment; 93.778: Medical Assistance Program; 93.767: State Children's Health Insurance Program)

Dated: January 5, 2009.

Ann C. Agnew,

Executive Secretary to the Department.

[FR Doc. E9–292 Filed 1–9–09; 8:45 am]

BILLING CODE 4150–29–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0664]

Meeting To Discuss Women's Health

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Women's Health is announcing the following meeting: ''Women's Health Dialogue.'' The meeting is intended for directors of national organizations interested in discussing women's health research and educational out reach.

Date and Time: The meeting will be held on February 9, 2009, from 8:30 a.m. to 11:30 a.m.

Location: The meeting will be held at HMA Associates, Inc., 1101 17th St., NW., suite 1102, Washington, DC 20036.

Contact: Deborah Kallgren, FDA Office of Women's Health (HF–8), Food and Drug Administration, 5600 Fishers Lane, rm. 16–65, Rockville, MD 20857, 301–827–0350, FAX: 301–827–9194, e-mail: *deborah.kallgren@fda.hhs.gov.*

Registration: There is no registration fee, but preregistration is required. Send registration information (including name, title, firm name, address, telephone, and fax number) to Deborah Kallgren. Seating is limited to 15 participants (1 person per organization).

If you need special accommodations due to a disability, please contact Deborah Kallgren at least 7 days in advance (by February 2, 2009).

Dated: January 7, 2009.

Jeffrey Shuren,

Associate Commissioner for Policy and Planning.

[FR Doc. E9–367 Filed 1–9–09; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; 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 a meeting of the Board of Scientific Counselors of the NIH Clinical Center.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the Clinical Center, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors of the NIH Clinical Center.

Date: February 17–18, 2009.

Time: 8 a.m. to 12 p.m.

Agenda: To review and evaluate the Department of Laboratory Medicine.

Place: National Institutes of Health, Building 10, 10 Center Drive, Room 4–2551, Bethesda, MD 20892.

Contact Person: David K Henderson, MD, Deputy Director for Clinical Care, Office of the Director, Clinical Center, National Institutes of Health, Building 10, Room 6–1480, Bethesda, MD 20892, (301) 496–3515.

Dated: *January 5, 2009.*

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–263 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; 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 Child Health and Human Development 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/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 Child Health and Human Development Council.

Date: January 22, 2009.

Open: 8 a.m. to 12:30 p.m.

Agenda: (1) A report by the Director, NICHD; (2) Report of the Subcommittee on Planning and Policy; (3) Child Development and Behavior Branch Presentation; and other business of the Council.

Place: National Institutes of Health, Building 31, 31 Center Drive, C–Wing, Conference Room 6, Bethesda, MD 20892.

Closed: 1:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Contact Person: Yvonne T. Maddox, PhD, Deputy Director, National Institute of Child Health and Human Development, NIH, 9000 Rockville Pike MSC 7510, Building 31, Room 2a03, Bethesda, MD 20892, (301) 496–1848.

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.nichd.nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

In order to facilitate public attendance at the open session of Council, the NICHD is initiating a pilot study of ''virtual attendance'' as an alternative to attending meetings on the NIH Campus. To attend the meeting virtually, please click on the virtual meeting URL for instructions: *http://www.nichd.nih.gov/about/overview/advisory/nachhd/virtual-meeting-200901.cfm.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–258 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; 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/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, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F—Manpower & Training.

Date: February 10, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Washington DC, 1515 Rhode Island Avenue, NW., Washington, DC 20005.

Contact Person: Lynn M. Amende, PhD, Scientific Review Officer, Resources And Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8105, Bethesda, MD 20892, 301–451–4759, *amendel@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, SPORE in Brain, Prostate, Kidney, Breast and Melanoma Cancers.

Date: February 11–12, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Wlodek Lopaczynski, Md, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd. Room

8131, Bethesda, MD 20892, 301–594–1402, *lopacw@mail.nih.gov*.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee G-Education.

Date: February 17–18, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington DC/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Jeannette F Korczak, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Blvd., Room 8115, Bethesda, MD 20892, 301–496–9767, *korczakj@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Prevention Control and Population Sciences.

Date: February 18–19, 2009.

Time: 8 a.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Marriott Bethesda North Hotel & Conference Center, 5700 Marinelli Road, Bethesda, MD 20852.

Contact Person: Peter J. Wirth, PhD, Scientific Review Officer, Research Programs Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8131, Bethesda, MD 20892–8328, 301–496–7565, *pw2q@nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Education Meeting (K05 & R25).

Date: February 18, 2009.

Time: 10 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Washington/Rockville, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Lynn M Amende, PhD, Scientific Review Officer, Resources and Training Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 8105, Bethesda, MD 20892–8328, 301–451–4759, *amendel@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Health Information Technology in Cancer Care.

Date: March 3, 2009.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications

Place: National Institutes of Health, 6116 Executive Boulevard, Rockville, MD 20852 (Telephone Conference Call)

Contact Person: Rhonda J. Moore, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *moorerh@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Small Grants for Behavioral Research in Cancer Control.

Date: March 12–13, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda Marriott—Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rhonda J. Moore, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *moorerh@mail.nih.gov*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Smokeless Tobacco Use Cessation.

Date: March 25, 2009.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Bethesda North Marriott Hotel & Conference Center, 5701 Marinelli Road, Bethesda, MD 20852.

Contact Person: Sherwood Githens, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Blvd., Room 8053, Bethesda, MD 20892, 301/435–1822, *GITHENSS@MAIL.NIH.GOV*.

Name of Committee: National Cancer Institute Special Emphasis Panel, Cancer Disparities Research Partnership Program.

Date: March 26, 2009.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications

Place: Bethesda Marriott—Pooks Hill, 5151 Pooks Hill Road, Bethesda, MD 20814.

Contact Person: Rhonda J. Moore, PhD, Scientific Review Officer, Special Review and Logistics Branch, Division of Extramural Activities, National Cancer Institute, NIH, 6116 Executive Boulevard, Room 7151, Bethesda, MD 20892–8329, 301–451–9385, *moorerh@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–266 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Complementary & Alternative Medicine; 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 for Complementary and Alternative Medicine Special Emphasis Panel; Clinical Research in CAM.

Date: February 23–24, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road, NW., Washington, DC 20015.

Contact Person: Laurie Friedman Donze, PhD, Scientific Review Officer, Office of Scientific Review, National Center for Complementary and Alternative Medicine, NIH, 6707 Democracy Blvd., Suite 401, Bethesda, MD 20892, 301–402–1030, *donzel@mail.nih.gov*.

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–264 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of 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 meetings of the National Advisory Council for Human Genome Research.

The meetings 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 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 Advisory Council for Human Genome Research.

Date: February 9–10, 2009.

Open: February 9, 2009, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: February 9, 2009, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: February 10, 2009, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov*.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 18–19, 2009.

Open: May 18, 2009, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: May 18, 2009, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: May 19, 2009, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.nih.gov*.

Name of Committee: National Advisory Council for Human Genome Research.

Date: September 14–15, 2009.

Open: September 14, 2009, 8:30 a.m. to 3 p.m.

Agenda: To discuss matters of program relevance.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: September 14, 2009, 3 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Closed: September 15, 2009, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Room, Bethesda, MD 20892.

Contact Person: Mark S. Guyer, PhD, Director for Extramural Research, National Human Genome Research Institute, 5635 Fishers Lane, Suite 4076, MSC 9305, Bethesda, MD 20892, 301–496–7531, *guyerm@mail.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.

Information is also available on the Institute's/Center's home page: *http://www.genome.gov/11509849*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–259 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

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 Special Emphasis Panel, Conte Centers for Basic and Translational Mental Health Research.

Date: February 23, 2009.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Vinod Charles, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd, Room 6151, MSC 9606, Bethesda, MD 20892–9606, 301–443–1606.

Name of Committee: National Institute of Mental Health Special Emphasis Panel, Social Neuroscience Panel.

Date: March 5, 2009.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: St. Gregory Hotel, 2033 M Street, NW., Washington, DC 20036.

Contact Person: Allan F. Mirsky, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6157, MSC 9609, Bethesda, MD 20892–9609, 301–443–0004, *sechu@mail.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: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–246 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; 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 Allergy and Infectious Diseases Special Emphasis Panel, Virology Program Project Application.

Date: January 28, 2009.

Time: 12 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817.
Contact Person: Brenda Lange-Gustafson, PhD, Scientific Review Officer, NIAID, DEA, Scientific Review Program, Room 3122, 6700–B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 451–3684, *bgustafson@niaid.nih.gov*.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Development of Immunological Memory.
Date: February 3, 2009.
Time: 10 a.m. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, 6700B Rockledge Drive, 3136, Bethesda, MD 20817. (Telephone Conference Call)
Contact Person: Cheryl K. Lapham, PhD, Scientific Review Administrator, Scientific Review Program, DEA, NIAID/NIH/DHHS, 6700–B Rockledge Drive, MSC 7616, Room 3127, Bethesda, MD 20892–7616, 301–402–4598, *clapham@niaid.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–270 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meetings

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the AIDS Research Advisory Committee, NIAID.

The meetings will be open to the public, 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.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: January 26, 2009.
Time: 1 p.m. to 5:30 p.m.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID, AIDS Vaccine Research Subcommittee.
Date: January 27–28, 2009.
Time: 8:30 a.m. to 5 p.m.
Agenda: Topics to be covered include an update on data analysis from the recent STEP vaccine trial and presentations covering cellular immune assays and systems biology approaches for vaccine research.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: James A. Bradac, PhD, Program Official, Preclinical Research and Development Branch, Division of AIDS, Room 5116, National Institutes of Health/NIAID, 6700B Rockledge Drive, Bethesda, MD 20892–7628, 301–435–3754, *jbradac@mail.nih.gov*.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: May 18, 2009.
Time: 1 p.m. to 5:30 p.m.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

Name of Committee: AIDS Research Advisory Committee, NIAID.
Date: September 14, 2009.
Time: 1 p.m. to 5:30 p.m.
Agenda: Reports from the Division Director and other staff.
Place: National Institutes of Health, Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Rona L. Siskind, Executive Secretary, AIDS Research Advisory Committee, Division of AIDS, NIAID/NIH, 6700B Rockledge Drive, Room 4139, Bethesda, MD 20892–7601, 301–435–3732.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–272 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of 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 meetings of the National Advisory Dental and Craniofacial Research Council.

The meetings 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 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 Advisory Dental and Craniofacial Research Council.
Date: January 26, 2009.
Open: 8:30 a.m. to 1 p.m.
Agenda: Report from Institute Director and other staff.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.
Closed: 1 p.m. to adjournment.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.
Contact Person: Alicia J. Dombroski, PhD, Deputy Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Name of Committee: National Advisory Dental and Craniofacial Research Council.
Date: May 18, 2009.
Open: 8:30 a.m. to 1 p.m.
Agenda: Report from Institute Director and Other staff.
Place: National Institutes of Health, Building 31, 31 Center Drive, Bethesda, MD 20892.
Closed: 1 p.m. to adjournment.
Agenda: To review and evaluate grant applications.
Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Deputy Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

Name of Committee: National Advisory Dental and Craniofacial Research Council.

Date: September 24, 2009.

Open: 8:30 a.m. to 1 p.m.

Agenda: Report from Institute Director and Other staff.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, Conference Room 10, Bethesda, MD 20892.

Contact Person: Alicia J. Dombroski, PhD, Deputy Director, Division of Extramural Activities, Natl Inst of Dental and Craniofacial Research, National Institutes of Health, Bethesda, MD 20892.

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.nidcr.nih.gov/about*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: January 5, 2009.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–277 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Deafness and Other Communication Disorders; 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 Institute on Deafness and Other Communication Disorders Special Emphasis Panel; NIDCD Clinical Center Review.

Date: January 27, 2009.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6120 Executive Blvd., Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sheo Singh, PhD, Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, Executive Plaza South, Room 400C, 6120 Executive Blvd., Bethesda, MD 20892, 301–496–8683, *singhs@nidcd.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.173, Biological Research Related to Deafness and Communicative Disorders, National Institutes of Health, HHS)

Dated: December 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–282 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; 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 Neurological Disorders and Stroke 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 Neurological Disorders and Stroke Council.

Date: February 5–6, 2009.

Open: February 5, 2009, 10:30 a.m. to 5 p.m.

Agenda: Report by the Director, NINDS; Report by the Associate Director for Extramural Research; Overview of the NINDS Intramural Program; Report on the Strategic Planning Process; and Other Administrative and Program Developments.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: February 5, 2009, 5 p.m. to 5:30 p.m.

Agenda: To review and evaluate the Division of Intramural Research Board of Scientific Counselors' Reports.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Closed: February 6, 2009, 8 a.m. to 11 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, 31 Center Drive, C Wing, Conference Room 10, Bethesda, MD 20892.

Contact Person: Robert Finkelstein, Ph.D., Associate Director for Extramural Research, National Institute of Neurological, Disorders and Stroke, NIH, 6001 Executive Blvd., Suite 3309, MSC 9531, Bethesda, MD 20892, (301) 496–9248.

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.ninds.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: December 30, 2008.

Jennifer Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. E9–286 Filed 1–9–09; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Customs and Border Protection

[Docket No. USCBP–2008–0112]

Enhanced Bonding Requirement for Certain Shrimp Importers

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of proposed modification; request for comments.

SUMMARY: This notice proposes to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to an enhanced bonding requirement (EBR). A recent World Trade Organization (WTO) Appellate Body Report has found that CBP's application of this requirement to shrimp from Thailand and India is inconsistent with U.S. WTO obligations. In response to this report, CBP proposes to end the designation of shrimp subject to antidumping or countervailing duty orders as a special category or covered case subject to the EBR. CBP proposes that shrimp importers affected by this requirement may request termination of any existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new bond application pursuant to 19 CFR 113.12(b). CBP seeks comment on this proposal.

DATES: Comments must be received on or before February 11, 2009.

ADDRESSES: Commenters may submit comments, identified by *docket number*, by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments via docket number USCBP–2008–0112.
- *Mail:* Trade and Commercial Regulations Branch, U.S. Customs and Border Protection, Regulations and Rulings, Office of International Trade, 799 9th Street, NW., (Mint Annex), Washington, DC 20229.

Instructions: All submissions received must include the agency name and docket number for this document. All comments received will be posted without change to *http://www.regulations.gov*, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Participation'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

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 on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Trade and Commercial Regulations Branch, Regulations and Rulings, Office of International Trade, U.S. Customs and Border Protection, 799 9th Street, NW., (5th Floor), Washington, DC. Arrangements to inspect submitted comments should be made in advance by calling Mr. Joseph Clark at (202) 325–0118.

FOR FURTHER INFORMATION CONTACT: David Genovese, ADCVD/Revenue Policy & Programs Division, Trade Policy and Programs, Office of International Trade, *David.Genovese@dhs.gov*, (202) 863–6092.

SUPPLEMENTARY INFORMATION:

Public Participation

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of the proposed rule. Customs and Border Protection (CBP) also invites comments that relate to the economic, environmental, or federalism effects that might result from this proposal. Comments that will provide the most assistance will reference a specific portion of the proposal, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

Background

A key CBP mission is to collect all import duties determined to be due to the United States. Under CBP statutes and regulations, release of merchandise prior to the determination of all duties that may be owed is ordinarily permitted, provided the importer posts a bond or other security to insure payment of duties and compliance with other applicable laws and regulations. The final assessment of duties occurs at liquidation of the entry.

In the case of goods subject to antidumping (AD) or countervailing (CV) duties, CBP follows instructions from the Department of Commerce (DOC) (which administers the AD/CV duty laws in conjunction with the U.S. International Trade Commission) regarding the applicable AD/CV duty rate, and collects any additional duties owed upon liquidation. However, CBP has found that many importers subject to AD/CV duties fail to pay the additional duties determined to be due at liquidation. As a result, since defaults for AD/CV duty supplemental bills have increased drastically, CBP conducted an internal policy review of revenue protection strategies at CBP.

Issuance of CBP's Enhanced Bonding Requirement (EBR)

In response to importers' increasing failure to pay additional duties determined to be due at liquidation, CBP reconsidered the general bond formula which provides that the minimum continuous bond may be in an amount equal to the greater of $50,000 or ten percent of the amount of the previous year's duties, taxes and fees. In order to address the growing collection problem, CBP announced an enhanced customs bonding requirement (EBR) for those continuous bonds that secure the importer's promise to pay all duties finally determined to be due on certain merchandise subject to an AD/CV duty order. See ''Monetary Guidelines for Setting Bond Amounts for Importations Subject to Enhanced Bonding Requirements'', 71 FR 62276 (October 24, 2006).

Application of CBP EBR

Application of the EBR has been limited to merchandise subject to the first antidumping orders involving agriculture and aquaculture merchandise imposed after the issuance of the July 2004 Amendment to the Bond Guidelines.[1] CBP required that continuous bond amounts for importers of shrimp subject to AD or CV duty orders be increased to the rate established in the final AD or CV duty

[1] Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Brazil, 70 FR 5143 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Thailand, 70 FR 5145 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from India, 70 FR 5147 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from People's Republic of China, 70 FR 5149 (Feb. 1, 2005); Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from the Socialist Republic of Vietnam, 70 FR 5152 (Feb. 1, 2005); and Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Certain Frozen Warmwater Shrimp from Ecuador, 70 FR 5156 (Feb. 1, 2005).

order, multiplied by the value of the importer's entries of the subject merchandise in the previous 12-month period.

World Trade Organization Disputes Regarding EBR

On April 24, 2006, Thailand requested consultations with respect to certain issues relating to the imposition of antidumping measures on shrimp from Thailand, including the application of the EBR to importers of shrimp from Thailand. Thailand requested the establishment of a panel on September 15, 2006, and the World Trade Organization (WTO) Dispute Settlement Body (DSB) established a panel on October 26, 2006.

On June 6, 2006, India requested consultations with respect to certain issues relating to Customs Bond Directive 99–3510–004, as amended by the *Amendment to Bond Directive 99–3510–004 for Certain Merchandise Subject to Antidumping Countervailing Duty Cases* (July 9, 2004) and clarifications and amendments thereof. India alleged that the United States has imposed on importers a requirement to maintain a continuous entry bond in the amount of the anti-dumping duty margin multiplied by the value of imports of subject shrimp imported by the importer in the preceding year, and that this action breached several provisions of the General Agreement on Tariffs and Trade 1994 (GATT 1994), the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement), and the Agreement on Subsidies and Countervailing Measures. India requested the establishment of a panel on October 13, 2006, and the DSB established a panel on November 21, 2006.

The panels circulated the reports in both cases on February 29, 2008. Among other things, the panels found that the additional bond requirement as applied to importers of shrimp from Thailand and India was a ''specific action against dumping'' inconsistent with Article 18.1 of the AD Agreement and was inconsistent with the Ad Note to paragraphs 2 and 3 of GATT 1994 Article VI because it did not constitute ''reasonable'' security.[2] On April 17, 2008, Thailand and India appealed the findings of the panels with respect to the additional bond requirement. The United States cross-appealed one aspect of those findings on April 29, 2008.

The Appellate Body report was issued on July 16, 2008.[3] The Appellate Body found that the panels properly concluded that the additional bond requirement as applied to importers of shrimp from Thailand and India did not constitute reasonable security. It rejected Thailand and India's other claims regarding the panels' interpretation of the Ad Note. The Panel and Appellate Body reports were adopted by the DSB on August 1, 2008. On August 29, 2008, the United States indicated that it intended to comply with the recommendations and rulings of the DSB.

Proposed Modification

CBP proposes to comply with the recommendations and rulings of the DSB by ending the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Furthermore, shrimp importers may request termination of existing continuous bonds pursuant to 19 CFR 113.27(a) and submit a new continuous bond application pursuant to 19 CFR 113.12(b). The requirements for submitting a new bond application pursuant to 19 CFR 113.12 are available on the CBP Web site at *http://www.cbp.gov/xp/cgov/trade/priority_trade/revenue/bonds/pilot_program/news_develop/* under the ''Policy and Procedures'' section.

After public comments are received, reviewed, and considered, CBP will publish in the Customs Bulletin and in the **Federal Register** a final notice regarding the designation of shrimp covered by antidumping or countervailing duty orders as a special category or covered case subject to the requirement of additional bond amounts. Any change to the designation of this merchandise and the bond amounts required of importers of this merchandise will be effective for entries made on or after the date of publication of the final notice.

Dated: January 7, 2009.

W. Ralph Basham,

Commissioner, Customs and Border Protection.

[FR Doc. E9–343 Filed 1–9–09; 8:45 am]

BILLING CODE 9111–14–P

[2] Panel Report, *United States—Measures Relating to Shrimp from Thailand*, WT/DS343/R, adopted August 1, 2008.

[3] WTO Appellate Body Report, ''*United States—Measures Relating to Shrimp from Thailand*'' and ''*United States—Customs Bond Directive for Merchandise Subject to Anti-Dumping/Countervailing Duties*, WT/DS343/AB/R and WT/DS345/AB/R, adopted August 1, 2008.

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Quarterly IRS Interest Rates Used in Calculating Interest on Overdue Accounts and Refunds on Customs Duties

AGENCY: Customs and Border Protection, Department of Homeland Security.

ACTION: General notice.

SUMMARY: This notice advises the public of the quarterly Internal Revenue Service interest rates used to calculate interest on overdue accounts (underpayments) and refunds (overpayments) of customs duties. For the calendar quarter beginning January 1, 2009, the interest rates for overpayments will be 4 percent for corporations and 5 percent for non-corporations, and the interest rate for underpayments will be 5 percent. This notice is published for the convenience of the importing public and Customs and Border Protection personnel.

DATES: *Effective Date:* January 1, 2009.

FOR FURTHER INFORMATION CONTACT: Ron Wyman, Revenue Division, Collection and Refunds Branch, 6650 Telecom Drive, Suite #100, Indianapolis, Indiana 46278; telephone (317) 614–4516.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to 19 U.S.C. 1505 and Treasury Decision 85–93, published in the **Federal Register** on May 29, 1985 (50 FR 21832), the interest rate paid on applicable overpayments or underpayments of customs duties must be in accordance with the Internal Revenue Code rate established under 26 U.S.C. 6621 and 6622. Section 6621 was amended (at paragraph (a)(1)(B) by the Internal Revenue Service Restructuring and Reform Act of 1998, Pub. L. 105–206, 112 Stat. 685) to provide different interest rates applicable to overpayments: one for corporations and one for non-corporations.

The interest rates are based on the Federal short-term rate and determined by the Internal Revenue Service (IRS) on behalf of the Secretary of the Treasury on a quarterly basis. The rates effective for a quarter are determined during the first-month period of the previous quarter.

In Revenue Ruling 2008–54, the IRS determined the rates of interest for the calendar quarter beginning January 1, 2009, and ending on March 31, 2009. The interest rate paid to the Treasury for underpayments will be the Federal short-term rate (2%) plus three

percentage points (3%) for a total of five percent (5%). For corporate overpayments, the rate is the Federal short-term rate (2%) plus two percentage points (2%) for a total of four percent (4%). For overpayments made by non-corporations, the rate is the Federal short-term rate (2%) plus three percentage points (3%) for a total of five percent (5%). These interest rates are subject to change for the calendar quarter beginning April 1, 2009, and ending June 30, 2009.

For the convenience of the importing public and Customs and Border Protection personnel the following list of IRS interest rates used, covering the period from before July of 1974 to date, to calculate interest on overdue accounts and refunds of customs duties, is published in summary format.

Beginning date	Ending date	Under payments (percent)	Over-payments (percent)	Corporate over-payments (Eff. 1–1–99) (percent)
070174	063075	6	6	
070175	013176	9	9	
020176	013178	7	7	
020178	013180	6	6	
020180	013182	12	12	
020182	123182	20	20	
010183	063083	16	16	
070183	123184	11	11	
010185	063085	13	13	
070185	123185	11	11	
010186	063086	10	10	
070186	123186	9	9	
010187	093087	9	8	
100187	123187	10	9	
010188	033188	11	10	
040188	093088	10	9	
100188	033189	11	10	
040189	093089	12	11	
100189	033191	11	10	
040191	123191	10	9	
010192	033192	9	8	
040192	093092	8	7	
100192	063094	7	6	
070194	093094	8	7	
100194	033195	9	8	
040195	063095	10	9	
070195	033196	9	8	
040196	063096	8	7	
070196	033198	9	8	
040198	123198	8	7	
010199	033199	7	7	6
040199	033100	8	8	7
040100	033101	9	9	8
040101	063001	8	8	7
070101	123101	7	7	6
010102	123102	6	6	5
010103	093003	5	5	4
100103	033104	4	4	3
040104	063004	5	5	4
070104	093004	4	4	3
100104	033105	5	5	4
040105	093005	6	6	5
100105	063006	7	7	6
070106	123107	8	8	7
010108	033108	7	7	6
040108	063008	6	6	5
070108	093008	5	5	4
100108	123108	6	6	5
010109	033109	5	5	4

Dated: January 7, 2009.

Jayson P. Ahern,

Acting Commissioner, U.S. Customs and Border Protection.

[FR Doc. E9–344 Filed 1–9–09; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5285–N–01]

Notice of Proposed Information Collection: Comment Request

Housing Counseling Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* March 13, 2009.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Lillian Deitzer, Departmental Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410; e-mail *Lillian_L._Deitzer@HUD.gov* or telephone (202) 402–8048.

FOR FURTHER INFORMATION CONTACT: Brian Siebenlist, Deputy Director, Office of Single Family Program Support Division, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 402–5415 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection 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 of the proposed collection of information; (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 the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Counseling Program.

OMB Control Number, if applicable: 2502–0261.

Description of the need for the information and proposed use: Nonprofit organizations will submit information to HUD through Grants.gov to apply for funding to provide various kinds of housing counseling assistance. HUD will use the information to evaluate applicants competitively and then select organizations to receive funding to supplement their housing counseling program. The proposed collection will allow HUD to evaluate and select the most qualified applicant(s). Post-award collection, such as quarterly reports, will allow HUD to evaluate grantee performance. This collection of information also includes renewal of various HUD forms, including form HUD–9900, the Housing Counseling Approval Application, and form HUD–9902, Housing Counseling Agency Activity Report. Additionally, it covers the collection of client level data and agency profile data.

Agency form numbers, if applicable: SF–424, SF–424Supp, SF–424CB, SF–LLL, HUD–27300, HUD–2880, HUD–2990, HUD–2991, HUD–2994, HUD–96010, HUD–9902.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated total number of hours needed to prepare the information collection is 36,320; the number of respondents is 12,450 generating approximately 39,980 annual responses; the frequency of response is on occasion or quarterly; and the estimated time needed to prepare the response is approximately 49 hours.

Status of the proposed information collection: This is extension of an already approved information collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: January 6, 2009.

Ronald Y. Spraker,

Acting General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

[FR Doc. E9–388 Filed 1–9–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5275–N–01]

Native American Housing Assistance and Self-Determination Reauthorization Act of 2008: Initiation of Negotiated Rulemaking

AGENCY: Office of Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: This notice announces that HUD is initiating negotiated rulemaking for the purpose of developing regulatory changes to the programs authorized under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA). Changes to these programs were made by the Native American Housing Assistance and Self-Determination Reauthorization Act of 2008, which also directs that HUD undertake negotiated rulemaking to implement the statutory revisions. This notice provides background information on the NAHASDA programs and describes the next steps in the negotiated rulemaking process.

FOR FURTHER INFORMATION CONTACT: Rodger J. Boyd, Deputy Assistant Secretary for Native American Programs, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4126, Washington, DC 20410–5000, telephone at 202–401–7914 (this is not a toll-free number). Persons with hearing or speech impediments may access this number through TTY by calling the toll-free Federal Information Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

The Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*) (NAHASDA) changed the way that housing assistance is provided to Native Americans. NAHASDA eliminated several separate assistance programs and replaced them with a single block grant program, known as the Indian Housing Block Grant (IHBG) Program. In addition, title VI of NAHASDA

authorizes federal guarantees for financing of certain tribal activities (Title VI Loan Guarantee Program). The regulations governing the IHBG and Title VI Loan Guarantee Programs are located in part 1000 of HUD's regulations in title 24 of the Code of Federal Regulations. In accordance with section 106 of NAHASDA, HUD developed the regulations with active tribal participation and using the procedures of the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570).

Under the IHBG Program, HUD makes assistance available to eligible Indian tribes for affordable housing activities. The amount of assistance made available to each Indian tribe is determined using a formula that was developed as part of the NAHASDA negotiated rulemaking process. Based on the amount of funding appropriated annually for the IHBG Program, HUD calculates the annual grant for each Indian tribe and provides this information to the Indian tribes. An Indian Housing Plan for the Indian tribe is then submitted to HUD. If the Indian Housing Plan is found to be in compliance with statutory and regulatory requirements, the grant is made. Under the Title VI Loan Guarantee Program, HUD guarantees notes and other obligations issued by Indian tribes or their tribally designated housing entities, for the purposes of financing the eligible activities specified in NAHASDA.

The Native American Housing Assistance and Self-Determination Reauthorization Act of 2008 (Pub. L. 110–411, approved October 14, 2008) (2008 Reauthorization Act) reauthorizes NAHASDA through 2013 and makes several amendments to the statutory requirements governing the IHBG and Title VI Loan Guarantee Programs. The 2008 Reauthorization Act amends section 106 of NAHASDA to provide that HUD shall ''initiate a negotiated rulemaking in accordance with this section by not later than 90 days after enactment of the'' 2008 Reauthorization Act.

Through this notice, HUD announces the initiation of the negotiated rulemaking required by the 2008 Reauthorization Act. This notice also provides an overview of the next steps in the negotiated rulemaking process.

II. Negotiated Rulemaking

The basic concept of negotiated rulemaking is to have the agency that is developing a regulation bring together representatives of affected interests for face-to-face negotiations. The give-and-take of the negotiation process is expected to foster constructive, creative and acceptable solutions to difficult problems. The establishment of the negotiated rulemaking committee will offer Indian tribal governments the opportunity to have input into the changes to the IHBG Program regulations.

Section 564 of the Negotiated Rulemaking Act of 1990 requires that an agency, prior to the establishment of a negotiated rulemaking committee, publish a notice in the **Federal Register** announcing its intent to establish the committee, provide a list of the proposed committee membership, provide certain other information regarding the formation of the committee, and solicit nominations for selection to the committee. HUD will be publishing the notice required by section 564 in the **Federal Register**. HUD's goal is to establish a committee whose membership reflects a balanced representation of Indian tribes.

When the committee is established, all meetings of the negotiated rulemaking committee will be announced in the **Federal Register** and be open to the public.

Dated: December 31, 2008.

Milan Ozdinec,

Deputy Assistant Secretary for Housing Choice Program, Office of Public and Indian Housing.

[FR Doc. E9–269 Filed 1–9–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5289–D–01]

Order of Succession for the Office of Policy Development and Research

AGENCY: Office of the Assistant Secretary for Policy Development and Research, HUD.

ACTION: Notice of order of succession.

SUMMARY: In this notice, the Assistant Secretary for Policy Development and Research designates the Order of Succession for the Office of Assistant Secretary for Policy Development and Research. This Order of Succession supersedes the Order of Succession for the Office of Policy and Development, published on July 28, 2003.

DATES: *Effective Date:* January 6, 2009.

FOR FURTHER INFORMATION CONTACT: Lynn B. Newkirk, Director, Management and Administrative Services, Department of Housing and Urban Development, 451 7th Street, SW., Room 8228, Washington, DC 20410–6000, telephone number (202) 708–1812. (This is not a toll-free number.) Persons with hearing-or speech-impairments may access this number through TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Policy Development and Research is issuing this Order of Succession of officials authorized to perform the duties and functions of the Office of the Assistant Secretary when, by reason of absence, disability, or vacancy in office, the Assistant Secretary is not available to exercise the powers or perform the duties of the Office. This Order of Succession is subject to the provisions of the Federal Vacancies Reform Act of 1998 (5 U.S.C. 3345–3349d). This publication supersedes the Order of Succession notice on July 28, 2003 (68 FR 44353).

Accordingly, the Assistant Secretary for Policy Development and Research designates the following Order of Succession:

Section A. Order of Succession

Subject to the provision of the Federal Vacancies Reform Act of 1998, during any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Policy Development and Research is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for Policy Development and Research, the following officials within the Office of Policy Development and Research are hereby designated to exercise the powers and perform the duties of the Office:

(1) General Deputy Assistant Secretary.

(2) Deputy Assistant Secretary for Research, Evaluation, and Monitoring.

(3) Deputy Assistant Secretary for Policy Development.

(4) Deputy Assistant Secretary for Economic Affairs.

These officials shall perform the functions and duties of the Office in the order specified herein, and no official shall serve unless all the other officials, whose position titles precede his or hers in this order, are unable to act by reason of absence, disability, or vacancy in office. Foley, Richard.

Section B. Authority Superseded

This Order of Succession supersedes the Order of Succession for the Assistant Secretary for Policy Development and Research, published on July 28, 2003 (68 FR 44353).

Authority: Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: January 6, 2009.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

[FR Doc. E9–387 Filed 1–9–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5278–N–01]

Section 8 Housing Assistance Payments Program—Contract Rent Annual Adjustment Factors, Fiscal Year 2009

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Revised Contract Rent Annual Adjustment Factors.

SUMMARY: The United States Housing Act of 1937 requires that assistance contracts signed by owners participating in the Department's Section 8 housing assistance payments programs provide for annual adjustment in the monthly rentals for units covered by the contract. This notice announces revised Annual Adjustment Factors (AAFs) for adjustment of contract rents on assistance contract anniversaries. The factors are based on a formula using data on residential rent and utilities cost changes from the most current annual Bureau of Labor Statistics Consumer Price Index (CPI) survey. These factors are applied at Housing Assistance Payment (HAP) contract anniversaries for those calendar months commencing after the effective date of this notice.

DATES: Effective Date: January 12, 2009.

FOR FURTHER INFORMATION CONTACT: Contact David Vargas, Associate Deputy Assistant Secretary for Office of Public Housing and Voucher Programs, 202–708–2815, for questions relating to the Project-Based Certificate, and Moderate Rehabilitation programs (non Single Room Occupancy); Ann Oliva, Office of Special Needs Assistance Programs, Office of Community Planning and Development, 202–708–4300 for questions regarding the Single Room Occupancy (SRO) Moderate Rehabilitation program; Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Office of Housing, 202–708–3000, for questions relating to all other section 8 programs; and Marie L. Lihn, Senior Economist, Economic and Market Analysis Division, Office of Policy Development and Research 202–708–0590, for technical information regarding the development of the schedules for specific areas or the methods used for calculating the AAFs. Mailing address for the above persons: Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Hearing-or speech-impaired persons may contact the Federal Information Relay Service at 800–877–8339 (TTY). (Other than the ''800'' TTY number, the above-listed telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: In addition to being published in the **Federal Register**, these data will be available electronically from the HUD data information page at *http://www.huduser.org/datasets/aaf.html*.

I. Applying AAFs to Various Section 8 Programs

AAFs established by this Notice are used to adjust contract rents for units assisted in certain Section 8 housing assistance payments programs during the initial (*i.e.*, pre-renewal) term of the HAP contract and for all units in the Project-Based Certificate program. There are three categories of section 8 programs that use the AAFs:

Category 1—The Section 8 New Construction and Substantial Rehabilitation programs and the Section 8 Moderate Rehabilitation program.

Category 2—The Section 8 Loan Management (LM) and Property Disposition (PD) programs.

Category 3—The Section 8 Project-Based Certificate (PBC) program.

Each section 8 program category uses the AAFs differently. The specific application of the AAFs is determined by the law, the HAP contract, and appropriate program regulations or requirements.

AAFs are not used in the following cases:

Renewal Rents. With the exception of the Project-Based Certificate program, AAFs are not used to determine renewal rents after expiration of the original section 8 HAP contract (either for projects where the section 8 HAP contract is renewed under a restructuring plan adopted under 24 CFR part 401; or renewed without restructuring under 24 CFR part 402). In general, renewal rents are based on the applicable state-by-state operating cost adjustment factor (OCAF) published by HUD; the OCAF is applied to the previous year's contract rent minus debt service.

Budget-based Rents. AAFs are not used for budget-based rent adjustments. For projects receiving Section 8 subsidies under the LM program (24 CFR part 886, subpart A) and for projects receiving Section 8 subsidies under the PD program (24 CFR part 886, subpart C), contract rents are adjusted, at HUD's option, either by applying the AAFs, or by budget-based adjustments in accordance with 24 CFR 886.112(b) and 24 CFR 886.312(b). Budget-based adjustments are used for most section 8/202 projects.

Certificate Program. In the past, AAFs were used to adjust the contract rent (including manufactured home space rentals) in both the tenant-based and project-based certificate programs. The tenant-based certificate program has been terminated and all tenancies in the tenant-based certificate program have been converted to the Housing Choice Voucher Program, which does not use AAFs to adjust rents. All tenancies remaining in the project-based certificate program continue to use AAFs to adjust contract rent for outstanding HAP contracts.

Voucher Program. AAFs are not used to adjust rents in the Tenant-Based or the Project-Based Voucher programs.

Moderate Rehabilitation Program. Under the Section 8 Moderate Rehabilitation program, (both the regular program and the single room occupancy program), the public housing agency (PHA) applies the AAF to the base rent component of the contract rent, not the full contract rent.

II. Adjustment Procedures

This section of the notice provides a broad description of procedures for adjusting the contract rent. Technical details and requirements are described in HUD notices H 2002—10 (Section 8 New Construction and Substantial Rehabilitation, Loan Management, and Property Disposition) and PIH 97—57 (Moderate Rehabilitation and Project-Based Certificates).

Because of statutory and structural distinctions among the various Section 8 programs, there are separate rent adjustment procedures for the three program categories:

Category 1: Section 8 New Construction, Substantial Rehabilitation, and Moderate Rehabilitation Programs

In the section 8 New Construction and Substantial Rehabilitation programs, the published AAF factor is applied to the pre-adjustment contract rent. In the section 8 Moderate Rehabilitation program, the published AAF is applied to the pre-adjustment base rent.

For Category 1 programs, the Table 1 AAF factor is applied before determining comparability (rent reasonableness). Comparability applies if the pre-adjustment gross rent (pre-adjustment contract rent plus any allowance for tenant-paid utilities) is

above the published Fair Market Rent (FMR).

If the comparable rent level (plus any initial difference) is lower than the contract rent as adjusted by application of the Table 1 AAF, the comparable rent level (plus any initial difference) will be the new contract rent. However, the pre-adjustment contract rent will not be decreased by application of comparability.

In all other cases (*i.e.*, unless the contract rent is reduced by comparability):

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 2: The Loan Management Program (24 CFR Part 886, Subpart A) and Property Disposition Program (24 CFR Part 886, Subpart C)

At this time Category 2 programs are not subject to comparability. (Comparability will again apply if HUD establishes regulations for conducting comparability studies under 42 U.S.C. 1437f(c)(2)(C).) Rents are adjusted by applying the full amount of the applicable AAF under this notice.

The applicable AAF is determined as follows:

- The Table 1 AAF is used for a unit occupied by a new family since the last annual contract anniversary.
- The Table 2 AAF is used for a unit occupied by the same family as at the time of the last annual contract anniversary.

Category 3: Section 8 Certificate Project-Based Certificate Program

The following procedures are used to adjust contract rent for outstanding HAP contracts in the section 8 PBC program:

- The Table 2 AAF is always used. The Table 1 AAF is not used.
- The Table 2 AAF is always applied before determining comparability (rent reasonableness).
- Comparability always applies. If the comparable rent level is lower than the rent to owner (contract rent) as adjusted by application of the Table 2 AAF, the comparable rent level will be the new rent to owner.
- The new rent to owner will not be reduced below the contract rent on the effective date of the HAP contract.

III. When To Use Reduced AAFs (From AAF Table 2)

In accordance with Section 8(c)(2)(A) of the United States Housing Act of 1937 (42 U.S.C. 1437f(c)(2)(A)), the AAF is reduced by 0.01:

- For all tenancies assisted in the Section 8 Project-Based Certificate program.
- In other Section 8 programs, for a unit occupied by the same family at the time of the last annual rent adjustment (and where the rent is not reduced by application of comparability (rent reasonableness)).

The law provides that:

> Except for assistance under the certificate program, for any unit occupied by the same family at the time of the last annual rental adjustment, where the assistance contract provides for the adjustment of the maximum monthly rent by applying an annual adjustment factor and where the rent for a unit is otherwise eligible for an adjustment based on the full amount of the factor, 0.01 shall be subtracted from the amount of the factor, except that the factor shall not be reduced to less than 1.0. In the case of assistance under the certificate program, 0.01 shall be subtracted from the amount of the annual adjustment factor (except that the factor shall not be reduced to less than 1.0), and the adjusted rent shall not exceed the rent for a comparable unassisted unit of similar quality, type and age in the market area. 42 U.S.C. 1437f(c)(2)(A).

To implement the law, HUD publishes two separate AAF Tables, contained in Schedule C, Tables 1 and 2 of this notice. The difference between Table 1 and Table 2 is that each AAF in Table 2 is 0.01 less than the corresponding AAF in Table 1. Where an AAF in Table 1 would otherwise be less than 1.0, it is set at 1.0, as required by statute; the corresponding AAF in Table 2 will also be set at 1.0, as required by statute.

IV. How To Find the AAF

The AAFs are contained in Schedule C, Tables 1 and 2 of this notice. There are two columns in each table. The first column is used to adjust contract rent for units where the highest cost utility is included in the contract rent, i.e., where the owner pays for the highest cost utility. The second column is used where the highest cost utility is not included in the contract rent, i.e., where the tenant pays for the highest cost utility.

The applicable AAF is selected as follows:

- Determine whether Table 1 or Table 2 is applicable. In Table 1 or Table 2, locate the AAF for the geographic area where the contract unit is located.
- Determine whether the highest cost utility is or is not included in contract rent for the contract unit.
- If highest cost utility is included, select the AAF from the column for ''highest cost included.'' If highest cost utility is not included, select the AAF from the column for ''utility excluded.''

V. Methodology

AAFs are rent inflation factors. Two types of rent inflation factors are calculated for AAFs: Gross rent factors and shelter rent factors. The gross rent factor accounts for inflation in the cost of both the rent of the residence and the utilities used by the unit; the shelter rent factor accounts for the inflation in the rent of the residence, but does not include any change in the cost of utilities. The gross rent inflation factor is designated as ''Highest Cost Utility Included'' and the shelter rent inflation factor is designated as ''Highest Cost Utility Excluded''.

AAFs are calculated using CPI data on ''rent of primary residence'' and ''fuels and utilities''.[1] The CPI inflation index for rent of primary residence measures the inflation of all surveyed units regardless of whether utilities are included in the rent of the unit or not. In other words, it measures the inflation of the ''contract rent'' which includes units with all utilities included in the rent, units with some utilities included in the rent and units with no utilities included in the rent. In producing a gross rent inflation factor and a shelter rent inflation factor, HUD decomposes the contract rent CPI inflation factor into parts to represent the gross rent change and the shelter rent change. This is done by applying the percentage of renters who pay for heat (a proxy for the percentage of renters who pay shelter rent) from the Consumer Expenditure Survey (CEX) and American Community Survey (ACS) data on the ratio of utilities to rents.[2]

Survey Data Used To Produce AAFs

In this publication, the rent and utility inflation factors for large metropolitan areas and Census regions are based on changes in the rent of primary residence and fuels and utilities CPI indices from 2006 to 2007. The CEX data used to decompose the contract rent inflation factor into gross rent and shelter rent inflation factors come from a special tabulation of 2006 CEX survey data produced for HUD for the purpose of computing AAFs. The utility-to-rent ratio used in the formula comes from 2006 ACS median rent and utility costs.

Geographic Areas

AAFs are produced for all Class A CPI cities (CPI cities with a population of 1.5 million or more) and for the four

[1] CPI indexes CUUSA103SEHA and CUSR0000SAH2, respectively.

[2] The formulas used to produce these factors can be found in the Annual Adjustment Factors overview and in the FMR documentation at *http://www.HUDUSER.org.*

Census Regions. They are applied to core-based statistical areas (CBSAs), as defined by the Office of Management and Budget (OMB), according to how much of the CBSA is covered by the CPI city-survey. If more than 75 percent of the CBSA is covered by the CPI city-survey, the AAF that is based on that CPI survey is applied to the whole CBSA and to any HUD-defined metropolitan area, called ''HUD Metro FMR Area'' (HMFA), within that CBSA. If the CBSA is not covered by a CPI city-survey, the CBSA uses the relevant regional CPI factor. Almost all non-metropolitan counties use regional CPI factors.[3] For areas assigned the Census Region CPI factor, both metropolitan and non-metropolitan areas receive the same factor.

Each metropolitan area that uses a local CPI update factor is listed alphabetically in the tables, by state and each HMFA is listed alphabetically within its respective CBSA. Each AAF applies to a specified geographic area and to units of all bedroom sizes. AAFs are provided:

- For separate metropolitan areas, including HMFAs and counties that are currently designated as non-metropolitan, but are part of the metropolitan area defined in the local CPI survey.
- For the four Census Regions for those metropolitan and non-metropolitan areas that are not covered by a CPI city-survey.

The AAFs shown in Schedule C use the same OMB metropolitan area definitions, as revised by HUD, that are used in the FY 2009 FMRs.

Area Definitions in Schedule C

To make certain that they are using the correct AAFs, users should refer to the area definitions section at the end of Schedule C. For units located in metropolitan areas with a local CPI survey, AAFs are listed separately. For units located in areas without a local CPI survey, the metropolitan or nonmetropolitan counties receive the regional CPI for that Census Region.

The AAF area definitions shown in Schedule C are listed in alphabetical order by state. The associated CPI region is shown next to each state name. Areas whose AAFs are determined by local CPI surveys are listed first. All metropolitan areas with local CPI surveys have separate AAF schedules and are shown with their corresponding county definitions or as metropolitan counties. In the six New England states, the listings are for counties or parts of counties as defined by towns or cities. The remaining counties use the CPI for the Census Region and are not specifically listed on Schedule C or the area file.

Puerto Rico and the Virgin Islands use the South Region AAFs. All areas in Hawaii use the AAFs identified in the Table as ''STATE: Hawaii,'' which are based on the CPI survey for the Honolulu metropolitan area. The Pacific Islands use the West Region AAFs.

Accordingly, HUD publishes these Annual Adjustment Factors for the Section 8 Housing Assistance Payments programs as set forth in the Tables.

Dated: January 6, 2009.

Darlene F. Williams,

Assistant Secretary for Policy Development and Research.

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS

CPI areas	Counties/towns
Alabama (South)	
All Counties in Alabama use the South Region AAF.	
Alaska (West)	
Anchorage, AK MSA:	
Metropolitan Area Components:	
Anchorage, AK HMFA	Anchorage.
Matanuska-Susitna Borough, AK HMFA	Matanuska-Susitna.
All other Boroughs use the West Region AAF.	
Arizona (West)	
Phoenix-Mesa-Scottsdale, AZ MSA	Maricopa, Pinal.
All other Counties use the West Region AAF.	
Arkansas (South)	
All Counties in Arkansas use the South Region AAF.	
California (West)	
Los Angeles-Long Beach-Santa Ana, CA MSA:	
Metropolitan Area Components:	
Los Angeles-Long Beach, CA HMFA	Los Angeles.
Orange County, CA HMFA	Orange.
Napa, CA MSA	Napa.
Oxnard-Thousand Oaks-Ventura, CA MSA	Ventura.
Riverside-San Bernardino-Ontario, CA MSA	Riverside, San Bernardino.
San Diego-Carlsbad-San Marcos, CA MSA	San Diego.
San Francisco-Oakland-Fremont, CA MSA	
Metropolitan Area Components:	
Oakland-Fremont, CA HMFA	Alameda, Contra Costa.

[3] There are four non-metropolitan counties that continue to use CPI city updates: Ashtabula County, OH, Henderson County, TX, Island County, WA, and Lenawee County, MI. BLS has not updated the geography underlying its survey for new OMB metropolitan area definitions, and these counties are no longer in metropolitan areas, but they are included as parts of CPI surveys because they meet the 75 percent standard HUD imposes on survey coverage. These four counties are treated the same as metropolitan areas using CPI city data.

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
San Francisco, CA HMFA	Marin, San Francisco, San Mateo.
San Jose-Sunnyvale-Santa Clara, CA MSA:	
Metropolitan Area Components:	
San Benito County, CA HMFA	San Benito.
San Jose-Sunnydale-Santa Clara, CA HMFA	Santa Clara.
Santa Cruz-Watsonville, CA MSA	Santa Cruz.
Santa Rosa-Petaluma, CA MSA	Sonoma.
Vallejo-Fairfield, CA MSA:	Solano.
All other Counties in California use the West Region AAF.	
Colorado (West)	
Boulder, CO MSA	Boulder.
Denver-Aurora, CO MSA	Adams, Arapahoe, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson, Park.
Greeley, CO MSA	Weld.
All other Counties in Colorado use the West Region AAF.	
Connecticut (Northeast)	
Bridgeport-Stamford-Norwalk, CT MSA:	
Metropolitan Area Components:	
Bridgeport, CT HMFA	Fairfield County towns of Bridgeport, Easton, Fairfield, Monroe, Shelton, Stratford, Trumbull.
Danbury, CT HMFA	Fairfield County towns of Bethel, Brookfield, Danbury, New Fairfield, Newtown, Redding, Ridgefield, Sherman.
Stamford-Norwalk, CT HMFA	Fairfield County towns of Darien, Greenwich, New Canaan, Norwalk, Stamford, Weston, Westport, Wilton.
New Haven-Milford, CT MSA:	
Metropolitan Area Components:	
Milford-Ansonia-Seymour, CT HMFA	New Haven County towns of Ansonia, Beacon Falls, Derby, Milford, Oxford, Seymour.
New Haven-Meriden, CT HMFA	New Haven County towns of Bethany, Branford, Cheshire, East Haven, Guilford, Hamden, Madison, Meriden, New Haven, North Branford, North Haven, Orange, Wallingford, West Haven, Woodbridge.
Waterbury, CT HMFA	New Haven County towns of Middlebury, Naugatuck, Prospect, Southbury, Waterbury, Wolcott.
All other Counties/Towns in Connecticut use the Northeast Region AAF.	
Delaware (South)	
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	New Castle.
All other Counties in Delaware use the South Region AAF.	
Dist. of Columbia (South)	
Washington-Arlington-Alexandria, DC–VA–MD HMFA	District of Columbia.
Florida (South)	
Miami-Fort Lauderdale-Pompano Beach, FL MSA:	
Metropolitan Area Components:	
Fort Lauderdale, FL HMFA	Broward.
Miami-Miami Beach-Kendall, FL HMFA	Miami-Dade.
West Palm Beach-Boca Raton, FL HMFA	Palm Beach.
Tampa-St. Petersburg-Clearwater, FL MSA	Hernando, Hillsborough, Pasco, Pinellas.
All other Counties in Florida use the South Region AAF.	
Georgia (South)	
Atlanta-Sandy Springs-Marietta, GA MSA:	
Metropolitan Area Components:	
Atlanta-Sandy Springs-Marietta, GA HMFA	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta, Dawson, DeKalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett, Heard, Henry, Jasper, Newton, Paulding, Pickens, Pike, Rockdale, Spalding, Walton.
Butts County, GA HMFA	Butts.
Haralson County, GA HMFA	Haralson.
Lamar County, GA HMFA	Lamar.
Meriwether County, GA HMFA	Meriwether.
All other Counties in Georgia use the South Region AAF.	

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
Hawaii (West)	
STATE Hawaii	Hawaii, Honolulu, Kalawao, Kauai, Maui.
Idaho (West)	
All Counties in Idaho use the West Region AAF.	
Illinois (Midwest)	
Chicago-Naperville-Joliet, IL–IN–WI MSA:	
Metropolitan Area Components:	
Chicago-Naperville-Joliet, IL HMFA	Cook, DuPage, Kane, Lake, McHenry, Will.
De Kalb County, IL HMFA	DeKalb.
Grundy County, IL	Grundy.
Kendall County, IL	Kendall.
Kankakee-Bradley, IL MSA	Kankakee.
St. Louis, MO–IL MSA:	
Metropolitan Area Components:	
Bond County, IL HMFA	Bond.
Macoupin County, IL HMFA	Macoupin.
St. Louis, MO–IL HMFA	Calhoun, Clinton, Jersey, Madison, Monroe, St. Clair.
All other Counties in Illinois use the Midwest Region AAF.	
Indiana (Midwest)	
Chicago-Naperville-Joliet, IL–IN–WI MSA:	
Metropolitan Area Components:	
Gary, IN HMFA	Lake, Newton, Porter.
Jasper County, IN MFA	Jasper.
Cincinnati-Middleton, OH–KY–IN HMFA	Dearborn, Franklin, Ohio.
All other Counties in Indiana use the Midwest Region AAF.	
Iowa (Midwest)	
All Counties in Iowa use the Midwest Region AAF.	
Kansas (Midwest)	
Kansas City, MO–KS MSA:	
Metropolitan Area Components:	
Franklin County, KS HMFA	Franklin.
Kansas City, MO–KS HMFA	Johnson, Leavenworth, Linn, Miami, Wyandotte.
All other Counties in Kansas use the Midwest Region AAF.	
Kentucky (South)	
Cincinnati-Middleton, OH–KY–IN MSA:	
Metropolitan Area Components:	
Cincinnati-Middleton OH–KY–IN HMFA	Boone, Bracken, Campbell, Gallatin, Kenton, Pendleton.
Grant County, KY HMFA	Grant.
All other Counties in Kentucky use the South Region AAF.	
Louisiana (South)	
All Parishes in Louisiana use the South Region AAF.	
Maine (Northeast)	
All Counties in Maine use the Northeast Region AAF.	
Maryland (South)	
Baltimore-Towson, MD MSA:	
Metropolitan Area Components:	
Baltimore-Towson, MD HMFA	Anne Arundel, Baltimore, Carroll, Harford, Howard, Queen Anne's, Baltimore City.
Columbia city, MD MSA.	
Hagerstown-Martinsburg, MD–WV MSA	Washington.
Washington-Arlington-Alexandria, DC–VA–MD HMFA	Calvert, Charles, Frederick, Montgomery, Prince George's.
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	Cecil.
All other Counties in Maryland use the South Region AAF.	

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
Massachusetts (Northeast)	
Boston-Cambridge-Quincy, MA–NH MSA:	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA–NH HMFA	Essex County towns of Amesbury, Beverly city, Danvers, Essex, Gloucester city, Hamilton, Ipswich, Lynn city, Lynnfield, Manchester-by-the-Sea, Marblehead, Middleton, Nahant, Newbury, Newburyport city, Peabody city, Rockport, Rowley, Salem city, Salisbury, Saugus, Swampscott, Topsfield, Wenham.
	Middlesex County towns of Acton, Arlington, Ashby, Ashland, Ayer, Bedford, Belmont, Boxborough, Burlington, Cambridge city, Carlisle, Concord, Everett city, Framingham, Holliston, Hopkinton, Hudson, Lexington, Lincoln, Littleton, Malden city, Marlborough city, Maynard, Medford city, Melrose city, Natick, Newton city, North Reading, Reading, Sherborn, Shirley, Somerville, Stoneham, Stow, Sudbury, Townsend, Wakefield, Waltham city, Watertown city, Wayland, Weston, Wilmington, Winchester, Woburn city.
	Norfolk County towns of Bellingham, Braintree, Brookline, Canton, Cohasset, Dedham, Dover, Foxborough, Franklin city, Holbrook, Medfield, Medway, Millis, Milton, Needham, Norfolk, Norwood, Plainville, Quincy city, Randolph, Sharon, Stoughton, Walpole, Wellesley, Westwood, Weymouth, Wrentham.
Boston-Cambridge-Quincy, MA–NH MSA:	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA–NH HMFA	Plymouth County towns of Carver, Duxbury, Hanover, Hingham, Hull, Kingston, Marshfield, Norwell, Pembroke, Plymouth, Rockland, Scituate, Wareham.
	Suffolk county towns of Boston city, Chelsea city, Revere city, Winthrop.
Brockton, MA HMFA	Norfolk County town of Avon.
	Plymouth County towns of Abington, Bridgewater, Brockton city, East Bridgewater, Halifax, Hanson, Lakeville, Marion, Mattapoisett, Middleborough, Plympton, Rochester, West Bridgewater town, Whitman.
Lawrence, MA–NH HMFA	Essex County towns of Andover, Boxford, Georgetown, Groveland, Haverhill city, Lawrence city Merrimac, Methuen city, North Andover, West Newbury.
Lowell, MA HMFA	Middlesex County towns of Billerica, Chelmsford, Dracut, Dunstable, Groton, Lowell city, Pepperell, Tewksbury, Tyngsborough, Westford.
Worcester, MA MSA:	
Metropolitan Area Components:	
Eastern Worcester County, MA HMFA	Worcester County towns of Berlin, Blackstone, Bolton, Harvard, Hopedale, Lancaster, Mendon, Milford, Millville, Southborough, Upton.
Fitchburg-Leominster, MA HMFA	Worcester County towns of Ashburnham, Fitchburg, Gardner, Leominster, Lunenburg, Templeton, Westminster, Winchendon.
Western Worcester County, MA HMFA	Worcester County towns of Athol, Hardwick, Hubbardston, New Braintree, Petersham, Phillipston, Royalston, Warren.
Worcester, MA HMFA	Worcester County towns of Auburn, Barre, Boylston, Brookfield, Charlton, Clinton, Douglas, Dudley, East Brookfield, Grafton, Holden, Leicester, Millbury, Northborough, Northbridge, North Brookfield, Oakham, Oxford, Paxton, Princeton, Rutland, Shrewsbury, Southbridge, Spencer, Sterling, Sturbridge, Sutton, Uxbridge, Webster, Westborough, West Boylston, West Brookfield, Worcester.
All other Counties/Towns in Massachusetts use the Northeast Region AAF.	
Michigan (Midwest)	
Ann Arbor, MI MSA	Washtenaw.
Detroit-Warren-Livonia, MI MSA:	
Metropolitan Area Components:	
Detroit-Warren-Livonia, MI HMFA	Lapeer, Macomb, Oakland, St. Clair, Wayne.
Livingston County, MI HMFA	Livingston.
Flint, MI MSA	Genesee.
Lenawee County, MI	Lenawee.
Monroe, MI MSA	Monroe.
All other Counties in Michigan use the Midwest Region AAF.	

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
Minnesota (Midwest)	
Minneapolis-St. Paul-Bloomington, MN–WI MSA:	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey, Scott, Sherburne, Washington, Wright.
All other Counties in Minnesota use the Midwest Region AAF.	
Mississippi (South)	
All Counties in Mississippi use the South Region AAF.	
Missouri (Midwest)	
Kansas City, MO–KS MSA:	
Metropolitan Area Components:	
Bates County, MO HMFA	Bates.
Kansas City, MO–KS HMFA	Caldwell, Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray.
St. Louis, MO–IL MSA:	
Metropolitan Area Components:	
St. Louis, MO–IL HMFA	Sullivan city part of Crawford, Franklin, Jefferson, Lincoln, St. Charles, St. Louis, Warren, St. Louis city.
Washington County, MO HMFA	Washington.
All other Counties in Missouri (including the rest of Crawford County) use the Midwest Region AAF.	
Montana (West)	
All Counties in Montana use the West Region AAF.	
Nebraska (Midwest)	
All Counties in Nebraska use the Midwest Region AAF.	
Nevada (West)	
All Counties in Nevada use the West Region AAF.	
New Hampshire (Northeast)	
Boston-Cambridge-Quincy, MA–NH MSA:	
Metropolitan Area Components:	
Boston-Cambridge-Quincy, MA–NH HMFA	Rockingham County towns of Seabrook, South Hampton.
Lawrence, MA–NH HMFA	Rockingham County towns of Atkinson, Chester, Danville, Derry, Fremont, Hampstead, Kingston, Newton, Plaistow, Raymond, Salem, Sandown, Windham.
Portsmouth-Rochester, NH HMFA	Rockingham County towns of Brentwood, East Kingston, Epping, Exeter, Greenland, Hampton, Hampton Falls, Kensington, New Castle, Newfields, Newington, Newmarket, North Hampton, Portsmouth, Rye, Stratham. Strafford County towns of Barrington, Dover, Durham, Farmington, Lee, Madbury, Middleton, Milton, New Durham, Rochester, Rollinsford, Somersworth, Strafford.
Western Rockingham County, NH HMFA	Rockingham County towns of Auburn, Candia, Deerfield, Londonderry, Northwood, Nottingham.
Manchester-Nashua, NH MSA:	
Metropolitan Area Components:	
Hillsborough County, NH (part) HMFA	Hillsborough County towns of Antrim, Bennington, Deering, Francestown, Greenfield, Hancock, Hillsborough, Lyndeborough, New Boston, Peterborough, Sharon, Temple, Windsor.
Manchester, NH HMFA	Hillsborough County towns of Bedford, Goffstown, Manchester, Weare.
Nashua, NH HMFA	Hillsborough County towns of Amherst, Brookline, Greenville, Hollis, Hudson, Litchfield, Mason, Merrimack, Milford, Mont Vernon, Nashua, New Ipswich, Pelham, Wilton.
All other Counties/Towns in New Hampshire use Northeast Region AAF.	
New Jersey (Northeast)	
Atlantic City, NJ MSA	Atlantic.
New York-Northern New Jersey-Long Island, NY–NJ–PA MSA:	
Metropolitan Area Components:	
Bergen-Passaic, NJ HMFA	Bergen, Passaic.
Jersey City, NJ HMFA	Hudson.
Middlesex-Somerset-Hunterdon, NJ HMFA	Hunterdon, Middlesex, Somerset.

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
New York-Monmouth-Ocean, NY–NJ HMFA	Monmouth, Ocean.
Newark, NJ HMFA	Essex, Morris, Sussex, Union.
Ocean City, NJ MSA	Cape May.
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	Burlington, Camden, Gloucester, Salem.
Trenton-Ewing, NJ MSA	Mercer.
Vineland-Millville-Bridgeton, NJ MSA	Cumberland.
Warren County uses the Northeast Region AAF.	
New Mexico (West)	
All Counties in New Mexico use the West Region AAF.	
New York (Northeast)	
New York-Northern New Jersey-Long Island, NY–NJ–PA MSA:	
Metropolitan Area Components:	
Nassau-Suffolk, NY HMFA	Nassau, Suffolk.
New York-Monmouth-Ocean, NY–NJ HMFA	Bronx, Kings, New York, Putnam, Queens, Richmond, Rockland.
Westchester County, NY HMFA	Westchester.
Poughkeepsie-Newburgh-Middletown, NY MSA	Dutchess, Orange.
All other Counties in New York use the Northeast Region AAF.	
North Carolina (South)	
All Counties in North Carolina use the South Region AAF.	
North Dakota (Midwest)	
All Counties in North Dakota use the Midwest Region AAF.	
Ohio (Midwest)	
Akron, OH MSA	Portage, Summit.
Ashtabula County, OH	Ashtabula.
Cincinnati-Middleton, OH–KY–IN MSA:	
Metropolitan Area Components:	
Brown County, OH HMFA	Brown.
Cincinnati-Middleton OH–KY–IN HMFA	Butler, Clermont, Hamilton, Warren.
Cleveland-Elyria-Mentor, OH	Cuyahoga, Geauga, Lake, Lorain, Medina.
All other Counties in Ohio use the Midwest Region AAF.	
Oklahoma (South)	
All Counties in Oklahoma use the South Region AAF.	
Oregon (West)	
Portland-Vancouver-Beaverton, OR–WA MSA	Clackamas, Columbia, Multnomah, Washington, Yamhill.
Salem, OR MSA	Marion, Polk.
All other Counties in Oregon use the West Region AAF.	
Pennsylvania (Northeast)	
New York-Northern New Jersey-Long Island, NY–NJ–PA MSA:	
Metropolitan Area Components:	
Pike County, PA HMFA	Pike.
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	Bucks, Chester, Delaware, Montgomery, Philadelphia.
Pittsburgh, PA MSA:	
Metropolitan Area Components:	
Armstrong County, PA HMFA	Armstrong.
Pittsburgh, PA HMFA	Allegheny, Beaver, Butler, Fayette, Washington, Westmoreland.
All other Counties in Pennsylvania use the Northeast Region AAF.	
Rhode Island (Northeast)	
All Counties/Towns in Rhode Island use the Northeast Region AAF.	
South Carolina (South)	
All Counties in South Carolina use the South Region AAF.	

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
South Dakota (Midwest)	
All Counties in South Dakota use the Midwest Region AAF.	
Tennessee (South)	
All Counties in Tennessee use the South Region AAF.	
Texas (South)	
Dallas-Fort Worth-Arlington, TX MSA:	
Metropolitan Area Components:	
Dallas, TX HMFA	Collin, Dallas, Delta, Denton, Ellis, Hunt, Kaufman, Rockwall.
Fort Worth-Arlington, TX HMFA	Johnson, Parker, Tarrant.
Wise County, TX HMFA	Wise.
Henderson County, TX	Henderson.
Houston-Sugar Land-Baytown, TX MSA:	
Metropolitan Area Components:	
Austin, County, TX HMFA	Austin.
Brazoria County, TX HMFA	Brazoria.
Houston-Baytown-Sugar Land, TX HMFA	Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, San Jacinto, Waller.
All other Counties in Texas use the South Region AAF.	
Utah (West)	
All Counties in Utah use the West Region AAF.	
Vermont (Northeast)	
All Counties/Towns in Vermont use the Northeast Region AAF.	
Virginia (South)	
Washington-Arlington-Alexandria, DC–VA–MD–WV MSA:	
Metropolitan Area Components:	
Warren County, VA HMFA	Warren.
Washington-Arlington-Alexandria, DC–VA–MD HMFA	Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford, Alexandria city, Fairfax city, Falls Church city, Fredericksburg city, Manassas Park city, Manassas city.
All other Counties/Cities in Virginia use the South Region AAF.	
Washington (West)	
Bremerton-Silverdale, WA MSA	Kitsap.
Island County, WA	Island.
Olympia, WA MSA	Thurston.
Portland-Vancouver, OR–WA MSA	Clark, Skamania.
Seattle-Tacoma-Bellevue, WA MSA:	
Metropolitan Area Components:	
Seattle-Bellevue, WA HMFA	King, Snohomish.
Tacoma, WA HMFA	Pierce.
All other Counties in Washington use the West Region AAF.	
West Virginia (South)	
Hagerstown-Martinsburg, MD–WV MSA	Berkeley, Morgan.
Washington-Arlington-Alexandria, DC–VA–MD–WV MSA:	
Metropolitan Area Components:	
Jefferson County, WV HMFA	Jefferson.
All other Counties in West Virginia use the South Region AAF.	
Wisconsin (Midwest)	
Milwaukee-Waukesha-West Allis, WI MSA	Milwaukee, Ozaukee, Washington, Waukesha.
Minneapolis-St. Paul-Bloomington, MN–WI MSA	Pierce, St. Croix.
Racine, WI MSA	Racine.
All other areas of Wisconsin use the Midwest Region AAF.	
Wyoming (West)	
All Counties in Wyoming use the West Region AAF.	

SCHEDULE C—CONTRACT RENT ANNUAL ADJUSTMENT FACTORS—AREA DEFINITIONS—Continued

CPI areas	Counties/towns
Pacific Islands (West)	
The American Samoa, Guam, Northern Mariana Islands, and Palau use the West Region AAF.	
Puerto Rico (South)	
All Municipios use the South Region AAF.	
Virgin Islands (South)	
The U.S. Virgin Islands use the South Region AAF.	

SCHEDULE C—TABLE 1—2009 CONTRACT RENT AAFS

	Highest cost utility	
	Included	Excluded
Midwest Region	1.026	1.021
Northeast Region	1.039	1.035
South Region	1.040	1.050
West Region	1.040	1.040
Akron, OH MSA	1.015	1.025
Anchorage, AK MSA	1.037	1.015
Metropolitan Area Components:		
Anchorage, AK HMFA		
Matanuska-Susitna Borough, AK HMFA		
Ann Arbor, MI MSA	1.018	1.023
Ashtabula County, OH	1.014	1.025
Atlanta-Sandy Springs-Marietta, GA MSA	1.046	1.050
Metropolitan Area Components:		
Atlanta-Sandy Springs-Marietta, GA HMFA		
Butts County, GA HMFA		
Haralson County, GA HMFA		
Lamar County, GA HMFA		
Meriwether County, GA HMFA		
Atlantic City-Hammonton, NJ MSA	1.042	1.043
Baltimore-Towson, MD MSA	1.058	1.042
Metropolitan Area Components:		
Baltimore-Towson, MD HMFA		
Columbia city, MD HMFA		
Boston-Cambridge-Quincy, MA–NH MSA	1.024	1.029
Metropolitan Area Components:		
Boston-Cambridge-Quincy, MA–NH HMFA		
Brockton, MA HMFA		
Lawrence, MA–NH HMFA		
Lowell, MA HMFA		
Portsmouth-Rochester, NH HMFA		
Western Rockingham County, NH HMFA		
Boulder, CO MSA	1.007	1.015
Bremerton-Silverdale, WA MSA	1.066	1.067
Bridgeport-Stamford-Norwalk, CT MSA	1.046	1.044
Metropolitan Area Components:		
Bridgeport, CT HMFA		
Danbury, CT HMFA		
Stamford-Norwalk, CT HMFA		
Chicago-Naperville-Joliet, IL–IN–WI MSA	1.056	1.030
Metropolitan Area Components:		
Chicago-Naperville-Joliet, IL HMFA		
DeKalb County, IL HMFA		
Gary, IN HMFA		
Grundy County, IL HMFA		
Jasper County, IN HMFA		
Kendall County, IL HMFA		
Kenosha County, WI HMFA		
Cincinnati-Middletown, OH–KY–IN MSA	1.027	1.022
Metropolitan Area Components:		
Brown County, OH HMFA		
Cincinnati-Middleton, OH–KY–IN HMFA		
Grant County, KY HMFA		
Cleveland-Elyria-Mentor, OH MSA	1.015	1.025

SCHEDULE C—TABLE 1—2009 CONTRACT RENT AAFS—Continued

	Highest cost utility	
	Included	Excluded
Dallas-Fort Worth-Arlington, TX MSA	1.018	1.026
Metropolitan Area Components:		
Dallas, TX HMFA		
Fort Worth-Arlington, TX HMFA		
Wise County, TX HMFA		
Denver-Aurora, CO MSA	1.006	1.016
Detroit-Warren-Livonia, MI MSA	1.015	1.024
Metropolitan Area Components:		
Detroit-Warren-Livonia, MI HMFA		
Livingston County, MI HMFA		
Flint, MI MSA	1.013	1.024
Greeley, CO MSA	1.002	1.016
HAWAII	1.078	1.081
Hagerstown-Martinsburg, MD–WV MSA	1.061	1.040
Metropolitan Area Components:		
Hagerstown, MD HMFA		
Martinsburg, WV HMFA		
Henderson County, TX	1.016	1.027
Houston-Sugar Land-Baytown, TX MSA	1.009	1.023
Metropolitan Area Components:		
Austin County, TX HMFA		
Brazoria County, TX HMFA		
Houston-Baytown-Sugar Land, TX HMFA		
Island County, WA	1.065	1.067
Kankakee-Bradley, IL MSA	1.063	1.025
Kansas City, MO–KS MSA	1.042	1.037
Metropolitan Area Components:		
Bates County, MO HMFA		
Franklin County, KS HMFA		
Kansas City, MO–KS HMFA		
Lenawee County, MI	1.014	1.024
Los Angeles-Long Beach-Santa Ana, CA MSA	1.057	1.062
Metropolitan Area Components:		
Los Angeles-Long Beach, CA HMFA		
Orange County, CA HMFA		
Manchester-Nashua, NH MSA	1.024	1.030
Metropolitan Area Components:		
Hillsborough County, NH (part) HMFA		
Manchester, NH HMFA		
Nashua, NH HMFA		
Miami-Fort Lauderdale-Pompano Beach, FL MSA	1.067	1.083
Metropolitan Area Components:		
Fort Lauderdale, FL HMFA		
Miami-Miami Beach-Kendall, FL HMFA		
West Palm Beach-Boca Raton, FL HMFA		
Milwaukee-Waukesha-West Allis, WI MSA	1.022	1.025
Minneapolis-St. Paul-Bloomington, MN–WI MSA	1.025	1.027
Monroe, MI MSA	1.014	1.024
Napa, CA MSA	1.039	1.039
New Haven-Milford, CT MSA	1.046	1.044
Metropolitan Area Components:		
Milford-Ansonia-Seymour, CT HMFA		
New Haven-Meriden, CT HMFA		
Waterbury, CT HMFA		
New York-Northern New Jersey-Long Island, NY–NJ–PA MSA	1.046	1.044
Metropolitan Area Components:		
Bergen-Passaic, NJ HMFA		
Jersey City, NJ HMFA		
Middlesex-Somerset-Hunterdon, NJ HMFA		
Monmouth-Ocean, NJ HMFA		
Nassau-Suffolk, NY HMFA		
New York, NY HMFA		
Newark, NJ HMFA		
Pike County, PA HMFA		
Westchester County, NY Statutory Exception Area		
Ocean City, NJ MSA	1.042	1.043
Olympia, WA MSA	1.066	1.067
Oxnard-Thousand Oaks-Ventura, CA MSA	1.058	1.062
Philadelphia-Camden-Wilmington, PA–NJ–DE–MD MSA	1.042	1.043
Phoenix-Mesa-Scottsdale, AZ MSA	1.060	1.061

SCHEDULE C—TABLE 1—2009 CONTRACT RENT AAFS—Continued

	Highest cost utility	
	Included	Excluded
Pittsburgh, PA MSA	1.040	1.036
Metropolitan Area Components:		
Armstrong County, PA HMFA		
Pittsburgh, PA HMFA		
Portland-Vancouver-Beaverton, OR–WA MSA	1.052	1.050
Poughkeepsie-Newburgh-Middletown, NY MSA	1.046	1.044
Racine, WI MSA	1.021	1.025
Riverside-San Bernardino-Ontario, CA MSA	1.054	1.062
Salem, OR MSA	1.052	1.050
San Diego-Carlsbad-San Marcos, CA MSA	1.035	1.037
San Francisco-Oakland-Fremont, CA MSA	1.039	1.039
Metropolitan Area Components:		
Oakland-Fremont, CA HMFA		
San Francisco, CA HMFA		
San Jose-Sunnyvale-Santa Clara, CA MSA	1.039	1.039
Metropolitan Area Components:		
San Benito County, CA HMFA		
San Jose-Sunnyvale-Santa Clara, CA HMFA		
Santa Cruz-Watsonville, CA MSA	1.039	1.039
Santa Rosa-Petaluma, CA MSA	1.039	1.039
Seattle-Tacoma-Bellevue, WA MSA	1.066	1.067
Metropolitan Area Components:		
Seattle-Bellevue, WA HMFA		
Tacoma, WA HMFA		
St. Louis, MO–IL MSA	1.019	1.025
Metropolitan Area Components:		
Bond County, IL HMFA		
Macoupin County, IL HMFA		
St. Louis, MO–IL HMFA		
Washington County, MO HMFA		
Tampa-St. Petersburg-Clearwater, FL MSA	1.064	1.072
Trenton-Ewing, NJ MSA	1.046	1.044
Vallejo-Fairfield, CA MSA	1.039	1.039
Vineland-Millville-Bridgeton, NJ MSA	1.043	1.044
Washington-Arlington-Alexandria, DC–VA–MD–WV MSA	1.056	1.043
Metropolitan Area Components:		
Jefferson County, WV HMFA		
Warren County, VA HMFA		
Washington-Arlington-Alexandria, DC–VA–MD HMFA		
Worcester, MA MSA	1.023	1.030
Metropolitan Area Components:		
Eastern Worcester County, MA HMFA		
Fitchburg-Leominster, MA HMFA		
Western Worcester County, MA HMFA		
Worcester, MA HMFA		

SCHEDULE C—TABLE 2—2009 CONTRACT RENT AAFS

	Highest cost utility	
	Included	Excluded
Midwest Region	1.016	1.011
Northeast Region	1.029	1.025
South Region	1.030	1.040
West Region	1.030	1.030
Akron, OH MSA	1.005	1.015
Anchorage, AK MSA	1.027	1.005
Metropolitan Area Components:		
Anchorage, AK HMFA		
Matanuska-Susitna Borough, AK HMFA		
Ann Arbor, MI MSA	1.008	1.013
Ashtabula County, OH	1.004	1.015
Atlanta-Sandy Springs-Marietta, GA MSA	1.036	1.040
Metropolitan Area Components:		
Atlanta-Sandy Springs-Marietta, GA HMFA		
Butts County, GA HMFA		
Haralson County, GA HMFA		
Lamar County, GA HMFA		
Meriwether County, GA HMFA		

SCHEDULE C—TABLE 2—2009 CONTRACT RENT AAFS—Continued

	Highest cost utility	
	Included	Excluded
Atlantic City-Hammonton, NJ MSA	1.032	1.033
Baltimore-Towson, MD MSA	1.048	1.032
Metropolitan Area Components:		
Baltimore-Towson, MD HMFA		
Columbia city, MD HMFA		
Boston-Cambridge-Quincy, MA–NH MSA	1.014	1.019
Metropolitan Area Components:		
Boston-Cambridge-Quincy, MA–NH HMFA		
Brockton, MA HMFA		
Lawrence, MA-NH HMFA		
Lowell, MA HMFA		
Portsmouth-Rochester, NH HMFA		
Western Rockingham County, NH HMFA		
Boulder, CO MSA	1.000	1.005
Bremerton-Silverdale, WA MSA	1.056	1.057
Bridgeport-Stamford-Norwalk, CT MSA	1.036	1.034
Metropolitan Area Components:		
Bridgeport, CT HMFA		
Danbury, CT HMFA		
Stamford-Norwalk, CT HMFA		
Chicago-Naperville-Joliet, IL–IN–WI MSA	1.046	1.020
Metropolitan Area Components:		
Chicago-Naperville-Joliet, IL HMFA		
DeKalb County, IL HMFA		
Gary, IN HMFA		
Grundy County, IL HMFA		
Jasper County, IN HMFA		
Kendall County, IL HMFA		
Kenosha County, WI HMFA		
Cincinnati-Middletown, OH–KY–IN MSA	1.017	1.012
Metropolitan Area Components:		
Brown County, OH HMFA		
Cincinnati-Middleton, OH–KY–IN HMFA		
Grant County, KY HMFA		
Cleveland-Elyria-Mentor, OH MSA	1.005	1.015
Dallas-Fort Worth-Arlington, TX MSA	1.008	1.016
Metropolitan Area Components:		
Dallas, TX HMFA		
Fort Worth-Arlington, TX HMFA		
Wise County, TX HMFA		
Denver-Aurora, CO MSA	1.000	1.006
Detroit-Warren-Livonia, MI MSA	1.005	1.014
Metropolitan Area Components:		
Detroit-Warren-Livonia, MI HMFA		
Livingston County, MI HMFA		
Flint, MI MSA	1.003	1.014
Greeley, CO MSA	1.000	1.006
Hawaii	1.068	1.071
Hagerstown-Martinsburg, MD–WV MSA	1.051	1.030
Metropolitan Area Components:		
Hagerstown, MD HMFA		
Martinsburg, WV HMFA		
Henderson County, TX	1.006	1.017
Houston-Sugar Land-Baytown, TX MSA	1.000	1.013
Metropolitan Area Components:		
Austin County, TX HMFA		
Brazoria County, TX HMFA		
Houston-Baytown-Sugar Land, TX HMFA		
Island County, WA	1.055	1.057
Kankakee-Bradley, IL MSA	1.053	1.015
Kansas City, MO-KS MSA	1.032	1.027
Metropolitan Area Components:		
Bates County, MO HMFA		
Franklin County, KS HMFA		
Kansas City, MO–KS HMFA		
Lenawee County, MI	1.004	1.014
Los Angeles-Long Beach-Santa Ana, CA MSA	1.047	1.052
Metropolitan Area Components:		
Los Angeles-Long Beach, CA HMFA		
Orange County, CA HMFA		

SCHEDULE C—TABLE 2—2009 CONTRACT RENT AAFS—Continued

	Highest cost utility	
	Included	Excluded
Manchester-Nashua, NH MSA	1.014	1.020
Metropolitan Area Components:		
Hillsborough County, NH (part) HMFA		
Manchester, NH HMFA		
Nashua, NH HMFA		
Miami-Fort Lauderdale-Pompano Beach, FL MSA	1.057	1.073
Metropolitan Area Components:		
Fort Lauderdale, FL HMFA		
Miami-Miami Beach-Kendall, FL HMFA		
West Palm Beach-Boca Raton, FL HMFA		
Milwaukee-Waukesha-West Allis, WI MSA	1.012	1.015
Minneapolis-St. Paul-Bloomington, MN-WI MSA	1.015	1.017
Monroe, MI MSA	1.004	1.014
Napa, CA MSA	1.029	1.029
New Haven-Milford, CT MSA	1.036	1.034
Metropolitan Area Components:		
Milford-Ansonia-Seymour, CT HMFA		
New Haven-Meriden, CT HMFA		
Waterbury, CT HMFA		
New York-Northern New Jersey-Long Island, NY–NJ–PA MSA	1.036	1.034
Metropolitan Area Components:		
Bergen-Passaic, NJ HMFA		
Jersey City, NJ HMFA		
Middlesex-Somerset-Hunterdon, NJ HMFA		
Monmouth-Ocean, NJ HMFA		
Nassau-Suffolk, NY HMFA		
New York, NY HMFA		
Newark, NJ HMFA		
Pike County, PA HMFA		
Westchester County, NY Statutory Exception Area		
Ocean City, NJ MSA	1.032	1.033
Olympia, WA MSA	1.056	1.057
Oxnard-Thousand Oaks-Ventura, CA MSA	1.048	1.052
Philadelphia-Camden-Wilmington, PA-NJ-DE-MD MSA	1.032	1.033
Phoenix-Mesa-Scottsdale, AZ MSA	1.050	1.051
Pittsburgh, PA MSA	1.030	1.026
Metropolitan Area Components:		
Armstrong County, PA HMFA		
Pittsburgh, PA HMFA		
Portland-Vancouver-Beaverton, OR–WA MSA	1.042	1.040
Poughkeepsie-Newburgh-Middletown, NY MSA	1.036	1.034
Racine, WI MSA	1.011	1.015
Riverside-San Bernardino-Ontario, CA MSA	1.044	1.052
Salem, OR MSA	1.042	1.040
San Diego-Carlsbad-San Marcos, CA MSA	1.025	1.027
San Francisco-Oakland-Fremont, CA MSA	1.029	1.029
Metropolitan Area Components:		
Oakland-Fremont, CA HMFA		
San Francisco, CA HMFA		
San Jose-Sunnyvale-Santa Clara, CA MSA	1.029	1.029
Metropolitan Area Components:		
San Benito County, CA HMFA		
San Jose-Sunnyvale-Santa Clara, CA HMFA		
Santa Cruz-Watsonville, CA MSA	1.029	1.029
Santa Rosa-Petaluma, CA MSA	1.029	1.029
Seattle-Tacoma-Bellevue, WA MSA	1.056	1.057
Metropolitan Area Components:		
Seattle-Bellevue, WA HMFA		
Tacoma, WA HMFA		
St. Louis, MO–IL MSA	1.009	1.015
Metropolitan Area Components:		
Bond County, IL HMFA		
Macoupin County, IL HMFA		
St. Louis, MO–IL HMFA		
Washington County, MO HMFA		
Tampa-St. Petersburg-Clearwater, FL MSA	1.054	1.062
Trenton-Ewing, NJ MSA	1.036	1.034
Vallejo-Fairfield, CA MSA	1.029	1.029
Vineland-Millville-Bridgeton, NJ MSA	1.033	1.034
Washington-Arlington-Alexandria, DC–VA–MD–WV MSA	1.046	1.033

SCHEDULE C—TABLE 2—2009 CONTRACT RENT AAFS—Continued

	Highest cost utility	
	Included	Excluded
Metropolitan Area Components:		
Jefferson County, WV HMFA		
Warren County, VA HMFA		
Washington-Arlington-Alexandria, DC–VA–MD HMFA		
Worcester, MA MSA	1.013	1.020
Metropolitan Area Components:		
Eastern Worcester County, MA HMFA		
Fitchburg-Leominster, MA HMFA		
Western Worcester County, MA HMFA		
Worcester, MA HMFA		

[FR Doc. E9–374 Filed 1–9–09; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Blackstone River Valley National Heritage Corridor Commission: Notice of Meeting

Notice is hereby given in accordance with Section 552b of Title 5, United States Code, that a meeting of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 26, 2009.

The Commission was established pursuant to Public Law 99–647. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated resource management plan for those lands and waters within the Corridor.

The meeting will convene on February 26, 2009 at 4 p.m. at the Providence Marriott, located at One Orms Street, Providence, RI for the following reasons:

1. Approval of Minutes.
2. Chairman's Report.
3. Executive Director's Report.
4. Financial Budget.
5. Public Input.

It is anticipated that about thirty people will be able to attend the session in addition to the Commission members.

Interested persons may make oral or written presentations to the Commission or file written statements. Such requests should be made prior to the meeting to: Jan H. Reitsma, Executive Director, John H. Chafee, Blackstone River Valley National Heritage Corridor Commission, One Depot Square, Woonsocket, RI 02895, *Tel.:* (401) 762–0250.

Further information concerning this meeting may be obtained from Jan H. Reitsma, Executive Director of the Commission at the aforementioned address.

Jan H. Reitsma,

Executive Director, BRVNHCC.

Notice of Full Commission Meeting for the John H. Chafee Blackstone River Valley National Heritage Corridor Commission

Notice is hereby given, in accordance with section 552b of Title 5, United States Code, that the meeting of the Full Commission of the John H. Chafee Blackstone River Valley National Heritage Corridor Commission will be held on Thursday, February 26, 2009 at 4 p.m. at the Providence Marriott, One Orms Street, Providence, RI. The purpose of the Commission is to assist federal, state and local authorities in the development and implementation of an integrated Resource Management Plan for those lands and waters within the Corridor in Rhode Island and Massachusetts.

[FR Doc. E9–245 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Vendor Outreach Workshop for Small Businesses in the Southeast Region of the United States

AGENCY: Office of the Secretary, Interior.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization of the Department of the Interior is hosting a Vendor Outreach Workshop for small businesses in the southeast region of the United States that are interested in doing business with the Department. The National Park Service, Fish and Wildlife Service and U.S. Geological Survey are partnering in this exciting event that will promote small business. This outreach workshop will review market contracting opportunities for the attendees. Business owners will be able to share their individual perspectives with Contracting Officers, Program Managers and Small Business Specialists from the Department. Following the workshop, businesses will also participate in a match-making event that will allow business representatives to talk one-on-one with the Department's officials.

DATES: The workshop will be held on February 11, 2009, from 8:30 a.m. to 4 p.m.

ADDRESSES: The workshop will be held at the Georgia International Convention Center; 2000 Convention Center Concourse (Salons 1 & 2); College Park, GA 30337. Register online at: *http://www.doi.gov/osdbu*.

FOR FURTHER INFORMATION CONTACT: Mark Oliver, Director, Office of Small and Disadvantaged Business Utilization, 1849 C Street, NW., MS 2252 MIB, Washington, DC 20240, telephone 877–375–9927.

SUPPLEMENTARY INFORMATION: In accordance with the Small Business Act, as amended by Public Law 95–507, the Department has the responsibility to promote the use of small and small disadvantaged business for its acquisition of goods and services. The Department is proud of its accomplishments in meeting its business goals for small, small disadvantaged, 8(a), woman-owned, HUBZone, and service-disabled veteran-owned businesses. In Fiscal Year 2008, the Department awarded 55 per cent of its $2.6 billion in contracts to small businesses.

This fiscal year, the Office of Small and Disadvantaged Business Utilization is reaching out to our internal stakeholders and the Department's small business community by conducting several vendor outreach workshops. The vendor outreach session for the southeast region will be held in the

Atlanta, Georgia, on February 11, 2009, at the Georgia International Convention Center. The Department's presenters will focus on contracting and subcontracting opportunities and how small businesses can better market services and products. Over 3,000 small businesses have been targeted for this event. If you are a small business interested in working with the Department, we urge you to register online at: *http://www.doi.gov/osdbu* and attend the workshop.

These outreach events are a new and exciting opportunity for the Department's bureaus and offices to improve their support for small business. Additional outreach events will be held in Alaska, Colorado, Massachusetts, New Mexico, Oregon and the District of Columbia. Dates and locations will be announced at a later date for the additional sessions.

Mark Oliver,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. E9–267 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–FHC–2008–N0348; 94300–1122–0000–Z2]

Wind Turbine Guidelines Advisory Committee; Amendment to Announcement of Public Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Amendment to notice of public meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announced in the September 19, 2008, **Federal Register** a meeting of the Wind Turbine Guidelines Advisory Committee (Committee) on January 27–29, 2009. The notice indicated that the meeting would begin on January 27, 2009, at 8:00 a.m. We will instead begin the meeting at 1:30 p.m. EST that day. The meeting is open to the public. The meeting agenda will include reports from the Subcommittees on Incentives, Legal, Scientific Tools & Procedures, and Synthesis.

DATES: The meeting will be held on January 27–29, 2009, from 1:30 p.m. to 4:30 p.m. on January 27, and 8 a.m. to 4:30 p.m. on January 28–29.

ADDRESSES: South Interior Auditorium, South Interior Building, 1951 Constitution Avenue, NW., Washington, DC 20240. For more information, see ''Meeting Location Information'' under **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Rachel London, Division of Habitat and Resource Conservation, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

On March 13, 2007, the Department of the Interior published a notice of establishment of the Committee and call for nominations in the **Federal Register** (72 FR 11373). The Committee's purpose is to provide advice and recommendations to the Secretary of the Interior (Secretary) on developing effective measures to avoid or minimize impacts to wildlife and their habitats related to land-based wind energy facilities. The Committee is expected to exist for 2 years and meet approximately four times per year, and its continuation is subject to biennial renewal. All Committee members serve without compensation. In accordance with the Federal Advisory Committee Act (5 U.S.C. App.), a copy of the Committee's charter has been filed with the Committee Management Secretariat, General Services Administration; Committee on Environment and Public Works, U.S. Senate; Committee on Natural Resources, U.S. House of Representatives; and the Library of Congress. The Secretary appointed 22 individuals to the Committee on October 24, 2007, representing the varied interests associated with wind energy development and its potential impacts to wildlife species and their habitats. The Service has held Committee meetings in February, April, June, July, and October of 2008. All Committee meetings are open to the public. The public has an opportunity to comment at all Committee meetings.

Meeting Location Information

Please note that the meeting location is accessible to wheelchair users. If you require additional accommodations, please notify us at least two weeks in advance of the meeting(s) you plan to attend.

All persons planning to attend a meeting will be required to present photo identification when entering the building. Because of building security in the Department of the Interior, we recommend that persons planning to attend the workshop and/or meeting register at *http://www.fws.gov/habitatconservation/windpower/wind_turbine_advisory_committee.html* by January 20, 2009, to allow us sufficient time to provide the building security staff with lists of persons planning to attend. You may still attend if you register after the dates listed above; however, seating is limited due to room capacity. We will give preference to registrants based on date and time of registration. Limited standing room will be available if all seats are filled.

Dated: December 29, 2008.

David J. Stout,

Designated Federal Officer, Wind Turbine Guidelines Advisory Committee.

[FR Doc. E9–316 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 170—Indian Reservation Roads

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Renewal of Information Collection.

SUMMARY: The Bureau of Indian Affairs (BIA) is seeking comments on information collected for the Indian Reservation Roads (IRR) Program. When the rule was published three years ago, the information collection was approved for three years. We now must renew that approval so that we can continue to operate the IRR program. This renewal is necessary for tribal participation in the IRR Program and for the allocation of funding for the IRR Program to federally recognized tribal governments for transportation assistance.

DATE: Submit comments on or before March 13, 2009.

ADDRESSES: Send comments to LeRoy Gishi, Chief, Division of Transportation, 1849 C Street, NW., Mail Stop 4512 MIB, Washington, DC 20240, *fax:* (202) 208–4696.

FOR FURTHER INFORMATION CONTACT: You may request further information or obtain copies of the proposed information collection request from LeRoy Gishi, Chief, Division of Transportation, 1849 C Street, NW., Mail Stop 4512 MIB, Washington, DC 20240, fax: (202) 208–4696.

SUPPLEMENTARY INFORMATION: This information collection is necessary to allow federally recognized tribal governments to participate in the Indian Reservation Roads (IRR) Program as defined in 23 U.S.C. 204(a)(1). Some of the information collected determines the allocation of IRR program funds to Indian tribes as described in 23 U.S.C. 202 (d)(2)(A).

Request for Comments: The BIA requests your comments on this collection concerning: (a) The necessity of this information collection 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 the burden (hours and cost) of the collection of information, including the validity of the methodology and assumptions used; (c) ways we could enhance the quality, utility and clarity of the information to be collected; and (d) ways we could minimize the burden of the collection of the information on the respondents, such as through the use of automated collection techniques or other forms of information technology.

Please note that an agency may not sponsor or request, and an individual need not respond to, a collection of information unless it has a valid OMB Control Number.

It is our policy to make all comments available to the public for review at the location listed in the **ADDRESSES** section, room 4516 MIB, during the hours of 8 a.m.–4:30 p.m., EST Monday through Friday except for legal holidays. Before including your address, phone number, e-mail address or other personally identifiable information, be advised that your entire comment—including your personally identifiable information—may be made public at any time. While you may request that we withhold your personally identifiable information, we cannot guarantee that we will be able to do so. All comments from organizations or representatives will be available for review. We may withhold comments from review for other reasons.

OMB Control Number: 1076–0161.

Type of review: Extension.

Title: 25 CFR 170, Indian Reservation Roads.

Brief Description of collection: Some of the information such as the application of Indian Reservation Roads High Priority Projects (IRRHPP) (25 CFR 170.210), the road inventory updates (25 CFR 170.443), the development of a long range transportation plan (25 CFR 170.411 and 170.412), the development of a tribal transportation improvement program and priority list (25 CFR 170.420 and 170.421) are mandatory for consideration of projects and for program funding from the formula. Some of the information, such as public hearing requirements, is necessary for public notification and involvement (25 CFR 170.437 and 170.439). While other information, such as data appeals (25 CFR 170.231) and requests for design exceptions (25 CFR 170.456), is voluntary.

Respondents: Respondents include federally recognized Indian tribal governments who have transportation needs associated with the IRR Program as described in 25 CFR 170.

Number of Respondents: Varies from 10 to 562.

Estimated Time per Response: The reports require from 30 minutes to 40 hours to complete. An average would be 16 hours.

Frequency of Response: Annually or on an as needed basis.

Total Annual Burden to Respondents: 18,828 hours.

Total Annual Cost to Respondents: $188,280.

Dated: December 17, 2008.

Sanjeev "Sonny" Bhagowalia,

Chief Information Officer—Indian Affairs.

[FR Doc. E9–303 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Advisory Board for Exceptional Children

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the Bureau of Indian Education (BIE) is announcing that the Advisory Board for Exceptional Children will hold its next meeting in Albuquerque, New Mexico. The purpose of the meeting is to meet the mandates of the Individuals with Disabilities Education Improvement Act of 2004 on Indian children with disabilities.

DATES: The Board will meet on Friday, January 23, 2009, from 8 a.m. to 4:30 p.m., and Saturday, January 24, 2009, 8 a.m. to 4:30 p.m., local time.

ADDRESSES: The Friday, January 23, 2009, meeting will be held at the Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road, NW., Suite 332, Albuquerque, NM 87103; telephone (505) 563–5274. The Saturday meeting will be held at the Holiday Inn Express, 2300 12th Street, NW., Albuquerque, NM 87104; telephone (877) 863–4780.

FOR FURTHER INFORMATION CONTACT: Stan Holder, Designated Federal Official, Bureau of Indian Education, Albuquerque Service Center, Division of Performance and Accountability, 1011 Indian School Road, NW., P.O. Box 1088, Suite 332, Albuquerque, NM 87103; telephone (505) 563–5251.

SUPPLEMENTARY INFORMATION: The Advisory Board was established to advise the Secretary of the Interior, through the Assistant Secretary—Indian Affairs, on the needs of Indian children with disabilities, as mandated by the Individuals with Disabilities Education Improvement Act of 2004 (Pub. L. 108–446).

The following items will be on the agenda:

- Review of BIE Advisory Board Handbook
- Review of BIE Annual Performance Report
- Review of Advisory Board Charter

The meetings are open to the public.

Dated: January 6, 2009.

George T. Skibine,

Acting Deputy Assistant Secretary for Policy and Economic Development.

[FR Doc. E9–368 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before December 27, 2008. Pursuant to section 60.13 of 36 CFR Part 60, written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by the United States Postal Service to the National Register of Historic Places, National Park Service, 1849 C St., NW., 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St., NW., 8th floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by January 27, 2009.

Alexandra Lord,

Acting Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Maricopa County

Valley Field Riding and Polo Club, 2530 N. 64th St., Scottsdale, 08001405

CALIFORNIA

Orange County

Dewella Apartments, 234–236 E. Wilshire Ave., Fullerton, 08001406

San Francisco County

Uptown Tenderloin Historic District, All or part of 33 blocks roughly bounded by Market, McAllister, Golden Gate, Larkin, Geary, Taylor, Ellis Sts., San Francisco, 08001407

GUAM

Guam County

Umang Dam, S. side of Finile Rd., Agat, 08001408

MISSOURI

Christian County

Ozark Courthouse Square Historic District, Portions of 2nd Ave., Church, Elm, and 2nd Sts. on the Courthouse Square, Ozark, 08001409

St. Louis Independent City

Wellston J.C. Penney Building, 5930 Dr. Martin Luther King Dr., St. Louis, 08001410

NEW HAMPSHIRE

Hillsborough County

Union Chapel, 220 Sawmill Rd., Hillsborough, 08001411

NORTH CAROLINA

Gaston County

McAdenville Historic District, 100–413 Main St., Elm and Poplar Sts., and cross sts. from I–85 to S. Fork of Catawba River, McAdenville, 08001412

Madison County

Hot Springs Historic District, Roughly bounded by Bridge St., Andrews Ave. S. and Meadow Ln., Hot Springs, 08001413

New Hanover County

Westbrook-Ardmore Historic District, Bounded by Dock St., Wrightsville Ave., Queen and Lingo Sts., and by S. 14th St., Wilmington, 08001414

Wake County

Mary Elizabeth Hospital, 1100 Wake Forest Rd., Raleigh, 08001415

[FR Doc. E9–295 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Weekly Listing of Historic Properties

Pursuant to (36CFR60.13(b,c)) and (36CFR63.5), this notice, through publication of the information included herein, is to appraise the public as well as governmental agencies, associations and all other organizations and individuals interested in historic preservation, of the properties added to, or determined eligible for listing in, the National Register of Historic Places from November 24 to November 28, 2008.

For further information, please contact Edson Beall via: United States Postal Service mail, at the National Register of Historic Places, 2280, National Park Service, 1849 C St., NW., Washington, DC 20240; in person (by appointment), 1201 Eye St., NW., 8th floor, Washington DC 20005; by fax, 202–371–2229; by phone, 202–354–2255; or by e-mail, *Edson_Beall@nps.gov*.

Dated: January 6, 2009.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

KEY: State, County, Property Name, Address/Boundary, City, Vicinity, Reference Number, NHL, Action, Date, Multiple Name

DISTRICT OF COLUMBIA, DISTRICT OF COLUMBIA STATE EQUIVALENT, Strand Theater, 5129–5131 Nannie Helen Burroughs Ave., NE., Washington, DC, 08001093, LISTED, 11/25/08

DISTRICT OF COLUMBIA, DISTRICT OF COLUMBIA STATE EQUIVALENT, Third Baptist Church, 1546 5th St., NW., Washington, DC, 08001094, LISTED, 11/26/08

ILLINOIS, COOK COUNTY, Otis Elevator Company Factory Building, 1435 W. 15th St. and 1501 S. Laflin St., Chicago, 08001097, LISTED, 11/26/08

ILLINOIS, DU PAGE COUNTY, Robbins Park Historic District, Bounded by Chicago Ave., 8th St., County Line Rd., and Garfield St., Hinsdale, 08001098, LISTED, 11/26/08

IOWA, WAPELLO COUNTY, Burlington Depot, 210 W. Main St., Ottumwa, 08001100, LISTED, 11/26/08

KENTUCKY, GARRARD COUNTY, Dr. Edwards House, 572 Danville St., Lancaster, 08000650, LISTED, 11/25/08

MARYLAND, ANNE ARUNDEL COUNTY, Universal Lodge No. 14, 64 Clay St., Annapolis, 08001101, LISTED, 11/26/08

MICHIGAN, INGHAM COUNTY, Ottawa Street Power Station, 217 E. Ottawa St., Lansing, 08001103, LISTED, 11/26/08

MICHIGAN, WAYNE COUNTY, Midtown Woodward Historic District, 2951–3424 Woodward, 14 Charlotte, 10 and 25 Peterboro, Detroit, 08001106, LISTED, 11/26/08

NEW JERSEY, BURLINGTON COUNTY, Old Schoolhouse, 35 Brainerd St., Mount Holly, 08001108, LISTED, 11/26/08

NEW JERSEY, SOMERSET COUNTY, Baker-Dauderstadt Farm, 30 DuBois Rd., Warren, 08001109, LISTED, 11/26/08

NEW MEXICO, SAN MIGUEL COUNTY, Park Springs Ranch Headquarters Complex, 11.6 mi. E. of jct. U.S. 84 and NM 451, Dilia vicinity, 08001137, LISTED, 11/28/08

NEW MEXICO, UNION COUNTY, Gate, Fence and Hollow Tree Shelter Designed by Dionicio Rodriguez, 320 Oak St., Clayton, 08001138, LISTED, 11/25/08

OKLAHOMA, COMANCHE COUNTY, Douglass School, 102 E. Gore Blvd., Lawton, 08001148, LISTED, 11/25/08

PENNSYLVANIA, PHILADELPHIA COUNTY, Woman's Medical College of Pennsylvania, 3300 Henry Ave., Philadelphia, 08000785, LISTED, 11/26/08

PUERTO RICO, SAN JUAN MUNICIPALITY, Condado Vanderbilt Hotel, 1055 Ashford Ave., San Juan, 08001110, LISTED, 11/25/08

TENNESSEE, MARION COUNTY, Hale's Bar Dam Powerhouse, 1265 Hale's Bar Rd., Haletown, 08001111, LISTED, 11/25/08

VIRGINIA, LOUDOUN COUNTY, Arcola Slave Quarters, 24837 Evergreen Mills Rd., Arcola, 08001113, LISTED, 11/26/08

VIRGINIA, SUSSEX COUNTY, Glenview, 13098 Comans Well Rd., Stony Creek vicinity, 08001114, LISTED, 11/26/08

WISCONSIN, COLUMBIA COUNTY, Mills, Rob, Block, 109–111 S. Main St., Lodi, 08001115, LISTED, 11/26/08

[FR Doc. E9–294 Filed 1–9–09; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Under the Clean Water Act

Notice is hereby given that on January 6, 2009, a proposed Consent Decree in *United States* v. *City of Ironton and the State of Ohio*, Civil Action No. 09–cv–00012, was lodged with the United States District Court for the Southern District of Ohio.

In this action the United States seeks civil penalties and injunctive relief for violations of the Clean Water Act, 33 U.S.C. 1251 *et seq.*, in connection with the City of Ironton's operation of its municipal wastewater and sewer system. The Complaint alleges that the City's discharges from its combined

sewer overflows (''CSOs'') violate the Clean Water Act because the City's discharge of untreated sewage into the Ohio River violates limitations and conditions in the City's National Pollutant Discharge Elimination System (NPDES) permit. The Complaint further alleges that the City failed to adequately control for solids and floatables as well as failed to timely submit a control plan to address its CSO discharge.

Under the proposed Consent Decree, the City would be required to: (1) Implement injunctive measures that will eliminate all discharges from its CSOs, at a total cost of approximately $12.5 million; (2) pay the United States a civil penalty of $49,000; and (3) pay the State of Ohio a civil penalty of $49,000. The proposed Decree would require the sewer improvements to be implemented over an 18-year period.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and either e-mailed to *pubcomment-ees.enrd@usdoj.gov* or mailed to P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *City of Ironton and the State of Ohio*, D.J. Ref. 90–5–1–1–08729.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Southern District of Ohio, 221 East Forth Street, Suite 400, Cincinnati, Ohio 45202 (contact Assistant United States Attorney Donetta Wiethe (513/684–3711)), and at U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Associate Regional Counsel Steven Kaiser (312/353–3804)). During the public comment period, the proposed Consent Decree, may also be examined on the following Department of Justice Web site, to *http://www.usdoj.gov/enrd/Consent_Decrees.html*. A copy of the proposed consent decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611 or by faxing or e-mailing a request to Tonia Fleetwood (*tonia.fleetwood@usdoj.gov*), fax no. (202) 514–0097, phone confirmation number (202) 514–1547. In requesting a copy from the Consent Decree Library, please enclose a check in the amount of $37.75 (25 cents per page reproduction cost) payable to the U.S. Treasury or, if by e-mail or fax, forward a check in that amount to the Consent Decree Library at the stated address.

William Brighton,

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

[FR Doc. E9–347 Filed 1–9–09; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Rapanos,* No. 94–CV–70788–DT (E.D. Mich.), was lodged with the United States District Court for the Eastern District of Michigan on December 29, 2008.

This proposed Consent Decree concerns a complaint filed by the United States against John A. Rapanos, Judith Ann Nelkie Rapanos, Prodo, Inc., Rolling Meadows Hunt Club, and Pine River Bluff Estates, Inc., pursuant to 33 U.S.C. 1311(a), to obtain injunctive relief from and impose civil penalties against the Defendants for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendants to perform mitigation and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this Notice. Please address comments to Daniel R. Dertke, Environment & Natural Resources Division, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986, and refer to *United States* v. *Rapanos,* DJ # 90–5–1–1–4274.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the Eastern District of Michigan, Theodore Levin U.S. Courthouse, 231 W. Lafayette Blvd., Detroit, Michigan 48226. In addition, the proposed Consent Decree may be viewed at *http://www.usdoj.gov/enrd/Consent_Decrees.html.*

Scott A. Schachter,

Assistant Section Chief, Environmental Defense Section, Environment & Natural Resources Division.

[FR Doc. E9–302 Filed 1–9–09; 8:45 am]

BILLING CODE 4410–CW–P

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 November 17, 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, 4C Soft, Inc., Seoul, REPUBLIC OF KOREA; CCKF Limited, Dublin, IRELAND; Common Need, Inc., Alexandria, VA; Embanet, Toronto, Ontario, CANADA; Lone Star College Online, The Woodlands, TX; and University of California System, Oakland, CA have been added as parties to this venture. Also, Respondus, Redmond, WA 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 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 August 28, 2008. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on September 29, 2008 (73 FR 56611).

Patricia A. Brink,

Deputy Director of Operations, Antitrust Division.

[FR Doc. E9–198 Filed 1–9–09; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of Affirmative Decisions on Petitions for Modification Granted in Whole or in Part.

SUMMARY: The Mine Safety and Health Administration (MSHA) enforces mine operator compliance with mandatory safety and health standards that protect miners and improve safety and health conditions in U.S. Mines. This **Federal Register** Notice (FR Notice) notifies the public that it has investigated and issued a final decision on certain mine operator petitions to modify a safety standard.

ADDRESSES: Copies of the final decisions are posted on MSHA's Web site at *http://www.msha.gov/indexes/petition.htm*. The public may inspect the petitions and final decisions during normal business hours in MSHA's Office of Standards, Regulations, and Variances, 1100 Wilson Boulevard, Room 2349, Arlington, Virginia 22209. All visitors must first stop at the receptionist desk on the 21st Floor to sign-in.

FOR FURTHER INFORMATION CONTACT: Roslyn B. Fontaine, Acting Deputy Director, Office of Standards, Regulations, and Variances at 202–693–9475 (Voice), *fontaine.roslyn@dol.gov* (E-mail), or 202–693–9441 (Telefax), or Barbara Barron at 202–693–9447 (Voice), *barron.barbara@dol.gov* (E-mail), or 202–693–9441 (Telefax). [These are not toll-free numbers].

SUPPLEMENTARY INFORMATION:

I. Introduction

Under section 101 of the Federal Mine Safety and Health Act of 1977, a mine operator may petition and the Secretary of Labor (Secretary) may modify the application of a mandatory safety standard to that mine if the Secretary determines that: (1) An alternative method exists that will guarantee no less protection for the miners affected than that provided by the standard; or (2) that the application of the standard will result in a diminution of safety to the affected miners.

MSHA bases the final decision on the petitioner's statements, any comments and information submitted by interested persons, and a field investigation of the conditions at the mine. In some instances, MSHA may approve a petition for modification on the condition that the mine operator complies with other requirements noted in the decision.

II. Granted Petitions for Modification

On the basis of the findings of MSHA's investigation, and as designee of the Secretary, MSHA has granted or partially granted the following petitions for modification:

• *Docket Number:* M–2007–011–C.
FR Notice: 72 FR 31859 (June 8, 2007).
Petitioner: Blue Diamond Coal Company, P.O. Box 47, Slemp, Kentucky 41763.
Mine: No. 75 Mine, MSHA I.D. No. 15–17478, located in Perry County, Kentucky.
Regulation Affected: 30 CFR 75.364(b)(2) (Weekly examination).

• *Docket Number:* M–2007–035–C.
FR Notice: 72 FR 36066 (July 2, 2007).
Petitioner: Black Beauty Coal Company, LLC, Vermilion Grove Road, 4500 N 1500 East Road, Ridge Farm, Illinois 61870–6075.
Mine: Riola Mine Complex-Vermilion Grove, MSHA I.D. No. 11–03060, located in Vermilion County, Illinois.
Regulation Affected: 30 CFR 75.1909(b)(6) (Non-permissible diesel-powered equipment; design and performance requirements).

• *Docket Number:* M–2007–067–C.
FR Notice: 72 FR 70350 (December 11, 2007).
Petitioner: Mach Mining, LLC, P.O. Box 300, Johnson City, Illinois 62951.
Mine: Mach No. 1 Mine, MSHA I.D. No. 11–03141, located in Williamson County, Illinois.
Regulation Affected: 30 CFR 75.1700 (Oil and gas wells).

• *Docket Number:* M–2007–070–C.
FR Notice: 73 FR 4638 (January 25, 2008).
Petitioner: White County Coal, LLC, P.O. Box 457, Carmi, Illinois 62821.
Mine: Pattiki Mine, MSHA I.D. No. 11–03058, located in White County, Illinois.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords).

• *Docket Number:* M–2007–072–C.
FR Notice: 73 FR 4638 (January 25, 2008).
Petitioner: Harlan-Cumberland Coal Company, P.O. Box 1710, 103 South Cumberland Avenue, Suite 200, Harlan, Kentucky 40831.
Mine: Totz Preparation Plant, MSHA I.D. No. 15–10657, located in Harlan County, Kentucky.
Regulation Affected: 30 CFR 77.214(a) (Refuse piles; general).

• *Docket Number:* M–2008–001–C.
FR Notice: 73 FR 7324 (February 7, 2008).
Petitioner: S & M Coal Company, 1744 E. Grand Avenue, Tower City, Pennsylvania 17980.
Mine: Buck Mountain Slope, MSHA I.D. No. 36–02022, located in Dauphin County, Pennsylvania.
Regulation Affected: 30 CFR 75.1400 (Hoisting equipment; general).

• *Docket Number:* M–2008–003–C.
FR Notice: 73 FR 12775 (March 10, 2008).
Petitioner: Brooks Run Mining Company, 208 Business Street, Beckley, West Virginia 25801.
Mine: Wyoming No. 1 Mine, MSHA I.D. No. 46–09213, located in Wyoming County, West Virginia; Cucumber Mine, MSHA I.D. No. 46–09066 and War Branch No. 1 Mine, MSHA I.D. No. 46–09055, located in McDowell County, West Virginia.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

• *Docket Number:* M–2008–004–C.
FR Notice: 73 FR 12775 (March 10, 2008).
Petitioner: The American Coal Company, P.O. Box 727, Harrisburg, Illinois 62946.
Mine: Galatia Mine, MSHA I.D. No. 11–02752, located in Saline County, Illinois.
Regulation Affected: 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords).

• *Docket Number:* M–2008–010–C.
FR Notice: 73 FR 20066 (April 24, 2008).
Petitioner: Pleasant View Mining Company, Inc., 755 Nebo Road, Madisonville, Kentucky 42431.
Mine: Richland No. 9 Mine, MSHA I.D. No. 15–17232, Hopkins County, Kentucky.
Regulation Affected: 30 CFR 75.1101–1(b) (Deluge-type water spray systems).

Dated: January 6, 2009.

Patricia W. Silvey,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. E9–330 Filed 1–9–09; 8:45 am]

BILLING CODE 4510–43–P

LEGAL SERVICES CORPORATION

Disaster Relief Emergency Grant Instructions

AGENCY: Legal Services Corporation.

ACTION: Notice of Issuance of Disaster Relief Emergency Grant Instructions.

SUMMARY: On occasion, the Legal Services Corporation (LSC) has available

special funding to help meet the emergency needs of programs in disaster areas. This Notice sets forth instructions for current LSC grant recipients who have experienced needs due to a disaster in a federally-declared disaster area and who wish to apply for disaster relief funding, when such funds are available. This information is also posted to the LSC Web site at *www.lsc.gov*.

DATES: *Effective Date:* These instructions become effective 30 days after the date of this publication.

FOR FURTHER INFORMATION CONTACT: Director of the Office of Program Performance, Legal Services Corporation, 3333 K St., NW., Washington, DC 20007, (202) 295–1500 (phone); (202) 337–6813 (fax).

SUPPLEMENTARY INFORMATION:

Instructions for Applying for Disaster Relief

Eligibility

On occasion, the Legal Services Corporation (LSC) has available special funding to help meet the emergency needs of programs in disaster areas. When funding is available, only current LSC recipients in Federally-declared disaster areas are eligible to apply for such emergency funds.

Disaster Relief Grant Application Instructions

To obtain emergency funding from the LSC, a recipient shall submit a written application to LSC's President. The application must be signed by the executive director and the chair of the board of directors of the recipient.

The following information must be included in the application:

(1) *Resources, Need and Objectives*

(a) The recipient's name and number;

(b) A description of the damage sustained by recipient and the surge in demand for services as a result of the disaster;

(c) An estimate, in dollars, of lost property, including records, and equipment;

(d) The amount of emergency funds requested;

(e) A brief narrative stating the purpose of the requested funds;

(f) The recipient's current annual budget of revenue and expenses (LSC and non-LSC);

(g) The recipient's fiscal year.

(2) *Operational Procedures*

Describe the operational procedures for the disaster relief project(s) including the following items where applicable:

(a) The anticipated length of time to restore operations from emergency status to normal;

(b) The anticipated term of the emergency grant (*i.e.*, proposed beginning and termination dates), not to exceed twelve months;

(c) A description of the project, including criteria to be used for determining successful completion;

(3) *Grant Assurances*

(a) An assurance that recipient will comply with all of the grant assurances applicable to its basic field grant (which are herein incorporated by reference) in the expenditure of the emergency funds; and

(e) An assurance that the recipient will follow the special LSC accounting and reporting requirements for the emergency funds (*i.e.*, separate reporting by natural line item in the annual audit, separate case reporting in the CSR report, and if requested, periodic progress reports to the LSC) specified below.

(4) *Budget*

Provide a detailed budget of expenses for the emergency need, including the following information

(a) The amount of emergency funds requested from LSC;

(b) Projected funding from other (non-LSC) sources, including insurance proceeds;

(c) Any in-kind contributions;

(d) Expenses by natural line item; and

(e) Any anticipated purchases in excess of $10,000.

It is suggested that the outside of the envelope clearly note that it contains an ''Application for an Emergency Grant for Disaster Relief'' and that the President's office be alerted by phone or e-mail that an application is being submitted.

Disaster Relief Emergency Grant Approval Criteria

Given the nature of emergency situations arising from natural disasters, requests for assistance will be processed on a priority basis. The primary emphasis will be on restoring, as quickly as possible, the program's capacity to serve eligible clients.

Disaster Relief Emergency Grant Extensions

To obtain approval for an extension of the grant term, a recipient must submit a request in writing no later than sixty days prior to the termination date of the grant. LSC shall respond to such request no later than thirty days prior to the termination date of the grant.

Disaster Relief Emergency Grant Accounting and Reporting

Accounting for the Grant

The grant must be separately reported by natural line item in recipient's annual audit(s). This reporting may be done either on the face of the financial statements, or in a schedule attached to the financial statements. Any fund balance remaining at the end of the grant period shall be refunded to the LSC at submission of the audit report.

Case Service Reporting

In times of crisis, the immediate needs of victims supersede the need to adhere to the recipient's established priorities and recipients confronted by natural disasters generally dispense with the stated priorities to respond to the most pressing needs of their clients. Depending on the extent of the disaster and the impact it has on the recipient's case activities, the recipient may find that it has processed a substantial number of cases outside its normal priorities and the case reporting would reflect this. To avoid a distorted picture when disaster cases are reported in the regular CSRs, LSC requires that there be separate case reporting for disaster related cases for which emergency funding was provided.

Periodic Progress Reports

If requested, the recipient shall make periodic reports to LSC on the progress being made by the recipient in the completion of the disaster relief project(s).

Dated: January 6, 2009.

Victor M. Fortuno,

Vice President & General Counsel.

[FR Doc. E9–361 Filed 1–9–09; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–003]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(e) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license worldwide to practice the inventions described and claimed in U.S. Patent Nos. 6,133,036, entitled ''Preservation Of Liquid Biological

Samples'' and 6,716,392, entitled ''Preservation Of Liquid Biological Samples'', to Profound Technologies, having its principal place of business in Warner Robbins, Georgia. The fields of use may be limited to preservation of liquid biological samples, including clinical laboratory samples, vaccines, and food. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated partially exclusive license. Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Patent Counsel, Office of Chief Counsel, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–4871; (281) 483–6936 [Facsimile].

FOR FURTHER INFORMATION CONTACT: Kurt G. Hammerle, Patent Attorney, Office of Chief Counsel, Johnson Space Center, Mail Code AL, 2101 NASA Parkway, Houston, TX 77058, (281) 483–1001; (281) 483–6936 [Facsimile]. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov/*.

Dated: December 29, 2008.

Richard W. Sherman,

Acting Deputy General Counsel.

[FR Doc. E9–278 Filed 1–9–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–004]

Notice of Intent To Grant Exclusive License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant Exclusive License.

SUMMARY: This notice is issued in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i). NASA hereby gives notice of its intent to grant an exclusive license in the United States to practice the inventions described and claimed in U.S. Patent No. 6,899,275 B1 and U.S. Patent Application Serial No. 12/047/686 and NASA Case No. MFS–32603–1 ''Methods for Identification and Verification Using a Multi-spectral Alias Pattern Identification Data System (MAPIDS)'' to Quest Integrated Inc., having its principal place of business in Kent, Washington. The patent rights in these inventions have been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. The prospective exclusive license will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: The prospective exclusive license may be granted unless, within fifteen (15) days from the date of this published notice, NASA receives written objections including evidence and argument that establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. Competing applications completed and received by NASA within fifteen (15) days of the date of this published notice will also be treated as objections to the grant of the contemplated exclusive license.

Objections submitted in response to this notice will not be made available to the public for inspection and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 552.

ADDRESSES: Objections relating to the prospective license may be submitted to Mr. James J. McGroary, Chief Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–0013.

FOR FURTHER INFORMATION CONTACT: Sammy A. Nabors, Technology Transfer Program Office/ED03, Marshall Space Flight Center, Huntsville, AL 35812, (256) 544–5226. Information about other NASA inventions available for licensing can be found online at *http://technology.nasa.gov*.

Dated: December 29, 2008.

Richard W. Sherman,

Acting Deputy General Counsel.

[FR Doc. E9–281 Filed 1–9–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 09–005]

NASA Advisory Council; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council. The agenda for the meeting includes updates from each of the Council committees, including discussion and deliberation of potential recommendations. The Council Committees address NASA interests in the following areas: Aeronautics, Audit and Finance, Space Exploration, Human Capital, Science, and Space Operations.

DATES: Thursday, February 5, 2009, 8 a.m. to 4 p.m.

ADDRESSES: Sea Oats Room, Hilton Cocoa Beach, 1550 North Atlantic Avenue, Cocoa Beach, FL 32931.

FOR FURTHER INFORMATION CONTACT: Ms. Marguerite Broadwell, Designated Federal Official, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–1894.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: January 5, 2009.

P. Diane Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. E9–285 Filed 1–9–09; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Arts Advisory Panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that two meetings of the Arts Advisory Panel to the National Council on the Arts will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 as follows (ending times are approximate):

Music (NEA Jazz Masters Fellowships nominations): January 27, 2009, by teleconference. This meeting, from 1 p.m. to 2:30 p.m., will be closed.

Music (NEA Jazz Masters Fellowships/ Advocacy nominations): January 27, 2009, by teleconference. This meeting, from 3 p.m. to 4 p.m., will be closed.

The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 28, 2008, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman. If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506 or call 202/682–5691.

Dated: January 7, 2008.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. E9–317 Filed 1–9–09; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 11, 2009. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2009–022) to Dr. Ross D. E. MacPhee on December 8, 2008. The issued permit allows the applicant to enter Byers Peninsula (ASPA #126) to collect vertebrate fossils for stable isotope analysis.

The applicant requests a modification of his permit to allow collection of modern biological specimens (bones and teeth of marine mammal and penguins) for destructive isotope analysis to look at the carbon (and perhaps nitrogen) isotopes, date if possible, and determine changes in trophic level, diet, foraging area, and weathering rates.

Location: Byers Peninsula (ASPA 126).

Dates: February 15, 2009 to March 30, 2009.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–233 Filed 1–9–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Alan T. Waterman Award Committee; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Alan T. Waterman Award Committee, #1172.

Date and Time: February 13, 2009, 8:30 a.m.–1:30 p.m., room 1235.

Place: Arlington, Virginia.

Type of Meeting: Closed.

Contact Person: Ms. Mayra Montrose, Program Manager, Room 1282, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–8040.

Purpose of Meeting: To provide advice and recommendations in the selection of the Alan T. Waterman Award recipient.

Agenda: To review and evaluate nominations as part of the selection process for awards.

Reason for Closing: The nominations being reviewed include information of a personal nature where disclosure would constitute unwarranted invasions of personal privacy. These matters are exempt under 5 U.S.C. 552b(c)(6) of the Government in the Sunshine Act.

Dated: January 7, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–306 Filed 1–9–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Astronomy and Astrophysics Advisory Committee #13883; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following Astronomy and Astrophysics Advisory Committee (#13883) meeting:

Date and Time: February 18–19, 2009, 8:30 a.m.–5 p.m.

Place: National Science Foundation, Room 555, Stafford II Building, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Dr. Craig Foltz, Acting Director, Division of Astronomical Sciences, Suite 1045, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: 703–292–4909.

Purpose of Meeting: To provide advice and recommendations to the National Science Foundation (NSF), the National Aeronautics and Space Administration (NASA) and the U.S. Department of Energy (DOE) on issues within the field of astronomy and astrophysics that are of mutual interest and concern to the agencies.

Agenda: To hear presentations of current programming by representatives from NSF, NASA, DOE and other agencies relevant to astronomy and astrophysics; to discuss current and potential areas of cooperation between the agencies; to formulate recommendations for continued and new areas of cooperation and mechanisms for achieving them.

Dated: January 7, 2009.

Susanne E. Bolton,

Committee Management Officer.

[FR Doc. E9–308 Filed 1–9–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Proposal Review Panel for Materials Research; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463 as amended), the National Science Foundation announces the following meeting:

Name: Site Visit review of the Materials Research Science and Engineering Center (MRSEC) at California Institute of Technology (Caltech), Pasadena, CA (DMR) #1203.

Dates & Times: Thursday, February 26, 2009; 7:45 a.m.–9 p.m., Friday, February 27, 2009; 8 a.m.–4:30 p.m.

Place: Caltech, Pasadena, CA.

Type of Meeting: Part-open.

Contact Person: Dr. Rama Bansil, Program Director, Materials Research Science and Engineering Centers Program, Division of Materials Research, Room 1065, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone (703) 292–8562.

Purpose of Meeting: To provide advice and recommendations concerning further support of the MRSEC at Caltech, Pasadena, CA.

Agenda:

Thursday, February 26, 2009

7:45 a.m.–9 a.m. Closed—Executive Session.
9 a.m.–4:30 p.m. Open—Review of the Caltech MRSEC.
4:30 p.m.–6 p.m. Closed— Executive Session.
6 p.m.–9 p.m. Open—Poster Session and Dinner.

Friday, February 27, 2009

8 a.m.–9 a.m. Closed—Executive session.
9 a.m.–10:15 a.m. Open—Review of the Caltech MRSEC.
10:15 a.m.–4:30 p.m. Closed—Executive Session, Draft and Review Report.

Reason for Closing: The work being reviewed may include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 7, 2009.

Susanne Bolton,

Committee Management Officer.

[FR Doc. E9–307 Filed 1–9–09; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978 (Pub. L. 95–541)

AGENCY: National Science Foundation.

ACTION: Notice of Permit Modification Received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act at Title 45 Part 670 of the Code of Federal Regulations. This is the required notice of a requested permit modification.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by February 11, 2009. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Room 755, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Nadene G. Kennedy at the above address or (703) 292–7405.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas a requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Description of Permit Modification Requested: The Foundation issued a permit (2009–013) to Dr. Robert Pitman on October 10, 2008. The issued permit allows the applicant to study movement patterns, diet preferences and genetics of Antarctic Killer whales, Minke whales and Humpback whales.

The applicant will be working in the Antarctic Peninsula studying Killer whales and attends to collect bits of their prey which sometimes floats to the surface. The applicant requests a modification of his permit to allow collection of unidentified prey items (mostly marine mammals but possibly penguins) so they can be genetically identified in the lab.

Location: Waters in the vicinity of the Antarctic Peninsula.

Dates: December 25, 2008 to December 31, 2013.

Nadene G. Kennedy,

Permit Officer, Office of Polar Programs.

[FR Doc. E9–232 Filed 1–9–09; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2008–0065]

Notice of Availability of Model Application Concerning Technical Specification Improvement To Revise Containment Isolation Valve Completion Times (TSTF–498, Revision 1, for Babcock & Wilcox Plants)

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: Notice is hereby given that the staff of the Nuclear Regulatory Commission (NRC) has prepared a model safety evaluation (SE) relating to the modification of technical specification (TS) 3.6.3, Containment Isolation Valves associated with implementation of BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change.'' The NRC staff has also prepared a model license amendment request and a model no-significant-hazards consideration (NSHC) determination relating to this matter. The purpose of these models is to permit the NRC to efficiently process amendments that propose to modify TS Completion Times (CTs) for CIVs. Licensees of nuclear power reactors to which the models apply can then request amendments after confirming

the applicability of the SE and NSHC determination to their reactors. Licensees of nuclear power reactors to which the model applies may request amendments using the model application.

DATES: The NRC staff issued a **Federal Register** (FR) notice (73 FR 6529–6537; February 4, 2008), which provided an opportunity for comment on a model SE, model application, and model NSHC determination relating to the CT extension for TS actions related to inoperable CIVs at Babcock & Wilcox (B&W) plants. Similarly, the NRC staff herein provides a revised model SE, revised model LAR, and model NSHC determination incorporating changes based on the public comments received. The NRC staff can most efficiently consider applications based on the model LAR, which references the model SE, if the LAR is submitted within one year of this **Federal Register** notice.

FOR FURTHER INFORMATION CONTACT: Robert Elliott, Mail Stop: O–12H2, Technical Specifications Branch, Division of Inspection & Regional Support, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone 301–415–8585.

SUPPLEMENTARY INFORMATION:

Background

This notice involves the modification of TS Containment Isolation Valve Completion Times. This change was proposed for incorporation into the standard technical specifications by the Owners Groups participants in the Technical Specification Task Force (TSTF) and is designated TSTF–498.

Note: This notice was published in the NRC's **Federal Register** (Vol. 73 FR 6529–6537, dated 02/04/2008) as ''Notice of Opportunity to Comment'' stating that the subject TSTF is available for adoption using the NRC's Consolidated Line Item Improvement Process (CLIIP). The NRC has determined that this TSTF does not qualify for the CLIIP process.

Those licensees opting to apply for the subject change to TSs are responsible for reviewing the staff's evaluation, referencing the applicable technical justifications, and providing any necessary plant-specific information. Each amendment application made in response to the notice of availability will be processed and noticed in accordance with applicable rules and NRC procedures. Note that containment isolation valve (CIV) configurations and extended completion times (CTs) not specifically evaluated by TR BAW–2461, or non-bounding risk parameter values outside the scope of the TR, will require NRC staff's review and licensee development of the specific penetrations and related justifications for the proposed CTs.

TSTF–498 can be viewed on the NRC's Web page at: *http://www.nrc.gov/reactors/operating/licensing/techspecs.html.*

Applicability

The staff is requesting that the methodologies for assessing large early release frequency (LERF) and incremental conditional large early release probability (ICLERP) are to be documented in the plant-specific application as a regulatory commitment (*i.e.*, included in the licensee's commitment tracking system in accordance with NEI 99–04, Revision 0, ''Guidelines for Managing NRC Commitment Changes'') (Reference 5) in the licensees' plant-specific applications referencing TR BAW–2461–A. The staff is requesting this regulatory commitment because a licensee's implementation of Regulatory Guide (RG) 1.177 Tier 3 guidelines generally implies the assessment of risk with respect to core damage frequency (CDF). However, the proposed containment isolation valve (CIV) completion time (CT) impacts containment isolation and consequently LERF and ICLERP, as well as CDF. Because the extended CIV CTs are also based on the LERF and ICLERP metrics, the management of risk in accordance with 10 CFR 50.65(a)(4) for these extended CIV CTs must also assess LERF and ICLERP.

Public Notices

The staff issued a **Federal Register** notice (73 FR 6529–6537, February 4, 2008) that requested public comment on the NRC's pending action to revise the TS completion times for selected CIVs at B&W plants as proposed in TSTF–498, Revision 1. TSTF–498, Revision 1, may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records are accessible electronically from the ADAMS Public Library component on the NRC Web site (the Electronic Reading Room) at *http://www.nrc.gov/reading-rm/adams.html.*

In response to the notice soliciting comments from interested members of the public about the proposed changes to TS regarding CIV completion times, the staff received one set of comments (from the TSTF Owners Groups, representing licensees). The specific comments are provided and discussed below. Note that some of the public comments pertain to the NRC's CLIIP process. As stated previously, the NRC has determined that the subject TSTF does not qualify for the CLIIP process.

1. *Comment:* Model SE, Section 2.0, ''Regulatory Evaluation,'' second paragraph, of the proposed Safety Evaluation states, ''Therefore, the NRC staff must be able to conclude that there is reasonable assurance that the safety functions affected by the proposed TS CT changes will be performed in accordance with the design basis accidents (DBAs) identified in Chapter 15 of the licensee's final safety analysis report (FSAR).'' The TSTF disagrees with the technical accuracy of this statement. The Technical Specification Limiting Conditions for Operation (LCOs) are based on providing ''reasonable assurance that the safety functions * * * will be performed in accordance with the design basis accidents (DBAs) identified in Chapter 15 of the licensee's final safety analysis report (FSAR).'' When an LCO is not met, the Required Actions are required to be followed within the specified Completion Times. By definition, when an LCO is not met, the safety functions cannot be performed as identified in Chapter 15 of the FSAR. We recommend that the sentence be deleted. This sentence is unnecessary as it only expands on a previous statement that there must be reasonable protection of public health and safety during the proposed Completion Times.

Response: The NRC agrees with the comment and the referenced sentence has been deleted. Additionally, wording has been added which describes the function of CTs.

2. *Comment:* Section 3.2 of the Model Application, ''Verification and Commitments,'' first paragraph, of the model application states, ''[LICENSEE] verifies the applicability of TSTF–498, Revision 1, to [PLANT], and commits to adopting the requirements specified in BAW–2461–A which includes the following Limitations and Conditions specified in Section 4.1, Staff Findings and Conditions and Limitations, of the NRC's Safety Evaluation for BAW–2461 (ML072330227).'' The section then repeats the eleven conditions in the NRC's Safety Evaluation for BAW–2461.

This approach is inconsistent with previous CLIIP model applications and other license amendments that are based on the technical justification provided in a Topical Report. Licensees do not typically repeat, verbatim, conditions on NRC approval of a Topical Report in a license amendment request. Furthermore, the proposed text adds no value as it states the conditions without addressing how the conditions are

satisfied by the license amendment request.

The TSTF recommends that the quoted sentence, above, be revised to delete the word ''following'' in the phrase ''the following Limitations and Conditions,'' and that the listing of the eleven conditions be removed from the model application.

We recommend that the discussion of the eleven conditions in the model Safety Evaluation be expanded to include a discussion of how each Limitation and Condition is addressed.

• For those Limitations and Conditions that require verification of the applicability of information in the Topical Report and the Safety Evaluation (*i.e.*, Conditions 1, 2, 3, 4, 5, 7, 9, 10, 11), the revised sentence provides the necessary affirmative statement.

• For those Limitations and Conditions addressed by the Technical Specification provisions in TSTF–498 (*i.e.*, Condition 4, bullets 1 and 3, Condition 6), the model Safety Evaluation should discuss how the Condition is satisfied by the proposed Technical Specification requirements.

• For those Limitations and Conditions that state that the licensee must discuss a topic in their submittal (*i.e.*, Conditions 5, 8), either an affirmative statement should be added to the model application confirming that the Limitation and Condition is met or guidance should be provided on what information must be included. Note that Limitation and

Condition 5 is addressed below by a proposed commitment.

Particular attention should be paid to ensuring that the model application, when used as the basis for a plant-specific license amendment request, can be processed by the NRC under the CLIIP.

Response: The NRC agrees with the comment that the current wording which repeats the Limitations and Conditions from the staff's Safety Evaluation for Topical Report BAW–2461–A does not address how the conditions are satisfied. The model application has been revised to require a specific verification by the licensee that each of the 11 Limitations and Conditions have been met. This change ensures that each licensee adopting TSTF–498 has met all the Limitations and Conditions without relying exclusively on cross-referencing another document. Additionally, Limitation and Condition #3, as specified in section 3.2, Verification and Commitments, of the Model Application has been revised such that the specific details describing what must be submitted in the application regarding external events, fire risk and seismic evaluations has been deleted. This was necessary to maintain consistency with the staff's resolution of comments on the draft safety evaluation for TR BAW–2461 by the Pressurized Water Reactor Owners Group (PWROG) (ADAMS ML072330227). Furthermore, the word ''following'' has been deleted from the phrase ''the following Limitations and Conditions,'' since it is no longer required.

3. *Comment:* Section 4, ''Environmental Evaluation,'' of the model application states that the NRC staff's environmental evaluation is applicable and is submitted as an attachment to the application. Submitting a copy of the NRC staff's environmental evaluation as an attachment to the license amendment request is inconsistent with previous CLIIP items and serves no purpose since the amendment request has already stated that the environmental evaluation is applicable.

The TSTF recommends that Section 4 be revised to be consistent with earlier CLIIP model applications, similar to, ''[LICENSEE] has reviewed the environmental evaluation included in the safety evaluation (SE) published on [DATE]([ ] FR [ ]) as part of the CLIIP Notice of Availability. [LICENSEE] has concluded that the staff's findings presented in that evaluation are applicable to [PLANT, NO.] and the evaluation is hereby incorporated by reference for this application.

Response: The NRC disagrees with the comment and the model application has been revised to clearly state that the Environmental Evaluation must be attached to the amendment request to satisfy the requirements of 10 CFR 50.91(a). Additionally, section 3.1, No Significant Hazards Determination (NSHD), has been revised to state that the NSHD must be attached to the amendment request to meet the requirements of 10 CFR 50.91(a).

4. *Comment:* Attachment 4, ''List of Regulatory Commitments,'' contains an example table with no commitments listed. This is inconsistent with other CLIIP model applications, which list any needed commitments. By not specifying whether any commitments are needed or what those commitments might be, the NRC is making it unlikely that any application submitted following the model application can be processed by the NRC under the CLIIP. The TSTF identified the following commitments that are appropriate to include in the model application. This is consistent with previous CLIIP model applications for risk informed Completion Times and with the proposed Safety Evaluation.

• [LICENSEE] commits to implement Bases consistent with the Bases provided in TSTF–498 under the Technical Specification Bases Control Program with a Due Date concurrent with the implementation of a license amendment based on TSTF–498.

• [LICENSEE] commits to implementing a methodology for assessing the effect on large early release frequency (LERF) and incremental conditional large early release probability (ICLERP) when utilizing the extended CIV CTs in the program for managing risk in accordance with 10 CFR 50.65(a)(4) with a Due Date concurrent with the implementation of a license amendment based on TSTF–498.

• [LICENSEE] commits to the guidance of NUMARC 93–01, Revision 2, section 11, which provides guidance and details on the assessment and management of risk during maintenance as an ongoing commitment.

Response: The NRC agrees with the comment with the exception of the first commitment concerning bases implementation. The bases are required to be submitted per the 10 CFR 50.36(a) criteria. The 10 CFR 50.36(a) states that a summary statement of the bases or reasons for such specifications, other than those covering administrative controls, shall also be included in the application, but shall not become part of the technical specifications. After the NRC approves the Technical Specifications, the licensee can revise bases under its Bases Control Program or/and 10 CFR 50.59 process. The remaining suggested commitments have been added to the model application. Additionally, as stated before, this is not a CLIIP model application.

Additional changes to the proposed Safety Evaluation:

• Editorial changes have been made to correct spelling and grammar errors.

• Wording has been removed from the Applicability statement related to the requirement for licensees to submit Technical Specification Bases along with the application. This statement was unnecessary since 10 CFR 50.36(a) requires the application for a Technical Specification change to include Technical Specification Bases.

• Per the Commission's Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors (58 FR 39132–39134, July 22, 1993), the Commission expects improved Bases to accompany requests for improved Technical specifications. Safety Evaluation section 3.0, Technical Evaluation, has been revised to clarify

that the TS Bases are not part of the Technical Specifications but must be submitted as required by 10 CFR 50.36(a).

• Wording has been added to the Summary that states the changes are consistent with the staff's Safety Evaluation for BAW–2461–A and are therefore acceptable.

Dated at Rockville, Maryland, this 5th day of January 2009.

For the Nuclear Regulatory Commission.

Robert B. Elliott,

Chief, Technical Specifications Branch, Division of Inspection and Regional Support, Office of Nuclear Reactor Regulation.

THE FOLLOWING EXAMPLE OF AN APPLICATION WAS PREPARED BY THE NRC STAFF. THE MODEL PROVIDES THE EXPECTED LEVEL OF DETAIL AND CONTENT FOR AN APPLICATION TO REVISE TECHNICAL SPECIFICATIONS REGARDING RISK-INFORMED JUSTIFICATION FOR CONTAINMENT ISOLATION VALVE ALLOWED OUTAGE TIME CHANGE. LICENSEES REMAIN RESPONSIBLE FOR ENSURING THAT THEIR ACTUAL APPLICATION FULFILLS THEIR ADMINISTRATIVE REQUIREMENTS AS WELL AS NUCLEAR REGULATORY COMMISSION REGULATIONS.

U.S. Nuclear Regulatory Commission
Document Control Desk
Washington, DC 20555

SUBJECT:
PLANT NAME
DOCKET NO. 50–
APPLICATION FOR TECHNICAL SPECIFICATION CHANGE REGARDING RISK-INFORMED JUSTIFICATION FOR CONTAINMENT ISOLATION VALVE ALLOWED OUTAGE TIME CHANGE

Dear Sir/Madam: In accordance with the provisions of 10 CFR 50.90 [LICENSEE] is submitting a request for an amendment to the technical specifications (TS) for [PLANT NAME, UNIT NOS.].

The proposed amendment would modify TS requirements for containment isolation valve (CIV) allowed outage time changes with implementation of BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change.''

Attachment 1 provides a description of the proposed change, the requested confirmation of applicability, and plant-specific verifications. Attachment 2 provides the existing TS pages marked up to show the proposed change. Attachment 3 provides revised (clean) TS pages. Attachment 4 provides a summary of the regulatory commitments made in this submittal. Attachment 5 provides the proposed TS Bases changes. Attachment 6 provides No Significant Hazards Consideration Determination. Attachment 7 provides Environmental Evaluation.

[LICENSEE] requests approval of the proposed License Amendment by [DATE], with the amendment being implemented [BY DATE OR WITHIN X DAYS].

In accordance with 10 CFR 50.91, a copy of this application, with attachments, is being provided to the designated [STATE] Official.

I declare [or certify, verify, state] under penalty of perjury that the foregoing is true and correct.

Executed on [date] [Signature]

If you should have any questions regarding this submittal, please contact [NAME, TELEPHONE NUMBER]

Sincerely,

[Name, Title]

Attachments:
1. Description and Assessment
2. Proposed Technical Specification Changes
3. Revised Technical Specification Pages
4. Regulatory Commitments
5. Proposed Technical Specification Bases
6. No Significant Hazards Consideration Determination
7. Environmental Evaluation

cc: NRC Regional Office
NRC Resident Inspector

ATTACHMENT 1—Description and Assessment

1.0 DESCRIPTION

The proposed amendment would modify TS requirements for containment isolation valve allowed outage times associated with implementation of BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change.''

The changes are consistent with Nuclear Regulatory Commission (NRC) approved Industry/Technical Specification Task Force (TSTF) STS change TSTF–498, Revision 1, (ADAMS Accession No. ML080280275). The **Federal Register** notice published on [DATE] announced the availability of this TS improvement.

2.0 ASSESSMENT

2.1 Applicability of Published Safety Evaluation

[LICENSEE] has reviewed the safety evaluation dated [DATE]. This review included a review of the NRC staff's evaluation, as well as the supporting information provided to support TSTF–498, Revision 1. [LICENSEE] has concluded that the justifications presented in the TSTF proposal and the safety evaluation prepared by the NRC staff are applicable to [PLANT, UNIT NOS.] and justify this amendment for the incorporation of the changes to the [PLANT NAME, UNIT NOS.] TS.

2.2 Optional Changes and Variations

[LICENSEE] is not proposing any variations or deviations from the TS changes described in TSTF–498, Revision 1, and the NRC staff's model safety evaluation dated [DATE].

3.0 REGULATORY ANALYSIS

3.1 No Significant Hazards Consideration Determination

[LICENSEE] has reviewed the proposed no significant hazards consideration determination (NSHCD) published in the **Federal Register** [DATE]([ ] FR [ ]). [LICENSEE] has concluded that the proposed NSHCD presented in the **Federal Register** notice is applicable to [PLANT NAME, UNIT NOS.] and is provided as an attachment to this amendment request which satisfies the requirements of 10 CFR 50.91(a).

3.2 Verification and Commitments

As discussed in the notice of availability published in the **Federal Register** on [DATE] for this TS improvement, [LICENSEE] verifies the applicability of TSTF–498, Revision 1, to [PLANT NAME, UNIT NOS.], and commits to adopting the requirements specified in BAW–2461–A. Additionally, [LICENSEE] verifies that each of the Limitations and Conditions specified in Section 4.1, Staff Findings and Conditions and Limitations, of the NRC's Safety Evaluation for BAW–2461 (ML072330227) as noted below for items (1) through (11), also apply.

(1) Based on TR BAW–2461, the CIV methodology, PRA parameters, configurations, and data used to evaluate an extended CIV CT to 168 hours is limited to the following plants:

• Davis-Besse
• Oconee Units 1, 2, and 3
• Crystal River 3

Other licensees of B&W designed PWRs requesting to use the TR methodology must provide the same level of information provided by these demonstration plants to ensure that TR BAW–2461 is applicable to their plant.

[LICENSEE] confirms that the information provided supports the applicability of TR BAW–2461 to be used to evaluate an extended CIV CT to 168 hours.

(2) Because not all penetrations have the same impact on ΔCDF, ΔLERF, ICCDP, or ICLERP, verify the applicability of TR BAW–2461 to the specific plant, including verification that: (a) The CIV configurations for the specific plant match the configurations in TR BAW–2461, and (b) the risk-parameter values used in TR BAW–2461, including the sensitivity studies contained in the RAIs, are representative or bounding for the specific plant. Any additional CIV configurations, CT extensions, or non-bounding risk parameter values not evaluated by TR BAW–2461 should be addressed in the plant-specific analyses. [Note that CIV configurations and extended CTs not specifically evaluated by TR BAW–2461, or non-bounding risk parameter values outside the scope of the TR, will require NRC staff review and licensee development of the specific penetrations and related justifications for the proposed CTs].[LICENSEE] confirms that TR BAW–2461 is applicable to [PLANT NAME, UNIT NOS.]. This confirmation includes verification that: (a) The CIV configurations for [PLANT NAME, UNIT NOS.] match the configurations in TR BAW–2461, and (b) the risk-parameter values used in TR BAW–2461, including the sensitivity studies contained in the RAIs, are representative or bounding for [PLANT NAME, UNIT NOS.].

[[LICENSEE] has provided additional information to support additional CIV configurations, CT extensions, or non-bounding risk parameter values not evaluated by TR BAW–2461].

(3) Each licensee adopting TR BAW–2461 will need to confirm that the plant-specific risk assessment including both internal and external events is within the assumptions of TR BAW–2461 and the acceptance guidelines of RG 1.174 and 1.177. The licensee's application verifies that external event risk, including seismic, fires, floods, and high winds, either through quantitative or qualitative evaluation, is shown to not have an adverse impact on the conclusions of the plant-specific analysis for extending the CIV CTs.

[LICENSEE] confirms that the plant-specific risk assessment, both internal and external events, is within the assumptions of TR BAW–2461 and the acceptance guidelines of RG 1.174 and 1.177. Additionally, [LICENSEE] verifies that external event risk, including seismic, fires, floods, and high winds, either through quantitative or qualitative evaluation, is shown to not have an adverse impact on the conclusions of the plant-specific analysis for extending the CIV CTs.

(4) For licensees adopting TR BAW–2461, confirmation should be provided that the Tier 2 and Tier 3 conclusions of the TR are applicable to the licensee's plant and that plant-specific Tier 2 evaluations including CCF and risk-significant configurations including interfacing-system LOCA have been evaluated and included under Tier 2 and Tier 3 including the CRMP as applicable.

• The proposed 168-hour CIV CT will not be applied to CIVs in penetrations connected to the RCS that have two NC CIVs if there are no other valves between the RCS and the environment (i.e., low pressure piping, or opening) that may be used for backup isolation and cannot be confirmed closed. In that case, the operable CIV will be verified closed within the original 4-hour CT, thus satisfying the TS Required Action. See Section 3.3.4 of the staff's SE for BAW–2461. The specific penetrations where this is applicable or where interfacing-system LOCA is shown to be risk-significant (as determined by the plant-specific risk-informed process including plant-specific LOCA analysis) will be identified on a plant-specific basis prior to implementation of the proposed TS change. They will be listed explicitly in the proposed TS revision and the current CT will be retained. TR BAW–2461 stated that an interfacing-system LOCA is assumed to lead to core damage and large early release, the effectiveness of mitigation systems besides containment isolation is not considered significant. All failed open penetration flow paths with an RCS connection were assumed to have CDF and LERF contributions in TR BAW–2461. Licensees incorporating TR BAW–2461 will need to confirm the above assumption for their plant specific implementation of BAW–2461.

• The specific penetrations with CCF potential will be identified by the licensee on a plant-specific basis. Upon entry into TS LCO 3.6.3, Condition A, the utility will confirm that the redundant similarly-designed CIV has not been affected by the same failure mode as the inoperable CIV. This verification will be performed before entering into the extended portion of the CT (i.e., within 4 hours). The specific penetrations with CCF potential will be identified on a plant-specific basis and listed in a plant-specific TS document or other administrative source. See Section 3.4.1.2 of the staff's SE for BAW–2461.

• No action or maintenance activity is performed that will remove equipment that is functionally redundant to the inoperable CIV, including the redundant CIV(s) on the same penetration and support systems for the redundant CIV. See Section 3.3 of TR BAW–2461.

• No action or maintenance activity is performed that will significantly increase the likelihood of challenge to the CIVs. Challenges to the CIVs include DBAs that result in a release of radioactive material within containment (LOCA, main steam line break, and rod ejection accident). Also included is the removal of equipment from service that may cause a significant increase in the likelihood of core damage while in the proposed CT, which may increase the large early release via the inoperable CIV. See Section 3.4 of TR BAW–2461.

• No action or maintenance activity is performed that will remove equipment that supports success paths credited in the CT risk evaluation. This includes the other series valves, if any, credited in the risk assessment for RCS penetrations that otherwise would be risk-significant (i.e., interfacing-system LOCA). See Section 3.4 of TR BAW–2461.

[LICENSEE] confirms that the Tier 2 and Tier 3 conclusions of the TR are applicable to [PLANT NAME, UNIT NOS.] and that plant-specific Tier 2 evaluations including CCF and risk-significant configurations including interfacing-system LOCA have been evaluated and included under Tier 2 and Tier 3 including the CRMP as applicable. Additionally, [LICENSEE] confirms that processes or procedures are in place to ensure the above items are met.

(5) TR BAW–2461 was based on generic-plant characteristics. Each licensee adopting TR BAW–2461 must confirm plant-specific Tier 3 information in their individual submittals. The licensee must discuss conformance to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), as they relate to the proposed CIV CTs and the guidance contained in NUMARC 93.01, Section 11, as endorsed by RG 1.182, including verification that the licensee's maintenance rule program, with respect to CIVs, includes a LERF/ICLERP assessment (i.e., CRMP). See Section 3.4.3 of the staff's SE for BAW–2461. [LICENSEE] has confirmed that the plant-specific Tier 3 information for [PLANT NAME, UNIT NOS.] is consistent with the generic plant characteristics used in TR BAW–2461. Also, [LICENSEE] has confirmed that [PLANT NAME, UNIT NOS.] conforms to the requirements of the maintenance rule (10 CFR 50.65(a)(4)), as they relate to the proposed CIV CTs and the guidance contained in NUMARC 93–01, Section 11, as endorsed by RG 1.182, including verification that the maintenance rule program, with respect to CIVs, includes a LERF and ICLERP assessment as part of the maintenance rule process.

(6) TS LCO 3.6.3, Note 2, allows separate condition entry for each penetration flow path. Therefore, each licensee adopting TR BAW–2461 will address the simultaneous LCO entry of an inoperable CIV in separate penetration flow paths such that the proposed 168-hour CIV CT LCO will be limited to no more than one CIV at any given time. In addition, the licensee must confirm that its Tier 3 CRMP addresses simultaneous inoperable CIV LCOs (i.e., separate condition entry) such that the cumulative CIV risk, including LERF, are maintained consistent with the assumptions and conclusions of TR BAW–2461. See Section 3.4.1.2 of the staff's SE for BAW–2461.

[LICENSEE] confirms that the Technical Specification Required Actions as proposed by adoption of TSTF–498 provides a requirement to isolate all but one penetration flow path within 4 hours if there are two or more penetration flow paths with one CIV inoperable.

(7) The licensee shall verify that the plant-specific PRA quality is acceptable with respect to its use for Tier 3 for this application in accordance with the guidelines given in RG 1.174 and as discussed in Section 3.4.1.1 of the staff's SE for BAW–2461.

[LICENSEE] confirms that [PLANT NAME, UNIT NOS.] PRA quality is acceptable with respect to its use for Tier 3 in accordance with the guidelines given in RG 1.174. Additionally, [LICENSEE] confirms additional information on PRA quality with respect to Tier 3 identified in Section 3.4.1.1 of the staff's SE for BAW–2461 has been provided.

(8) With respect to past plant-specific license amendments or additional plant-specific applications for a TS change under NRC review that have not been incorporated into the baseline PRA used to evaluate the proposed change, the cumulative risk must be evaluated on a plant-specific basis consistent with the guidance given in RG 1.174, Section 2.2.6 and 3.3.2, and addressed in a licensee's plant-specific application. See Section 3.4.1.5 of the staff's SE for BAW–2461.

[LICENSEE] confirms that the cumulative risk has been evaluated for [PLANT NAME, UNIT NOS.] in accordance with guidance in RG 1.174, Section 2.2.6 and 3.3.2, with respect to past [PLANT NAME, UNIT NOS.] license amendments or additional [PLANT NAME, UNIT NOS.] applications for a TS change under NRC review that have not been incorporated into the baseline PRA used to evaluate the proposed change. This evaluation is provided in this application.

(9) Closed systems inside and outside containment, which are considered to be containment isolation barriers, must meet the provisions outlined in NUREG–0800, Section 6.2.4, (Containment Isolation System. (See Section 2.2 of the staff's SE for BAW–2461.

[LICENSEE] verifies that all closed systems inside and outside containment, which are considered to be containment isolation barriers, meet the provisions of NUREG–0800, Section 6.2.4, ''Containment Isolation System.''

(10) With an extended CIV CT, the possibility exists that the CIV unavailability will be impacted. Depending on the penetration risk significance and the

frequency and length of time of the CIV CT, the unavailability of the containment isolation function may also be impacted. Therefore, licensee's adopting TR BAW–2461 will need to establish an Implementation and monitoring program for CIVs, including performance criteria, on a plant-specific basis. See Sections 3.4.1.2 and 3.4.4 of the staff's SE for BAW–2461.

[LICENSEE] confirms that [PLANT NAME, UNIT NOS.] has established performance criteria and tracks maintenance unavailability in accordance with the maintenance rule program, 10 CFR 50.65.

(11) The PWROG did not specifically address ΔCDF and ΔLERF in TR BAW–2461 regarding the acceptance guidelines of RG 1.174. The PWROG stated that it is not expecting that online CIV preventive maintenance will increase with the proposed 168-hour CIV. To address this, licensee's adopting TR BAW–2461 will need to assess, on a plant-specific basis, the ΔCDF and ΔLERF acceptance guidance of RG 1.174 including the expected frequency of entering the proposed CT and the expected mean CT for CIV maintenance. See Section 3.4.1.2 of the staff's SE for BAW–2461.

[LICENSEE] has assessed the ΔCDF and ΔLERF acceptance guidance for [PLANT NAME, UNIT NOS.] in accordance with RG 1.174 and provided information pertaining to the expected frequency of entering the proposed CT and the expected mean CT for CIV maintenance. This assessment and information is provided in this application.

4.0 ENVIRONMENTAL EVALUATION

[LICENSEE] has reviewed the environmental evaluation included in the model safety evaluation dated [DATE]. [LICENSEE] has concluded that the proposed determination presented in the notice is applicable to [PLANT NAME, UNIT NOS.] and the determination is provided as an attachment to this amendment request to satisfy the requirements of 10 CFR 50.91(a).

ATTACHMENT 2—PROPOSED TECHNICAL SPECIFICATION CHANGES (MARK–UP)

ATTACHMENT 3—PROPOSED TECHNICAL SPECIFICATION PAGES

ATTACHMENT 4—LIST OF REGULATORY COMMITMENTS

The following table identifies those actions committed to by [LICENSEE] in this document. Any other statements in this submittal are provided for information purposes and are not considered to be regulatory commitments. Please direct questions regarding these commitments to [CONTACT NAME].

Regulatory commitments	Due date
[LICENSEE] commits to implementing a methodology for assessing the effect on large early release frequency (LERF) and incremental conditional large early release probability (ICLERP) when utilizing the extended CIV CTs in the program for managing risk in accordance with 10 CFR 50.65(a)(4).	Concurrently with the implementation of a license amendment based on TSTF–498.
[LICENSEE] commits to the guidance of NUMARC 93–01, "Industry Guideline for monitoring the effectiveness of maintenance at nuclear power plants," Revision 2, Section 11, which provides guidance and details on the assessment and management of risk during maintenance.	Ongoing commitment.

ATTACHMENT 5—PROPOSED CHANGES TO TECHNICAL SPECIFICATION BASES

ATTACHMENT 6—NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION

ATTACHMENT 7—ENVIRONMENTAL EVALUATION

Proposed No Significant Hazards Consideration Determination

Description of Amendment Request: [PLANT NAME, UNIT NOS.] requests adoption of an approved change to the standard technical specifications (STS) for Babcock and Wilcox (B&W) Plants (NUREG–1430) and plant specific technical specifications (TS), to allow modification of containment isolation valve completion times associated with implementation of BAW–2461–A, "Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change," dated October 2007. The changes are consistent with NRC approved Industry/Technical Specification Task Force (TSTF) STS Traveler, TSTF–498, Revision 1, "Risk-Informed Containment Isolation Valve Completion Times (BAW–2461)." The proposed change extends the Completion Times for containment penetration flow paths with one containment isolation valve inoperable from 4 hours up to 7 days for Babcock & Wilcox (B&W) NSSS plants. This change is applicable to containment penetrations with one or more containment isolation valves in which one containment isolation valve is inoperable [for reasons other than purge valve [shield building bypass] leakage not within limit]. The extended Completion Time is not applicable to containment isolation valves in the main steam lines or those identified by plant-specific analysis as having high risk significance for interfacing systems loss of coolant accidents (ISLOCAs) and the existing 4 hour Completion Time applies.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

1. Does the Proposed Change Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated?

Response: No.

The proposed changes revise the Completion Times for restoring an inoperable containment isolation valve (or isolating the affected penetration) within the scope of Topical Report BAW–2461–A, "Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change." The Completion Times are extended from 4 hours up to 7 days. Containment isolation valves are not accident initiators in any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. Containment isolation valves control the extent of leakage from the containment following an accident. As such, containment isolation valves are instrumental in controlling the consequences of an accident. However, the consequences of any accident previously evaluated are no different during the proposed extended Completion Times than during the existing Completion Times. As a result, the consequences of any accident previously evaluated are not significantly increased. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the Proposed Change Create the Possibility of a New or Different Kind of Accident from any Accident Previously Evaluated?

Response: No.

The proposed changes revise the Completion Times for restoring an inoperable containment isolation valve (or isolating the affected penetration) within the scope of Topical Report BAW–2461–A, "Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change." The proposed changes do not change the design, configuration, or method of operation of the plant. The proposed changes do not involve a physical alteration of the plant (no new or different kind of equipment will be installed). Therefore, the proposed changes do not create the possibility of

a new or different kind of accident from any accident previously evaluated.

3. Does the Proposed Change Involve a Significant Reduction in the Margin of Safety?

Response: No.

The proposed changes revise the Completion Times for restoring an inoperable containment isolation valve (or isolating the affected penetration) within the scope of Topical Report BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change.'' In order to evaluate the proposed Completion Time extensions, a probabilistic risk evaluation was performed as documented in Topical Report BAW–2461–A. The risk evaluation concluded that the proposed increase in the Completion Times does not result in an unacceptable incremental conditional core damage probability or incremental conditional large early release probability according to the guidelines of Regulatory Guide 1.177. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration as set forth in 10 CFR 50.92(c).

Model Safety Evaluation

U.S. Nuclear Regulatory Commission

Office of Nuclear Reactor Regulation

Technical Specification Task Force (TSTF) Change TSTF–498, Revision 1, Modification of Technical Specification Containment Isolation Valve Completion Times

1.0 Introduction

By letter dated December 20, 2006, (Reference 1) the Technical Specifications Task Force (TSTF), a joint owners group activity, submitted TSTF–498, ''Risk-Informed Containment Isolation Valve Completion Times (BAW–2461),'' Revision 0, for NRC review. By letter dated October 10, 2007 (Reference 2) the TSTF submitted Revision 1 to TSTF–498 based on responses to Requests for Additional Information (RAI) that resulted in not adopting certain provisions provided by BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change'' (Reference 3). TSTF–498 is proposing to change NUREG 1430, ''Standard Technical Specifications Babcock and Wilcox Plants,'' (BAW STS) Revision 3.0 (Reference 4), to generically implement containment isolation valve completion time (CT) changes associated with implementation of BAW–2461–A.

BAW–2461–A and TSTF–498 support extending CTs for CIVs in a penetration flow path with two [or more] containment isolation valves from 4 hours to 168 hours (7 days). The proposed change revises the TS for B&W Plants, NUREG–1430, Revision 3, Limiting Condition for Operation (LCO), Section 3.6.3, ''Containment Isolation Valves,'' Condition A from 4 hours to 7 days. Additionally, a new Required Action is added (Required Action A.1) which requires verification that the Operable containment isolation valve in the penetration is not inoperable due to common cause failure and also results in Required Actions A.1 and A.2 being relabeled as A.2 and A.3. No change is proposed by the Pressurized Water Reactor Owners Group (PWROG) for Condition B (relabeled Condition D) (i.e., a penetration flow path with two inoperable CIVs). A new Condition, Condition B, is added which is similar to the existing Condition A. It contains a 4 hour Completion Time to isolate the affected flow path and is only applicable to the containment isolation valves excluded from Condition A (e.g., containment isolation valves in the main steam lines or (as described in a Reviewer's Note) those identified by plant-specific analysis as having high risk significance for interfacing systems loss of coolant accidents (ISLOCAs). A new Condition, Condition C, is added which is applicable when two or more penetrations have one inoperable containment isolation valve. This Condition requires isolating all but one of the affected penetrations within 4 hours (the existing Completion Time for Condition A). This condition limits the 7 day Completion Time in Condition A to a single penetration. The extended Completion Time is not applicable to containment isolation valves in the main steam lines or those identified by plant-specific analysis as having high risk significance for ISLOCAs and the existing 4 hour Completion Time applies. BAW–2461–A is only applicable to Davis Besse, Oconee Nuclear Station Units 1, 2, and 3, and Crystal River Unit 3. Other licensees of B&W designed PWRs requesting to use the Topical Report (TR) methodology must provide the same level of information provided by these demonstration plants to ensure that TR BAW–2461–A is applicable to their plant. TSTF–498 will provide standardized wording in the B&W STS for plants implementing the changes specified in BAW–2461–A related to extending AOTs for applicable inoperable CIVs from 4 hours to 168 hours.

2.0 Regulatory Evaluation

In 10 CFR 50.36, the Commission established its regulatory requirements related to the content of TS. Pursuant to 10 CFR 50.36, TS are required to include items in the following five specific categories related to station operation: (1) Safety limits, limiting safety system settings, and limiting control settings; (2) limiting conditions for operation (LCOs); (3) surveillance requirements (SRs); (4) design features; and (5) administrative controls. However, the regulation does not specify the particular TSs to be included in a plant's license. TSTF–498 is proposing changes to the TSs that involve category 2 above. The LCOs are the lowest functional capability, or performance levels, of equipment required for safe operation of the facility. When an LCO of a nuclear reactor is not met, the licensee shall shut down the reactor, or follow any remedial actions permitted by the TS until the condition can be met.

Furthermore, the CTs specified in the TSs must be based on reasonable protection of the public health and safety. As set forth in 10 CFR 50.36, a licensee's TS must establish the LCOs that are the lowest functional capability or performance levels of equipment required for safe operation of the facility. This requirement includes CTs for structures, systems, and components (SSCs), such as CIVs. These CTs allow a certain amount of time to correct the condition for not meeting the LCO until the reactor must be brought to a condition which exits the mode of applicability, in most cases resulting in the reactor being shutdown.

The Maintenance Rule, 10 CFR 50.65, ''Requirements for monitoring the effectiveness of maintenance at nuclear power plants,'' requires licensees to monitor the performance, or condition, of SSCs against licensee-established goals in a manner sufficient to provide reasonable assurance that SSCs are capable of fulfilling their intended functions. The implementation and monitoring program guidance of Regulatory Guide (RG) 1.174, Section 2.3, and RG 1.177, Section 3, states that monitoring performed in conformance with the Maintenance Rule can be used when such monitoring is sufficient for the SSCs affected by the risk-informed application.

In addition, 10 CFR 50.65(a)(4), as it relates to the proposed CIV CT extension, requires the assessment and management of the increase in risk that

may result from the proposed maintenance activity.

Appendix A of 10 CFR Part 50, GDC–54, ''Piping systems penetrating containment,'' requires those piping systems that penetrate primary containment be provided with leak detection, isolation, and containment capabilities having redundancy, reliability, and performance capabilities that reflect the importance to safety of isolating these piping systems.

Appendix A of 10 CFR Part 50, GDC–55, ''Reactor coolant pressure boundary penetrating containment,'' requires that each line that is part of the reactor coolant pressure boundary and that penetrates the primary containment shall be provided with CIVs.

Appendix A of 10 CFR Part 50, GDC–56, ''Primary containment isolation,'' requires that each line that connects directly to the containment atmosphere and penetrates the primary reactor containment shall be provided with CIVs.

The CIVs help ensure that adequate primary containment boundaries are maintained during and after accidents by minimizing potential pathways to the environment and help ensure that the primary containment function assumed in the safety analysis is maintained.

2.1 Proposed Change

TSTF–498 would make the following changes to the B&W STS contained in NUREG–1430 associated with TS 3.6.3 Containment Isolation Valves (CIVs):

• The proposed change adds a Reviewer's Note prior to Condition A which states ''The Condition A Note should list the specific penetrations (if any) identified by the plant specific risk analysis as having high risk significance for an interfacing systems loss of coolant accident (ISLOCA).''

• The proposed change revises the Condition A NOTE to add ''except containment isolation valves in the main steam lines and [ ].''

• The proposed change adds the new Required Action A.1, ''Determine the OPERABLE containment isolation valve in the affected penetration is not inoperable due to common cause failure'' with a Completion Time of 4 hours. This new Required Action is connected by an AND statement to the other applicable Required Actions.

• The proposed change revises the previous Required Action A.1 to be A.2 with the completion time changed from 4 hours to 7 days.

• The proposed change revises the previous Required Action A.2 to be A.3.

• The proposed change adds a new Condition B for one or more penetration flow paths with one containment isolation valve inoperable [for reasons other than purge valve leakage not within limit] with a NOTE stating (Only applicable to penetration flow paths with two [or more] containment isolation valves in the main steam lines and [ ]. (There is also a Reviewers NOTE similar to Condition A.

• The proposed change provides new Required Action B.1 to isolate the affected penetration flow path with a completion time of 4 hours AND Required Action B.2 to verify the affected penetration flow path is isolated once per 31 days for isolation devices outside containment and Prior to entering Mode 4 from Mode 5 if not performed within the previous 92 days for isolation devices inside containment. Furthermore, new Required Action B.2 has two notes which state (1) Isolation devices in high radiation areas may be verified by use of administrative means and (2) Isolation devices that are locked, sealed, or otherwise secured may be verified by use of administrative means.

• The proposed change adds a new Condition C for two or more penetration flow paths with one containment isolation valve inoperable [for reasons other than Condition[s] [E and F]] with a NOTE stating ''Only applicable to penetration flow paths with two [or more] containment isolation valves.

• The proposed change provides new Required Action C.1 to isolate all but one of the affected penetration flow paths by use of at least one closed and de-activated automatic valve, closed manual valve, or blind flange with a completion time of 4 hours.

• The proposed change revises the previous Condition B and Required Action B.1 to be new Condition D and Required Action D.1.

• The proposed change revises the previous Condition C and Required Action C.1 and C.2 to be new Condition E and Required Action E.1 and E.2.

• The proposed change revises the previous Condition D and Required Action D.1, D.2 and D.3 to be new Condition F and Required Action F.1, F.2 and F.3.

• The proposed change revises the previous reference to Required Action D.1 for performance of SR 3.6.3.6 within Required Action D.3 to Required Action F.1.

• The proposed change revises the previous Condition E and Required Action E.1 and E.2 to be new Condition G and Required Action G.1 and G.2.

TSTF–498 includes changes to the B&W STS Bases B 3.6.3 contained in NUREG–1430.

• Condition A has been modified by a Note indicating this Condition is only applicable to those penetration flow paths with two [or more] containment isolation valves. The Note also states that the Condition is not applicable to containment isolation valves in the main steam lines and [any specific penetrations identified by the plant-specific risk analysis as having high risk significance for an ISLOCA]. The previous discussion about the Note has been deleted. Additionally, a new Required Action A.1 has been added to determine that the OPERABLE containment isolation valve in the affected penetration is not inoperable due to a common cause failure with a completion time of 4 hours. The other Condition A Required Actions have been re-numbered and Required Action A.2 Completion Time has been changed from 4 hours to 7 days.

• The bases has been revised to update Required Action A.2 from 4 hours to 7 days based on an analysis of plant risk and the discussion on considering the time required to isolate the penetration and the relative importance of supporting containment OPERABILITY has been deleted.

• A new Condition B has been added with a Note indicating this Condition is only applicable to those penetration flow paths with two [or more] containment isolation valves that are containment isolation valves in the main steam lines or are [any specific penetrations identified by the plant-specific risk analysis as having high risk significance for an interfacing systems loss of coolant accident (ISLOCA)]. Condition B is entered if one containment isolation valve in one or more penetration flow paths is inoperable, [except for purge valve leakage not within limit]. The Bases describes Required Actions B.1 and B.2 Completion Times and Notes as specified in the TS section.

• A new Condition C as been added with a Note indicating this Condition is only applicable to penetration flow paths with two [or more] containment isolation valves. Condition C is entered if two or more penetration flow paths with one containment isolation valve inoperable [for reasons other than Condition[s] E [and F]]. The Bases describes the Required Action C.1 Completion Time to isolate all but one of the affected containment isolation valves within 4 hours.

• The bases discussion for Required Action D.1 has been updated to account for new Conditions B and C and have been added where applicable.

• Condition B and Required Action B.1 has been re-numbered to Condition D and Required Action D.1.

• Condition C and Required Action C.1 and C.2 have been re-numbered to Condition E and Required Action E.1 and E.2.

• Reference to BAW–2461–A has been added as Reference 6. Previous references 6, 7, and 8 have been re-numbered to references 7, 8, and 9. Applicable changes have been made throughout the Bases.

• Condition D and Required Action D.1, D.2 and D.3 have been re-numbered to Condition F and Required Action F.1, F.2 and F.3.

• Condition E and Required Action E.1 and E.2 have been re-numbered to Condition G and Required Action G.1 and G.2.

3.0 Technical Evaluation

As stated previously, BAW–2461–A describes a method to revise the Completion Time for specific Conditions per Technical Specification 3.6.3, Containment Isolation Valves. The NRC approved BAW–2461 on August 29, 2007, for referencing in license applications to the extent specified and under the limitations and conditions stated in the topical report and Section 4.1 of the staff's safety evaluation (Reference 6). TSTF–498 is proposing changes to the B&W STS, NUREG 1430, which are in accordance with Topical Report BAW–2461–A and subject to the Limitations, Conditions and Regulatory Commitments specified in the staff Safety Evaluation. Any differences between TR BAW–2461–A Technical Specification examples and TSTF–498 proposed Technical Specifications have been evaluated and determined to be acceptable. BAW–2461–A, Table 2–1, Condition A note states ''Only applicable to penetration flow paths with two [or more] containment isolation valves with the exception of containment isolation valves in the main steam lines [and list of specific penetrations (if any) identified by the plant-specific risk-informed process to have high risk significance for ISLOCA].'' To be consistent with the ITS format and content rules, the Condition A Note was written as ''Only applicable to penetration flow paths with two [or more] containment isolation valves except containment isolation valves in the main steam lines and [ ].'' The Condition is modified by a Reviewer's Note which states, ''The Condition A Note should list the specific penetrations (if any) identified by the plant-specific risk analysis as having high risk significance for an interfacing systems loss of coolant accident (ISLOCA).'' This change is editorial and does not affect the application of the TS. The change in wording meets the requirements specified in BAW–2461–A and is therefore acceptable.

The July 5, 2006 Request for Additional Information (RAI) response to NRC Question 1 stated that the following action would be added as Required Action A.1 with a 4 hour Completion Time, ''Verify that the redundant CIV on the same penetration is operable [applicable only if the redundant CIV has an operator and/or body type that is not diverse from the inoperable CIV depending on which parts are inoperable].'' In TSTF–498, Required Action A.1 has a 4 hour Completion Time and states, ''Determine the OPERABLE containment isolation valve in the affected penetration is not inoperable due to common cause failure.'' The wording was chosen to be consistent with LCO 3.8.1, Required Action B.3.1, regarding inoperable diesel generators. The discussion of what is required to be evaluated, ''applicable only if the redundant CIV has an operator and/or body type that is not diverse from the inoperable CIV depending on which parts are inoperable,'' is placed in the Required Action A.1 Bases. Placing the detailed description of what is meant by common cause failure in the Bases is consistent with the ITS format and content rules. This change has been evaluated as a Revision to BAW–2461–A. TSTF–498 wording is equivalent to the proposed wording submitted as RAI response #1 and is consistent with NRC's Safety Evaluation for BAW–2461–A and is therefore acceptable.

B&W STS Required Action A.1 and A.2 are being revised to re-number these actions to A.2 and A.3. This is necessary to incorporate the new Required Action A.1 as described above. Additionally, the completion time for the new Required Action A.2 which states ''isolate the affected penetration flow path by use of at least one closed and de-activated automatic valve, closed manual valve, blind flange, or check valve with flow through the valve secured'' is being revised from 4 hours to 7 days. This change is consistent with NRC's Safety Evaluation for BAW–2461–A and is therefore acceptable.

B&W STS is adding a new Condition B for one or more penetration flow paths with one containment isolation valve inoperable [for reasons other than purge valve leakage not within limit] with a Note specifying ''Only applicable to penetration flow paths with two [or more] containment isolation valves in the main steam lines and [ ].'' There is also a Reviewer's Note that states ''The Condition B Note should list the specific penetrations (if any) identified by the plant-specific risk analysis as having high risk significance for an interfacing systems loss of coolant accident (ISLOCA).'' This wording is consistent with the change made to Condition A and is consistent with the format and content rules in ITS. Additionally, the Required Actions and associated Completion Times are consistent with Condition A and the change evaluated by the staff in the NRC's Safety Evaluation for BAW–2461–A. New Condition B for Main Steam Line Isolation Valves was added to conform with the NRC's Safety Evaluation for BAW–2461–A since main steam line isolation valves were explicitly excluded from the Topical Report CT extension and is therefore acceptable.

B&W STS Condition B and Required Action B.1 are being revised to be Condition D and Required Action D.1. With the addition of new Conditions B and C the remaining Conditions and Required Actions need to be re-numbered. This change is editorial and results in no technical change and is therefore acceptable.

B&W STS is adding a new Condition C which is applicable when two or more penetrations have one inoperable containment isolation valve. This Condition requires isolating all but one of the affected penetrations within 4 hours (the existing Completion Time for Condition A). Once this Completion Time is satisfied and since Condition A is still applicable then this essentially limits the 7 day Completion Time in Condition A to a single penetration. This change conforms to Condition and Limitation 6 in the NRC's Safety Evaluation for BAW–2461–A and is therefore acceptable.

B&W STS Condition C and Required Actions C.1 and C.2 are being revised to be Condition E and Required Action E.1 and E.2. With the addition of new Conditions B and C the remaining Conditions and Required Actions need to be re-numbered. This change is editorial and results in no technical change and is therefore acceptable.

B&W STS Condition D and Required Action D.1, D.2 and D.3 are being revised to be Condition F and Required Action F.1, F.2 and F.3. With the addition of new Conditions B and C the remaining Conditions and Required Actions need to be re-numbered. This change is editorial and results in no technical change and is therefore acceptable.

B&W STS Condition E and Required Action E.1 and E.2 are being revised to be Condition G and Required Action G.1 and G.2. With the addition of new Conditions B and C the remaining

Conditions and Required Actions need to be re-numbered. This change is editorial and results in no technical change and is therefore acceptable.

The following B&W STS Bases changes are being made and shall be submitted as required by 10 CFR 50.36(a). In all cases, the commission expects improved Bases to accompany requests for improved Technical specifications. The Staff's approval of the amendment was based on the information provided by the licensee, which includes the TS Bases. The changes to the Bases discussed below revise the current information in the STS Bases to support the changes made to the Technical Specifications. The Bases changes continue to meet the criteria specified in the Final Policy Statement on ''Technical Specifications Improvements for Nuclear Power Reactors'' (58 FR 39132, 39139, July 22, 1993) by providing information necessary to support the Technical Specifications. After incorporation of the amendment, the licensee may follow TS 5.5.14, Bases Control Program, should it desire to make additional changes to the Bases.

• B&W STS Bases for B 3.6.3 Actions A.1, A.2 and A.3 are being revised to describe the Note that is being added indicating the Condition is only applicable to those penetration flow paths with two [or more] containment isolation valves and that the isolation valves in the main steam line are not applicable along with any specific penetrations identified by the plant-specific risk analysis. Since the changes are supported by risk-informed analyses, the Final Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, is satisfied. The Policy states, ''The Commission expects that licensees, in preparing their Technical Specification related submittals, will utilize any plant-specific probabilistic safety assessment (PSA) or risk survey and any available literature on risk insights and PSAs.''

• B&W STS Bases for B 3.6.3 Required Action A.2 Completion Time is being revised from 4 hours to 7 days and indicates that this is based on an analysis of plant risk. The change is revising wording associated with the 4 hour completion time to a 7 day completion time. The 7 day completion time is now based upon a plant risk evaluation instead of a reasonable time to isolate the penetration. This change supports the changes made to the Technical Specifications and meets the Final Policy Statement (as stated above).

• B&W STS Bases for B 3.6.3 is adding support information for new Condition B and Required Actions B.1 and B.2 which is applicable for one or more penetration flow paths with one containment isolation valve inoperable [for reasons other than purge valve leakage not within limit]. Condition B is also only applicable to penetration flow paths with two [or more] containment isolation valves in the main steam lines and [ ]. This change provides a more accurate description of the Applicability of Condition B and Required Actions B.1 and B.2.

• B&W STS Bases for B 3.6.3 is adding support information for new Condition C and Required Action C.1 which is applicable for two or more penetration flow paths with one containment isolation valve inoperable [for reasons other than Condition[s] E [and F]]. Condition C is only applicable to penetration flow paths with two [or more] containment isolation valves. The Required Action to isolate all but one of the affected penetration flow paths by use of at least one closed and de-activated automatic valve, closed manual valve, or blind flange within 4 hours ensures that simultaneous LCO entry of an inoperable CIV in separate penetration flow paths such that the proposed 7 day Completion Time in Condition A is limited to no more than one CIV at any given time. This change provides supporting information to ensure proper use and application of the changes made to the Technical Specifications based on TR BAW–2461–A.

• B&W STS Bases for B 3.6.3 are being revised such that each Condition and Required Action subsequent to the addition of new Conditions B and C need to be re-numbered. Additionally, a new reference has been added (Reference 6) which requires subsequent references to be re-numbered. The change corrects the format for the subject Conditions.

3.1 Summary

TSTF–498 would provide standardized wording in the B&W STS for plants implementing BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change.'' The changes to NUREG–1430 proposed by TSTF–498 have been reviewed for consistency with the current NUREG–1430 and BAW–2461–A. The proposed changes have been found to be consistent with NUREG–1430 and BAW–2461–A. Additionally, the proposed changes are consistent with the NRC staff's safety evaluation which included a PRA evaluation for BAW–2461–A, and are therefore acceptable.

4.0 State Consultation

In accordance with the Commission's regulations, the [ ] State official was notified of the proposed issuance of the amendment. The State official had [(1) no comments or (2) the following comments—with subsequent disposition by the staff].

5.0 Environmental Consideration

The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR Part 20 and change surveillance requirements. The NRC staff has determined that the amendments involve no significant increase in the amounts and no significant change in the types of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards considerations, and there has been no public comment on the finding (73 FR 6529,6537, February 4, 2008). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

6.0 Conclusion

The Commission has concluded, on the basis of the considerations discussed above, that (1) there is reasonable assurance that the health and safety of the public will not be endangered by operation in the proposed manner, (2) such activities will be conducted in compliance with the Commission's regulations, and (3) the issuance of the amendments will not be inimical to the common defense and security or to the health and safety of the public.

7.0 References

1. Letter from the Technical Specifications Task Force (TSTF), a joint owners group activity, re: ''TSTF–498, Revision 0 'Risk-Informed Containment Isolation Valve Completion Times (BAW–2461),' '' dated December 20, 2006. (ADAMS ML063560402).

2. Letter from the TSTF re: Response to NRC Request for Additional Information Regarding TSTF–498, Revision 0, ''Risk-Informed Containment Isolation Valve Completion Times (BAW–2461),'' dated

October 10, 2007. (ADAMS ML072840444).

3. BAW–2461–A, ''Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change.'' Revision 0, dated October 2007. (ADAMS ML072980529).

4. NUREG 1430, ''Standard Technical Specifications Babcock and Wilcox Plants,'' Revision 3.0. (ADAMS ML041830589 and ML041800598).

5. Nuclear Energy Institute 99–04, Revision 0, ''Guidelines for Managing NRC Commitment Changes,'' July 1999.

6. Final Safety Evaluation for Pressurized Water Reactors Owners Group, Topical Report, BAW–2461, Revision 0, Risk-Informed Justification for Containment Isolation Valve Allowed Outage Time Change (TAC No. MD5722) (ADAMS ML072330227).

[FR Doc. E9–345 Filed 1–9–09; 8:45 am]

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POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–15 and CP2009–21; Order No. 165]

Domestic Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Express Mail Contract 3 to the Competitive Product List. The Postal Service has also filed a related contract. This notice addresses procedural steps associated with these filings.

DATES: Comments are due January 15, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 31, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add Express Mail Contract 3 to the Competitive Product List.[1] The Postal Service asserts that the Express Mail Contract 3 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009–15.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract is assigned Docket No. CP2009–21.

Request. The Request incorporates (1) A redacted version of the Governors' Decision authorizing the new product; (2) a redacted version of the contract; (3) requested changes in the Mail Classification Schedule (MCS) product list; (4) a statement of supporting justification as required by 39 CFR 3020.32; and (5) certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request asks the Commission to add the Express Mail Contract 3 product to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Kim Parks, Manager, Sales and Communications, Expedited Shipping, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment D. Thus, Ms. Parks contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Related contract. A redacted version of the specific Express Mail Contract 3 is included with the Request. The contract is for 1 year and is to be effective the day the Commission provides all necessary regulatory approvals. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a) and 39 CFR 3015.7(c). *See id.*, Attachment to Governors' Decision and Attachment E. It notes that performance under this contract could vary from estimates, but concludes that the risks are manageable, and overall the contract is expected to generate significant contribution. *Id.*, Attachment to Governors' Decision.

The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific Express Mail Contract 3, under seal.[3] In its Request, the Postal Service maintains that the contract and related financial information, including the customer's name and the accompanying analyses that provide prices, terms, conditions, and financial projections should remain under seal. *Id.* at 2–3. It further believes that it would be inappropriate in this case to redact information through the ''blackout'' method since it could provide information or clues about the name of the customer, the length and breadth of price charts, the complexity of annual adjustment mechanisms, or other similar sensitive information. Accordingly, it redacts the sensitive information using ellipses. *Id.* at 3.

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–15 and CP2009–21 for consideration of the Request pertaining to the proposed Express Mail Contract 3 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.[4]

Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR part 3020, subpart B. Comments are due no later than January 15, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Paul L. Harrington to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–15 and CP2009–21 for consideration of the matters raised in each respective docket.

2. Pursuant to 39 U.S.C. 505, Paul L. Harrington is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

[1] Request of the United States Postal Service to Add Express Mail Contract 3 to Competitive Product List and Notice of Establishment of Rates and Class Not of General Applicability, December 31, 2008 (Request).

[2] Attachment A to the Request consists of the redacted Decision of the Governors of the United States Postal Service on Establishment of Rate and Class Not of General Applicability for Express Mail Service (Governors' Decision No. 08–25). The Governors' Decision includes an attachment which provides an analysis of the proposed Express Mail Contract 3. Attachment B is the redacted version of the contract. Attachment C shows the requested changes to the MCS product list. Attachment D provides a statement of supporting justification for this Request. Attachment E provides the certification of compliance with 39 U.S.C. 3633(a).

[3] It notes that data filed under seal are more recent than what was available when the Governors voted. *Id.* at 2, n.10.

[4] Docket No. MC2009–15 is reserved for only those filings related to the proposed product and the requirements of 39 U.S.C. 3642, while Docket No. CP2009–21 is reserved for those filings specific to the contract and the requirements of 39 U.S.C. 3633.

3. Comments by interested persons in these proceedings are due no later than January 15, 2009.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–289 Filed 1–9–09; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2009–14 and CP2009–20; Order No. 164]

International Mail Contracts

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add International Business Reply Service (IBRS) to the Competitive Product List. The Postal Service has also filed a related contract. The notice invites public comment and addresses routine procedural matters. In addition, it directs several questions to the Postal Service.

DATES: Postal Service responses to questions identified in this notice are due January 12, 2009. Comments are due January 16, 2009.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov*.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6820 and *stephen.sharfman@prc.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

On December 24, 2008, the Postal Service filed a formal request pursuant to 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.* to add International Business Reply Service Contract 1 to the Competitive Product List.[1] The Postal Service asserts that the new International Business Reply Service Contract 1 product is a competitive product ''not of general applicability'' within the meaning of 39 U.S.C. 3632(b)(3). Request at 1. The Request has been assigned Docket No. MC2009–14.

The Postal Service contemporaneously filed a contract related to the proposed new product pursuant to 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. The contract has been assigned Docket No. CP2009–20.

Request. The Request incorporates (1) A statement of supporting justification as required by 39 CFR 3020.32, (2) a redacted version of the Governors' Decision authorizing the new product; (3) requested changes to the Mail Classification Schedule; and (4) a certification of compliance with 39 U.S.C. 3633(a).[2] Substantively, the Request seeks to add International Business Reply Service Contract 1 to the Competitive Product List. *Id.* at 1–2.

In the statement of supporting justification, Jo Ann Miller, Director, Global Business Development, asserts that the service to be provided under the contract will cover its attributable costs, make a positive contribution to institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.*, Attachment 1. Thus, Ms. Miller contends there will be no issue of subsidization of competitive products by market dominant products as a result of this contract. *Id.*

Product description. As part of her statement of supporting justification, Ms. Miller describes the proposed product. She explains that IBRS contracts are for U.S.-based entities seeking a channel for returned merchandise or other articles from their overseas customers. Such entities typically supply preprinted, prepaid IBRS packaging in which their customers can place used or defective consumer items into the mailstream at no direct cost. The business entity compensates the Postal Service for this service, and the Postal Service remits to the relevant foreign postal administration the amount due for collection and transportation of the items in the foreign country. *Id.*, Attachment 1, section (d).

Related contracts. An unredacted version of the specific International Business Reply Service Contract 1 is included with the Request filed under seal. Unlike past practice, the entirety of the Docket No. CP2009–20 contract was filed under seal, and no redacted version was filed publicly. The Commission requests the Postal Service to explain why no portions of this contract can be filed publicly no later than January 12, 2009.

The contract is for 1 year from the date the Postal Service notifies the customer that all necessary approvals and reviews of the agreement have been obtained. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *See id.*, Attachment 1 and Attachment 3.

The Postal Service also explains that it has two ongoing similar arrangements with two customers whose prior contracts officially expired. These ''contingency arrangements'' survive the contracts' expiration and govern any residual items that third parties might continue to enter into the mailstream for return to the IBRS customers. The Postal Service states when the Docket No. CP2009–20 contract expires, this contingency arrangement will continue with respect to this contract partner until such time as a new IBRS contract can take effect after all necessary approvals and reviews. The Postal Service shall provide any and all IBRS contingency arrangements currently in effect no later than January 12, 2009. *See* Request at 3.

Confidentiality. The Postal Service filed much of the supporting materials, including the Governors' Decision and the specific International Business Reply Service Contract 1, under seal. In its Request, the Postal Service maintains that the contract, related financial information, the customer's name, the accompanying analyses and certified statements that provide cost, prices, terms, conditions, and financial projections should remain under seal. *Id.* at 3–4. It notes that prices and other contract terms relating to parties' processes and procedures are confidential in the business world and

[1] Request of the United States Postal Service to Add International Business Reply Service Contracts to the Competitive Products List, and Notice of Filing (Under Seal) Contract and Enabling Governors' Decision, December 24, 2008 (Request). The Postal Service proposes to call this new product ''International Business Reply Service Contracts.'' In this Notice, the Commission proposes to slightly alter that proposed name to ''International Business Reply Service Contract 1'' to provide for the possibility that more than one type of International Business Reply Service contract may exist in the future that is not functionally or substantially equivalent to the proposed Docket No. CP2009–20 contract. This may occur even though other future contracts may meet the parameters set by the Governors' Decision No. 08–24.

[2] Attachment 1 consists of a statement of supporting justification for this Request. Attachment 2 is the redacted Decision of the Governors of the United States Postal Service on Establishment of Prices and Classifications for International Business Reply Service (IBRS) Contracts (Governors' Decision No. 08–24). The Governors' Decision includes three attachments. Attachment A is proposed Mail Classification Schedule language. Attachment B is the price floor and price ceiling formulas approved by the Governors. Attachment C provides an analysis of the proposed price floor and price ceilings discussed in Attachment B. Attachment D is a certification as to the formulas for prices offered under applicable International Business Reply Service contracts. Attachment 3 is a redacted certification for the IBRS contract at issue in Docket No. CP2009–20. Unredacted copies of the Governors' Decision, the IBRS contract, the certification, and other supporting documentation establishing compliance with 39 CFR 3015.5 were filed separately with the Commission under seal.

should be protected in accordance with industry standards. *Id.*

II. Notice of Filings

The Commission establishes Docket Nos. MC2009–14 and CP2009–20 for consideration of the Request pertaining to the proposed International Business Reply Service Contract 1 product and the related contract, respectively. In keeping with practice, these dockets are addressed on a consolidated basis for purposes of this Order; however, future filings should be made in the specific docket in which issues being addressed pertain.

The Commission appoints Michael J. Ravnitzky to serve as Public Representative in these dockets.

Comments. Interested persons may submit comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642 and 39 CFR part 3015 and 39 CFR 3020 subpart B. Comments are due no later than January 16, 2009. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

Pursuant to 39 CFR 1315.6, the Commission requests that the Postal Service address the following issues by January 12, 2009:

1. Ms. Miller's statement describing the product and why it should be classified as competitive, at least preliminarily, seems as though it could also apply to the domestic Merchandise Return Service product which is currently classified as market dominant. *See* Request, Attachment 1, section (d). Should this proposed product category be called ''International Merchandise Return Service'' to better align it with its domestic counterpart (Merchandise Return Service) and to avoid confusion with the market dominant product of the same name ''International Business Reply Service''? *See* Order No. 43, Order Establishing Ratemaking Regulations for Market Dominant and Competitive Products, October 29, 2007 at Appendix A, sections 1540 and 1505.10.

2. For the reasons set forth in Attachment 1, section (d), should a proceeding be initiated to consider moving the domestic Merchandise Return Service product to the competitive rate category? If not, please explain the processing and market characteristic differences between the proposed new product and Merchandise Return Service.

Other interested persons also may find it appropriate to address these issues in their comments.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2009–14 and CP2009–20 for consideration of the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Michael J. Ravnitzky is appointed to serve as officer of the Commission (Public Representative) to represent the interests of the general public in these proceedings.

3. Comments by interested persons in these proceedings, including those addressing questions (1) and (2) of section II above, are due no later than January 16, 2009.

4. The Postal Service shall address questions (1) and (2) of section II above no later than January 12, 2009.

5. The Postal Service shall provide any and all IBRS contingency arrangements currently in effect no later than January 12, 2009.

6. The Postal Service shall explain why no portions of this contract can be filed publicly no later than January 12, 2009.

7. The Secretary shall arrange for publication of this Order in the **Federal Register**.

By the Commission.

Steven W. Williams,

Secretary.

[FR Doc. E9–290 Filed 1–9–09; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59200; File No. SR–CBOE–2008–125]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Affiliations With Broker-Dealers

January 6, 2009.

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 15, 2008, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') 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 prepared by the CBOE. The Exchange has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule under Section 19(b)(3)(A)(i) of the Act,[3] and Rule 19b–4(f)(1)[4] thereunder, 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 is seeking effectiveness of an interpretation of a CBOE Constitution provision related to affiliations with broker-dealers. The proposed rule change is available on CBOE's Web site (*http://www.cboe.org/legal*), at the CBOE's Office of the Secretary, 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 parts 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 is in the process of forming a wholly owned broker-dealer subsidiary. With respect to the contemplated establishment of the broker-dealer, the Exchange is seeking effectiveness of an interpretation of a CBOE Constitution provision related to affiliations with broker-dealers.

In particular, the Exchange notes that Article VIII, Section 8.1(b) of the CBOE Constitution provides in part that ''[n]o officer, other than the Vice Chairman of the Board, shall be a member or affiliated with a member or a broker or dealer in securities or commodities.''[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(i).

[4] 17 CFR 240.19b–4(f)(1).

[5] The Exchange notes that this provision of the Constitution is proposed to be deleted as part of the Exchange's contemplated demutualization and, upon its deletion, there would no longer be such a restriction. *See* SR–CBOE–2008–88. The Exchange also notes that other self-regulatory organizations

The term ''affiliated with'' is not explicitly defined in the Constitution, but that term, and the related definition of control, has been defined in the Exchange Rules since 1973, the year the Exchange was founded.[6] The term ''affiliate'' or a person ''affiliated with'' another person is defined in the Exchange Rule 1.1(j) as, ''a person who, directly or indirectly, controls, is controlled by, or is under common control with, such other person.'' The term ''control'' is defined in Exchange Rule 1.1(k) as ''the power to exercise a controlling influence over the management or policies of a person, unless such power is solely the result of an official position with such person. Any person who owns beneficially, directly or indirectly, more than 20% of the voting power in the election of directors of a corporation, or more than 25% of the voting power in the election of directors of any other corporation which directly or through one or more affiliates owns beneficially more than 25% of the voting power in the election of directors of such corporation, shall be presumed to control such corporation.''

The purpose of this rule filing is to seek effectiveness of an Exchange interpretation that Section 8.1(b), by its terms, does not apply to instances in which an Exchange officer acts solely in an official position for a broker-dealer, consistent with the longstanding definition and application of the term ''affiliated with'' in the Exchange Rules.[7] The essence of this interpretation is that if an Exchange officer is not in a control relationship with a broker-dealer subsidiary of the Exchange, the officer is not an ''affiliate'' of the subsidiary even if the officer serves in an official position with the subsidiary, and thus the Exchange officer's serving in an official position of the subsidiary is not prohibited by Section 8.1(b) of the Constitution. For example, the Exchange believes it would be permissible and consistent with Section 8.1(b) for an Exchange officer to be a director, officer, principal, or an employee of a broker-dealer that is a wholly-owned subsidiary of the Exchange.

The Exchange notes that until it demutualizes it only intends to utilize the interpretation to permit Exchange officers to act in an official position with the wholly-owned broker-dealer subsidiary in accordance with Section 8.1(b) and to form the broker-dealer. The Exchange represents that the broker-dealer will not perform any operations without first discussing with the Commission staff whether any of the broker-dealer's operations should be subject to an Exchange rule filing required under the Act.[8] These Exchange also notes that there are other protections in place that limit the potential conflicts between the Exchange as a self-regulator and broker-dealers, including, among other things, the existence of a Regulatory Oversight Committee as a committee of the CBOE Board of Directors that consists solely of public directors.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[9] in general and furthers the objectives of Section 6(b)(5) of the Act[10] in particular in that it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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 proposed rule change is also consistent with the requirements of Section 6(b)(1) of the Act,[11] which requires that an exchange be so organized so as to have the capacity to be able to carry out the purposes of the Act and to comply, and (subject to any rule or order of the Commission pursuant to Section 17(d)[12] or 19(g)(2)[13] of the Act) to enforce compliance by its members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder and the rules of the Exchange. This rule change is designed to clarify the meaning and scope of CBOE's Constitution and Rules related to affiliations with broker-dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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

The Exchange neither received nor solicited written comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change will take effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(i) of the Act[14] and Rule 19b–4(f)(1) thereunder,[15] because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule.

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–CBOE–2008–125 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington DC 20549–1090.

do not have restrictions in their rules preventing their respective officers from acting in an official capacity with a broker-dealer affiliate. For example, certain officers of the National Stock Exchange, Inc. (''NSX'') are also officers and principals of NSX's subsidiary broker-dealer, NSX Securities LLC.

[6] E-mail from Jennifer M. Lamie, Assistant General Counsel, CBOE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated January 5, 2009 (adding the preceding sentence to clarify the nature of the proposed interpretation).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(1). In particular, the Exchange represents that it will not commence operations for such broker-dealer prior to an effective rule filing with the Commission setting forth the manner in which the broker-dealer would operate. E-mail from Jennifer M. Lamie, Assistant General Counsel, CBOE, to Richard Holley III, Senior Special Counsel, Division of Trading and Markets, Commission, dated January 5, 2009 (adding the preceding clarifying text).

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(1).

[12] 15 U.S.C. 78q(d).

[13] 15 U.S.C. 78s(g)(2).

[14] 15 U.S.C. 78s(b)(3)(A)(i).

[15] 17 CFR 240.19b–4(f)(1).

All submissions should refer to File Number SR–CBOE–2008–125. 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 such filing also will be available for inspection and copying at the principal office of the CBOE. 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 No. SR–CBOE–2008–125 and should be submitted on or before February 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–350 Filed 1–9–09; 8:45 am]

BILLING CODE 8011–01–P

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59199; File No. SR–DTC–2008–14]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Modify Existing Operational Arrangements

January 6, 2009.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on October 21, 2008, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to modify DTC's existing Operational Arrangements (''OA'') necessary for a securities issue to become and remain eligible for the services of DTC.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

DTC's OA was first published in June 1987.[3] It was then updated in June 1988, in February 1992, in December 1994, in January 1998, and most recently in May 2002.[4] DTC's OA is designed to maximize the number of issues that can be made eligible while ensuring orderly processing and timely payments to its participants. DTC's experience demonstrates that when issuers, underwriters, and their counsel are aware of DTC's requirements, those requirements can be met almost without exception. The purpose of this rule change is not substantive in nature in that it is merely an update to the OA in an attempt to assemble relevant requirements, including requirements resulting from Commission approval of prior DTC rule changes, in one place. Additionally, some clerical changes, reorganization, and clarification of language have been made in order to provide a concise and coherent version of the OA.

The primary differences between the attached modified OA and the OA filed with the Commission in 2002 are as follows:

1. In an effort to update the OA and make it more comprehensive, DTC has included a description of the following, all of which have been previously approved by the Commission:

(a) In 1988, the Commission approved a DTC rule filing related to certificates of deposit.[5] The OA has been updated to include a section describing procedures unique to retail certificates of deposit.

(b) In 1994, the Commission approved a DTC rule filing which consisted of enhancements to the reorganization and deposit services of DTC. The OA has been updated accordingly to specify that issuers' agents are required to provide timely notification to DTC for conversions with variable rate (cash and share) entitlements.[6]

(c) In 1995, the Commission approved a DTC rule filing in which DTC was designated as the ''appropriate qualified registered securities depository'' to receive notices of transfer agent changes pursuant to Rule 17Ad–16 of the Act.[7] The OA has been updated to reflect the procedures for notifying DTC of transfer agency changes.[8]

(d) In 1996, the Commission approved a DTC rule filing which established procedures for the Direct Registration System (''DRS'').[9] DRS permits an investor to hold a security as the registered owner of the security in electronic form on the books of the issuer rather than (i) indirectly through a financial intermediary that holds the security in street name; or (ii) in the form of a certificate. The OA has been updated to include a description of DRS.

(e) In 1997, the Commission approved a rule filing amending DTC's Return-of-Funds Policy.[10] The rule change amended DTC's charge back and return of funds policies to shorten from ten business days to one business day after the payable date the period within which a paying agent can request that DTC return principal and income payments that have been allocated to participants. The rule change also amended the procedure so if a paying agent requests the return of a principal and income payment more than

[2] The Commission has modified the text of the summaries prepared by DTC.

[3] Securities Exchange Act Release No. 24818 (August 19, 1987), 52 FR 31833 (August 24, 1987) (File No. SR–DTC–87–10).

[4] Securities Exchange Act Release Nos. 25948 (July 27, 1988), 53 FR 29294 (August 3, 1988) (File No. SR–DTC–88–13); 30625 (April 30, 1992), 57 FR 18534 (April 30, 1992) (File No. SR–DTC–92–06); 35342 (February 8, 1995), 60 FR 8434 (February 14, 1995) (File No. SR–DTC–94–19); 39894 (April 21, 1998), 63 FR 23310 (April 28, 1998) (SR–DTC–97–23); and 45994 (May 29, 2002), 68 FR 35037 (June 11, 2003) (File No. SR–DTC–2002–02).

[5] Securities Exchange Act Release No. 25870 (May 7, 1988), 53 FR 25870 (May 12, 1988) (File No. SR–DTC–88–3).

[6] Securities Exchange Act Release No. 34189 (June 9, 1994), 59 FR 30818 (June 15, 1994) (File No. SR–DTC–94–06).

[7] 15 U.S.C. 78 *et seq.*

[8] Securities Exchange Act Release Act No. 35378 (February 15, 1995), 60 FR 9875 (February 22, 1995) (File No. SR–DTC–95–02).

[9] Securities Exchange Act Release Act No. 37931 (November 7, 1996), 61 FR 58600 (November 15, 1996) (File No. SR–DTC–96–15).

[10] Securities Exchange Act Release Act No. 38564 (April 30, 1997), 62 FR 25008 (May 7, 1997) (File No. SR–DTC–96–22).

one business day after a payable date, DTC will work with the paying agent and participants to resolve the matter, but DTC will not return the allocated payments without each participant's consent. The OA has been updated to describe DTC's Return-of-Funds Policy.

(f) In 2005, DTC filed a rule change with the Commission in order to establish a fine for participants that are required to conduct connectivity testing for business continuity purposes and who fail to do so.[11] The OA has been updated to reflect a description of DTC's business continuity procedure and to reflect its right to impose a fine for noncompliance.

(g) In 2005, the Commission approved a DTC filing which described Security Position Report type information, known as ''call lottery results'' for auction rate securities.[12] The OA has been updated to include the description of auction rate securities.

(h) In 2006, the Commission approved a DTC rule change in which DTC proposed to revise its Deposit Service, Custody Service, and Withdrawals-by-Transfer Service procedures based upon guidance from the U.S. Department of the Treasury's Office of Foreign Assets Control (''OFAC'') to DTC.[13] The OA has been updated to reflect a description of DTC's OFAC procedures.

(i) In 2007, the Commission approved a DTC rule change which consisted of new Rule 30, Canadian-Link Service. Rule 30 describes the operation of a service that DTC offers to participants, through the facilities of DTC and The CDS Clearing and Depository Services Inc. (''CDS'').[14] Rule 30 permits participants using the service (''Canadian-Link Participants'') to: (i) Clear and settle valued securities transactions with participants of CDS (''CDS Participants'') and other Canadian-Link Participants in Canadian dollars and (ii) transfer Canadian dollars to or receive Canadian dollars from CDS Participants and other Canadian-Link Participants without any corresponding delivery or receipt of securities.[15] The OA has been updated to describe this service.

(j) In 2007, the Commission approved a rule filing intended to provide greater efficiency by making available more automated functions to be utilized for a broader range of voluntary reorganization events (*e.g.*, DTC's Automated Tender Offer Program (''ATOP'')).[16] The OA has been updated to include a description of these procedures.

(k) In 2007, DTC filed a rule change with the Commission in order to amend DTC's OA as it applies to structured securities.[17] That rule filing: (i) Extended the deadline by which paying agents of such securities must submit periodic payment rate information to DTC to preferably five business days but no less than one business day prior to the payable date; (ii) extended the processing deadline for payment rate files from 7 p.m. Eastern Standard Time (''EST'') to 11:30 p.m. EST; (iii) established two classes of structured securities, ''conforming'' and ''non-conforming;'' (iv) imposed an exception processing fee which applies to certain structured securities whose features prevent paying agents from complying with the extended deadline; and (v) provided that DTC track and make publicly available reports on paying agent performance as it relates to timeliness and accuracy of structured securities payment rate information submitted to DTC. DTC has extended the deadlines by which paying agents of such structured securities must submit periodic payment rate information to DTC to no later than 3:00 am EST on the payable date and has extended the processing deadline for payment rate files to 3:00 am EST on the payable date. The OA has been updated to include this product and to reflect these extensions.

(l) In 2007, the Commission approved a DTC rule filing which provided that DTC's foreign currency payment option may be used: (i) In relation to securities denominated in U.S. dollars and (ii) regardless of whether the terms of the issue originally contemplated the option of payment in one or more currencies.[18] The OA has been updated to reflect this change.

(m) In 2007, the Commission approved a DTC rule change which added a new Policy Statement on the Eligibility of Foreign Securities to DTC's rules.[19] The purpose of the policy statement is to set forth in a single place and in an accessible manner the criteria and procedures for making the securities of foreign issuers eligible for deposit and book-entry transfer through the facilities of DTC in accordance with the Securities Act of 1933[20] and the rules and regulations of the SEC thereunder. A description of the policy statement has been added to the OA.

(n) In 2008, the Commission approved a DTC rule filing to implement the New Issue Information Dissemination System (''NIIDS'') for municipal securities. NIIDS is an automated system developed by DTC at the request of the Securities Industry and Financial Markets Association (''SIFMA'') in order to improve the mechanism for disseminating new issue information regarding municipal securities.[21] DTC has mandated the use of NIIDS in connection with eligibility processing of municipal securities issuances in order to assist underwriters in meeting the reporting standards set forth by the Municipal Securities Rule Making Board (''MSRB''). The OA has been updated to include a description of NIIDS.

2. DTC has updated the OA to describe the modification in cutoff time for Fast Automated Securities Transfer (''FAST'') Agents to approve or reject a deposit or withdrawal instruction submitted by a participant. This adjustment was implemented on October 2, 2001.[22]

3. Additionally, DTC has updated the OA to indicate that voluntary unit separations[23] are now processed under the FAST program. The volume of voluntary unit separations has declined significantly throughout the years (to one or two per year) thereby reducing the need for a separate program to process such transactions. Voluntary units have been processed under the Fast program since the late 1990s.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act[24] and the rules and regulations thereunder applicable to DTC because the proposed rule change should facilitate the prompt and accurate clearance and settlement of securities transactions by expediting the process of making securities eligible for DTC's services.

B. Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have any impact on or impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments relating to the proposed rule change have been solicited or received. DTC will notify the Commission of any written comments received by DTC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing pursuant to Section

[11] Securities Exchange Act Release No. 52446 (September 15, 2005), 70 FR 55435 (September 21, 2005) (File No. SR–DTC–2005–04).

[12] Securities Exchange Act Release No. 52393 (September 8, 2005), 70 FR 54598 (September 15, 2005) (File No. SR–DTC–2005–12).

[13] Securities Exchange Act Release No. 54120 (July 10, 2006), 71 FR 40562 (July 17, 2006) (File No. SR–DTC–2005–14).

[14] Formerly known as ''The Canadian Depository for Securities Limited.''

[15] Securities Exchange Act Release Act No. 55239 (February 5, 2007), 72 FR 6797 (February 13, 2007) (File No. SR–DTC 2006–15).

[16] Securities Exchange Act Release No. 56538 (September 26, 2007), 72 FR 56409 (October 3, 2007) (File No. SR–DTC–2007–09).

[17] Securities Exchange Act Release No. 57542 (March 20, 2008), 73 FR 16403 (March 27, 2008) (File No. SR–DTC–2007–11).

[18] Securities Exchange Act Release No. 57298 (February 8, 2008), 73 FR 8921(February 15, 2008) (File No. SR–DTC–2007–13).

[19] Securities Exchange Act Release No. 56277 (August 17, 2007), 72 FR 48709 (File No. SR–DTC–2007–04).

[20] 15 U.S.C. 77 *et seq.*

[21] Securities Exchange Act Release No. 57513 (March 17, 2008), 73 FR 15548 (March 24, 2008) (File No. SR–DTC–2007–10).

[22] The modification explains that the cutoff has been changed to 5:30 p.m. EST from 6:30 p.m. EST. For more information regarding this change, see DTC Important Notice B#2358–01 available at *http://www.dtcc.com/downloads/legal/imp_notices/2001/dtc/exe/exe_2358.pdf.*

[23] A unit is a security comprised of more than one class of securities such as common stock and warrants (''components''). In a voluntary unit separation, the separation and recombination between the security component and the security is done by the Participant and transfer agent using DTC's Deposit/Withdrawal At Custodian (''DWAC'') system.

[24] 15 U.S.C. 78q–1.

19(b)(3)(A)(iii) of the Act [25] and Rule 19b–4(f)(4) [26] thereunder because the proposed rule change effects a change in an existing service of DTC that (i) does not adversely affect the safeguarding of securities or funds in the custody or control of DTC or for which it is responsible and (ii) does not significantly affect the respective rights of the clearing agency or persons using the service. At any time within sixty days of the filing of such 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–DTC–2008–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–DTC–2008–14. 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 Section, 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 DTC and on DTC's Web site at *http://www.dtcc.com/legal/rule_filings/ficc/2008.php.* 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–DTC–2008–14 and should be submitted on or before January 29, 2009.

For the Commission by the Division of Trading and Markets, pursuant to delegated authority.[27]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–349 Filed 1–9–09; 8:45 am]

BILLING CODE 8011–01–P

[25] 15 U.S.C. 78s(b)(3)(A)(iii).

[26] 26 17 CFR 240.19b–4(f)(4).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–59198; File No. SR–NYSE–2008–131]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Proposed Rule Change To Introduce a NYSE OpenBook® Nonprofessional Subscriber Fee and To Revise the Unit of Count That Determines the Device Fees Payable by Data Recipients

January 5, 2009.

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, 2008, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') 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 prepared by the Exchange. 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 is proposing to introduce a nonprofessional subscriber fee for its NYSE OpenBook® product offerings and to revise the unit of count that determines the device fees payable by data recipients.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NYSE 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. NYSE 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

(a) *Background.* NYSE OpenBook responds to the desire of some market participants for depth-of-book data. It is a compilation of limit order data that the Exchange provides to market data vendors through a data feed.

NYSE OpenBook is a packaged suite of data feed products. It includes:

i. NYSE OpenBook Realtime, by which the Exchange makes NYSE OpenBook Realtime available on a snapshot basis, with updates distributed in real-time at intervals of one second; and

ii. NYSE OpenBook Ultra, by which the Exchange updates NYSE OpenBook information upon receipt of each displayed limit order, or upon an event that removes limit orders from NYSE OpenBook (*i.e.*, cancellation or execution).

For no additional charge, the Exchange makes available to recipients of NYSE OpenBook additional data feeds containing:

iii. NYSE BestQuote,[3] which allows customers to see NYSE's best bid and offer as made available through the Consolidated Quotation System, and which may contain additional market interest that is not displayed in the NYSE limit order book and that, therefore, is not available in NYSE OpenBook; and

iv. Order Imbalance Information, which includes information regarding order imbalances prior to the market opening and closing auctions.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] NYSE added NYSE BestQuote to the NYSE OpenBook Realtime package in October 2006. *See* Release No. 34–54594 (October 12, 2006); 71 FR 61819 (October 19, 2006); File No. SR–NYSE–2006–81.

In June 2008, the Exchange added NYSE OpenBook Ultra and Order Imbalance Information to the NYSE OpenBook package of products.[4] In the NYSE OpenBook Ultra filing, NYSE stated that it would temporarily make NYSE OpenBook Ultra and Order Imbalance Information available at no additional fee beyond the charges that the Exchange currently imposes for the receipt and use of NYSE OpenBook Realtime and NYSE BestQuote. It also stated that the Exchange would submit any proposed new or modified fees to the Commission as proposed rule changes and would not impose any new or modified charges on data feed recipients and end-users prior to Commission approval. This proposed rule change proposes to establish a discounted fee for nonprofessional subscribers that receive and use NYSE OpenBook products.

Currently, an end-user of NYSE OpenBook pays (or its Vendor pays on its behalf) the monthly per-terminal NYSE OpenBook device fee of $60. In addition, a NYSE OpenBook data feed recipient pays a monthly $5,000 access fee for NYSE OpenBook, plus the per-terminal fee if the data feed recipient also displays the data. These fees currently apply regardless of whether the recipient receives NYSE OpenBook Realtime or NYSE OpenBook Ultra and whether the subscriber is a professional subscriber or a nonprofessional subscriber. The recipients receive NYSE Order Imbalance Information and NYSE BestQuote for no additional charge.

(b) *Subscribers and Data Feed Recipients.* After consultation with the Exchange's market data customers, including large and small redistributors and broker-dealers, the Exchange found that the marketplace desires a simplified fee structure for its products, especially regarding the methodology for counting the ''devices'' that are the subject of the device fee. As technology has made it increasingly difficult to define ''device'' and to control who has access to devices, the markets have struggled to make device counts uniform among their customers.

i. *The Original Model.* The markets created the ''device fee'' metric in 1960, when market data vendors first made interrogation services available to their subscribers. During the 1960s, 1970s and 1980s, a vendor would typically link its servers to display devices that the vendor provided to its subscribers. The linkages allowed the subscriber to interrogate the vendor's database for vendor-prepared displays of stock prices and quotes. The subscriber could do no more than view the vendor-provided displays of prices and quotes. The vendor reported the number of display devices through which each subscriber could receive the vendor's displays and the exchanges imposed fees on the subscribers based on that number of devices.

The markets deemed any party that received access to the price and quote data feeds to constitute something other than a subscriber. Access to a data feed meant the receipt of prices and quotes in a manner that allowed the recipient to manipulate and re-format the data (as opposed to a subscriber's receipt of the vendor's read-only controlled displays). Such parties (''Data Feed Recipients'') used their data feed access:

a. To create interrogation services that they would vend to their subscribers;

b. To make the data feeds available to other parties; or

c. To use the data internally for display, analysis, portfolio valuation or other purposes other than display.

The markets imposed access fees on such parties, fees that the markets have never imposed on subscribers' receipt of controlled display services.

ii. *The Impact of Technology.* During and after the 1980s, the markets and supporting technology evolved dramatically. Networks of personal computers replaced direct links between the vendor and each subscriber device as the standard means for distributing a vendor's interrogation service to subscribers. Vendors and subscribers applied ''user id and password'' entitlements to control access to the vendor's interrogation services. In time, controlled display devices became more sophisticated and enabled the subscriber to use the data for analysis and other non-display functions, functions previously reserved only for Data Feed Recipients. Vendors began to provide services in which they controlled access, but no longer provided pre-set displays of data. This evolutionary process blurred the historic distinctions between Data Feed Recipients' uses of data and subscribers' uses of data. As a result, the traditional measures for billing purposes (*i.e.*, device fees for subscribers; access, program classification and device fees for Data Feed Recipients) became difficult to apply. This has resulted in unnecessary burdens and costs to customers and exchanges alike.

(c) *The Proposed Solution.* As part of a one-year pilot and a wider initiative to simplify and modernize market data administration, the Exchange proposes to redefine some of the basic ''units of measure'' that Vendors are required to report to the Exchange and on which the Exchange bases its fees for its NYSE OpenBook product packages. The Exchange believes that these changes more closely align with current data consumption, will reduce costs for the Exchange's customers, and, if successful, will serve as a model for additional pricing efficiencies.

Under the proposal, the Exchange will no longer define the Vendor-subscriber relationship based on the manner in which a Data Feed Recipient or subscriber receives data (*i.e.,* through controlled displays or through data feeds). Instead, the Exchange proposes to adopt billing criteria that are more objective. The following basic principles underlie this proposal.

i. *Vendors.*

- ''Vendors'' are market data vendors, broker-dealers, private network providers and other entities that control Subscribers' access to data through Subscriber Entitlement Controls.

ii. *Subscribers.*

- ''Subscribers'' are unique individual persons or devices to which a Vendor provides data. Any individual or device that receives data from a Vendor is a Subscriber, whether the individual or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.
- Only a Vendor may control Subscriber access to data.
- Subscribers may not redistribute data in any manner.

iii. *Subscriber Entitlements.*

- A Subscriber Entitlement is a Vendor's permissioning of a Subscriber to receive access to data through an Exchange-approved Subscriber Entitlement Control.
- A Vendor may not provide data access to a Subscriber except through a unique Subscriber Entitlement.
- The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.
- At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

iv. *Subscriber Entitlement Controls.*

- A Subscriber Entitlement Control is the Vendor's process of permissioning Subscribers' access to data.
- Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.
- The Exchange will approve a Subscriber Entitlement Control if it

[4] *See* Release No. 34–57861; 73 FR 31905 (June 4, 2008); File No. SR–NYSE–2008–42.

allows only authorized, unique end-users or devices to access data or monitors access to data by each unique end-user or device.

• Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

A. Each entitlement update to the Subscriber Entitlement Control;

B. The status of the Subscriber Entitlement Control; and

C. Any other changes to the Subscriber Entitlement Control over a given period.

• Only the Vendor may have access to Subscriber Entitlement Controls.

The Exchange recognizes that each Vendor and Subscriber will use NYSE OpenBook data differently and that the Exchange is one of many markets with whom Vendors and Subscribers may enter into arrangements for the receipt and use of data. In recognition of that, the Exchange's proposed solution does not restrict how Vendors may use NYSE OpenBook data in their display services and encourages Vendors to create and promote innovative uses of NYSE OpenBook information. For instance, a Vendor may use NYSE OpenBook data to create derived information displays, such as displays that aggregate NYSE OpenBook data with data from other markets.[5]

The proposal does not discriminate among data recipients and users, as the new ''unit of measure'' concepts would apply equally to everyone.

The Exchange intends for the pilot period to provide an opportunity for it and its customers to assess specific usage issues and to enable the Exchange to establish a leadership role in effecting change after soliciting feedback from customers and other industry participants.

(d) *Unit of Count*. Subject to the rules set forth below, the Exchange will require Vendors to count every Subscriber Entitlement, whether it be an individual person or a device. This means that the Vendor must include in the count every person and device that has access to the data, regardless of the purposes for which the individual or device uses the data. The Exchange believes that eliminating current exceptions to the device-reporting obligation will subject the count to a more objective process and will simplify the reporting obligation for Vendors. Previously, the Exchange has not required Vendors to report certain programmers and other individuals who receive access to data for certain specific, non-trading purposes. These exceptions require the Exchange to monitor the manner through which end-users consume data and adds cost for both the Exchange and customers. To simplify the process, the Exchange will require Vendors to report all entitlements in accordance with the following rules.

i. In connection with a Vendor's external distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to the Exchange's market data. However, where a device is dedicated specifically to a single individual, the Vendor should count only the individual and need not count the device.

ii. In connection with a Vendor's internal distribution of NYSE OpenBook data, the Vendor should count as one Subscriber Entitlement each unique individual (but not devices) that the Vendor has entitled to have access to the Exchange's market data.

iii. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to gain access to multiple market data services, the Vendor should count that as one Subscriber Entitlement. However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more market data services (*e.g.*, a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

iv. Vendors should report each unique individual person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that individual.

v. The Vendor should include in the count as one Subscriber Entitlement devices serving no entitled individuals. However, if the Vendor entitles one or more individuals to use the same device, the Vendor should include only the entitled individuals, and not the device, in the count.

(e) *Proposed Nonprofessional Subscriber Fee*.

i. *The Fee*. In addition to the ''unit of measure'' pilot program, the Exchange also proposes to establish a fee applicable to the receipt and use of NYSE OpenBook data by nonprofessional Subscribers. Until now, the Exchange has not established a separate fee for the receipt of NYSE OpenBook data by nonprofessional Subscribers. NYSE OpenBook subscribers currently pay a device fee of $60. In previous filings, the Exchange has declared that it would consider designing a limit order data product suited for the retail, nonprofessional customer if it perceived a suitable demand for it. In the proposed rule change, the Exchange proposes to reduce the NYSE OpenBook device fee to $15 per month for those investors who qualify as nonprofessional Subscribers. The Exchange proposes to impose the charge on the Vendor, rather than on the nonprofessional Subscriber, regardless of whether the Vendor provides NYSE OpenBook Realtime or NYSE OpenBook Ultra.

ii. *Qualification as a Nonprofessional Subscriber*. In establishing a reduced rate for nonprofessional Subscribers, the Exchange proposes to apply the same criteria for qualification as a ''nonprofessional subscriber'' as the CTA and CQ Plan Participants use. As is true under the CTA and CQ Plans, classification as a nonprofessional subscriber is subject to Exchange review and requires the subscriber to attest to his or her nonprofessional subscriber status. A ''nonprofessional subscriber'' is a natural person who uses the data solely for his personal, non-business use and who is neither:

a. Registered or qualified with the Securities and Exchange Commission, (''SEC''), the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association,

b. Engaged as an ''investment adviser'' as that term is defined in section 202(a)(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that act), nor

c. Employed by a bank or other organization exemption from registration under Federal and/or state securities laws to perform functions that would require him/her to be so registered or qualified if he/she were to perform such function for an organization not so exempt.

Individuals that qualify as nonprofessional subscribers would be eligible to enjoy the lower nonprofessional subscriber rate regardless of whether they receive the NYSE OpenBook service from a Vendor that receives the NYSE OpenBook datafeed directly from the Exchange, or from a Vendor that receives the database indirectly through an intermediary.

[5] In the case of derived displays, the Vendor is required to: (i) Pay the Exchange's device fees (described below); (ii) include derived displays in its reports of NYSE OpenBook usage; and (iii) use reasonable efforts to assure that any person viewing a display of derived data understands what the display represents and the manner in which it was derived.

(f) *Nonprofessional Subscriber Fee Cap*. The Exchange proposes to introduce a monthly maximum amount (the ''Maximum Amount'') that a broker-dealer would have to pay to provide NYSE OpenBook Realtime or NYSE OpenBook Ultra to any number of nonprofessional Subscribers so long as each such Subscriber maintains a brokerage account with the broker-dealer. The broker-dealer must be registered as a broker/dealer under the Securities Exchange Act of 1934.

The Exchange proposes to set the Maximum Amount at $25,000 per month for each month falling in calendar year 2008. For the months falling in each subsequent calendar year, the Maximum Amount shall increase or decrease by the percentage increase or decrease in the annual cost-of-living adjustment (''COLA'') that the U.S. Social Security Administration applies to Supplemental Security Income for the calendar year preceding that subsequent calendar year. For example, if the COLA for calendar year 2008 is a two percent increase, then the monthly Maximum Amount for months falling in calendar year 2009 would increase by two percent to $25,500.

The Exchange anticipates that the broker-dealers that will enjoy the benefits of the maximum monthly payment are broker-dealers servicing a large customer base. As such, they have in place procedures that:

i. Enable them to procure readily the nonprofessional subscriber attestation from each nonprofessional customer, a requirement that is a prerequisite for qualification as a nonprofessional subscriber; and

ii. Enable them to review periodically the accounts included under their nonprofessional cap to ensure their nonprofessional status.

The Exchange also realizes that these broker-dealers may have a small number of account-holding customers that technically do not qualify for the nonprofessional Subscriber fee, but whom a broker-dealer may inadvertently include under the cap because of the complexities of managing thousands or even millions of accounts. As a practical response to compliance and the costs of administration, the Exchange is proposing the following guidelines under which the Exchange will not penalize a broker-dealer using the nonprofessional Subscriber fee cap if the broker-dealer includes a limited number of account-holding professional Subscribers under the cap.

A broker-dealer may include professional Subscribers in the calculation of the monthly maximum amount so long as:

i. Nonprofessional Subscribers comprise no less than 95 percent of the pool of Subscribers that are included in the calculation;

ii. Each professional Subscriber included in the calculation maintains an active brokerage account directly with the broker-dealer (that is, with the broker-dealer rather than with a correspondent firm of the broker-dealer); and

iii. Each professional Subscriber that is included in the calculation is not affiliated with the broker-dealer or any of its affiliates.

iv. All Subscribers receive access to the identical service, regardless of whether the Subscribers are professional Subscribers or nonprofessional Subscribers.

v. Upon discovery of the inclusion in the cap of an individual that does not qualify as a nonprofessional Subscriber, the broker-dealer takes reasonable action to reclassify and report that individual as a professional Subscriber during the immediately following reporting period.

A professional Subscriber is ''affiliated'' with a broker-dealer if he or she is an officer, partner, member, or employee of the broker-dealer or an affiliate of the broker-dealer or enjoys a similar status with the broker-dealer or affiliate.

Notwithstanding clauses (iii) and (v), the broker-dealer may include a professional Subscriber that is affiliated with the broker-dealer or its affiliates (subject to clauses (i) and (ii)) if he or she accesses market data on-line through his or her personal account solely for the non-business purpose of managing his or her own portfolio.

Notwithstanding clause (v), professional Subscribers may constitute up to five percent of the pool of Subscribers that the broker-dealer includes in the calculation of the monthly maximum amount if those professional Subscribers can only view data derived from NYSE OpenBook Ultra:

(i) Through the Subscriber's online brokerage account; and

(ii) In an inquiry/response per-quote display (*i.e.*, not in a streaming display).

The purpose of this exception is to permit broker-dealers that primarily serve non-institutional brokerage account holders to offer a consistent online client experience without undue administrative burdens. At the same time, the Exchange must guard against potential abuse of this exception. Therefore, the Exchange intends to monitor its use closely and reserves the right to deny application of this exception if it discovers that a broker-dealer is misusing it, such as by opening up retail brokerage accounts to disseminate data to institutional clients.

If the $15 per-device fee would allow a broker-dealer to pay less than the Maximum Amount for any month, the broker-dealer may pay the lower amount for that month.

The Exchange intends for the Maximum Amount to enable much wider distribution of NYSE OpenBook data to retail investors holding brokerage accounts. This will further the goal of market transparency for investors. The low fee enabling wider retail investor access, coupled with the five percent ''de minimis'' exception for professional Subscribers in the Subscriber Pool, reduce administrative burdens and produce a fee that is fair and reasonable. Moreover, the Maximum Amount compares favorably with monthly maximums payable to Nasdaq and to the CTA Plan Participants. Nasdaq set its maximum at $25,000 per month for nonprofessional subscribers' receipt of TotalView,[6] although Nasdaq also requires the additional purchase of its Level 2 product at $9 per nonprofessional subscriber. Nasdaq's maximum does not apply to OpenView or to its Level 1 or NQDS services. For calendar year 2007, the CTA Plan Participants set the maximum at $660,000 per month for internal distribution of consolidated quotation information within a broker-dealer's organization and for the broker-dealer's distribution to nonprofessional subscribers that maintain brokerage accounts (the ''CTA Maximum Amount'').

(g) *The Fee and the Maximum Amount are Non-Discriminatory*. As a result of the fee reduction for the receipt of NYSE OpenBook data by nonprofessional Subscribers, the Exchange would apply one device fee in respect of professional Subscribers to NYSE OpenBook services and a different, lower device fee in respect of nonprofessional Subscribers. The use of a lower fee for nonprofessional Subscribers than for professional Subscribers has a long history. The Exchange played an active role in CTA's adoption of the first nonprofessional subscriber fee 25 years ago[7] and that

[6] Through TotalView, Nasdaq provides real-time information relating to the displayed quotes and orders of Nasdaq participants in UTP Plan Securities. TotalView displays quotes and orders at multiple prices.

[7] *See* the Sixth Substantive Amendment and Sixth Charges Amendment to the CTA Plan (''Non-Professional Subscribers''), File No. S7–433, Release Nos. 34–20002 (July 22, 1983), 34–20239 (September 30, 1983) and 34–20386 (November 17, 1983).

reduced fee for nonprofessional subscribers has succeeded in substantially broadening the access of individual investors to real-time market information. The Exchange believes that a nonprofessional Subscriber fee for NYSE OpenBook is likely to broaden the access of individual investors to NYSE OpenBook information and thereby to further the statutory goals expressed in section 11A(a)(1)(c) of the Securities Exchange Act of 1934 (the ''Exchange Act'').

Section 603(a)(2) of Regulation NMS requires markets to distribute market data ''on terms that are not unreasonably discriminatory.'' Given the differences in data usage between professional subscribers and nonprofessional subscribers and the industry's long acceptance of different fees for professional subscribers and nonprofessional subscribers, the Exchange believes that the proposed nonprofessional subscriber fee does not unreasonably discriminate against the professional subscriber fee.

Similarly, the establishment of the Maximum Amount mirrors other industry fee caps, such as the CTA Maximum Amount and Nasdaq's TotalView fee cap. The Maximum Amount encourages wider retail distribution by the Exchange's largest NYSE OpenBook vendors. Any vendor is entitled to take advantage of the Maximum Amount. In the Exchange's view, limiting the fee exposure of its largest vendors does not unreasonably discriminate against other vendors under section 603(a)(2) of Regulation NMS.

(h) *The Fee and the Maximum Amount Are Fair and Reasonable*. The Exchange believes that the reduction in the device fee for nonprofessional Subscribers to $15 and the Maximum Amount comport with the standard that the Commission established for determining whether market data fees relating to non-core market data products are fair and reasonable. (''Non-core products'' refers to products other than the consolidated products that markets offer collectively under the joint industry plans.) In its recent ''Order Setting Aside Action by Delegated Authority and Approving Proposed Rule Change Relating to NYSE Arca Data'' (the ''NYSE ArcaBook Approval Order''),[8] the Commission reiterated its position from its release approving Regulation NMS that it should ''allow market forces, rather than regulatory requirements, to determine what, if any, additional quotations outside the NBBO are displayed to investors.'' [9]

The Commission went on to state that:

> The Exchange Act and its legislative history strongly support the Commission's reliance on competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system. Indeed, competition among multiple markets and market participants trading the same products is the hallmark of the national market system.[10]

The Commission then articulated the standard that it will apply in assessing the fairness and reasonableness of market data fees for non-core products, as follows:

> With respect to non-core data, * * * the Commission has maintained a market-based approach that leaves a much fuller opportunity for competitive forces to work. This market-based approach to non-core data has two parts. The first is to ask whether the exchange was subject to significant competitive forces in setting the terms of its proposal for non-core data, including the level of any fees. If an exchange was subject to significant competitive forces in setting the terms of a proposal, the Commission will approve the proposal unless it determines that there is a substantial countervailing basis to find that the terms nevertheless fail to meet an applicable requirement of the Exchange Act or the rules thereunder.[11]

The Exchange believes that by this standard or any other standard, the proposed nonprofessional Subscriber fee and the Maximum Amount are fair and reasonable. NYSE OpenBook is subject to significant competitive forces and the reduction in the device fee and the establishment of a Maximum Amount represent, in part, responses to that competition. To start, the Exchange competes intensely for order flow. It competes with the other 10 national securities exchanges that currently trade equities, with electronic communication networks, with quotes posted in FINRA's Alternative Display Facility and Trade Reporting Facilities, with alternative trading systems, and with securities firms that primarily trade as principal with their customer order flow ''and the competition is fierce.'' [12]

In addition, NYSE OpenBook is in competition with a number of alternative products. NYSE OpenBook does not provide a complete picture of the full market for a security. Rather, an investor has potentially dozens of different information sources to choose from in determining where to send an order. The 12 SROs, the several Trade Reporting Facilities of FINRA, and ECNs that produce proprietary data are all sources of competition. Each is currently permitted to produce depth-of-book products, and many currently do, including Nasdaq, NYSE Arca, and BATS. In addition, investors can probe market depth by ''pinging'' the various markets (by routing oversized marketable limit orders) to access an exchange's total liquidity available at an order's limit price or better. In addition, NYSE OpenBook faces the threat of competition from the independent distribution of order data by securities firms and data vendors.

Moreover, the Exchange believes that the great majority of investors do not believe that it is necessary to purchase a depth-of-book product from the Exchange, given other sources of information on market depth in Exchange-listed stocks. The Exchange has a substantial trading share in Exchange-listed stocks, yet less than 10 percent of professional users that purchase core data in Exchange-listed stocks through CTA also purchase NYSE OpenBook. As the Commission said in the NYSE ArcaBook Approval Order, ''the fact that 95% of the professional users of [Nasdaq] core data choose not to purchase the depth-of-book order data of a major exchange strongly suggests that no exchange has monopoly pricing power for its depth-of-book order data.'' [13]

In addition, the Exchange believes that no substantial countervailing basis exists to support a finding that the nonprofessional fee for NYSE OpenBook fails to meet the requirement of the Exchange Act.

In sum, the availability of a variety of alternative sources of information imposes significant competitive pressures on NYSE OpenBook and NYSE's compelling need to attract order flow imposes significant competitive pressure on NYSE to act equitably, fairly, and reasonably in setting NYSE OpenBook fees. The significant reduction in the NYSE OpenBook device fee, from $60 to $15, for investors who qualify as nonprofessional Subscribers and the establishment of the Maximum Amount are, in part, responses to that pressure.

(i) *Impact of Changes*. The Exchange anticipates that switching from the ''per-device'' metric to the ''Subscriber'' metric will enable the Exchange to reclassify as Subscribers certain of its customers that the Exchange currently classifies as Vendors. The reclassified customers would no longer be subject to

[8] *See* Release No. 34–59039 (December 2, 2008); File No. SR–NYSEArca–2006–21.

[9] *See* Regulation NMS Release, 70 FR at 37566–37567 (addressing differences in distribution standards between core data and non-core data).

[10] NYSE ArcaBook Approval Order at pp. 46–47.

[11] *Id.* at pp. 48–49.

[12] *Id.* at p. 52.

[13] *Id.* at p. 64.

access fees. This will essentially lower their fees from $5,000 per month to $60 per month per individual and device. In addition, the ''Subscriber'' metric should reduce administrative costs, as it should simplify the processes of counting customer entitlements and reporting.

The introduction of the proposed nonprofessional Subscriber Fee, subject to the monthly Maximum Amount payable, will respond to the growing demand from broker-dealers to provide depth-of-book information to their account-holding customers. It will lower the fees payable for NYSE OpenBook data in respect of nonprofessional Subscribers from $60 per month per individual and device to $15 per month per individual and device.

The Exchange believes that the nonprofessional Subscriber Fee reflects an equitable allocation of its overall costs to users of its facilities. The Exchange believes that the proposed fee and the Maximum Amount are fair and reasonable and that it is fair and reasonable to charge nonprofessional subscribers lower rates than their professional subscriber counterparts.

(j) *Contracts*. The Exchange will require each nonprofessional Subscriber that receives NYSE OpenBook Realtime or NYSE OpenBook Ultra from a vendor, broker-dealer or other entity to enter into the Network A nonprofessional subscriber agreement or an agreement that incorporates the essential terms of the nonprofessional subscriber agreement.[14]

2. Statutory Basis

The bases under the Securities Exchange Act of 1934 (the ''1934 Act'') for the proposed rule change are the requirement under section 6(b)(4)[15] that an exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities and the requirements under section 6(b)(5)[16] that 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.

[14] The Network A nonprofessional subscriber agreement has been in effect since the CTA and CQ Plan Participants first filed it with the Commission in 1983. *See* Release No. 34–20385 (November 17, 1983).

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(5).

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

The Exchange has not solicited, and does not intend to solicit, comments regarding the proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

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–NYSE–2008–131 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, Station Place, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2008–131. 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, 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–NYSE–2008–131 and should be submitted on or before February 2, 2009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Florence E. Harmon,

Deputy Secretary.

[FR Doc. E9–348 Filed 1–9–09; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice 6480]

In the Matter of the Review of the Designation of Mujahedin-e Khalq Organization (MEK), and All Designated Aliases, as a Foreign Terrorist Organization Upon Petition Filed Pursuant to Section 219 of the Immigration and Nationality Act, as Amended

The MEK filed a petition for revocation of its designation as a foreign terrorist organization (the ''Petition''). Based upon a review of the Administrative Record assembled in this matter, including the Petition and associated filings by the MEK, pursuant to Section 219(a)(4)(B) of the Immigration and Nationality Act, as amended (8 U.S.C. 1189(a)(4)(B)) (''INA''), and in consultation with the Attorney General and the Secretary of the Treasury, I conclude that the circumstances that were the basis for the 2003 re-designation of the aforementioned organization as a

[17] 17 CFR 200.30–3(a)(12).

foreign terrorist organization have not changed in such a manner as to warrant revocation of the designation and that the national security of the United States does not warrant a revocation.

Therefore, I hereby determine that the designation of the aforementioned organization as a foreign terrorist organization, pursuant to Section 219 of the INA (8 U.S.C. 1189), shall be maintained.

This determination shall be published in the **Federal Register**.

Dated: January 7, 2009.

Condoleezza Rice,

Secretary of State, Department of State.

[FR Doc. E9–474 Filed 1–9–09; 8:45 am]

BILLING CODE 4710–10–P

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: U.S. Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members of the U.S. Trade and Development Agency's Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Carolyn Hum, Administrative Officer, U.S. Trade and Development Agency, 1000 Wilson Boulevard, Suite 1600, Arlington, VA 22209 (703) 875–4357.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5), U.S.C., requires that each agency establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES Performance Review Boards. The Board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

The following have been selected as acting members of the Performance Review Board of the U.S. Trade and Development Agency: Leocadia Zak, Deputy Director, U.S. Trade and Development Agency; Geoffrey Jackson, Director for Policy and Program, U.S. Trade and Development Agency; Thomas Hardy, Chief of Staff, U.S. Trade and Development Agency; and James Wilderotter, General Counsel, U.S. Trade and Development Agency.

Dated: January 7, 2009.

Carolyn Hum,

Administrative Officer.

[FR Doc. E9–373 Filed 1–9–09; 8:45 am]

BILLING CODE 8040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 24, 2008, vol. 73, no. 207, page 63541. Information to be collected supports FAA in determining the amount of required liability insurance for a reentry operator after examining the risk associated with a reentry vehicle, its operational capabilities, and its designated reentry site.

DATES: Please submit comments by February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION: Federal Aviation Administration (FAA)

Title: Financial Responsibility Requirements for Licensed Reentry Activities.

Type of Request: Revision of a currently approved collection.

OMB Control Number: 2120–0649.

Forms(s) There are no FAA forms associated with this collection.

Affected Public: An estimated 1 Respondent.

Frequency: This information is collected on occasion.

Estimated Average Burden Per Response: Approximately 300 hours per response.

Estimated Annual Burden Hours: An estimated 300 hours annually.

Abstract: Information to be collected supports FAA in determining the amount of required liability insurance for a reentry operator after examining the risk associated with a reentry vehicle, its operational capabilities, and its designated reentry site.

Addresses: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation/FAA, and sent via electronic mail to *oira_submission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 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 estimates 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.

Issued in Washington, DC, on Jan. 5, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–340 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Seeking OMB Approval

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: The FAA invites public comments about our intention to request the Office of Management and Budget's (OMB's) revision of a current information collection. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on October 24, 2008, vol. 73, no. 207, page 63541. The rule allows experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions in a simulator.

DATES: Please submit comments by February 11, 2009.

FOR FURTHER INFORMATION CONTACT: Carla Mauney at *Carla.Mauney@faa.gov.*

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Training and Qualification Requirements for Check Airmen and Flight Instructors.

Type of Request: Extension without change of a currently approved collection.

OMB Control Number: 2120–0600.

Forms(s): There are no FAA forms associated with this collection.

Affected Public: An estimated 3,000 respondents.

Frequency: This information is collected on occasion.

Estimated Average Burden per Response: Approximately 15 seconds per response.

Estimated Annual Burden hours: An estimated 13 hours annually.

Abstract: *The rule allows experienced pilots who would otherwise qualify as* flight instructors or check airmen, but who are not eligible to hold the requisite medical certificate, to perform flight instructor or check airmen functions in a simulator.

ADDRESSES: Interested persons are invited to submit written comments on the proposed information collection to the Office of Information and Regulatory Affairs, Office of Management and Budget. Comments should be addressed to the attention of the Desk Officer, Department of Transportation / FAA, and sent via electronic mail to *oirasubmission@omb.eop.gov*, or faxed to (202) 395–6974, or mailed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 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 estimates 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.

Issued in Washington, DC, on Jan. 5, 2009.

Carla Mauney,

FAA Information Collection Clearance Officer, IT Enterprises Business Services Division, AES–200.

[FR Doc. E9–342 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2008–50]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATE: Comments on this petition must identify the petition docket number involved and must be received on or before January 27, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2008–1298 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building, Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building, Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Anna Bruse, 202–267–9655, or Laverne Brunache, 202–267–3133, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on January 6, 2009.

Pamela Hamilton-Powell,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2008–1298.

Petitioner: FlightSafety International Inc.

Section of 14 CFR Affected: §§ 60.17(a), 60.17(c)(ii) and 60.27(a)(4).

Description of Relief Sought: FlightSafety International seeks an exemption from 14 CFR 60.17(a), 60.17(c)(ii), and 60.27(a)(4), to allow Flight Safety International to operate SK–76A Level B simulator FAA ID# 747 without a Master Qualification Test Guide (MQTG) through October 17, 2009. The purpose of the petition is to allow FlightSafety International to gather information required to compile and produce a Master Qualification Test Guide and continue use of the simulator beyond October 17, 2009.

[FR Doc. E9–268 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[NHTSA Docket No. NHTSA–2009–0001]

Notice of Federal Advisory Committee Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: National Emergency Medical Services Advisory Council (NEMSAC); Notice of Federal Advisory Committee Meeting.

SUMMARY: The NHTSA announces a meeting of NEMSAC to be held in the Metropolitan Washington, DC area. This notice announces the date, time and location of the meeting, which will be open to the public. The purpose of NEMSAC is to provide a nationally recognized council of emergency medical services representatives and consumers to provide advice and recommendations regarding Emergency Medical Services (EMS) to the U.S. DOT's NHTSA.

DATES: The meeting will be held on January 29, 2009, from 1 p.m. to 5 p.m., and January 30, 2009, from 8 a.m. to 11 a.m. A public comment period will take

place on January 30, 2009, between 10 a.m. and 10:30 a.m.

Comment Date: Written comments or requests to make oral presentations must be received by January 22, 2009.

ADDRESSES: The meeting will be held at the Marriott Crystal City at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202. Persons wishing to make an oral presentation or who are unable to attend or speak at the meeting may submit written comments. Written comments and requests to make oral presentations at the meeting should reach Drew Dawson at the address listed below and must be received by January 22, 2009. All submissions received must include the docket number, NHTSA–2009–0001, and may be submitted by any one of the following methods: You may submit or retrieve comments online through the Document Management System (DMS) at *http://www.regulations.gov/* under the docket number listed at the beginning of this notice. The DMS is available 24 hours each day, 365 days each year. Electronic submission and retrieval help guidelines are available under the help section of the Web site.

An electronic copy of this document may be downloaded from the **Federal Register**'s home page at *http://www.archives.gov* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Please note that even after the comment closing date, we will continue to file relevant information in the docket as it becomes available.

E-mail: drew.dawson@dot.gov or *susan.mchenry@dot.gov*.

Fax: (202) 366–7149.

FOR FURTHER INFORMATION CONTACT: Drew Dawson, Director, Office of Emergency Medical Services, National Highway Traffic Safety Administration, 1200 New Jersey Avenue, SE., NTI–140, Washington, DC 20590, Telephone number (202) 366–9966; E-mail *Drew.Dawson@dot.gov*.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act (FACA), Public Law 92–463, as amended (5 U.S.C. App. 1 *et seq.*) The NEMSAC will be holding its third meeting on Thursday and Friday, January 29 and 30, 2009, at the Marriott Crystal City at Reagan National Airport, 1999 Jefferson Davis Highway, Arlington, VA 22202.

Agenda of Council Meeting, January 29–30, 2009

The tentative agenda includes the following:

Thursday, January 29, 2009

(1) Opening Remarks;

(2) Introduction of Members and all in attendance;

(3) Review and Approval of Minutes of last Meeting;

(4) Presentation by National EMS Management Association representative regarding the *Emergency Medical Services Management and Leadership Development in America: An Agenda for the Future*;

(5) *EMS Workforce Agenda for the Future* Presentation;

(6) Committee Reports and Discussion.

Friday, January 30, 2009

(1) Welcome and Introductions;

(2) Unfinished Business from January 29;

(3) Public Comment Period;

(4) Next Steps and Future Meetings.

A public comment period will take place on January 30, 2009, between 10 a.m. and 10:30 a.m.

Public Attendance: The meeting is open to the public. Persons with disabilities who require special assistance should advise Drew Dawson of their anticipated special needs as early as possible. Members of the public who wish to make comments on Friday, January 30 between 10 a.m. and 10:30 a.m. are requested to register in advance. In order to allow as many people as possible to speak, speakers are requested to limit their remarks to 3 minutes. For those wishing to submit written comments, please follow the procedure noted above.

This meeting will be open to the public. Individuals wishing to register must provide their name, affiliation, phone number, and e-mail address to Drew Dawson by e-mail at *drew.dawson@dot.gov* or by telephone at (202) 366–9966 no later than January 22, 2009. There will be limited seating, so please register early. Pre-registration is necessary to enable proper arrangements.

Minutes of the NEMSAC Meeting will be available to the public online through the DOT Document Management System (DMS) at: *http://www.regulations.gov* under the docket number listed at the beginning of this notice.

Issued on: January 6, 2009.

Jeffrey P. Michael,

Associate Administrator for Research and Program Development.

[FR Doc. E9–288 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2008–0212]

Notice of Receipt of Petition for Decision That Nonconforming 2007 Chevrolet Trailblazer Multipurpose Passenger Vehicles Manufactured Prior to September 1, 2007 for Sale in the Kuwaiti Market Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 2007 Chevrolet Trailblazer multipurpose passenger vehicles manufactured prior to September 1, 2007 for sale in the Kuwaiti market are eligible for importation.

SUMMARY: This document announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 2007 Chevrolet Trailblazer multipurpose passenger vehicles (MPVs) manufactured prior to September 1, 2007 for sale in the Kuwaiti market that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards (FMVSS) are eligible for importation into the United States because: (1) They are substantially similar to vehicles that were originally manufactured for sale in the United States and that were certified by their manufacturer as complying with the safety standards (the U.S.-certified 2007 Chevrolet Trailblazer MPV manufactured prior to September 1, 2007), and (2) they are capable of being readily altered to conform to the standards.

DATE: The closing date for comments on the petition is February 11, 2009.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Mail: Docket Management Facility:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Privacy Act: 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 (65 FR 19477–78).

How to Read Comments submitted to the Docket: You may read the comments received by Docket Management at the address and times given above. You may also view the documents from the Internet at *http://www.regulations.gov.* Follow the online instructions for accessing the dockets. The docket ID number and title of this notice are shown at the heading of this document notice. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

FOR FURTHER INFORMATION CONTACT: Coleman Sachs, Office of Vehicle Safety Compliance, NHTSA (202–366–3151).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable FMVSS shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable FMVSS.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Wallace Environmental Testing Laboratories, Inc. of Houston, Texas (WETL) (Registered Importer 90–005) has petitioned NHTSA to decide whether nonconforming 2007 Chevrolet Trailblazer MPVs manufactured prior to September 1, 2007 for sale in the Kuwaiti market are eligible for importation into the United States. The vehicles which WETL believes are substantially similar are 2007 Chevrolet Trailblazer MPVs manufactured prior to September 1, 2007 that were manufactured for sale in the United States and certified by their manufacturer as conforming to all applicable FMVSS.

The petitioner claims that it carefully compared non-U.S. certified 2007 Chevrolet Trailblazer MPVs manufactured prior to September 1, 2007 for sale in the Kuwaiti market, to their U.S.-certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most FMVSS.

WETL submitted information with its petition intended to demonstrate that non-U.S. certified 2007 Chevrolet Trailblazer MPVs manufactured prior to September 1, 2007 and for sale in the Kuwaiti market, as originally manufactured, conform to many FMVSS in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 2007 Chevrolet Trailblazer MPVs manufactured prior to September 1, 2007 and for sale in the Kuwaiti market, are identical to their U.S.-certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence, Starter Interlock, and Transmission Braking Effect,* 103 *Windshield Defrosting and Defogging Systems,* 104 *Windshield Wiping and Washing Systems,* 106 *Brake Hoses,* 108 *Lamps, Reflective Devices and Associated Equipment,* 111 *Rearview Mirrors,* 113 *Hood Latch System,* 114 *Theft Protection,* 116 *Motor Vehicle Brake Fluids,* 118 *Power-Operated Window, Partition, and Roof Panel Systems,* 120 *Tire Selection and Rims for Motor Vehicles Other than Passenger Cars,* 124 *Accelerator Control Systems,* 135 *Light Vehicle Brake Systems,* 201 *Occupant Protection in Interior Impact,* 202 *Head Restraints,* 204 *Steering Control Rearward Displacement,* 205 *Glazing Materials,* 206 *Door Locks and Door Retention Components,* 207 *Seating Systems,* 208 *Occupant Crash Protection,* 209 *Seat Belt Assemblies,* 210 *Seat Belt Assembly Anchorages,* 212 *Windshield Mounting,* 214 *Side Impact Protection,* 216 *Roof Crush Resistance,* 219 *Windshield Zone Intrusion,* 225 *Child Restraint Anchorage Systems,* 301 *Fuel System Integrity,* and 302 *Flammability of Interior Materials.*

Petitioner also contends that the vehicle is capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* inscription of the word ''brake'' on the instrument cluster in place of the international ECE warning symbol.

The petitioner additionally states that a vehicle identification plate must be affixed to the vehicles near the left windshield post to meet the requirements of 49 CFR Part 565.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above addresses both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: January 6, 2009.

Claude H. Harris,

Director, Office of Vehicle Safety Compliance.

[FR Doc. E9–315 Filed 1–9–09; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF VETERANS AFFAIRS

National Research Advisory Council; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the National Research Advisory Council will hold a meeting on Monday, February 9, 2009, in room GL–20 at the Greenhoot Cohen Building, 1722 Eye

Street, NW., Washington, DC. The meeting will convene at 8:30 a.m. and end at 3 p.m. The meeting is open to the public.

The purpose of the Council is to provide external advice and review for VA's research mission. The agenda will include a review of the VA research portfolio and a summary of current budget allocations. The Council will also provide feedback on the direction/focus of VA's research initiatives.

Any member of the public wishing to attend the meeting or wishing further information should contact Jay A. Freedman, PhD, Designated Federal Officer, at (202) 461–1699. Oral comments from the public will not be accepted at the meeting. Written statements or comments should be transmitted electronically to *jay.freedman@va.gov* or mailed to Dr. Freedman at Department of Veterans Affairs, Office of Research and Development (12), 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: January 6, 2009.

By Direction of the Secretary.

E. Philip Riggin,

Committee Management Officer.

[FR Doc. E9–375 Filed 1–9–09; 8:45 am]

BILLING CODE 8320–01–P

Federal Register

Monday,
January 12, 2009

Part II

Department of Transportation

Federal Aviation Administration
14 CFR parts 65, 119, 121 et al.
Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR parts 65, 119, 121, 135 and 142

[Docket No. FAA–2008–0677; Notice No. 08–07]

RIN 2120–AJ00

Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: The FAA proposes to amend the regulations for crewmember and dispatcher training programs in domestic, flag, and supplemental operations. The proposed regulations enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers and including additional training requirements in areas that are critical to safety. The proposal also reorganizes and revises the qualification and training requirements. The proposed changes are intended to contribute significantly to reducing aviation accidents.

DATES: Comments must be received on or before May 12, 2009.

ADDRESSES: You may send comments identified by Docket Number FAA–2006–26139 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov*, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For flight crewmember information contact Ed Cook, for flight attendant information contact Nancy Lauck Claussen, and for aircraft dispatcher information contact David Maloy, Air Carrier Training Branch (AFS–210), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8166. For legal questions, 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: Later in this preamble under the Additional Information section, we discuss how you can comment on this proposal and how we will handle your comments. Included in this discussion is related information about the docket, privacy, and the handling of proprietary or confidential business information. We also discuss how you can get a copy of this proposal and related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security.

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I. Summary of the Proposal

Purpose

The primary purpose of this NPRM is to establish new requirements for traditional air carrier training programs to ensure that safety-critical training is included. These changes are expected to make a significant contribution to the FAA's accident reduction goal. The secondary purpose of this rulemaking project is to reorganize, simplify and modernize all rule language associated with crewmember and aircraft dispatcher qualification and training under part 121. This proposal revises and recodifies the crewmember qualification and training requirements in subparts N and O into a new subpart BB of part 121 and revises and recodifies the aircraft dispatcher qualification and training requirements in subparts N and P into subpart CC of part 121.

This rulemaking is part of the FAA's efforts to reduce fatal accidents in which human error was a major contributing cause. The proposed changes would reduce human error and improve performance among flight crewmembers, flight attendants, and aircraft dispatchers.

The FAA is proposing the following safety improvements to its qualification and training requirements:

- Train and evaluate flight crewmembers in a complete flight crew environment.
- Require Line Oriented Flight Training (LOFT) to be administered to flight crewmembers in a full flight simulator (FFS) during recurrent training.
- Require the use of a qualified flight simulation training device (FSTD) for training, testing, and checking flight crewmembers.
- Require special hazard training for flight crewmembers, such as loss of control and Controlled Flight Into Terrain (CFIT).

• Require additional training and practice in the use of Crew Resource Management (CRM) principles.

• Require flight attendants to complete ''hands on'' performance drills using emergency equipment and procedures every 12 months.

• Require flight attendants to complete operating experience by aircraft type for the certificate holder.

• Require trained and qualified flight attendant ground instructors and evaluators.

• Standardize the training and experience requirements for check dispatchers and dispatcher instructors.

• Implement supervised operating experience (SOE) requirements for aircraft dispatchers.

• Establish Requalification training for aircraft dispatchers and crewmembers.

• Require a continuous analysis process (CAP) for certificate holders.

In addition, the FAA's recent ''Call to Action'' plan elevated short-, mid-, and long-term goals to address safety improvement at airport runways. This proposed rule states that the tasks listed in the rule, and the Flight Crewmember Operating Manual (FCOM) required by the rule, must be integrated with one another and must reflect the certificate holder's operations and the specific aircraft. The proposed rule also includes tasks that directly address the runway safety goals. Specifically, they include the following:

(1) Using an airport diagram (surface movement) chart to aid in maintaining positional awareness.

(2) Obtaining the appropriate clearance before crossing or entering active runways.

(3) Observing runway hold lines, localizer and glide slope critical areas, beacons, and other surface movement guidance control markings and lighting.

(4) Ensuring takeoff clearance is received and that the correct runway is being entered for takeoff prior to crossing the hold short line.

The FAA is issuing this proposal under the authority described in Subtitle VII, Part A, subpart i, 49 U.S.C. 44701. The FAA is charged with regulating air commerce in a way that best promotes safety.

Compliance Issues

To help transition from the current regulations to the revised requirements for qualification, service, and use of crewmembers and aircraft dispatchers, the FAA is proposing to continue the current regulations under subparts N, O, and P, for 5 years after the effective date of the final rule. On the date the current regulations expire, all certificate holders, crewmembers, and aircraft dispatchers must be in compliance with the requirements in subparts BB and CC of part 121. Therefore, it will be necessary for certificate holders to begin training under subparts BB and CC in sufficient time to ensure that all crewmembers and aircraft dispatchers are trained, qualified, and meet the applicable look back provisions of subparts BB and CC, before the expiration of regulations pertaining to qualification, service, and use of crewmembers and aircraft dispatchers in subparts N, O, and P. Proposed 14 CFR121.1202 and 121.1402 require certificate holders to submit a transition plan that specifies the transition completion date, which must be before the expiration of the current regulations.

The effective date of the final rule will be 120 days after publication in the **Federal Register**. Persons who have an approved training program before the effective date of the final rule or have submitted a training program for approval before the effective date of the final rule may comply with existing regulations, subparts BB and CC, or both. The proposed rule permits simultaneous compliance to allow the certificate holder to continue using its approved programs while transitioning to the new requirements. Although the rule allows the certificate holder to simultaneously comply with the existing regulations and the new rules, each individual crewmember or aircraft dispatcher must be trained and qualified under the requirements of either subparts BB and CC, or subparts N, O, and P.

For example, during the transition period, the air carrier may decide to train all newly hired flight attendants in accordance with the proposed rules, while continuing to train existing flight attendants under the current requirements. However, individual flight attendants, in the above example, would be required to be fully in compliance with the requirements of the existing regulations or with the proposed regulations. If a certificate holder submits a training program for a new aircraft type after the effective date of the rule, the training program developed for this new aircraft type must be in compliance with and approved under proposed subparts BB and CC. Therefore, any flight attendants qualified on this new aircraft type would be trained in accordance with the new rules, while flight attendants qualified on aircraft types currently operated by the certificate holder could be trained in accordance with the existing regulations in subparts N, O, and P.

Setting the effective date for 120 days after publication of the final rule and allowing use of the existing regulations for 5 years after this period provides existing certificate holders and the FAA time to smoothly transition to the new requirements. By using this approach, certificate holders seeking FAA approval for a new training program will not have to develop one training program to comply with the old regulations, then develop another training program to comply with the new regulations.

The proposed rule also contemplates that when a new training program is submitted for approval after the rule's effective date, the training program must meet the requirements of subparts BB or CC, as applicable. The FAA does not intend that non-significant modifications that may be proposed to a current training program under the existing regulations would require the certificate holder to initiate development of a training program to comply with Subpart BB or CC any earlier than they had planned in accordance with their current business plan.

The FAA has included a grandfather provision in proposed subpart BB to allow persons qualified for a crewmember duty position under the current rules to meet the requirements of the proposed rule without having to repeat certain categories of training they have already completed under the current rules. Proposed subpart CC contains a similar grandfather provision for aircraft dispatchers.

In addition, the FAA is proposing to amend requirements in current § 121.543 in proposed § 121.1241(b)(3)(v). Proposed § 121.1241(b)(3)(v) requires that all flight crewmembers at the controls are current and qualified, including landing recency. Under the current rules, landing recency is not required for relief pilots. This proposal codifies current industry practice and ensures proficiency in all tasks necessary for safe operation of the aircraft.

II. Qualification Performance Standards (QPS) Appendices

The FAA is proposing to add four QPS appendices in 14 CFR part 121: pilots, appendix Q; flight engineers, appendix R; flight attendants, appendix S; and aircraft dispatchers, appendix T. The QPS appendices contain minimum training and evaluation standards as well as procedures for crewmembers and aircraft dispatchers to become qualified and maintain qualification. The material in the proposed QPS appendices is based on the subjects and

tasks in subparts N, O, and P. In addition, the pilot QPS is based on current part 121 practical training and checking standards in appendices E and F, and flight simulation performance guidelines in appendix H. The FAA has separated the material in the QPS appendices into two sections: ''QPS Requirements'' and ''Information.'' The ''QPS Requirements'' sections are regulatory and are in addition to the requirements in part 121. The ''Information'' sections are advisory, and are not regulatory. Future changes and additions to the QPS Requirements would be subject to notice and comment rulemaking procedures under the Administrative Procedure Act, unless ''good cause'' (see 5 U.S.C. 553(b)(B)) exists to justify proceeding without notice and comment.

The FAA does not expect that many changes to the QPS appendices will justify the expenditure of time and resources at the highest levels of the agency that the standard procedures for final review of rulemakings require. The Administrator will delegate authority for final review and issuance of changes to the QPS appendices to the Director of the Flight Standards Service. This delegation of authority will be exercised with the concurrence of the Office of the Chief Counsel. This streamlined process will result in timely responses to incident and accident data, continuous analysis process (CAP) changes, and advances in aircraft or simulation technology. If at any time during the amendment process the Administrator or the Director of the Flight Standards Service determines that a proposed amendment is not appropriate for this streamlined process, the rulemaking project will proceed in accordance with the agency's standard rulemaking procedures.

III. Background

A. Current Qualification and Training Requirements

The regulations governing certificate holder crewmember and aircraft dispatcher qualification and training requirements appear in 14 CFR part 121 subparts N, O, and P. Subpart N contains the requirements for establishing and maintaining a training program for crewmembers, aircraft dispatchers, and other operations personnel. Subpart N also contains the requirements for the use of airplane simulators and other training devices. Subpart O contains crewmember qualification requirements. Subpart P contains aircraft dispatcher qualification requirements. Appendix E to part 121 establishes the flight training tasks required in pilot initial, transition, and upgrade training. Appendix F to part 121 establishes the flight checking tasks required in pilot proficiency checks. Appendix H to part 121 provides guidelines and a means for using advanced airplane simulators in training and checking of flight crewmembers.

B. Need for Safety Improvements and FAA Actions

FAA Initiatives

Among the leading causes of fatal accidents for U.S. air carriers from 1987 through 1996 were loss of control and CFIT. Human error was identified as a major contributing cause in a large percentage of these accidents. The FAA took immediate steps toward preventing these types of accidents by developing technological standards and encouraging simulator training in CFIT avoidance and to improve flight crewmember response in loss of control situations. The FAA also reviewed its regulations in 14 CFR part 121 subparts N, O, and P to identify improvements in training for flight crewmembers, flight attendants, and aircraft dispatchers.

As part of the regulatory review, the FAA evaluated its experience with the Advanced Qualification Program (AQP) currently in place at many part 121 air carriers. AQP is an alternative method using advanced simulation equipment and objective performance standards for training and testing crewmembers.[1] The FAA's review of AQP revealed the need to improve the traditional qualification and training programs conducted under subparts N, O, and P.

The National Transportation Safety Board (NTSB) investigations identified several areas of inadequate training that were the probable cause of an accident, such as Incomplete Manuals, Inadequate Standards/Procedures, Lack of a Stabilized Approach Below 500 Feet, Crew Resource Management, Turbulence, Thunder Storms, Wind Shear, IFR Conditions, Cross Wind, and Tail Wind.

During the 1985 through 2004 time period, the NTSB determined that inadequate training was the probable cause of 169 accidents involving the affected populations. We believe that many of these accidents could have been prevented if the proposed training initiatives were in place during that 20-year period. Of the 169 accidents, 43 (about 25%) involved one or more fatalities and 126 (about 75%) had no fatalities. These accidents resulted in 988 fatalities and 250 serious injuries. In addition to the injuries and fatalities, there was also significant damage or complete hull loss for these accidents. This proposal contains changes to address the causes and factors identified by the NTSB.

NTSB Recommendations

The changes proposed in this NPRM also address several NTSB recommendations. The NTSB recommendations addressed Crewmember Resource Management (CRM) training (Recommendations A–88–71 and A–94–196); use of simulators to conduct LOFT (Recommendations A–94–191 through 194); TCAS RA training (Recommendation A–93–46); training of flight crews to respond to sudden, unusual or unexpected aircraft upsets (Recommendation A–96–120); flight attendant training (Recommendations A–92–67, A–92–70, A–92–71, A–92–74, and A–92–77); and training to respond to inflight fires (Recommendations A–01–83 through A–01–85).[2]

The FAA recognizes that the NTSB has already closed some of these recommendations. However, we reviewed NTSB recommendations concerning training to make the proposed training requirements as effective as possible. For specific information on how the FAA is responding to these NTSB recommendations, see section IV, ''The Proposal,'' later in this preamble.

C. Qualification To Serve as a Required Crewmember or Aircraft Dispatcher

There are several requirements for a crewmember to become qualified to serve in part 121 operations. Just because an individual is ''qualified'' under this proposal does not mean that he or she can serve in part 121 operations without meeting additional requirements. For example, pilots are ''qualified'' under this proposal when they hold the appropriate certificates and ratings and have completed the required curricula. However, to serve unsupervised in part 121 operations they must also meet the operating experience, initial line check, crew pairing, operating limitations, and route and airport qualification requirements. In addition, when they first serve in part 121 operations they must be supervised. Further, once they obtain their initial authorization to serve, they must continually meet a different set of requirements to retain that authorization. This is similar to current requirements.

[1] The FAA codified AQP in 14 CFR part 121 subpart Y (September 16, 2005; 70 FR 54810).

[2] The NTSB Safety Recommendation Letters are available online at *http://www.ntsb.gov/Recs/letters/letters.htm*.

D. Subparts N and O Aviation Rulemaking Committee (ARC)

On May 3, 2004, the FAA established the ARC as a forum for the FAA and the aviation community to discuss crewmember and aircraft dispatcher qualification and training. The ARC focused on changes to improve flight safety issues; the application of simulation to flight crewmember training, testing, or checking activities; and the implementation of technical changes in training and qualification standards. The ARC included participants from the FAA, Air Line Pilots Association, Air Transport Association, Airbus Training Center, Airline Dispatchers Federation, Alteon Training, America West Airlines, American Airlines, Association of Flight Attendants, Association of Professional Flight Attendants, Boeing, CAE, Independence Air, JetBlue Airways, Northwest Airlines, Omni Air International, Pan Am, Regional Airline Association, and Southwest Airlines. The ARC submitted recommendations to the Associate Administrator for Aviation Safety in April 2005. These recommendations focused on changes to the regulatory requirements, the development of QPS appendices specific to the needs of pilots, flight engineers, flight attendants, and aircraft dispatchers, and organization of the regulations.

E. Training Program Vocabulary and Instructional Design

The purpose of a certificate holder's training program is to produce and maintain competency necessary for job performance. In this proposal, the FAA is introducing new terms associated with training programs.

At the highest level, training programs have ''curricula'' to qualify a person for a duty position for an aircraft type. A pilot in command (PIC), second in command (SIC), flight engineer, or a flight attendant serving in operations under this part holds a ''crewmember duty position.'' A flight instructor (aircraft or simulator), flight engineer instructor (aircraft or simulator), flight attendant instructor, check person (check pilot, aircraft; check pilot, simulator; check flight engineer, aircraft; check flight engineer, simulator; or check flight attendant), or person authorized to administer flight attendant proficiency tests holds a ''training'' or ''evaluation'' duty position. The curriculum for each crewmember duty position and training or evaluation duty position includes categories of training and the appropriate segments for each category.

Within a curriculum, ''categories of training'' (also called ''training categories'') relate to qualification experience levels, first time qualification for a certificate holder, first time qualification in type, configuration differences within type or series, maintaining and regaining qualification, and changes in operation. The categories of training within a curriculum include: New hire; initial; transition; conversion (full and core); upgrade (full and core); emergency; differences; recurrent; requalification; and special.

Each category of training includes two ''segments of training''—academic and job performance. Academic is training and evaluation that provides students with the required knowledge and cognitive skills necessary to perform the tasks required for the crewmember duty position or training or evaluation duty position. Academic training could be completed in either a classroom setting or through distance learning. Job performance is training and evaluation in the duty or job environment that provides students with the practical, hands on experience of integrating knowledge and skills and learning the related motor skills necessary to perform the job.

For flight crewmembers, the proposed term ''academic training'' is currently known as ''ground training.'' For flight crewmembers, the proposed term ''job performance training'' is currently known as ''flight training.'' The FAA has proposed these new terms in order to ensure they accurately apply to all training populations affected by the proposed rule, including those that do not conduct flight training, such as flight attendants and aircraft dispatchers.

Segments of training have subsets called ''modules.'' Certificate holders create modules based on the task requirements in the applicable QPS. The FAA approves all modules as part of the approved training program.

The following table compares the proposed terminology with the current usage.

Current rule	Proposed rule		
TRAINING PROGRAM (Curriculum and Resources)	TRAINING PROGRAM (Curriculum and Resources)		
CURRICULUM	CURRICULUM		
CATEGORIES OF TRAINING	CATEGORIES OF TRAINING		
	Flight crewmember:	Flight attendant:	Aircraft dispatchers:
Basic Indoctrination	New Hire	New Hire	Initial
Initial	Initial	Initial	Transition
Transition	Transition	Transition	Recurrent
Upgrade	Conversion	Recurrent	Requalification
Recurrent	Upgrade	Requalification	Differences
Requalification	Recurrent	Differences	Special
Differences	Requalification	Special	
Crewmember Emergency	Differences	Emergency	
	Special		
CURRICULUM SEGMENTS (Two Types—Ground and Flight)	CURRICULUM SEGMENTS (Two Types—Academic and Job Performance)		
MODULE	MODULE		
LESSON	LESSON		
ELEMENT	ELEMENT		

IV. The Proposal

This section addresses the major changes proposed in this document and includes a general description of each change and supporting rationale. You can find a detailed description of these and other proposed changes in the ''Section-by-Section Discussion'' in the docket for this rulemaking at *http://*

www.regulations.gov. In addition to the ''Section-by-Section Discussion'' document, the docket also contains ''Derivation and Distribution Tables'' for the proposed Subparts BB and CC. The ''Derivation and Distribution Tables'' will help commenters track how the proposed sections relate to the current sections in part 121. The following table lists the major changes and their applicability to crewmembers and aircraft dispatchers.

MAJOR CHANGES AND THEIR APPLICABILITY TO CREWMEMBERS AND AIRCRAFT DISPATCHERS

Major changes
A. Crewmembers and Aircraft Dispatchers
1. Provide more accurate and complete operating procedures and crewmember and aircraft dispatcher duties.
2. Integrate subparts N, O, and P into new subparts BB and CC.
3. Require baseline and minimum programmed hours.
4. Require integration of Crew Resource Management (CRM) and Dispatcher Resource Management (DRM).
5. Add ''Special'' training category.
6. Establish phased Requalification.
7. Establish provisions for initial cadre.
8. Continuous analysis process.
B. Flight Crewmembers
1. Require the use of FSTD for job performance training and evaluation.
2. Train and evaluate flight crewmembers in a full crew environment.
3. Require Special Hazards training.
4. Require Recurrent LOFT.
5. Reduce the frequency of performance drills using emergency equipment and procedures.
C. Flight Attendants
1. Establish qualification and training requirements for check flight attendants, flight attendant instructors, and evaluators.
2. Require operating experience by aircraft type specific to the certificate holder.
3. Increase the frequency of performance drills using emergency equipment and procedures.
D. Aircraft Dispatchers
1. Establish dispatcher instructors and check dispatchers.
2. Require supervised operating experience specific to the certificate holder.
3. Establish optional aircraft dispatcher Combined Certification and Initial Curriculum.
4. Establish qualification requirements for Dispatch Program Designees.

A. Major Changes Affecting Crewmembers and Aircraft Dispatchers

1. Provide for More Accurate and Complete Operating Procedures and Crewmember and Aircraft Dispatcher Duties

Training effectiveness is enhanced when operational procedures and crewmember duties are thoroughly and accurately defined for the type of operation. The FAA reviewed numerous accidents where a lack of properly defined procedures and duties were a direct or contributing factor. The following proposals will improve the completeness and accuracy of the duties and procedures for crewmembers and aircraft dispatchers.

• Add Standard Operating Procedures, Abnormal or Non-normal Procedures, Emergency Procedures, Weight and Balance (or Loading), and Performance sections to the Operating Limitations section of the FAA-approved Flight Crew Operating Manual (FCOM) as mandatory instructions for all persons operating a civil aircraft in operations under this part.

• Require that training and evaluation of monitoring duties for the pilot not flying the aircraft be provided in addition to the traditional pilot flying (at the controls).

• Include procedures in the FCOM for executing the tasks authorized for the certificate holder. These procedures may come from the following: (1) The FAA-approved Airplane Flight Manual (AFM); (2) the generic procedures provided in the QPS; or other procedures as modified by the certificate holder and approved by the Principal Operations Inspector (POI), such as those contained in Operations Specifications (OpSpecs).

• Provide training in approved procedures in critical environments (*e.g.*, windshear for takeoff and landing).

• Provide awareness performance statements relative to each task (*e.g.*, be aware of the autoflight configuration at all times).

• Require that the material in the current certificate holder's manual (§§ 121.133, 121.135, and 121.141) pertaining to crewmembers and aircraft dispatchers be contained in the Flight Crew Operating Manual (FCOM), Flight Attendant Operating Manual (FAOM), and Aircraft Dispatcher Procedures Manual (ADPM).

The requirement for operating procedures and crewmember duties is not new. However, a thorough and accurate compilation of the information will improve safety of flight operations. It will also result in better training program definition and development.

2. Integrate Subparts N, O, and P Into New Subparts BB and CC

Under the proposal, the current regulations governing drug and alcohol testing and hazardous material training would remain in subparts N and O. The crewmember qualification and training requirements in subparts N and O would be moved into subpart BB of part 121 and the aircraft dispatcher qualification and training requirements in subparts N and P would be moved into subpart CC of part 121. Other changes include the addition of new appendices, Q, R, S, and T as QPS appendices for pilots, flight engineers, flight attendants, and aircraft dispatchers. The proposal also removes obsolete references to flight navigators.

3. Require Baseline and Minimum Programmed Hours

This proposal prescribes programmed hour requirements for crewmembers and aircraft dispatchers. Programmed hours are the required academic and job performance training hours for categories of training. The proposed programmed hours are contained in the applicable QPS. The programmed hours consist of baseline and minimum hours for academic and job performance training segments. The term baseline hours refers to the starting point for determining the number of programmed

hours required for FAA approval. The FAA may allow a reduction from the baseline hours in certain circumstances. However, the FAA will not allow a reduction below the minimum number of hours prescribed in the QPS appendices.

For example, in accordance with Table 1 of the Pilot QPS, the baseline for transition academic training is 92 hours. The FAA may allow a certificate holder to reduce the number of programmed hours if the certificate holder demonstrates that circumstances justify a lesser amount. However, the FAA will not approve a reduction below the minimum hours stated in the Pilot QPS, which is 62 hours for transition academic training. These proposed requirements would improve the consistency of reductions to training hours.

The programmed hours do not include other required training, such as training for hazardous materials and security. In addition, periods of time when training is not occurring, such as lunch and travel between facilities, do not count toward required programmed hours. The proposed programmed hours give certificate holders flexibility in developing training programs. The proposed programmed hours also ensure that training programs have a sufficient number of hours for crewmembers and aircraft dispatchers to gain and maintain proficiency.

Flight Crewmember Programmed Hours

Programmed hours consist of baseline and minimum hour requirements. The FAA bases the proposed baseline and minimum program training hours on national norms, FAA handbooks, traditional and AQP training programs, and problems routinely encountered by a POI. The baseline hours for flight training are not reducible. The baseline hours for academic training could be reduced to the minimum hours if the certificate holder applied for a reduction under proposed § 121.1335(b). The Administrator would consider the factors outline in proposed § 121.1337(e) before granting a reduction in programmed hours. These factors are:

- The pass/fail rate in the curriculum.
- The quality and effectiveness of the teaching-learning process.
- The experience levels of the students, instructors, and check persons.
- The certificate holder's type and scope of operations.
- The complexity of make, model, and series of aircraft used.

Current regulations prescribe minimum programmed hours for flight training. However, under § 121.409(c), the minimum programmed hours do not apply if the training program includes a course of flight crewmember training in an FSTD. Since one of the purposes of this rule is to require all certificate holders to use FSTD in their job performance training programs, the FAA proposes to delete the exception in current § 121.409(c). Under § 121.1335 of this proposal, all training programs are required to have the programmed hours specified in the applicable QPS.

Flight Attendant Programmed Hours

Similar to flight crewmember programmed hours, flight attendant programmed hours are also based on current regulatory and advisory material. In Recommendation A–92–67, the NTSB stated the FAA should establish procedures for reducing required hours of flight attendant Recurrent training. Specifically, the NTSB recommended the procedures be based on the following:

- The number of types of aircraft for which flight attendants are qualified.
- The accuracy and effectiveness of training devices and simulators.
- The methods used to test and evaluate proficiency.

The FAA proposes to change the way it allocates flight attendant programmed hours for Initial training for each aircraft type. The FAA proposes to increase the number of baseline hours for Initial training on the first aircraft type. Under the proposal, the FAA requires 12 hours of training on general subjects (such as CRM, passenger handling, and theory of flight) and 12 hours of aircraft type specific training. For each subsequent aircraft type, the FAA does not require the flight attendant to repeat training on the general subjects.

The FAA also proposes a baseline of 24 hours for flight attendant emergency training. These hours may not be reduced for flight attendants qualified in overwater operations. For flight attendants not qualified in overwater operations, the required hours may be reduced to a minimum of 22 hours. This proposal codifies the national norms that the FAA has included in FAA Order 8400.10 Air Transportation Operations Inspector's Handbook (*http://www.faa.gov/library/manuals/examiners_inspectors/8400/*), and is consistent with industry practice and NTSB recommendations.

In addition, the FAA is proposing new programmed hours for transition training. Transition training would allow a flight attendant to qualify on an aircraft type if the flight attendant has been qualified for at least 180 days and served in the previous 180 days on an aircraft as a flight attendant for that certificate holder.

Under the proposal, the baseline programmed hours for transition training are 12 hours to ensure adequate training for flight attendants. The baseline may be reduced to a minimum of 8 hours.

Aircraft Dispatcher Programmed Hours

The proposed aircraft dispatcher regulations contain programmed hour requirements similar to crewmember programmed hours, including authorizations for reductions. For example, the Aircraft Dispatcher QPS outlines a baseline programmed hour requirement of 8 hours for supervised operating experience. These programmed hours may not be reduced below the baseline.

4. Require Integration of Crew Resource Management (CRM) and Dispatcher Resource Management (DRM)

CRM and DRM training is the incorporation of team management concepts in flight operations. Resource management training focuses on the interaction among flight crewmembers, flight attendants, aircraft dispatchers, maintenance personnel, air traffic controllers, and others. CRM and DRM activities include team building and maintenance, information transfer, problem solving, decision making, maintaining situational awareness, and using automated systems. This proposal revises current CRM and DRM requirements by integrating CRM and DRM proficiencies throughout the training and evaluation programs for crewmembers and aircraft dispatchers. These proposed changes address NTSB recommendations concerning CRM training (Recommendations A–88–71 and A–94–196).

The proposed requirements provide details about how certificate holders must include CRM and DRM training in specific subject areas. The QPS appendices describe specific CRM and DRM subject areas, such as: Communication processes and decisions, workload management, and situational awareness. The proposed Pilot and Flight Engineer QPS appendices require CRM training and evaluation during recurrent LOFT sessions and line checks. Training in these areas helps prevent errors such as taxiing on a wrong runway, misinterpreting tower controller information, and incompletely preparing for takeoff because of interruptions. The Flight Attendant QPS incorporates CRM proficiencies into performance drills. The Aircraft Dispatcher QPS requires that certificate

holders evaluate DRM indicators throughout the entire Proficiency Test or Check.

5. Add ''Special'' Training Category

When certain changes are made to the certificate holder's operations or equipment, the certificate holder must make conforming changes to its training program. For example, a certificate holder may begin conducting Reduced Vertical Separation Minimums (RVSM) or Extended Operations (ETOPs) and would need to amend its training program to address these new operations. Another example is the addition of equipment to aircraft (e.g., Automated External Defibrillators). In these situations, it may be difficult to determine when specific crewmembers and aircraft dispatchers have been trained. To address this situation, some certificate holders have developed a ''Special'' training category. The modules for this ''Special'' training category are temporary and used by the certificate holder to ensure that all crewmembers and aircraft dispatchers receive the new training. The certificate holder integrates the module for this ''Special'' training into the existing training categories. The proposed language has adopted this strategy by codifying a ''Special'' category of training.

6. Establish Phased Requalification

Flight Crewmembers

Proposed § 121.1239 establishes Requalification requirements for flight crewmembers who become unqualified by not meeting Recurrent training requirements. The proposed changes clarify that an unqualified person may not necessarily be required to repeat all of the Initial training to regain qualification. Instead, the FAA has based the Requalification requirements on the amount of time that has elapsed since the person last served in the duty position in operations under this part.

Proposed § 121.1239(b) outlines three phases of Requalification:

- Phase I Requalification—the person has been unqualified for less than 9 months.
- Phase II Requalification—the person has been unqualified for at least 9 months, but less than 27 months.
- Phase III Requalification—the person has been unqualified for 27 months or more.

The specific tasks that the flight crewmember must complete for requalification are outlined in the appropriate QPS.

Flight Attendants

Proposed § 121.1309 establishes Requalification requirements for flight attendants who become unqualified by not meeting Recurrent training requirements. This rule is necessary because the current regulations imply that an unqualified person must repeat all required training. In some cases this is not necessary because a previously qualified flight attendant retains some of the knowledge and skills that he or she has learned. Thus, proposed § 121.1309 establishes that, to be requalified, the person must meet either the basic qualification requirements (new hire, initial, transition, and emergency training, and differences training, if necessary), or requalification requirements based on the amount of time the person has been unqualified.

Proposed § 121.1309 outlines three phases of requalification:

- Phase I Requalification—the person has been unqualified for less than 12 months.
- Phase II Requalification—the person has been unqualified for at least 12 months, but not more than 24 months.
- Phase III Requalification program—the person has been unqualified for more than 24 months.

The specific tasks that the flight attendant is required to complete for Requalification are outlined in the proposed Flight Attendant QPS.

Dispatchers

Proposed § 121.1419 contains aircraft dispatcher requalification requirements that are similar to crewmember requalification requirements.

Proposed § 121.1419 outlines five phases of requalification:

- Phase I Requalification—the person has been unqualified for less than 6 months.
- Phase II Requalification—the person has been unqualified for 6 months or more, but less than 12 months.
- Phase III Requalification—the person has been unqualified for 12 months or more, but less than 24 months.
- Phase IV Requalification—the person has been unqualified for 24 months or more, but less than 36 months.
- Phase V Requalification—the person has been unqualified for 36 months or more.

The specific tasks that the dispatcher must accomplish for requalification are outlined in the appropriate QPS.

7. Establish Provisions for Initial Cadre

A start-up part 119 certificate holder or an existing certificate holder starting-up operations using a new aircraft type is not able to meet all of the requirements for check pilots, check flight engineers, and check flight attendants. Those certificate holders lack qualified personnel to fill these duty positions. The FAA has over 40 years of experience authorizing check persons as the initial cadre. The existing practice has served the safety goals of the FAA for the following reasons: (1) The FAA requires highly qualified and recently experienced personnel to participate in the initial cadre; (2) the FAA directly oversees the evaluation and observation of the initial cadre; and (3) the FAA limits the duration of the initial cadre to a period not to exceed 24 months. Proposed § 121.1257 codifies a long-standing FAA policy to allow initial cadre personnel to serve as check pilots or check flight engineers during the period of initial cadre status.

Proposed §§ 121.1425 and 121.1323 for check dispatchers and check flight attendants are similar to proposed § 121.1257 for initial cadre check pilots and check flight engineers. These sections codify requirements for qualifying an initial cadre of check persons. Most of the proposed requirements are based on current industry practice and FAA policy.

8. Continuous Analysis Process

The proposal adds a continuous analysis process for crewmember and aircraft dispatcher training programs. These new requirements are similar to the existing § 121.373, which addresses continuing analysis and surveillance for maintenance programs. The proposal requires certificate holders to establish procedures for validating and maintaining the effectiveness of the continuous analysis process and the training program. Additionally, it requires certificate holders to analyze crewmember and aircraft dispatcher evaluations to identify areas that need to be addressed and training program improvements that need to be made. The continuous analysis process ensures that certificate holders identify and correct deficiencies in their training programs. The proposal also establishes a notification and appeal process that ensures the FAA approves any changes to the training program, consistent with the approval and amendment process.

B. Major Changes Affecting Flight Crewmembers

1. Require the Use of FSTD for Job Performance Training and Evaluation

Current appendix H of part 121 permits certificate holders to use simulators for varying amounts of the training, testing, and checking required by the FAA. Appendix H is a voluntary alternative to training and checking in the airplane. The only required use of an FSTD in the current regulations is the windshear requirements in § 121.409(d).

The proposal requires that all creditable pilot and flight engineer training and evaluation be completed in a qualified FSTD approved by the POI for those tasks specified in the applicable QPS. Using FSTD, rather than airplanes, allows for more in-depth training in a safer environment, including the practice of critical emergency procedures. FSTD also provide benefits such as reducing noise, air pollution, and air traffic congestion, and conserving petroleum resources. This proposal addresses concerns raised by NTSB Recommendations A–94–191 through 194, which stated that part 121 flight training and checking should be required in FSTD wherever possible.

The FAA recognizes that in a few cases, certificate holders initially may not be able to comply with the requirements to use FSTD for all of their job performance training and evaluation. Accordingly, the proposed rule includes provisions for requesting a deviation in § 121.1345(b) through (e). Proposed paragraph (b) describes the limited circumstances when a certificate holder may receive a deviation from the requirement in paragraph (a). Proposed paragraph (c) requires a person requesting a deviation to demonstrate to the FAA why the circumstances warrant a deviation from the requirement to use a qualified FSTD. The FAA does not intend that the deviation provide a loophole for certificate holders who want to continue training and evaluating in aircraft. Rather, the deviation is designed to accommodate those certificate holders who use aircraft for which there are no FSTD available (e.g., DC–6) or, for extraordinary reasons, do not have access to an FSTD for the aircraft type they operate.

2. Train and Evaluate Flight Crewmembers in a Full Crew Environment.

The existing recurrent qualification and training requirements for a PIC and SIC differ in several respects. Current regulations require different tasks and events for PIC and SIC, and the training is separate. For example, PIC receive more training tasks and more frequent proficiency checks than SIC. In addition, PIC train on a 6-month basis, and SIC train on a 12-month basis. The disparity between the training requirements for PIC and SIC is not consistent with actual line operations. During actual operations, pilots must work as a flight crew unit. Typically, today's flight operations involve PIC and SIC performing both pilot flying and monitoring duties.

The proposed rule eliminates the differences in training for PIC and SIC. The training cycles for PIC and SIC are no longer separate. Under the proposal, PIC and SIC are required to complete Recurrent training on a 9-month basis. The requirement is such that each must complete all of the academic subjects and all of the job performance tasks listed in the applicable QPS where each subject, task, or environment may be required once each 9-month period; once each 18-month period, or once each 36-month period. Proposed § 121.1333 and the QPS require the same tasks and events for PIC and SIC. Both PIC and SIC must demonstrate proficiency in the flying and monitoring duties associated with the prescribed tasks and events. The QPS also requires the same number of programmed hours for PIC and SIC training. For example, there are 24 programmed hours for transition flight training. During that 24 hours of training, both the PIC and the SIC must demonstrate proficiency in flying and monitoring duties. The proposed changes facilitate training flight crewmembers in a complete crewmember environment.

In addition to leveling the requirements regarding tasks and task performance between PIC and SIC, this proposal provides additional advantages. The change in frequency of training exposure provides an increase in the actual training exposure for both PIC and SIC over an equal time period. Additionally, while this proposal reduces the frequency with which PIC return for training, it increases the frequency with which SIC return for training. The FAA anticipates a reduction in previous piloting experience for pilots entering the air carrier industry in the near future; almost all of these new pilots will start their air carrier service as SIC. This proposal would provide these new, lesser experienced, pilots with more training at each training event and provide those training events more frequently than under today's regulations.

In addition to integrating the training for PIC and SIC, the proposal will also integrate the training for flight engineers with the training for PIC and SIC, when applicable. Proficiency tests, proficiency checks, proficiency reviews, LOFT, and FSTD Course of Instruction require all flight crewmember duty positions to be occupied by a person who is qualified to serve in that crewmember duty position (including a qualified crewmember, instructor, check pilot, and aircrew program designee (APD)), or is in student status learning to serve in that crewmember duty position.

3. Require Special Hazards Training

In 1996, the NTSB recommended the FAA require training to better prepare flight crewmembers to respond to sudden or unexpected aircraft upsets (Recommendation A–96–120). Also, the NTSB recommended the FAA develop CFIT training requirements for all pilots operating under part 121.

The QPS includes special hazard academic training subjects such as CFIT and Ground Proximity Escape maneuvers, upset and loss of control, and runway incursions. In addition to academic training in special hazards, the FAA is proposing to include job performance training during Initial, Conversion, Transition, Upgrade, Requalification, and Recurrent training. For pilots, this training includes inflight maneuvers in upset and disturbance recovery, low altitude windshear avoidance and escape, and ground proximity warning system (GPWS) and terrain awareness warning system (TAWS) alert recognition and escape maneuvers.

4. Require Recurrent LOFT

LOFT is training in an FSTD with a complete flight crew. LOFT uses representative flight segments containing standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures expected in line operations. LOFT used in Recurrent training is called ''recurrent LOFT.'' LOFT used to qualify for line operations is called ''qualification LOFT.''

Proposed § 121.1353 includes the general requirements for conducting LOFT. The proposed requirements are more specific than the current regulations and codify existing advisory material (AC 120–35C, Line Operational Simulations: Line Oriented Flight Training, Special Purpose Operational Training, Line Operational Evaluation). A LOFT is conducted as a line operation and allows for no interruption by the instructor during the session except for a non-disruptive acceleration of uneventful en route segments. Interruptions are not allowed in LOFT

sessions because they disrupt the flow and undermine the realistic nature of line operations.

The proposal requires 4 hours of training in an FSTD, plus a briefing and debriefing. In addition, each duty position must be filled by a person who is qualified or in student status to serve in that position. This proposed requirement is needed because the training value of LOFT is diminished when inappropriate crew substitutions are made, such as using an SIC to substitute for a PIC. The certificate holder selects the tasks to be performed from the list provided in the applicable QPS, and the FAA approves the selected tasks. In this way, the FAA is certain the selected tasks are appropriate for the certificate holder's operations.

Under proposed § 121.1353, any person serving in a flight crewmember position during a LOFT who does not perform satisfactorily may not serve as a required crewmember or operate under part 121 without receiving additional training to correct the deficiencies. This is common industry practice and consistent with FAA advisory material. The certificate holder must schedule a separate training session to correct the deficiencies. This additional training ensures that the substandard performance is corrected before the person performs line operations.

5. Reduce the Frequency of Performance Drills Using Emergency Equipment and Procedures

The current rule requires all crewmembers to have recurrent emergency ''hands on'' performance drill training on the use of portable emergency equipment (e.g., fire extinguishers, protective breathing equipment, portable oxygen equipment, flotation equipment) and aircraft exits every 24 months. This proposal adjusts the frequency of flight crewmember ''hands on'' training from 24 months to 36 months. This matches the newly adjusted frequency for flight crewmember Recurrent training. It also addresses FAA guidance recommending that flight crewmembers land the aircraft as quickly as possible to minimize the effect of an on-board fire, and that flight crewmembers remain on the flight deck, consistent with the post-9/11 security procedures. In addition, current policy places increased responsibility on the flight attendant to respond to emergency situations in the aircraft cabin. While this proposal decreases the frequency of hands on drills for flight crewmembers, it increases the frequency of hands on drills for flight attendants. Although the FAA is proposing to reduce the frequency for flight crewmember emergency ''hands on'' drills, we are also proposing to add an unannunciated fire (fire in the aircraft cabin) drill to flight training.

C. Major Changes Affecting Flight Attendants

The proposed rule and associated Flight Attendant QPS appendix would revise flight attendant requirements in several areas to address NTSB recommendations and to enhance flight attendant training and evaluation.

1. Establish Qualification and Training Requirements for Check Flight Attendants, Flight Attendant Instructors, and Evaluators

Check Flight Attendants

The proposed rule includes eligibility, approval, qualification, and continuing qualification requirements for check flight attendants. These proposed requirements provide regulatory standards for initially qualifying a flight attendant to serve as a check flight attendant as well as continuing qualification for that flight attendant. The requirements ensure that check flight attendants are familiar with the certificate holder's operations as well as the aircraft type on which they will be conducting operating experience, that they are line-qualified for the certificate holder before evaluating other flight attendants, and that they are qualified to evaluate flight attendants who are completing operating experience. The FAA is proposing to add these requirements to ensure that effective and qualified evaluators conduct the evaluation of the person completing operating experience.

Flight Attendant Instructors

The proposed rule requires each flight attendant instructor to complete basic qualification or Recurrent training requirements, as appropriate, for the certificate holder. The FAA recognizes that a flight attendant instructor may not be physically able to perform certain performance drills due to injury, pregnancy, or disability. Therefore, the FAA also proposes to allow those individuals to complete the required training to qualify as a flight attendant instructor, with the exception of those performance drills the person cannot physically perform. However, the FAA only allows flight attendant instructors to teach performance drills that they are able to demonstrate at the time of instruction. In addition, the flight attendant instructors must have performed the drills within the past 12 months as part of their basic qualification or Recurrent flight attendant training. This requirement provides certificate holders with flight attendant instructor staffing flexibility, while ensuring that flight attendant training is delivered by knowledgeable instructors who have completed the FAA approved flight attendant training program for that certificate holder. The FAA based the proposed rule on current effective industry practices.

Persons Authorized To Administer Flight Attendant Proficiency Tests

The FAA is proposing new requirements to ensure that an individual who evaluates flight attendant proficiency tests is approved by the Administrator and has appropriate training to administer the test. This ensures that effective and qualified evaluators administer the proficiency tests. The FAA based these requirements on current effective industry practice regarding qualification of instructors and evaluators in flight attendant training programs.

2. Require Operating Experience by Aircraft Type Specific to the Certificate Holder

The proposed rule increases the requirements for flight attendants to complete operating experience on each aircraft type operated by the certificate holder prior to becoming qualified on that aircraft type. The proposed rule requires flight attendants to gain aircraft operating experience after completion of Initial training for each aircraft type. This is different from the current rule which only requires a flight attendant to complete operating experience on one aircraft type (Group I or Group II, as applicable) in part 121 operations during the flight attendant's career. The proposal ensures that a flight attendant qualified on a large number of different aircraft types has more extensive training on each aircraft type than under the current rules. The proposed rule also requires that a person receive operating experience on each aircraft type for each certificate holder for whom the person is employed. This requirement is necessary because flight attendant procedures can differ significantly between certificate holders, even for the same aircraft type.

The proposed rule also gives certificate holders more flexibility than the current rule regarding the instructional design of basic qualification curricula. For example, under the current rule, a person must complete all Basic Qualification training before beginning operating experience. However, under the proposed rule, a person must only complete new hire

and Initial training on the aircraft type prior to beginning aircraft operating experience on that aircraft type. This approach allows certificate holders to incorporate the increased operating experience requirements into their training programs more efficiently.

The proposed rule also requires flight attendants to complete aircraft operating experience within 90 days of completing Initial training on that aircraft type. This is consistent with the concept of consolidating knowledge and skills learned in Initial training on that aircraft type.

The proposed rule also establishes new supervision requirements for aircraft operating experience and limits the number of persons who may receive or administer operating experience on any one operating cycle. For example, a check flight attendant cannot supervise more than four persons on any one operating cycle, and there can be no more than two check flight attendants supervising on any one operating cycle. These requirements help ensure a realistic operating environment where effective evaluation of the person receiving operating experience can occur, and are consistent with current effective industry practices and International Civil Aviation Organization (ICAO) recommendations for Cabin Attendant's Safety Training.

The proposed rule also requires that when completing operating experience, a person perform the assigned duties of a flight attendant on at least two cycles on each aircraft type. This ensures that a person completing operating experience is actually gaining experience during takeoffs and landings, which are the most critical phases of flight. However, the person could not serve as a required crewmember, because the person is not a fully qualified flight attendant. The proposed rule continues the current requirement that a person receive aircraft operating experience for 5 hours. All operating experience must be gained during line operations. The proposal does not allow operating experience credit for training conducted in a full-scale cabin training device. The FAA considers experience gained in a ''line operations'' environment to be a significant training event that combines the demonstration of knowledge and skill. A ground based cabin training device is not considered an adequate substitute for operating experience gained during actual line operations with passengers onboard.

3. Increase the Frequency of Performance Drills Using Emergency Equipment and Procedures

The proposed rule requires flight attendants to perform emergency procedure drills with the appropriate emergency equipment every 12 months, as opposed to the 24-month interval in the current rule. These drills provide critical practice in the actions that flight attendants must take in an emergency. As stated in NTSB Report, Flight Attendant Training and Performance During Emergency Situations (NTSB/SIR–92/02),

> [e]mergency procedures, such as those required to prepare an airplane for an evacuation or a ditching, extinguish an in-flight fire, supervise the cabin following a decompression, handle a hijack situation, or manage passengers during an emergency evacuation, are rarely, if ever, used. Flight attendants must immediately change from passenger service oriented roles to their critical safety-related roles in an emergency. Emergency situations typically require quick, assertive, and decisive action with little time for analysis of the situation. For most flight attendants, the only opportunity to practice skills needed in an emergency is during Initial and Recurrent training. These skills are perishable, and continuing and effective training is essential for maintaining them.

In addition to responding to the NTSB, this proposal codifies current industry practice, as well as ICAO recommendations for Cabin Attendant's Safety Training.

D. Major Changes Affecting Aircraft Dispatchers

1. Establish Dispatcher Instructors and Check Dispatchers

The proposal establishes qualification requirements for dispatcher instructors and check dispatchers. The new requirements are based on current FAA policy and industry practice. Codifying these requirements standardizes requirements for dispatcher instructors and check dispatchers.

The proposal adds new requirements that a dispatcher instructor either hold an aircraft dispatcher certificate, maintain aircraft dispatcher currency, and meet certain instructor training requirements or be a subject matter expert. The proposal provides flexibility by allowing people who do not have an aircraft dispatcher certificate to be subject matter experts and instruct in specific subjects as approved by the Administrator (e.g., weather). The proposed requirements ensure that all dispatcher instructors (subject matter experts and certificated aircraft dispatchers) are knowledgeable in the subjects they are teaching. In addition, the proposal ensures that dispatcher instructors who are certificated aircraft dispatchers are knowledgeable in the certificate holder's facilities, equipment, and procedures, and use equipment and facilities specifically approved for the certificate holder's training program.

The proposal also codifies check dispatcher qualification requirements. The proposed term ''check dispatcher'' replaces current terms ''supervisor or ground instructor'' used in § 121.422(b). The proposal requires check dispatchers to hold an aircraft dispatcher certificate, maintain aircraft dispatcher currency, and meet certain training and experience requirements. For example, a check dispatcher must have performed the duties of an aircraft dispatcher for at least 8 hours in a 24-hour period in the preceding 60 days, and be current and qualified as an aircraft dispatcher for a part 121 domestic or flag operation for at least 3 of the previous 5 years. The FAA believes that the proposed recency of experience requirement is necessary because currently dispatchers who administer competency checks are not required to have recent practical work experience. The FAA believes recent experience is necessary for check dispatchers to competently evaluate aircraft dispatchers. This is consistent with proposed subpart BB for crewmembers.

The proposed new section also specifies curriculum requirements for Initial and Recurrent training for check dispatchers. These requirements are consistent with the proposed requirements in subpart BB for check pilots and check flight engineers and with current industry practice.

2. Require Supervised Operating Experience Specific to the Certificate Holder

The proposal establishes a new requirement that aircraft dispatchers receive supervised operating experience for the certificate holder. This proposal improves safety by ensuring that aircraft dispatchers are familiar with the certificate holder's operations, and have an opportunity to practice knowledge and skills during actual operations. The proposal prescribes minimum hours of supervised operating experience that the aircraft dispatcher must meet before serving unsupervised.

The proposal also imposes specific criteria for persons supervising operating experience. The supervising dispatcher does not need to be a check dispatcher. However, the supervising dispatcher must meet the same experience requirements as a check dispatcher. Requiring the supervising dispatcher to have the same experience as a check dispatcher provides adequate

safety for supervised operating experience and staffing flexibility for certificate holders.

The proposed rule also clarifies that supervised operating experience may not begin until the person has completed Initial, Combined Certification and Initial, or Requalification training and operating familiarization. This new requirement ensures that supervised operating experience provides an opportunity to consolidate knowledge and skills acquired in training.

The proposal also prohibits an aircraft dispatcher administering operating experience from supervising more than one person at a time. This ensures that the supervising aircraft dispatcher has a manageable workload.

3. Establish Optional Aircraft Dispatcher Combined Certification and Initial Curriculum

Currently a person may obtain an aircraft dispatcher certificate only under the requirements in part 65 subpart C. After obtaining a certificate from the FAA, the aircraft dispatcher is then trained in the certificate holder's approved training program to become qualified to serve as an aircraft dispatcher in the certificate holder's operations.

The proposed rule continues to allow certification of aircraft dispatchers under part 65, but it also integrates part 65 requirements into part 121 training programs to allow certification through a certificate holder's approved Combined Certification and Initial training curriculum (in-house).[3] Under the proposal, a person could receive the necessary training, be tested by the certificate holder's dispatch program designee, and be issued an aircraft dispatcher certificate. The aircraft dispatcher's certificate would be issued under part 65, not part 121. Integrating a certification program into a certificate holder's training program allows a certificate holder to draw potential dispatchers from its pool of employees and train them ''in-house'' to become aircraft dispatchers.

The requirements for obtaining an in-house dispatcher certificate are contained in the proposed Aircraft Dispatcher QPS. These proposed requirements are based on the requirements in Appendix A of part 65 and provide an equivalent level of training and safety. The proposed Aircraft Dispatcher QPS also contains training requirements for aircraft dispatchers who receive certificates through a traditional FAA approved part 65 program.

Under the proposal, a certificate holder with a Combined Certification and Initial curriculum administers practical and proficiency tests to their dispatcher candidates. This process is illustrated in Flowchart 1 of the proposed Aircraft Dispatcher QPS. The dispatcher candidate completes the practical test, undergoes supervised operating experience, and then completes a proficiency test. A dispatch program designee for the certificate holder or the FAA must administer the practical test.

4. Establish Qualification Requirements for Dispatch Program Designees

This proposed section establishes qualification requirements for a dispatch program designee. These requirements are consistent with those proposed for aircrew program designees in subpart BB. Part 65 currently allows designated aircraft dispatcher examiners to administer practical tests for certification to graduates from certain approved courses. The proposal would allow dispatch program designees to administer practical tests for certification to graduates of the specific certificate holder's in-house training program. The FAA has used designees for pilot, maintenance, and aircraft certification for decades and has been satisfied with designee performance. Therefore, the FAA proposes to extend the use of designees to aircraft dispatcher certification in part 121 operations to provide greater flexibility while maintaining the highest level of safety. Dispatch program designees evaluate aircraft dispatcher candidates based on the specific operational requirements of the certificate holder; therefore, the FAA believes it is in the best interest of safety for dispatch program designees to be limited to a specific certificate holder.

V. Impact Statements

Privacy Impact Statement for Proposed 14 CFR Part 121 Subparts BB and CC—Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

Legal Requirements

Section 522 of the Consolidated Appropriations Act of 2005 instructs DOT to conduct a privacy impact assessment (PIA) of proposed rules that will affect the privacy of individuals. The PIA should identify potential threats relating to the collection, handling, use, sharing and security of the data, the measures identified to mitigate these threats, and the rationale for the final decisions made for the rulemaking as a result of conducting the PIA.

Definitions

Certificate holder means a person certificated under part 119 of this chapter that conducts operations under part 121 of this chapter, or a person certificated under part 119 of this chapter that conducts operations under part 135 of this chapter and is permitted or required by § 135.3 of this chapter to conduct training curricula in compliance with this subpart.

Individual means a living human being, especially a citizen of the United States or an alien lawfully admitted for permanent residence.

Personally Identifiable Information (PII) is any information that permits the identity of an individual to whom the information applies to be reasonably inferred by either direct or indirect means, singly or in combination with other data. Examples of PII include but are not limited to physical and online contact information, Social Security number and driver's license number.

Privacy Impact Assessment is an analysis of how a rulemaking would impact the way information is handled in order to ensure data handling conforms to applicable legal, regulatory, and policy requirements regarding privacy, determine the risks and effects the rulemaking will have on collecting, maintaining and sharing PII, and examine and evaluate protections and alternative processes for handling information to mitigate potential privacy risks.

Requirements for the Submission and Retention of PII as Part of Compliance With Proposed 14 CFR Part 121 Subparts BB and CC—Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers

The FAA proposes to amend the training regulations for pilots, flight engineers, flight attendants and aircraft dispatchers serving in part 121 operations. There are 34,000 affected pilots in part 121 operations, 1,600 flight engineers, 2,700 aircraft dispatchers, and 106,600 flight attendants. Therefore, the total number of individuals that would be impacted by the proposed rule is approximately 150,000.

Under the proposal, certificate holders are required to develop a record keeping system demonstrating that each

[3] ''In-house'' is used in this preamble to mean as part of the part 121 operator's FAA-approved training program. This option is described in detail in the Aircraft Dispatcher QPS as the ''combined certification & initial training curriculum.'' Use of the phrase ''in-house'' does not mean that the training necessarily would only be conducted by the certificate holder or in the certificate holder's facility. Some training could still be out sourced to an FAA-approved training provider.

person has completed the required training and evaluation to serve in a particular duty position for the certificate holder. The proposed rule does not require a certificate holder to maintain PII. However, the FAA recognizes that certain PII may be contained in the certificate holder's records. This information may include the person's name, date of birth, address, telephone number, duty position, social security number, medical records, and type ratings. The FAA routinely reviews training records in the course of exercising its safety oversight authority and may request a certificate holder to disclose PII for investigation, compliance, or enforcement purposes.

In addition to the certificate holders' records, the FAA also maintains PII for all certificated airmen, including pilots and aircraft dispatchers. The FAA records for certificated airmen include the name, date of birth, social security number, driver's license number, passport number, or government ID number, physical description (height, weight, hair and eye color, sex, and citizenship), address (airmen only), medical records, and airmen certificate number. The FAA also maintains PII for flight attendants who have obtained a Certificate of Demonstrated Proficiency.

The FAA protects PII in its possession in accordance with *''Privacy Act Notice DOT/FAA 847—Aviation Records on Individuals (formerly General Air Transportation Records on Individuals).''* The Privacy Act Notice is available at *http://cio.ost.dot.gov/DOT/OST/Documents/files/records.html.*

The FAA did not conduct a PIA for this rulemaking because this proposed rule does not specifically require the collection of any PII. However, in August 2004, the FAA released a PIA for airmen certification records. The PIA addresses the methodology the agency uses to collect, store, distribute, and protect PII for certificated airmen and flight attendants. The PIA is available at *http://www.dot.gov/pia/faa_rms.htm.*

For more information or for comments and concerns on our privacy practices, please contact our Privacy Officer, Carla Mauney at *carla.mauney@faa.gov,* or by phone at (202) 267–9895.

Paperwork Reduction Act

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers.

Summary: The FAA proposes to amend the regulations for crewmember and dispatcher training programs in domestic, flag, and supplemental operations. The proposed regulations enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers and including additional training requirements in areas that are critical to safety. The proposal also reorganizes and revises the qualification and training requirements. The proposed changes are intended to contribute significantly to reducing aviation accidents.

Use of: This project is in direct support of the Department of Transportation's Strategic Plan—Strategic Goal—SAFETY; i.e., to promote the public health and safety by working toward the elimination of transportation-related deaths and injuries. This request for clearance reflects requirements necessary under Title 14 CFR parts 65, 119, 121, 135, and 142, to ensure safety-of-flight by making certain that complete and adequate training, testing, checking, and experience is obtained and maintained by those who operate under these parts of the regulation and that the use of flight simulation is utilized to its maximum practical extent in achieving these goals. The FAA will use the information it collects and reviews to ensure compliance and adherence to regulations and, where necessary, to take enforcement action on violators of the regulations.

Respondents (including number of): The FAA estimates there are 118 certificate holders who would be required to provide information in accordance with the proposed rule. The respondents to this proposed information requirement are certificate holders using the training requirements in 14 CFR part 121.

Frequency: The FAA estimates certificate holders will have a one time information collection, then will collect or report information occasionally thereafter.

Burden Estimate: This proposal would result in a 10-year recordkeeping and reporting burden as follows:

Summary of time and costs (10-year) addressed in question 12:

Section	Cost	Hours
121.133/121.135:		
Flight Crew Operating Manual	$1,272,212	42,480.0
Flight Attendant and Aircraft Dispatcher Operating Manuals	424,071	14,160.0
121.1413	13,295	320.0
121.1421	83	2.0
121.1433		
(a)(i)	13,273	355.0
(b)(i)	159,281	4,260.0
(b)(ii)	159,281	4,260.0
(b)(iii)	106,188	2,840.0
(b)(iv)	42,475	1,136.0
121.1457	16,618	400.0
121.1459	16,618	400.0
121.1307	105,618	2,840.0
121.1331		
(a)(i)	208,253	2124.0
(a)(ii)	1,041,266	10620.0
(b)(i)	5,263	142.0
(b)(ii)	39,469	1065.0
(c)(i)(A)	122,081	3195.0
(c)(i)(B)	16,277	426.0
(c)(i)(C)	8,139	213.0
(c)(ii)(A)	651,098	17,040.0
(c)(ii)(B)	542,582	14,200.0
(c)(ii)(C)	108,516	2,840.0

Section	Cost	Hours
(d)	601	35.5
121.1355		
Pilots and Flight Engineers	273,133	3068.0
Flight Attendants	79,980	1,846.0
Dispatchers	76,693	1,846.0
Total	5,502,366	132,113.5

The agency 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 through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by May 12, 2009, and should direct them to the address listed in the **ADDRESSES** section of this document. Comments also should be submitted to the Office of Information and Regulatory Affairs, OMB, New Executive Building, Room 10202, 725 17th Street, NW., Washington, DC 20053, *Attention:* Desk Officer for FAA.

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (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 proposed regulations.

Economic Assessment, Initial Regulatory Flexibility Determination, 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, this 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 proposed rule. We suggest readers seeking greater detail read the full regulatory evaluation, a copy of which we have placed in the docket for this rulemaking.

In conducting these analyses, FAA has determined that this proposed rule: (1) Has benefits that justify its costs, (2) is a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, requiring review by the Office of Management and Budget, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) would have a significant economic impact on a substantial number of small entities; (5) would not create unnecessary obstacles to the foreign commerce of the United States; and (6) would not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified above. These analyses are summarized below.

The purpose of this rulemaking is to establish new requirements for air carrier training programs to enhance safety-critical training. These changes are expected to significantly reduce aviation accidents. The secondary purpose of this rulemaking project is to reorganize, simplify, and modernize all rule language associated with crewmember and aircraft dispatcher qualification and training under part 121. This proposal revises and recodifies the crewmember qualification and training requirements in subparts N and O into a new subpart BB of part 121, and revises and recodifies the aircraft dispatcher qualification and training requirements in subparts N and P into subpart CC of part 121. The rulemaking is necessary because the existing regulations have not been revised since 1970. They do not reflect current best practices or technological advances that have emerged over the last 30 years.

Over a 10-year period, the total cost of the proposed rule would be approximately $372.7 million ($229.7 million, discounted). The total cost is composed of the costs of subparts BB and CC. The total the cost of subpart BB (crewmember training) would be approximately $368.1 million ($226.3 million, discounted), and the cost of subpart CC (aircraft dispatcher training) would be approximately $4.6 million ($3.4 million, discounted).

Based on FAA analysis, the FAA believes the proposed training improvements, both in content and application, are expected to produce safety benefits (i.e., accidents avoided) of $1.11 billion and $2.46 billion over the first 10 years. Presently, part 121 carriers may train crewmembers under existing subparts N and O to part 121 or under the Advanced Qualification Program (AQP), which is in subpart Y to part 121. We believe that current AQP training programs already meet the safety improvements contained in this NPRM. Because the proposed rule would principally affect part 121 and

part 121/135 operators not conducting training under an Advanced Qualification Program (AQP) and because only 42.8 percent of the part 121 and part 121/135 pilots are not trained under AQP, we only claim 42.8 percent of these potential safety benefits. After this adjustment, the safety benefits would be between $476 million and $1.05 billion over the 10-year period. Several requirements of this proposed rule are phased-in over several years. Taking into account the phasing in of the proposed rule requirements, we believe the potential benefits of this rulemaking to be between $333 million and $737 million over the 10-year period, with an expected benefit value of $535 million. The proposed rule would also generate qualitative benefits for dispatchers, flight attendants, and flight engineers.

Initial Regulatory Flexibility Analysis

A. Initial Regulatory Flexibility Analysis for Subpart BB

A.1. Initial Regulatory Flexibility Determination for Subpart BB

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.

The Small Business Administration size standard for ''small'' air carrier is 1,500 or fewer employees, as defined in 13 CFR 121.201, NAICS Code 48111. For subpart BB, the FAA identified a total of 73 out of 102 air carriers affected by this rule that meet this definition.

For each of these entities, the FAA attempted to retrieve annual revenue data from Back Aviation Solutions. The FAA found revenue data for 17 of the 73 small entities that would be impacted by the rule. The FAA then compared this revenue data with the annualized compliance costs (see Appendix H, Table H.1, in the full regulatory evaluation available in the docket). Of the 17 entities, the FAA expects that the projected annualized cost per entity of the rule would be $104,000. The FAA also expects that the projected annualized costs of the rule would be 1% or higher than the annual revenue for five of them (29%), which we believe is a significant economic impact. For the remaining 56 small entities, we believe that the annualized cost of the rule would also be significant for 29%, or sixteen or more of them. Accordingly, the FAA concludes that Subpart BB of the proposed rule would have a significant economic impact on a substantial number of small entities.

A.2. Initial Regulatory Flexibility Analysis for Subpart BB

Under section 603(b) of the RFA (as amended), each initial regulatory flexibility analysis is required to address the following points: (1) Reasons why the agency considered the rule, (2) the objectives and legal basis for the rule, (3) the type and number of small entities to which the rule will apply, (4) the reporting, recordkeeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule. In addition, 5 U.S.C. 603(c) requires that the analysis also describe any significant alternatives to the proposed rule which accomplish the stated objectives of applicable statutes and which minimize any significant impact of the proposed rule on small entities.

Reasons Why the FAA Considered the Rule

The FAA reviewed its crewmember and dispatcher training regulations in 14 CFR part 121 to identify improvements in training program content and application that would reduce human error among crewmembers and dispatchers, particularly in situations with special hazards. Based on this review, the FAA proposed improvements to the current rule, as discussed in the Background section of this Regulatory Evaluation (Section II.).

The Objectives and Legal Basis for the Rule

The objective of the rule is to enhance crewmember and aircraft dispatcher training programs by including additional training requirements in areas that are critical to safety. The proposed changes are intended to contribute significantly to reducing aviation accidents and improving crewmember and dispatcher performance.

The legal basis for the rule is 49 U.S.C. 44701 *et seq.*, which provides that for regulations related to airmen certification, the FAA must consider the duty of an air carrier to provide service with the highest possible degree of safety in the public interest. The FAA must also consider, as a matter of policy, reducing or eliminating the possibility of recurrence of accidents in air transportation (49 U.S.C. 44701(c)).

The Type and Number of Small Entities to Which the Rule Will Apply

Of the 102 air carriers affected by the rule, there are 73 air carriers that meet the SBA size standard of small business. Of these 73 air carriers, we retrieved net income and balance sheet data on 20 of these identified air carriers. A brief financial profile of these small entities is provided in Tables H.2 (net income) and H.3 (current assets, current liabilities, and financial solvency ratios) in the full regulatory evaluation available in the docket.

Federal Rules That May Duplicate, Overlap, or Conflict With the Rule

The FAA is unaware of any Federal rules that duplicate, overlap, or conflict with the rule.

Other Considerations:

Affordability Analysis

For the purpose of this analysis, the degree to which small entities can ''afford'' the cost of compliance is predicated on the availability of financial resources. Initial implementation costs can be paid from existing company assets, from borrowing, or from obtaining additional equity capital. Continuing annual costs of compliance may be accommodated by accepting reduced profits, raising ticket prices, or finding other ways to offset costs.

Other means of assessing the affordability is the ability of each of the small entities to meet its short-term obligations, as shown in Tables H.2 (net income) and H.3 (working capital and financial solvency ratios) of the full

regulatory evaluation available in the docket. A company's short-term financial strength is substantially influenced by its working capital and its ability to pay short-term liabilities. Net working capital is the excess of current assets over current liabilities. It represents the margin of short-term debt-paying ability over existing short-term debt. In addition to the amount of net working capital, two other analytical indexes of current position are often computed: (1) Current ratio; and (2) quick ratio. The current ratio (i.e., current assets divided by current liabilities) helps put the amount of net working capital into perspective by showing the relationship between current assets and short-term debt. The quick ratio (sometimes called the acid test ratio) focuses on immediate liquidity (e.g., cash, marketable securities, accounts receivable) divided by current liabilities. A decline in net working capital, the current ratio, and the quick ratio over a period of time (such as 3 or 4 years) may indicate that a company is losing financial solvency. Negative net working capital is an indication of financial difficulty. If a company is experiencing financial difficulty, it is less likely to be able to afford additional costs.

To assess the affordability of affected entities, we can also consider the amount of the annualized costs of the rule relative to net income. The lower the relative importance of the costs, the greater the likelihood that implementing offsetting cost-saving efficiencies or raising fares to cover increased costs will not substantially decrease the number of passengers.

The financial information shown in Tables H.2 and H.3 of the full regulatory evaluation, available in the docket, suggest the following:

- Five of these entities appear to be generally profitable and solvent, as shown in Table H.2 and H.3, respectively, for most or all of the 5-year period examined. Therefore, they probably will have financial resources available to meet the requirements of this rule.
- For 10 entities, the FAA is unable to determine the ability to financially comply with the rule because of contradictory results (e.g., the companies were profitable, yet their net working capital has been negative, and their current and quick ratios have been below 1.00).
- The FAA has identified five small entities that may have trouble financing the expected compliance cost of this rule. Those entities had net losses as well as negative net working capital, current ratios, and quick ratios below 1.00 for most of the years examined. This amounts to 25% of the entities for which we found data.
- Additionally, there is little or no data in 53 cases to make any financial assessment. However, based on the information on the companies that we do have information on, we believe that 25%, or thirteen or more of these entities, also may have trouble financing the expected costs of the rule.

Competitiveness Analysis

Due to the financial problems that certain aircraft operators are experiencing, there may be an impact on the relative competitive position of these carriers in the markets they serve.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which those small entities that would be significantly impacted by this proposed rule would have to close their operations. However, the profitability information shown in Table H.2 in the full regulatory evaluation, available in the docket, and the affordability analysis can be indicators of the likelihood of a business closure.

A number of these small entities are already in serious financial difficulty. To what extent the proposed rule makes the difference in whether these entities remain in business is difficult to determine. However, the FAA believes that the likelihood of business closure is high for three of the 20 (15%) entities for which financial data was available. (See Table H.2 in the full regulatory evaluation, available in the docket). Therefore, we believe that for the remaining 53 small entities, 15% or more may have similar difficulties.

Alternatives

The FAA considered alternatives to the rule for the small air carriers. A discussion of these alternatives follows.

Alternative 1—12-month recurrent training cycle for small entities.

Currently, PICs train every 6 months and SICs train every 12 months. The FAA could extend the recurrent training cycle for PICs working for small entities to 12 months to coincide with current SIC recurrent training cycles, instead of proposing to require PICs and SICs to attend recurrent training on a 9-month training cycle. This would result in cost savings for small entities. Again, in the proposal the FAA has required improvements that would reduce human error among crewmembers and aircraft dispatchers, particularly in situations with special hazards. Reducing the training cycle for PICs to a 12-month cycle is contrary to the purpose of this rulemaking.

Conclusion. In the proposal, the FAA has required improvements that would reduce human error among crewmembers and aircraft dispatchers, particularly in situations with special hazards. Because these problems are equally incurred by all part 121 air carriers, regardless of size, it would be contrary to our policy for one high level of safety in all part 121 operations to exclude certain operators simply because they are small entities. Thus, the FAA does not consider this to be a significant alternative in accordance with 5 U.S.C. 603(d).

Alternative 2—Extending the final compliance date to 7 years for small entities.

Extending the final compliance date from 5 years to 7 years for small entities reduces the costs to the industry by approximately 40 percent. Under this alternative, the FAA expects that the projected annualized cost of the rule would still be significant for 2 of the 20 operators studied, or 10 percent of the small entities. Since there are 73 known small operators impacted by this rule, this alternative not only does not eliminate the problem for a substantial number of small entities, but also it would be contrary to our policy for one level of safety.

Conclusion: In the proposal, the FAA has required improvements that would reduce human error among crewmembers and aircraft dispatchers, particularly in situations with special hazards. Because these problems are equally incurred by all part 121 air carriers, regardless of size, it would be contrary to our policy for one high level of safety in all part 121 operations to exclude certain operators simply because they are small entities. Thus, the FAA does not consider this to be a significant alternative in accordance with 5 U.S.C. 603(d).

Based on this analysis, the FAA expects that subpart BB may have a significant impact on small entities. Please provide comment on any or all provisions in the rule with regard to the impact of the provisions on small entities, including any benefits and costs, as well as any alternatives that would meet the FAA's safety objectives but also result in reducing the costs and burdens for these small entities. All comments must be accompanied with clear and detailed supporting data.

B. Initial Regulatory Flexibility Determination for Subpart CC

In accordance with the Regulatory Flexibility Act of 1980 (RFA) the FAA reviewed subpart CC to determine

whether there would be a significant economic impact on a substantial number of small entities. Over a 10-year period, enactment of subpart CC would impose costs of $25,500 ($18,400, discounted) per small entity or applicant (see Appendix I in the full regulatory evaluation, available in the docket, for further details). The Small Business Administration size standard for ''small'' air carrier is 1,500 or fewer employees, as defined in 13 CFR 121.201, NAICS Code 48111 (2008). A review of the air carriers listed by the FAA concluded that 73 of the firms met this criterion, which employ on average 13 dispatchers. These dispatchers would incur a one-time cost for the initial and transition dispatchers' training and an annual cost for the recurrent training. Because the initial and transition training costs are different from the recurrent training cost, costs would vary on a per year basis, but the annualized cost per small entity would only be $2,600 ($18,400 × 0.14238), which is less than 1% of the annual revenue of small entities. As a result, subpart CC would not have a significant economic impact on a substantial number of small entities. The FAA, however, invites industry comments and requests that all comments be accompanied with clear and detailed supporting data.

VII. 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 potential effect of this proposed rule and has determined that it would have only a domestic impact and therefore no effect on any trade-sensitive activity.

VIII. 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 proposed rule does not contain such a mandate.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined this action 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, and therefore would 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 rulemaking 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 NPRM 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 likely to have a significant adverse effect on the supply, distribution, or use of energy.

Additional Information

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, please send only one copy of written comments, or if you are filing comments electronically, please submit your comments only one time.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

Proprietary or Confidential Business Information

Do not file in the docket information that you consider to be proprietary or confidential business information. Send or deliver this information directly to the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this document. You must mark the information that you consider proprietary or confidential. If you send the information on a disk or CD–ROM, mark the outside of the disk or CD–ROM and also identify electronically within the disk or CD–ROM the specific information that is proprietary or confidential.

Under 14 CFR 11.35(b), when we are aware of proprietary information filed with a comment, we do not place it in the docket. We hold it in a separate file to which the public does not have access, and we place a note in the docket that we have received it. If we receive a request to examine or copy this information, we treat it as any other request under the Freedom of Information Act (5 U.S.C. 552). We process such a request under the DOT procedures found in 49 CFR part 7.

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 docket number, notice number, or amendment number of this rulemaking.

You may access all documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, from the Internet through the Federal

eRulemaking Portal referenced in paragraph (1).

List of Subjects

14 CFR Part 65

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 135

Air taxis, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 142

Administrative practice and procedure, Airmen, Educational facilities, Reporting and recordkeeping requirements, Schools, Teachers.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter 1 of Title 14, Code of Federal Regulations (CFR) parts 65, 119, 121, 135, and 142, as follows:

PART 65—CERTIFICATION: AIRMEN OTHER THAN FLIGHT CREWMEMBERS

1. The authority citation for part 65 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Amend § 65.57 by revising the introductory text and adding paragraph (c) to read as follows:

§ 65.57 Experience or training requirements.

An applicant for an aircraft dispatcher certificate must present documentary evidence satisfactory to the Administrator that he or she has the experience prescribed in paragraph (a) of this section or has accomplished the training described in paragraph (b) of this section or has completed a dispatcher training program in accordance with paragraph (c) of this section as follows:

* * * * *

(c) Successfully completed an aircraft dispatcher training program approved in accordance with subpart CC of part 121 of this chapter.

3. Amend § 65.70 by revising the introductory text of paragraph (a) to read as follows:

§ 65.70 Aircraft dispatcher certification courses: Records.

(a) The operator of a part 65 appendix A aircraft dispatcher course must maintain a record for each student, including a chronological log of all instructors, subjects covered, and course examination and results. The record must be retained for at least 3 years after graduation. The course operator must also prepare for its records, and transmit to the Administrator not later than January 31 of each year, a report containing the following information for the previous year:

* * * * *

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

4. The authority citation for part 119 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

5. Amend § 119.65 by adding new paragraph (a)(6) to read as follows:

§ 119.65 Management personnel required for operations conducted under part 121 of this chapter.

(a) * * *

(6) At least one line qualified check pilot, and, if appropriate, at least one check flight engineer, for each aircraft make and model and aircraft type for which the certificate holder has more than five pilots. A check pilot or check flight engineer may hold the additional position of Director of Safety, Director of Operations, or Chief Pilot, if the check pilot or check flight engineer meets the requirements of the additional position.

* * * * *

6. Amend § 119.67 by adding paragraph (f) to read as follows:

§ 119.67 Management personnel: Qualifications for operations conducted under part 121 of this chapter.

* * * * *

(f) To serve as a Check Pilot or Check Flight Engineer for an aircraft type under § 119.65(a) a person must be qualified in accordance with §§ 121.1251, 121.1253, and 121.1255 of this chapter.

7. Amend § 119.69 by adding paragraph (a)(4) to read as follows:

§ 119.69 Management personnel required for operations conducted under part 135 of this chapter.

(a) * * *

(4) A line qualified check pilot or check flight engineer for each aircraft make and model and aircraft type for which the certificate holder has more than five pilots and is required to have, or elects to have, an approved training program under part 121 of this chapter. A check pilot or check flight engineer can hold the additional position of Director of Safety, Director of Operations, or Chief Pilot, if the check pilot or check flight engineer meets the requirements of the additional position.

* * * * *

8. Amend § 119.71 by redesignating paragraphs (e) and (f) as paragraphs (f) and (g) and adding a new paragraph (e) to read as follows:

§ 119.71 Management personnel: Qualifications for operations conducted under part 135 of this chapter.

* * * * *

(e) To serve as a Check Pilot for an aircraft make and model and aircraft type under § 119.69 a person must be qualified in accordance with § 121.1251 of this chapter.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

9. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

10. Revise § 121.1(c) to read as follows:

§ 121.1 Applicability.

* * * * *

(c) Each person who applies for initial or provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum under subpart Y of this part and each person employed or used by a person authorized to conduct operations under this part to perform training, qualification, or evaluation functions in accordance with an Advanced Qualification Program under subpart Y of this part.

* * * * *

11. Add new § 121.9 to read as follows:

§ 121.9 Fraud, falsification, or incorrect statements.

(a) No person may make, or cause to be made, any of the following:

(1) A fraudulent or intentionally false statement in any application or any amendment thereto, or in any other record or test result required by this part or by any QPS associated with this part.

(2) A fraudulent or intentionally false statement in, or a known omission from, any record or report that is kept, made, or used to show compliance with this part or with any QPS associated with this part, or to exercise any privileges under this chapter.

(b) The commission by any person of any act prohibited under paragraph (a) of this section is a basis for any one or any combination of the following:

(1) A civil penalty.

(2) Suspension or revocation of any certificate held by that person that was issued under this chapter.

(3) The denial of an application for approval of a training program established under this part.

(4) The removal of approval for a training program established under this part.

(c) The following may result in denial of an application or removal of approval for a training program established under this part:

(1) An incorrect statement, upon which the FAA relied or could have relied, made in support of an application for approval of a training program.

(2) An incorrect entry, on which the FAA relied or could have relied, made in any training records or test results required to be kept, made, or used to show compliance with any requirement of this part or with any QPS associated with this subpart.

12. Revise § 121.133 to read as follows:

§ 121.133 Preparation.

(a) Each certificate holder must prepare and keep current a manual for the use and guidance of flight and ground operations, and management personnel in conducting its operations.

(b) The certificate holder may prepare the manual, in whole or in part, in printed form or other form acceptable to the Administrator. The manual must include the instructions and information necessary to allow crewmembers or aircraft dispatchers to perform their required safety related duties and responsibilities with the highest possible degree of safety. The manual, and any changes, must be approved by the Administrator and contain the following:

(1) A Flight Attendant Operating Manual (FAOM) for all of the aircraft types operated by the certificate holder in operations under this part.

(2) A Flight Crewmember Operating Manual (FCOM) for each aircraft type operated by the certificate holder in operations under this part.

(3) An Aircraft Dispatcher Procedures Manual (ADPM) for all types of operations and aircraft types, if required.

13. Amend § 121.135 by revising paragraph (b)(16), redesignating paragraph (b)(26) as (b)(28), and adding new paragraphs (b)(26) and (b)(27) to read as follows:

§ 121.135 Manual contents.

* * * * *

(b) * * *

(16) Each training program curriculum required by § 121.1333.

* * * * *

(26) Each task specified in each of the crewmember and aircraft dispatcher Qualification Performance Standards (QPS) must be tailored to the specific aircraft type as provided in the FAOM, FCOM, or ADPM and must be trained or evaluated as indicated in the appropriate QPS.

(27) Each FCOM must also include the contents described in § 23.1581(a)(1) or § 25.1581(a)(1), as appropriate for the specific aircraft type.

* * * * *

14. Revise § 121.141 to read as follows:

§ 121.141 Airplane Flight Manual.

Each certificate holder must keep a current approved Airplane Flight Manual for each type of airplane that it operates except for nontransport category aircraft certificated before January 1, 1965.

15. Add new § 121.392 to read as follows:

§ 121.392 Personnel identified as flight attendants.

(a) Any person identified by the certificate holder as a flight attendant on an aircraft in operations under this part must be trained and qualified in accordance with subpart BB of this part. This includes:

(1) Flight attendants provided by the certificate holder in excess of the number required by § 121.391(a) and (b);

(2) Flight attendants provided by the certificate holder on an aircraft having a passenger seating capacity of 9 or less; and

(3) Flight attendants provided by the certificate holder on an aircraft with a payload capacity of 7,500 pounds or less and a passenger seating capacity of 19 or less.

(b) Any person serving as a crewmember on an aircraft in operations under this part, who has not completed the requirements of § 121.1301(a)(1) and (a)(2) for the certificate holder, may not be identified to passengers as a flight attendant.

§ 121.393 [Amended]

16. Amend § 121.393(a) by removing the reference to ''§ 121.417'' and adding in its place ''§ 121.1373 or 121.417, as applicable''.

17. Amend § 121.400 by adding paragraph (d) and a note to paragraph (d), to read as follows:

§ 121.400 Applicability and terms used.

* * * * *

(d) Except for § 121.429, the provisions of this subpart, and Appendices E, F, and H of this part, expire on [date 5 years and 120 days after publication of the final rule]. After [date 5 years and 120 days after publication of the final rule], all training programs must be established and maintained in accordance with the provisions in subparts BB and CC of this part, or in accordance with the certificate holder's approved Advanced Qualification Program under subpart Y of this part.

Note to paragraph (d): *See* §§ 121.1202 and 121.1402 for provisions outlining the process for transitioning from training programs established in accordance with subparts N, O, and P of this part, to the training program requirements provided in subparts BB and CC of this part.

18. Amend § 121.431 by adding paragraph (c), and a note to paragraph (c), to read as follows:

§ 121.431 Applicability.

* * * * *

(c) Except for §§ 121.455, 121.457, 121.458, and 121.459, the provisions of this subpart, and Appendices E, F, and H of this part, expire on [date 5 years and 120 days after publication of the final rule]. After [date 5 years and 120 days after publication of the final rule], all training programs must be established and maintained in accordance with the provisions in subparts BB and CC of this part, or in accordance with the certificate holder's approved Advanced Qualification Program under subpart Y of this part.

Note to paragraph (c): *See* §§ 121.1202 and 121.1402 for provisions outlining the process for transitioning from training programs established in accordance with subparts N, O, and P of this part, to the training program requirements provided in subparts BB and CC of this part.

§ 121.461 [Amended]

19. Amend § 121.461 by removing the words ''Qualifications and'' from paragraph (a).

§ 121.463 [Removed]

20. Remove § 121.463.

§ 121.465 [Amended]

21. Amend § 121.465 by removing paragraph (c).

22. Add § 121.540 to read as follows:

§ 121.540 Manual procedures requirements.

Each crewmember must perform and each certificate holder must ensure that each crewmember performs the respective job function in accordance with the information, instructions, duties, and responsibilities contained in the manual required by § 121.133. The information, instructions, duties, and responsibilities must include standard operating procedures, abnormal procedures, non-normal procedures, emergency procedures, airplane performance, and airplane limitations.

23. Amend § 121.543 by adding paragraph (c), to read as follows:

§ 121.543 Flight crewmembers at controls.

* * * * *

(c) The requirements of § 121.543 will expire on [date 5 years and 120 days after publication of the final rule]. After [date 5 years and 120 days after publication of the final rule], the requirements of § 121.1241 apply.

* * * * *

24. Revise § 121.683 to read as follows:

§ 121.683 Crewmember and dispatcher record.

(a) Each certificate holder must maintain current records for each crewmember and dispatcher in accordance with the following requirements:

(1) The records must show whether the crewmember or aircraft dispatcher complies with the applicable sections of this chapter, including proficiency and route checks, airplane and route qualifications, training, and all required physical examinations, flight time, and duty and rest periods.

(2) Training records must include qualifications, instruction, certificate and ratings, and satisfactory proficiency evaluations. For flight crewmembers, the training records must also include both satisfactory and unsatisfactory performance evaluations and comments and evaluations made by an evaluator designated under §§ 121.1251, 121.1271, 125.295, or 135.337 of this chapter.

(3) For flight crewmembers and aircraft dispatchers, records must show any disciplinary action that was taken with respect to the individual that was not later overturned.

(4) For flight crewmembers and aircraft dispatchers, records must show any release from employment or resignation, termination, or disqualification with respect to employment.

(b) Except for records on flight time, and duty and rest periods, crewmember and aircraft dispatcher records must be maintained for at least 5 years. Flight attendant records must be maintained for at least 12 months. For aircraft dispatchers, records kept under paragraph (a)(4) of this section must be kept for 6 months.

(c) Each certificate holder conducting supplemental operations must maintain the records required by this section at its principal base of operations, or at another location used by it and approved by the Administrator.

(d) Computer record systems approved by the Administrator may be used in complying with the requirements of this section.

25. Amend § 121.805 by removing paragraph (b)(4), redesignating paragraph (b)(5) as paragraph (b)(4), and revising the newly redesignated paragraph paragraph (b)(4)(iii), to read as follows:

§ 121.805 Crewmember training for in-flight medical events.

* * * * *

(b) * * *

(4) * * *

(iii) Recurrent training, to include performance drills, in the proper use of an automated external defibrillator and in cardiopulmonary resuscitation at least once every 12 months.

* * * * *

§ 121.901 [Amended]

26. Amend § 121.901(b) by removing the reference to ''§ 121.401'' and adding in its place ''§ 121.1331, or the provisions of subpart N and O of this part, as applicable''.

§ 121.909 [Amended]

27. Amend § 121.909(d) by removing the reference to ''§ 121.405(e)'' and adding in its place ''§ 121.1337(e) or § 121.405, as applicable''.

28. Add subpart BB to part 121 consisting of §§ 121.1201 through 121.1391 to read as follows:

Subpart BB—Requirements for Qualification, Service, and Use of Crewmembers

General

Sec.

121.1201 Applicability.
121.1202 Interim requirements for training programs transitioning from the requirements of subparts N and O.
121.1203 Certificate holder responsibility for compliance with this subpart.
121.1205 Definitions.
121.1207 Certification requirements: Crewmembers, flight instructors, check pilots, check captain, and check flight engineers.
121.1209 English language requirement.
121.1211 Medical certificate requirements.
121.1213 Pilot monitoring (not flying) duties.

Flight Crewmember

121.1221 Flight Crewmember: Training and evaluation.
121.1223 Flight Crewmember: Recurrent training and evaluation schedule for continuing qualification.
121.1225 Flight Crewmember: Operating experience.
121.1227 Pilot: Consolidation.
121.1229 Pilot: Recent experience.
121.1231 Flight engineer: Recent experience.
121.1233 Line checks.
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121.1253 Check pilot and check flight engineer: Training, evaluation, approval, and recent experience.
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Aircrew Program Designee Qualification

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Flight Instructor Qualification

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Flight Attendant Instructor Qualification

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Flight Attendant

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Check Flight Attendant Qualification

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Other Training Requirements

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Subpart BB—Requirements for Qualification, Service, and Use of Crewmembers

General

§ 121.1201 Applicability.

(a) This subpart prescribes the following:

(1) Requirements for qualification, service, and use for:

(i) Persons who serve in operations under this part as crewmembers, flight instructors, check pilots, check flight engineers, aircrew program designees (APDs), flight attendant instructors, check flight attendants, or persons authorized to conduct flight attendant proficiency tests.

(ii) Persons who serve in operations under part 135 of this chapter for a certificate holder that is permitted or required by § 135.3 of this chapter to conduct training curricula in compliance with this subpart.

(2) Requirements applicable to each certificate holder for establishing, obtaining approval of, and maintaining a training program, for crewmembers, flight instructors, check pilots, check flight engineers, APDs, flight attendant instructors, check flight attendants, and persons authorized to conduct flight attendant proficiency tests, who serve under this part.

(3) Requirements applicable to persons other than the certificate holder's employees who are used by the certificate holder to assist in meeting the certificate holder's responsibilities under this subpart.

(b) Any person qualified in a duty position for the certificate holder before [date 120 days after publication of the final rule], or qualified under the provisions in subparts N and O of this part, may continue to serve in that duty position for that certificate holder without complying with new hire training under § 121.1363, initial training under § 121.1365 or § 121.1369, operating experience under § 121.1305, or emergency training under § 121.1373.

§ 121.1202 Interim requirements for training programs transitioning from the requirements of subparts N and O.

(a) Contrary provisions of this subpart notwithstanding, a person who has submitted a training program for approval before [date 120 days after publication of the final rule] that was constructed in accordance with the applicable provisions of subparts N and O of this part in effect on or before [date 119 days after publication of the final rule], may complete the approval and implementation process and conduct operations in compliance with the applicable provisions of subparts N and O of this part instead of the provisions of subpart BB of this part.

(b) A certificate holder must submit a transition plan to the FAA no later than [date 4 years and 120 days after publication of the final rule]. The transition plan must include the following:

(1) Subpart BB training program(s), as applicable.

(2) Plan for transition for crewmembers from the provisions of subparts N and O to the provisions of subpart BB of this part.

(3) A transition completion date that is before [date 5 years and 120 days after the publication of the final rule].

(c) During the transition, the certificate holder may use people to conduct operations under this part provided those people are trained under the applicable provisions of subparts N and O of this part, or subpart BB of this part. While a certificate holder may simultaneously operate training programs in compliance with the applicable provisions of subparts N and O of this part and subpart BB of this part, each individual (crewmember or aircraft dispatcher) must be trained and qualified under the requirements of either the applicable provisions of subparts N and O of this part, or the applicable provisions of subpart BB of this part.

(d) The certificate holder may not use a crewmember, nor may a crewmember serve, in a duty position unless that person is current and qualified to perform the duties to which he or she is assigned. If, during the operation of the aircraft, one required crewmember is current and qualified in accordance with the appropriate provisions of subparts N and O of this part, and another required crewmember is current and qualified in accordance with subpart BB of this part, the lesser operating requirements apply for that duty position for that operation.

§ 121.1203 Certificate holder responsibility for compliance with this subpart.

Responsibility for compliance with the requirements of this subpart applies as follows:

(a) Each certificate holder is responsible for ensuring that its approved training program, including all portions of the training program conducted by persons other than the part 119 certificate holder's employees, meets the requirements of this subpart.

(b) Each certificate holder is responsible for ensuring that all training program procedures, manuals, and other materials submitted for initial or final approval are kept up to date.

(c) Each certificate holder is responsible for ensuring that all training and evaluation is completed in accordance with the requirements of this subpart. Training or evaluation that does not meet the definition of complete, as used in this subpart, must be repeated to ensure that the requirements of this subpart are met.

§ 121.1205 Definitions.

For the purpose of this subpart, the following terms and their definitions apply:

Academic training. The structured training conducted on the ground in a classroom or other location for the purpose of acquiring knowledge, procedural skills, and cognitive skills needed to perform in operations under this part.

Actual fire. A fire fueled by ignited combustible material, in controlled conditions, of sufficient magnitude and duration to complete crewmember training requirements for the firefighting drill as contained in the Pilot QPS, Flight Engineer QPS, and Flight Attendant QPS.

Airplane Flight Manual (AFM). A document that contains aircraft operating limitations, operating procedures, and performance information. The FAA may review and approve amendments to the operating limitations section of the AFM. Amendments to the AFM that are adopted via Airworthiness Directives are enforceable by the FAA.

Approved fire extinguisher device. A training device that has been approved by the Administrator for use in meeting crewmember training requirements for operation of a specific type of aircraft installed hand fire extinguisher as contained in the Pilot QPS, Flight Engineer QPS, and Flight Attendant QPS.

Approved protective breathing equipment (PBE) device. A training device that has been approved by the Administrator for use in meeting crewmember training requirements for operation of a specific type of protective breathing equipment as contained in the Pilot, Flight Engineer and Flight Attendant QPS.

Base month. The month in which a recurrent activity is due.

Basic Qualification (flight attendant). All requirements that a person must complete prior to working his or her first flight for a certificate holder as a flight attendant. It includes new hire training, initial training, emergency training, and differences training, as applicable, as well as aircraft operating experience.

Categories of training. Parts of a curriculum that relate to qualification experience levels, first time qualification for a certificate holder, first time qualification in group (applicable to flight crewmembers), configuration differences within type or series, maintaining and regaining qualification, and changes in operations. Categories of training include: New hire, initial, transition, conversion (full and core), upgrade (full and core), emergency, differences, recurrent, requalification, and special.

Certificate holder. A person certificated under part 119 of this chapter that conducts operations under part 121, or a person certificated under part 119 of this chapter that conducts operations under part 135 of this chapter and is permitted or required by § 135.3 of this chapter to conduct training curricula in compliance with this subpart.

Check captain. A person qualified as pilot in command who is current and qualified on the navigation system necessary for the route to be flown and the aircraft on which he or she will be supervising operating experience, and who is specifically approved by the Principal Operations Inspector for supervising operating experience.

Check flight attendant. A person who meets the qualification and training requirements for a check flight attendant and is authorized to evaluate a person who is completing aircraft operating experience as required by the Flight Attendant QPS.

Check person. A person who meets the training and qualification requirements to serve as an aircrew program designee, check pilot, check flight engineer, or check flight attendant.

Combat. To properly fight an actual fire or simulated fire using an appropriate type of fire extinguisher until that fire is extinguished.

Complete. To fully carry out the training or evaluation required by this subpart, including being eligible to receive or administer the training or evaluation, and demonstrating the required level of proficiency. In addition, for flight crewmembers, performing the training or evaluation in a flight simulation training device (FSTD) appropriately qualified in accordance with the requirements of part 60 of this chapter.

Consolidation. The process by which a person through practice and practical experience increases proficiency in newly acquired knowledge and skills.

Conversion training. A category of training used to qualify a person as a flight crewmember for a certificate holder when the person has been previously qualified in the same crewmember duty position in the same aircraft type(s) for another certificate holder conducting operations under this part. Conversion training may be required to reestablish recency or for Requalification training for the certificate holder. Conversion training may be either ''core'' or ''full'' as specified in the QPS.

Crewmember Duty Position. A crewmember duty position is a pilot in command, second in command, flight engineer, or flight attendant serving in operations under this part.

Current. Current means satisfying the recency of experience requirements prescribed in § 121.1229, § 121.1231, or § 121.1307.

Currently Serving. Currently serving means current and qualified as defined in this subpart.

Curriculum. A curriculum is the training required to qualify a person for a crewmember duty position or a training or evaluation duty position for an aircraft type. The curriculum for each duty position includes categories of training and the appropriate segments for each category.

Differences training. A category of training on a particular aircraft type when the Administrator finds additional training is necessary before that person serves in the same capacity on a particular variation within a series of an aircraft type or a different series within an aircraft type.

Eligibility Period. The eligibility period consists of the month in which the recurrent activity is due (the ''base month''), the month before and the month after (the ''grace month'').

Emergency training (flight attendant). A category of training that qualifies flight attendants to conduct emergency procedures, operate emergency equipment, and enhance passenger and crewmember survivability.

Environment. A combination of external, physical, and surrounding conditions that affect aircraft performance, aircraft and equipment operation, and decisionmaking.

Evaluation. Any testing, checking, proficiency review or observation activities in which a person's knowledge and skills are assessed by a person authorized to perform that evaluation.

Exit device. Exit device means emergency exit doors, plugs, and hatches, including window exits, floor level exits, tailcone exits, ventral stairs, flight deck exits, and any other exit designed for passenger or crewmember egress from the aircraft.

Flight Attendant Jumpseat. A flight attendant jumpseat is a seat located in the cabin of an aircraft that meets the requirements of § 121.311(g).

Flight Attendant Operating Manual (FAOM). An FAA-approved document that includes the instructions and information necessary to allow the flight attendant to perform his or her required safety related duties and responsibilities with the highest possible degree of safety. The FAOM contains standard operating procedures, abnormal or non-normal procedures, and emergency procedures.

Flight Crewmember. A pilot in command, second in command, or flight engineer.

Flight Crewmember Operating Manual (FCOM). An FAA-approved document that includes the instructions and information necessary to allow a flight crewmember to perform his or her required safety related duties and responsibilities with the highest possible degree of safety. The FCOM contains standard operating procedures, abnormal or non-normal procedures, and emergency procedures. The FCOM also contains information such as ground and flight operations tasks, flight deck checklists, systems descriptions, and evacuation procedures.

Flight tasks. The maneuvers and procedures necessary to operate the aircraft in various phases of flight operations and environments.

Group. A broad categorization of aircraft based on propulsion methods. Group I is propeller driven, including reciprocating powered and turbopropeller powered. Group II is turbojet powered.

Initial Cadre. The specific persons approved by the FAA for the start-up time frame necessary, not to exceed 24 months, for a new part 119 certificate holder to initiate operations under part 119 of this chapter, or for a current part 119 certificate holder to initiate operations of a new aircraft type not operated previously or to initiate a new type of operation.

Initial training (flight attendant). A category of training required to qualify a person to serve as a flight attendant on an aircraft type when the person has not served as a flight attendant for at least 180 days in operations under this part for the certificate holder.

Initial training (flight crewmembers). A category of training that is required to qualify a person to serve as a flight crewmember for the first time in group or for the first time in operations under this part.

Initial training (flight instructors, check persons, flight attendant instructors, and persons authorized to conduct flight attendant proficiency tests). A category of training that is required to qualify a person to serve for the first time for the certificate holder as a flight instructor, check person, flight attendant instructor, and a person authorized to conduct flight attendant proficiency tests.

Job performance training. The structured training conducted in an aircraft, in a flight simulation training device approved under part 60 of this chapter, in another training device approved under this part, or in a classroom for the purpose of obtaining required psychomotor skills for crewmembers.

Lesson. A part of a segment of training. A module could be a lesson, or a module could have several lessons.

Line operating flight time. Flight time performed in operations under this part.

Line Oriented Flight Training (LOFT). Training in a simulator with a complete flight crew using representative flight segments that contain procedures that may be expected in line operations. A qualification LOFT is an approved flight simulator course of LOFT to transition from a structured flight training syllabus to representing line operations. A recurrent LOFT is an approved flight simulator course of LOFT that must be used to meet recurrent job performance training requirements.

Line Qualified. Qualified to serve as a flight crewmember in operations under this part.

Module. Modules of instruction are subsets of a training segment that include major subject areas for training and evaluation.

Month. Calendar month.

New Hire training. A category of training required to qualify a person to serve as a crewmember for the first time for the certificate holder under this part.

Observation Drill. Observation drill means a drill where a person watches without actively participating in the training or evaluation.

Observer Seat. An observer seat is a seat on the flight deck, or a forward passenger seat with headset or speaker, that provides adequate visibility of the flight controls, instruments, and external views that is used by the FAA for conducting en route inspections.

Operating cycle. A complete flight segment consisting of the time from push back/power back, taxi out, takeoff, climb, en route portion, descent, landing, taxi in, parking, and shutdown.

Practice. A physical or verbal exercise of skills in an instructor led environment that encourages interaction among participants for the specific area of knowledge.

Procedure. A procedure is a step-by-step method used to complete a specific task. Types of procedures are:

(1) *Standard operating procedure.* A procedure associated with systems that are functioning in their usual manner.

(2) *Abnormal or Non-normal operating procedure.* A procedure associated with systems that are not functioning in their usual manner and that require crewmember action for continued safe flight and landing.

(3) *Emergency procedure.* A procedure requiring immediate crewmember action to protect the aircraft and occupants from serious harm.

Proficiency. Demonstrated sufficient awareness of existing circumstances, competence in the necessary knowledge and skill, and performance of the relevant task (maneuver or procedure) within the operating range of environments to the standards identified and required by the appropriate QPS.

Proficiency check. An assessment of crewmember proficiency during which limited training or practice is allowed. The assessment is of knowledge and skill in tasks to the standards identified and required by the appropriate QPS. The proficiency check must be conducted by a check person.

Proficiency review. An assessment of pilot or flight engineer proficiency during which limited training or practice is allowed. The assessment is of knowledge and skill in tasks to the standards identified and required by the appropriate QPS. The proficiency review must be conducted by a check person, or a flight instructor authorized to conduct proficiency reviews.

Proficiency test. An assessment of crewmember proficiency during which additional training or practice is not allowed. The assessment is of knowledge and skill in tasks to the standards identified and required by the appropriate QPS. For flight crewmembers, when a proficiency test is not for the purpose of obtaining an airman certificate or rating, it must be conducted by a check pilot. When a proficiency test is conducted for the purpose of obtaining an airman certificate or rating, it must be conducted by an APD or an FAA Inspector. For flight attendants, the proficiency test may only be conducted by a person authorized to administer flight attendant proficiency tests or an FAA Inspector.

Programmed hours. The required academic and job performance hours set forth in this subpart for categories of training.

Protective Breathing Equipment (PBE) drill. An emergency drill in which a crewmember combats an actual fire or simulated fire while using PBE.

Qualification Performance Standards (QPS). FAA standards providing all of the tasks and areas of training and evaluation, including activities, procedures, and knowledge needed to qualify a person to serve under this part. The QPSs are in part 121 appendices as follows: appendix Q: Pilot Qualification Performance Standards; appendix R: Flight Engineer Qualification Performance Standards; appendix S: Flight Attendant Qualification Performance Standards; and appendix T, Aircraft Dispatcher Qualification Performance Standards.

Qualified. Qualified, when used in reference to an individual, means:

(1) For a flight attendant crewmember duty position or a flight attendant training or evaluation duty position, an individual who has completed the certificate holder's FAA-approved curriculum for the aircraft type to serve in that position under this part.

(2) For a flight crewmember duty position or a flight crewmember training or evaluation duty position, an individual who has completed the certificate holder's FAA-approved curriculum for the aircraft type to serve in that position under this part and holds the appropriate U.S. medical certificate and airman certificates and ratings.

Recurrent Flight Attendant Training Cycle. The 12 month period in which required tasks are trained and evaluated in accordance with the Flight Attendant QPS.

Recurrent training. A category of training that must be completed within the specified eligibility period to enable a qualified person to continue to serve in a crewmember duty position or a training or evaluation duty position for the certificate holder under this part.

Requalification training. A category of training required to allow crewmembers to become qualified again to serve in a crewmember duty position for the certificate holder in operations under this part.

Segments of training. Each category of training has two segments. One segment is ''academic.'' This is training and evaluation that provides students with the required knowledge and cognitive skills necessary to perform the tasks required for the crewmember duty position or training or evaluation duty position. The other segment is ''job performance.'' This segment is training and evaluation in the duty or job setting. This segment provides students with the practical, hands on experience of integrating knowledge and skills and learning the related motor skills necessary to perform the job.

Serve. To perform the duties and discharge the responsibilities required under this part.

Simulated fire. An artificial duplication of smoke or flame used to create various aircraft firefighting scenarios, such as lavatory, galley oven, and aircraft seat fires.

Simulator Only Instructors and Check Persons. Simulator Only Instructors and Check Persons are persons who have completed the training necessary to qualify as a crewmember and meet the recency of experience requirements prescribed in this subpart, as applicable, but may not serve as a required flight crewmember in operations under this part.

Special training. A category of training necessary to address changes to the certificate holder's operations or to correct deficiencies identified by the certificate holder's continuous analysis process. Special training is temporary and is integrated into the approved training program.

Training. Instruction and practice.

Training center evaluator. An individual who meets the requirements of § 142.55 of this chapter.

Training or Evaluation Duty Position. Flight instructors, flight attendant instructors, check persons, check captains, and persons authorized to conduct flight attendant proficiency tests.

Training program. A certificate holder's training curricula, personnel, facilities, equipment, and other resources used to meet the training requirements under this subpart.

Transition training (check persons and persons authorized to conduct flight attendant proficiency tests). A category of training required to qualify check persons and persons authorized to conduct flight attendant proficiency tests to serve in a training or evaluation duty position on an aircraft type for the certificate holder when they have previously served in the same training or evaluation duty position on a different aircraft type in the same group for that certificate holder.

Transition training (flight attendants). A category of training that allows a flight attendant to qualify on an aircraft type if the flight attendant has been qualified for at least 180 days and served in the previous 180 days on an aircraft as a flight attendant for that certificate holder.

Transition training (flight crewmembers). A category of training required to qualify flight crewmembers who have qualified and served in the same duty position on a different aircraft type in the same group in operations under this part.

Upgrade training. Refers to core upgrade or full upgrade training.

(1) *Core Upgrade:* A category of training required to qualify flight crewmembers as either PIC or SIC in an aircraft type in which they have been previously qualified and served as SIC or flight engineer respectively for that certificate holder. A pilot may complete core upgrade when it has been 9 months or less since the person served as SIC or flight engineer for that certificate holder.

(2) *Full Upgrade*. A category of training required to qualify flight crewmembers as either PIC or SIC in an aircraft type in which they have been previously qualified and served as SIC or flight engineer respectively. A pilot may complete full upgrade when it has been more than 9 months but less than 36 months since the person has qualified and served as SIC or flight engineer for that certificate holder, or when it has been 36 months or less since the person served as SIC or flight engineer for another certificate holder in operations under this part.

§ 121.1207 Certification requirements: Crewmembers, flight instructors, check pilots, check captain, and check flight engineers.

(a) No certificate holder may use any person, nor may any person serve, as a crewmember, flight instructor, check pilot, check captain, or check flight engineer in a training program or in operations under this part, unless that person meets the following requirements, as applicable:

(1) *Pilots*.

(i) To act as pilot in command of an aircraft, or as second in command of an aircraft that requires three or more pilots in a flag or supplemental operation, a pilot must hold an airline transport pilot certificate and an appropriate type, category, and class rating for that aircraft.

(ii) To act as a second in command of an aircraft that requires only two pilots in flag operations or in international supplemental operations, a pilot must hold at least a commercial pilot certificate with appropriate type, category, and class ratings for that aircraft, and an instrument rating.

(iii) To act as a second in command in domestic operations, a pilot must hold at least a commercial pilot certificate with appropriate category and class ratings for that aircraft, and an instrument rating.

(2) *Flight Engineers*. To serve as a flight engineer, a person must hold a flight engineer certificate with the appropriate aircraft class rating.

(3) *Flight Instructors, Check Pilots, Check Captains, and Check Flight Engineers*. No person may use, nor may any person serve, as a flight instructor, check pilot, check captain, or check flight engineer in a training program or in operations under this part, with respect to the aircraft type involved, unless the person holds the airman certificates and ratings required to serve as a pilot in command or flight engineer, as applicable, in operations under this part.

(4) *Flight Attendant*. A person is considered to hold a Certificate of Demonstrated Proficiency and is eligible to serve as a flight attendant once the Administrator is notified by a certificate holder that the person has the demonstrated proficiency to be a flight attendant.

(b) A person who is currently serving as a pilot or flight engineer for the certificate holder or a person who is engaged in training and evaluation activities for the certificate holder (as described in § 121.1331(d)) may be issued the appropriate certificate or type rating if that person meets the following requirements:

(1) The applicable eligibility, aeronautical knowledge, and experience required by part 61 or part 63 of this chapter.

(2) The applicable training requirements of this subpart.

(3) The proficiency test requirements of § 121.1365(b)(1). The FAA or an APD must administer the proficiency test.

§ 121.1209 English language requirement.

No certificate holder may use any person, nor may any person serve, as a flight crewmember, flight attendant, or person acquiring flight attendant operating experience in operations under this part, unless that person has demonstrated to an individual qualified to conduct evaluations under this part, that he or she can:

(a) Read, write, speak, and understand the English language.

(b) Have his or her English language and writings understood.

§ 121.1211 Medical certificate requirements.

(a) No certificate holder may use any person, nor may any person serve, on an aircraft as a required flight crewmember in operations under this part unless that person has a valid medical certificate required by § 61.23 or § 63.31 of this chapter, as appropriate for the duty being performed.

(b) No medical certificate is required to serve in an FSTD.

§ 121.1213 Pilot monitoring (not flying) duties.

Each pilot who is seated at the pilot controls of the aircraft or FSTD, while not flying the aircraft or FSTD, is required to accomplish pilot monitoring duties as appropriate in accordance with the FCOM. Pilot monitoring duties are subject to the same oversight and evaluation as pilot flying duties.

Flight Crewmember

§ 121.1221 Flight Crewmember: Training and evaluation.

No certificate holder may use any person, nor may any person serve, as a required flight crewmember in operations under this part unless that person has completed the required curriculum for that aircraft type and crewmember duty position.

(a) A curriculum consists of the programmed hours, including training and evaluation, as specified in § 121.1335 and in the appropriate QPS, and the following training categories.

(1) New hire training as prescribed in § 121.1363.

(2) Initial, conversion, transition, or upgrade training as prescribed in § 121.1365, as applicable.

(3) Differences training, if necessary, as prescribed in § 121.1391.

(4) Recurrent training as prescribed in § 121.1367, according to the schedule prescribed in § 121.1223.

(5) Requalification training, if necessary, as prescribed in § 121.1239.

(6) Special training, if necessary, as prescribed in § 121.1337.

(b) *Continuity of training*. Within 120 days of beginning first time qualification a person must have completed in the following order:

(1) The required new hire training as described in paragraph (a)(1) of this section, if the person is qualifying for the first time for the certificate holder.

(2) The required initial, conversion, transition, or upgrade training categories and academic and job performance training segments described in paragraph (a)(2) of this section, as applicable; and differences training as described in paragraph (a)(3) of this section, if applicable.

(3) A proficiency test as prescribed in § 121.1365(b)(1).

(4) A qualification LOFT as prescribed in § 121.1365(b)(2).

(c) *Failure to complete training within 120 days*. If a person fails to complete the required curriculum within the 120 days, as required by paragraph (b) of this section, the person must repeat the entire curriculum. No credit is given for any of the training previously completed if the entire curriculum is not completed within 120 days.

(d) *Complete Flight Crew*. Except as provided in paragraph (d)(2) of this section, a complete flight crew is required for training under this part and each flight crewmember duty position must be filled by a person qualified to serve in the required duty position.

(1) For aircraft certificated for 2 pilots: Each pilot duty position must be occupied by a person who is qualified to serve in that crewmember duty position (a line qualified crew member, a simulator-only instructor, a flight instructor, a check pilot, a check captain, or an APD), or by a student training to serve in that crewmember duty position.

(2) For aircraft certificated for 2 pilots and a flight engineer: Each pilot duty position and the Flight Engineer duty position must be occupied by a person who is qualified to serve in that crewmember duty position (a line qualified crew member, a simulator-only instructor, a flight instructor, a check pilot, a check captain, a check flight engineer, or an APD), or by a student training to serve in that crewmember duty position. After the minimum hours of job performance training have been completed, at the discretion of the instructor, training on specific piloting tasks may be conducted without the flight engineer duty position being filled. In these situations, the flight engineer's panel in the simulator must be properly set for the pilot training tasks and must not require further monitoring or adjustment.

§ 121.1223 Flight Crewmember: Recurrent training and evaluation schedule for continuing qualification.

(a) To serve as a flight crewmember, a person must complete the recurrent academic and job performance training segments for each aircraft type, as prescribed in § 121.1367, in accordance with the associated programmed hours specified in § 121.1335. Each flight crewmember must complete all of the academic subjects and all of the job performance tasks and environments in accordance with the applicable QPS.

(b) A flight crewmember must complete a recurrent academic training module, a recurrent job performance training module, and aircraft emergency equipment training as prescribed in § 121.1367 and at the interval specified in the applicable QPS.

(c) A flight crewmember must complete recurrent academic and job performance training modules by the end of the eligibility period. The eligibility period consists of the base month, the month before the base month and the month after the base month. The base month is the 9th month following

the month during which the proficiency test required in § 121.1365(b)(1) is completed; the 9th month following the month in which the proficiency test authorized in § 121.1239 is completed; or the 9th month following the completion of the recurrent academic and job performance training modules when adjusting the base month in accordance with § 121.1223(d).

(d) The base month may be adjusted by completing the required recurrent academic and recurrent job performance training modules within the time frames described in § 121.1223(f) at any time prior to the beginning of the eligibility period described in paragraph (c) of this section.

(e) A flight crewmember who has not completed recurrent training by the end of the base month may continue to serve until the end of the eligibility period. However, if the recurrent requirements are not completed during the eligibility period and the base month is not adjusted forward as described in paragraph (d) of this section, the person is unqualified for that flight crewmember duty position on the first day of the month following the eligibility period. The unqualified person may not serve in that flight crewmember duty position until requalified. The person must complete the applicable phase of the requalification training category in accordance with § 121.1239 to become requalified.

(f) Time required to complete recurrent training:

(1) *Academic Training*. A flight crewmember must complete each required recurrent academic training and evaluation within the preceding number of months specified in the applicable QPS. The academic training must begin and end within the eligibility period, and end within 30 days from the beginning of the academic training.

(2) *Job Performance Training*. A flight crewmember must complete required job performance training and evaluation within the preceding number of months specified in the applicable QPS. The job performance training must begin and end within the eligibility period, and end within 96 hours from the beginning of the training.

§ 121.1225 Flight Crewmember: Operating experience.

(a) Except as provided in this section, no certificate holder may use any person, nor may any person serve, as a required flight crewmember on an aircraft, unless the person has completed the operating experience and operating cycles required by this section for that aircraft type and in that duty position in operations under this part. The certificate holder must ensure that the flight crewmember completing operating experience and operating cycles is current and qualified for the duty position in accordance with this part.

(b) Pilots must complete operating experience and operating cycles as follows:

(1) *General*. Operating experience must include at least four operating cycles and 21 hours in operations under this part. At least one cycle must be flown as the pilot monitoring the aircraft. At least two cycles must be flown as the pilot flying the aircraft, of which at least one must be flown with the automatic pilot disengaged after takeoff until departing the terminal area and prior to approach upon entering the terminal area. A pilot will receive one hour of credit towards the 21 hours required by this paragraph for each operating cycle completed in excess of the four operating cycles required. Operating experience must be started no later than 60 days and completed within 120 days of completing the proficiency test given at the end of initial, transition, upgrade, or conversion training. If operating experience is not started within 60 days or completed within 120 days of completing the proficiency test, another proficiency test is required to re-initiate operating experience.

(2) *Pilot in command*.

(i) A qualifying pilot in command completing operating experience and operating cycles must complete all of the following:

(A) Serve as the second in command of record.

(B) Perform the duties of a pilot in command under the supervision of a check pilot or check captain, except as provided in paragraph (d) of this section.

(C) Be given a line check conducted by an appropriately qualified check pilot during the final portion of operating experience. The line check must consist of at least two operating cycles. During one of the cycles the qualifying pilot in command must perform the duties of the pilot flying the aircraft. In the other cycle, the qualifying pilot in command must perform the pilot monitoring duties.

(D) In addition to the requirements in paragraphs (b)(2)(i)(A) through (C) of this section, a qualifying pilot in command receiving operating experience after completing initial or upgrade training, must perform the duties of a pilot in command during at least one operating cycle under the observation of an APD authorized to conduct these observations or an FAA inspector.

(ii) Except as provided in paragraph (d) of this section, the check pilot or check captain supervising operating experience must serve as the pilot in command and occupy a pilot station under the following requirements:

(A) While supervising the transitioning or converting pilot in command until the qualifying pilot in command has completed the following, at which time the check pilot or check captain may occupy the observer's seat for the remaining portion of the operating experience:

(*1*) Made at least two takeoffs and landings in the aircraft type used.

(*2*) Satisfactorily demonstrated to the check pilot or check captain the ability to perform the duties of a pilot in command of that aircraft type.

(B) While supervising an initial or upgrading pilot in command.

(3) *Second in command.* A second in command pilot must perform the duties of a second in command under the supervision of an appropriately qualified check pilot or check captain.

(c) A flight engineer must perform the duties of a flight engineer for at least 10 hours of operating experience in operations under this part under the supervision of a check flight engineer, a check pilot, a check captain, or a flight engineer who is specifically authorized by the POI to supervise operating experience.

(d) During operating experience following transition, conversion, or upgrade training, the check pilot or check captain may take a rest period during the en route cruise portion of flight, if the following conditions are met:

(1) The pilot obtaining operating experience meets the requirements of paragraphs (b)(2)(ii)(A)(*1*) and (2) of this section.

(2) The relief pilot meets the requirements in § 121.1241(b)(3).

(e) In the case of an aircraft not previously used by the certificate holder in operations under this part, operating experience for pilots and flight engineers completed in the aircraft during proving flights or ferry flights may be used to meet this requirement.

(f) Credit for operating experience hours may only be taken while the pilot or flight engineer is under the direct supervision of the check pilot or check captain.

§ 121.1227 Pilot: Consolidation.

(a) Pilots completing the proficiency test given at the end of initial, transition, or conversion training must

complete at least 100 hours of LOFT for consolidation in that aircraft type for the certificate holder. The consolidation hours must be completed within 120 days after completing the proficiency test.

(1) If the consolidation flight time in an aircraft type is interrupted by flight time in another aircraft type, the pilot must complete refresher training to refresh the pilot's knowledge and skills, as provided in the certificate holder's approved training program. The refresher training must be completed in the aircraft type in which consolidation was started before continuing the consolidation. The refresher training must be conducted by a flight instructor or check pilot qualified under this part.

(2) Consolidation must be started no later than 60 days after completion of the proficiency test given at the end of initial, transition, or conversion training. If consolidation is not started within 60 days of completing the proficiency test, another proficiency test is required to re-initiate consolidation.

(b) If consolidation is not completed within 120 days of completing the proficiency test given at the end of initial, transition, or conversion training, the certificate holder may extend the 120-day period to no more than 150 days if both of the following conditions are met:

(1) The pilot continues to meet all other applicable requirements of this subpart.

(2) On or before the 120th day the pilot completes refresher training conducted by an appropriately qualified and authorized instructor or check pilot to refresh the pilot's knowledge and skills, as provided in the certificate holder's approved training program, or a check pilot determines that the pilot has retained an adequate level of proficiency after observing that pilot in a supervised line operating flight.

(c) If consolidation is not completed within 150 days of completing the proficiency test given at the end of initial, transition, or conversion training, the certificate holder may extend the 150-day period to no more than 210 days if both of the following conditions are met:

(1) The pilot continues to meet all other applicable requirements of this subpart.

(2) On or before the 150th day the pilot completes a proficiency check in a Level C or D full flight simulator qualified in accordance with part 60 of this chapter.

(d) If consolidation is not completed within 210 days of completing the proficiency test given at the end of initial, transition, or conversion training, the remaining line operating flight time that is necessary to complete consolidation must be supervised by a check pilot.

(e) If consolidation is not completed by the time the proficiency test required by § 121.1223 is completed for the first recurrent period, consolidation must start over.

§ 121.1229 Pilot: Recent experience.

(a) No certificate holder may use any person, nor may any person serve, as a required pilot unless the person has made, within the preceding 90 days, at least three takeoffs and landings as the pilot flying in the aircraft type in which the person is to serve. The three takeoffs and landings required by this paragraph must be satisfied by compliance with either paragraph (b) or (c) of this section, but not a combination of paragraph (b) and (c) of this section.

(b) If a pilot satisfies the requirements of paragraph (a) of this section through the use of an aircraft, the pilot must complete three operating cycles in the aircraft type in which the pilot serves.

(c) If a pilot satisfies the requirements of paragraph (a) of this section through the use of a full flight simulator (FFS), the FFS must be qualified in accordance with part 60 of this chapter and approved for takeoff and landing maneuvers. The pilot must complete in a single simulator session at least three takeoffs and landings and the maneuvers and procedures prescribed in the QPS. One takeoff and one landing must be included in a LOFT environment under § 121.1353.

(d) If it has been 90 days or less since the pilot's recency has lapsed, the pilot may regain recency by completing at least three takeoffs and landings using the maneuvers and procedures specified in the Pilot QPS in an FFS qualified for takeoffs and landings in accordance with part 60 of this chapter. All three takeoffs and landings must be conducted in a LOFT environment as provided in § 121.1353.

(e) If it has been more than 90 days since the pilot's recency has lapsed, the pilot may only regain recency by completing the core conversion training category in accordance with the pilot QPS. Completing core conversion to reestablish recency of experience does not change the pilot's recurrent training base month.

§ 121.1231 Flight engineer: Recent experience.

(a) No certificate holder may use any person, nor may any person serve, as a required flight engineer unless, within the preceding 90 days, the person has performed the duties of a flight engineer during at least three takeoffs and landings in the aircraft type in which the person is to serve. The three takeoffs and landings required by this paragraph must be satisfied by compliance with either paragraph (b) or (c) of this section, but not a combination of paragraphs (b) and (c) of this section.

(b) If a flight engineer satisfies the requirements of paragraph (a) of this section through the use of an aircraft, the flight engineer must complete three operating cycles in the aircraft type in which the flight engineer serves.

(c) If a flight engineer satisfies the requirements of paragraph (a) of this section through the use of an FFS, the FFS must be qualified in accordance with part 60 of this chapter and approved for takeoff and landing maneuvers. When an FFS is used, the flight engineer must complete in a single simulator session at least three takeoffs and landings and the maneuvers and procedures prescribed in the QPS. One takeoff and one landing must be included in a LOFT environment under § 121.1353.

(d) If it has been 90 days or less since the flight engineer's recency has lapsed, the flight engineer may regain recency by completing a proficiency check in accordance with the Flight Engineer QPS. This proficiency check must be administered with a complete flight crew, with each crewmember duty position filled by a person who is qualified or in student status to serve in that crewmember duty position.

(e) If it has been more than 90 days since the flight engineer's recency has lapsed, the flight engineer may only regain recency by completing the core conversion training category in accordance with the flight engineer QPS. Completing core conversion to reestablish recency of experience does not change the flight engineer's recurrent training base month.

§ 121.1233 Line checks.

(a) No certificate holder may use any person, nor may any person serve, as a pilot in command, unless, within the preceding 24 months, that person has completed a line check for that certificate holder in one of the aircraft types in which he or she is to serve. During the line check, the person must perform the duties and responsibilities of a pilot in command.

(b) A pilot in command line check for domestic and flag operations must be administered by a check pilot or APD who is current and qualified on both the route and the aircraft type. A pilot in command line check for supplemental operations must be administered by a check pilot or APD who is current and

qualified in the aircraft type and must be conducted on an instrument flight rules flight plan.

(c) A line check conducted under this part must consist of at least two operating cycles during operations under this part. In one of the cycles the pilot in command must perform the duties of the pilot flying the aircraft. In the other cycle, the pilot in command must perform the pilot monitoring duties.

(d) The check pilot or APD conducting the line check must evaluate the entire flight crew in the performance of their duties during the line check of the pilot in command required by paragraph (a) of this section. The check pilot or APD will record the evaluation of the pilot in command and any other required flight crewmember that demonstrates a lack of proficiency. If any required flight crewmember performs below standard on any tasks, that person may not serve as a required flight crewmember in operations under this part until he or she receives training on such tasks, and completes a proficiency test in those tasks.

(e) Check pilots or APDs conducting line checks must conduct a debriefing of the flight crew that includes technical and resource management competencies.

(f) On flights with a flight engineer as a required crewmember, check pilots or APDs who meet the qualification requirements of this subpart to conduct pilot in command line checks will evaluate flight engineer performance during the line check. The check pilot or APD is not required to hold a flight engineer certificate to conduct flight engineer evaluations during line checks.

(g) If a pilot does not receive the line check required by paragraph (a) of this section, the pilot may not serve as pilot in command in operations under this part until he or she completes the following:

(1) If it has been more than 24 months, but less than 30 months since the pilot received his or her last line check, the pilot must complete a line check. The check pilot or APD must serve as the pilot in command during the line check and must occupy a pilot duty station.

(2) If it has been 30 months or more since the pilot received his or her last line check, the pilot must complete the core conversion training category in accordance with the pilot QPS and complete a line check. The check pilot or APD must serve as the pilot in command during the line check and must occupy a pilot duty station. Completing core conversion to satisfy the line check requirement does not change the pilot's recurrent training base month.

(h) If a pilot in command fails the line check required by paragraph (a) of this section, the pilot may not serve in operations under this part until he or she successfully completes within 60 days of the date of failure all of the following:

(1) Recurrent academic training without adjusting the recurrent base month.

(2) A proficiency check.

(3) A qualification LOFT, consisting of at least two operating cycles, one under normal conditions, and one that includes abnormal or emergency issues.

(4) Two operating cycles during line operations under the supervision of a check pilot or APD, followed by a line check. The check pilot or APD must serve as the pilot in command and occupy a pilot duty station during the operating cycles required by this section and the line check.

(i) If a pilot in command fails to meet the requirements of paragraph (h) of this section within 60 days of the date of the failed line check, the pilot in command may not serve in operations under this part until the pilot in command completes the following:

(1) Full conversion training without adjusting the recurrent base month.

(2) A proficiency check.

(3) A qualification LOFT, consisting of at least two operating cycles, one under normal conditions, and one that includes abnormal or emergency issues.

(4) Two operating cycles during line operations under the supervision of a check pilot or APD, followed by a line check. The check pilot or APD must serve as the pilot in command and occupy a pilot duty station during the operating cycles required by this section and the line check.

§ 121.1235 Pilot: Routes and airports.

(a) No certificate holder may use any person, nor may any person serve, as a pilot, unless that pilot has current information provided by the certificate holder regarding routes, airports and terminal areas into which that pilot operates. The certificate holder must ensure that each pilot has adequate knowledge and skill to use the information. The certificate holder must provide information on at least the following subjects:

(1) Weather.

(2) Navigation facilities.

(3) Communication procedures, including airport visual aids.

(4) Terrain and obstructions.

(5) Minimum safe flight levels.

(6) En route and terminal area arrival and departure procedures, holding procedures and authorized instrument approach procedures for the airports involved.

(7) Congested areas and physical layout of each airport in the terminal area in which the pilot will operate.

(8) Notices to Airmen.

(b) Each certificate holder must provide a system acceptable to the Administrator for disseminating the information required by paragraph (a) of this section to the pilots and appropriate flight operations personnel. The system must also provide an acceptable means for showing compliance with pilot qualification for special areas, routes, and airports.

(c) The Administrator may determine that certain airports (due to items such as surrounding terrain, obstructions, or complex approach or departure procedures) are special airports requiring special airport qualifications and that certain areas or routes require a special type of navigation qualification.

(d) No certificate holder may use any person, nor may any person serve, as a pilot in special airport operations unless, within the preceding 18 months, the pilot has met one of the following requirements:

(1) Made a takeoff and landing at the special airport while serving as a pilot flying the aircraft.

(2) Qualified by using photographs and diagrams approved by the Administrator for the special airport.

(3) Qualified by using written descriptions and diagrams of the special characteristics of the airport only in those cases where the country in which the airport is located does not allow photographs to be taken of the airport. The written descriptions and diagrams must be approved by the Administrator.

§ 121.1237 Pilot: Operating limitations and crew pairing.

(a) No certificate holder may use any person, nor may any person serve, as a pilot in operations under this part unless either the pilot in command or the second in command has at least 75 hours of line operating flight time for that aircraft type, either as pilot in command or second in command. The Administrator may, upon application by the certificate holder, authorize deviations from the requirements of this paragraph by an appropriate amendment to the operations specifications in any of the following circumstances:

(1) A new certificate holder does not employ any pilots who meet the minimum requirements of this paragraph (a).

(2) An existing certificate holder adds an aircraft type that was not previously proven for use in its operations.

(3) An existing certificate holder establishes a new domicile to which it assigns pilots who will be required to become qualified on the aircraft operated from that domicile.

(b) If the second in command has fewer than 100 hours of flight time as second in command in operations under this part in the aircraft type being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command must make all takeoffs and landings in any of the following conditions:

(1) The prevailing visibility value in the latest weather report for the airport is below ¾ mile.

(2) The runway visual range for the runway to be used is below 4,000 feet.

(3) The runway to be used has water, snow, slush or similar conditions that may adversely affect aircraft performance.

(4) The braking action on the runway to be used is reported to be less than ''good.''

(5) The crosswind component for the runway to be used is in excess of 15 knots.

(6) Windshear is reported in the vicinity of the airport.

(7) Any time the pilot in command determines it to be prudent to make the takeoffs and landings.

(c) Except for check pilots, newly qualifying PIC in the aircraft type, and as described in paragraph (d) of this section, no certificate holder may use any person, nor may any person serve, as a PIC or SIC in operations under this part unless the PIC has been trained for, is assigned to, and operates the aircraft from the left hand pilot's seat, and the SIC has been trained for, is assigned to, and operates the aircraft from the right hand seat.

(d) A certificate holder may authorize an assigned PIC to operate the aircraft from the right hand pilot seat and to authorize the assigned SIC to operate the aircraft from the left hand pilot seat provided the pilots have completed either a training program for that pilot seat or the seat dependent task training for that pilot seat in accordance with the Pilot QPS. The responsibilities of the PIC and SIC who exchange operating seats as described in this paragraph, remain unchanged regardless of the pilot seat being occupied. Duties and functions of the pilot flying and the pilot monitoring will change only due to the limitations and requirements imposed by occupying the opposite pilot seat.

§ 121.1239 Flight crewmember: Requalification.

(a) No certificate holder may use any person, nor may any person serve, as a pilot or flight engineer if that person has become unqualified by failing to complete recurrent academic or job performance training segments including proficiency tests, proficiency checks, and proficiency reviews, as required by § 121.1223.

(b) If a person fails to meet any of the requirements of paragraph (a) of this section, then the person must complete the initial training requirements of § 121.1365 in accordance with the Pilot QPS, including operating experience and proficiency test, or the person must meet the requirements of this paragraph in accordance with the appropriate requalification phase to be requalified. The requalification phases are based on the person being unqualified and the number of months after the month in which the person last served in a crewmember duty position for the aircraft type in operations under this part.

(1) *Phase I Requalification.*

(i) *Eligibility for Phase I Requalification.* An unqualified flight crewmember may requalify by completing the Phase I Requalification program if it has been less than 9 months since the month the person last served in a crewmember duty position for the aircraft type.

(ii) *Phase I Requalification program.* The flight crewmember must complete all of the recurrent training modules or any modules that were not completed. These requirements must be completed within 30 days of beginning requalification training and less than 9 months from the month the person last served in a crewmember duty position for the aircraft type in operations under this part. The flight crewmember's base month for recurrent training will not change.

(2) *Phase II Requalification.*

(i) *Eligibility for Phase II Requalification.* An unqualified flight crewmember may requalify by completing the Phase II Requalification program if it has been 9 months or more, but less than 27 months since the month the person last served in a crewmember duty position for the aircraft type in operations under this part.

(ii) *Phase II Requalification program.* The flight crewmember must complete the following Phase II Requalification requirements within 60 days of beginning requalification training and less than 27 months from the month the person last served in a crewmember duty position for the aircraft type in operations under this part:

(A) The flight crewmember must complete the core conversion training category. The Principal Operations Inspector will decide, on a case by case basis, the number of programmed hours for academic and job performance training. For academic training, the required programmed hours may be more or less than the core conversion training hours. For the job performance training segment, the programmed hours will be no less than the minimum job performance programmed hours for the core conversion training category required by the applicable QPS. A pilot in command must also complete a line check.

(B) The flight crewmember's recurrent base month must be changed as appropriate to correspond to the month in which the proficiency test was completed.

(3) *Phase III Requalification.*

(i) *Eligibility for Phase III Requalification.* An unqualified flight crewmember must complete the Phase III Requalification program if it has been 27 months or more since the month the person last served in a crewmember duty position for the aircraft type in operations under this part.

(ii) *Phase III Requalification program.* The flight crewmember must complete the following Phase III Requalification requirements within 90 days of beginning requalification training:

(A) The flight crewmember must complete the full conversion training category, except the programmed hours specified in the QPS do not apply. The Principal Operations Inspector will decide, on a case by case basis, the number of hours for academic and job performance training. For job performance training, the programmed hours will be no less than the minimum job performance programmed hours for the full conversion training category required by the applicable QPS. A pilot must also complete a qualification LOFT, and a pilot in command must also complete a line check.

(B) The flight crewmember's recurrent base month must be changed as appropriate to correspond to the month in which the proficiency test was completed.

§ 121.1241 Flight crewmembers at controls.

(a) Except as provided in paragraph (b) of this section, each required flight crewmember on flight deck duty must remain at the assigned duty station with seat belt fastened while the aircraft is taking off or landing, and while it is en route.

(b) A required flight crewmember may leave the assigned duty station only in the following situations:

(1) If the crewmember's absence is necessary for the performance of duties in connection with the operation of the aircraft.

(2) If the crewmember's absence is in connection with physiological needs.

(3) If the crewmember (PIC or SIC) is taking a rest period, and relief is provided during the en route cruise portion of the flight by a pilot who meets all of the following:

(i) Holds an airline transport pilot certificate and a type rating on the aircraft.

(ii) Is qualified as pilot in command or second in command on the aircraft.

(iii) Has completed operating experience in accordance with § 121.1225.

(iv) Has completed line operating flight time for consolidation, if applicable, within the time prescribed in § 121.1227.

(v) Has completed either of the following:

(A) Training for the duty station to be occupied.

(B) Training for the opposite duty station and the seat dependent task training described in the pilot QPS for the duty station to be occupied.

(vi) Is maintaining recency in accordance with § 121.1229.

(4) If the pilot in command is taking a rest period in accordance with paragraph (b)(3) of this section, the pilot in command must designate an acting pilot in command on the flight deck.

Check Pilot And Check Flight Engineer Qualification

§ 121.1251 Eligibility: Check pilot, check flight engineer, Aircrew Program Designee (APD), and Flight Instructor.

To be eligible to enter training as a check pilot, check flight engineer, APD, or Flight Instructor, a person must meet the following requirements:

(a) For pilots:

(1) Have an ATP certificate and a rating for the aircraft type in which they are to serve.

(2) Have served in one of the following capacities for at least 1 year in an aircraft of the same group in which that person is authorized to instruct or evaluate:

(i) A flight instructor in a certificate holder's approved training program.

(ii) A pilot in command.

(iii) A Training Center Evaluator (TCE).

(iv) A second in command.

(3) Have completed the certificate holder's academic and job performance training segments for pilot in command, in accordance with §§ 121.1365 and 121.1367, for the aircraft type on which they are to serve as an instructor, check pilot, or APD.

(b) For flight engineers:

(1) Have a flight engineer certificate and a rating for the aircraft type in which they are to serve.

(2) Have served as a flight engineer for at least 1 year in an aircraft of the same group in which that person is authorized to instruct or evaluate.

(3) Have completed the certificate holder's academic and job performance training segments for flight engineer in accordance with §§ 121.1365 and 121.1367, for the aircraft type on which they are to serve as an instructor, check flight engineer, or APD.

§ 121.1253 Check pilot and check flight engineer: Training, evaluation, approval, and recent experience.

No certificate holder may use any person, nor may any person serve, as a check pilot or check flight engineer in a training program established under this subpart, with respect to the aircraft type involved, unless the person has satisfied the requirements of this section.

(a) Training:

(1) For check pilots, the following:

(i) The certificate holder's approved academic and job performance training for check pilots, as required by §§ 121.1381 and 121.1383.

(ii) The seat dependent task training from both seats, in accordance with the QPS.

(2) For check flight engineers, the certificate holder's approved academic and job performance training for check flight engineers, as required by §§ 121.1381 and 121.1383.

(b) Evaluation:

(1) For check pilots, the following observation checks:

(i) To be authorized to conduct proficiency tests or proficiency checks, the person must be observed conducting a proficiency test or proficiency check in an FFS by an FAA inspector or an APD, and the pilot undergoing the proficiency test or proficiency check for this observation must be signed off by the FAA inspector or the APD as the evaluator of record.

(ii) To be authorized to conduct line checks, the person must be observed conducting a line check by an FAA inspector or an APD, and the pilot undergoing the line check for this observation must be signed off by the FAA inspector or the APD as the evaluator of record.

(2) For check flight engineers, to be authorized to conduct proficiency tests or proficiency checks, the person must be observed conducting a proficiency test or proficiency check in an FFS by an FAA inspector or an APD, and the flight engineer undergoing the proficiency test or proficiency check for this observation must be signed off by the FAA inspector or the APD as the evaluator of record.

(c) Approval:

(1) For check pilots, after completing the requirements of paragraphs (a) and (b) of this section, the check pilot may be issued an FAA letter of authorization to conduct the following, as applicable:

(i) Proficiency tests, proficiency checks, or proficiency reviews, or any combination.

(ii) Line checks.

(2) For check flight engineers, after completing the requirements of paragraphs (a) and (b) of this section, the check flight engineer may be issued an FAA letter of authorization to conduct proficiency tests, proficiency checks, or proficiency reviews, or any combination.

(3) Check pilots and check flight engineers may conduct only those activities listed on the FAA letter of authorization.

(d) Recent experience:

(1) Check pilots and check flight engineers must maintain recency as a pilot or flight engineer as required by § 121.1229 or § 121.1231, as applicable. Check pilots and check flight engineers who use the authorizations of § 121.1229(c) or § 121.1231(c), as applicable, to maintain this recency of experience requirement, must also, within 90 days before performing the duties of a check pilot or check flight engineer, satisfy the following requirements:

(i) The check pilot must have made at least five takeoffs and landings in an FFS qualified in accordance with part 60 of this chapter and approved for performing takeoffs and landings.

(ii) The check flight engineer must have served as a flight engineer on five takeoffs and landings in an FFS qualified in accordance with part 60 of this chapter and approved for performing takeoffs and landings.

(2) After a person has been a check pilot or a check flight engineer for 12 months:

(i) The person may not serve as a check pilot or a check flight engineer unless in the preceding 12 months the person has completed at least eight evaluation activities for the certificate holder. The minimum of eight activities must include at least one of each activity he or she is authorized to conduct in accordance with the applicable QPS. If the check pilot or check flight engineer fails to conduct at

least eight activities, that person may not serve as a check pilot or check flight engineer until the person is re-observed by an FAA inspector or an APD while conducting a proficiency test or proficiency check. If the person has conducted eight activities but one or more of the authorized activities have not been conducted:

(A) The check pilot or check flight engineer may not serve as a check pilot or check flight engineer until re-observed by an FAA inspector or an APD while conducting a proficiency test or proficiency check; or

(B) The certificate holder must request that the FAA update the check pilot's or check flight engineer's letter of authorization by removing the non-conducted activities from the authorizations.

(ii) Within the 12 months preceding performing the duties of a check pilot or check flight engineer, the check pilot or check flight engineer must have completed the following:

(A) Attended all standardization meetings (required by § 121.1355(a)(2)) for each aircraft type in which the person is authorized to conduct check pilot or check flight engineer duties; and

(B) If the check pilot or check flight engineer meets the requirements of paragraph (d)(1) of this section by completing § 121.1229(b) or § 121.1231(b) through aircraft operations other than line operations under this part, or by completing § 121.1229(c) or § 121.1231(c) in a qualified and approved FFS, the check pilot or check flight engineer must have observed the line operations of at least one of the certificate holders for whom the check pilot or check flight engineer performs evaluations. This observation must be part of a Principal Operations Inspector approved line-observation program.

§ 121.1255 Check Captain: Additional training requirements.

No certificate holder may use any person, nor may any person serve, as a check captain in operations under this part with respect to the aircraft type involved, unless the person is current and qualified as a pilot in command and has done the following in an FSTD:

(a) Learned the safety measures to be taken from either pilot seat for emergency situations that are likely to develop during flight operations.

(b) Learned the potential consequences of improper, untimely or unexecuted safety measures during flight operations.

(c) Completed the seat dependent task training described in the QPS.

§ 121.1257 Check pilot, check captain, and check flight engineer: Initial cadre.

(a) A certificate holder may use a person as a check pilot, check captain, or check flight engineer even though the person does not meet the experience, recency, crew pairing, or consolidation requirements of the subpart, if the person meets the initial cadre requirements of this section. The FAA will determine the period of initial cadre status and may terminate initial cadre status entirely or for an individual check pilot, check captain, or check flight engineer, if necessary. In no case will initial cadre status exceed a period of 24 months.

(b) To be an initial cadre check pilot, check captain, or check flight engineer for a part 119 certificate holder and to continue to serve in that capacity for the authorized period, a person must meet all of the following requirements:

(1) Be employed by the part 119 certificate holder.

(2) Have served at least 3 years in the past 6 years as a pilot in command or as a flight engineer, as applicable, on an aircraft of the same group in which the person is to perform duties as an initial cadre check pilot, check captain, or check flight engineer.

(3) Have the appropriate certificates and ratings for the aircraft type and pilot or flight engineer position.

(4) Have completed the academic and job performance training segments of the applicable training categories, as approved by the Principal Operations Inspector for the part 119 certificate holder that are required to serve as a pilot in command or flight engineer, as applicable. For initial cadre check pilots, these requirements must be completed for both pilot seats.

(5) Perform each of the duties to be accomplished as a check pilot, check captain, or check flight engineer under the observation of an FAA inspector. When an observed activity must be made part of a training record, the people undergoing the observed activities must be signed off by the FAA inspector as the evaluator of record.

(6) Be approved by the Principal Operations Inspector for the specific duties to be performed.

(c) Initial cadre check pilots, check captains, and check flight engineers may obtain aircraft operating experience while supervising or being supervised by other initial cadre check pilots, check captains, and check flight engineers, and while being observed by the FAA. Operating experience for initial cadre personnel may be obtained during revenue passenger operations or during aircraft delivery flights, ferry flights, repositioning flights, or proving flights.

(d) An initial cadre check pilot, check captain, or check flight engineer may not gain operating experience in operations under this part unless there is at least one initial cadre check pilot on that flight who has the following experience in the aircraft type:

(1) Has at least 5 hours of operating experience at the pilot controls; and

(2) Has made at least two takeoffs and landings within the previous 60 days.

(e) The part 119 certificate holder must propose for approval by the Principal Operations Inspector, current employees, employees of part 142 certificate holders, employees of other part 119 certificate holders, or aircraft manufacturers as instructors, check pilots, and aircrew program designees (APDs) for initial cadre duties. The FAA must complete all evaluation of initial cadre check pilots and check flight engineers.

(f) Notwithstanding contrary provisions of § 121.1227 for consolidation of knowledge and skills (including operating experience required under § 121.1225), an initial cadre check pilot or check captain may delay initiating line operating flight time for consolidation. The initiation of consolidation may be delayed until 180 days after completing the proficiency test at the end of the initial or transition training category, or until 10 days after the initial cadre status is terminated by the Principal Operations Inspector, whichever is sooner. Once consolidation is initiated, the pilot must acquire 100 hours of line operating experience within 120 days. If consolidation is not completed as required by this paragraph, the pilot must restart consolidation in accordance with § 121.1227.

(g) Notwithstanding contrary provisions of § 121.1229 for recent takeoff and landing experience, an initial cadre check pilot or check captain may perform the duties of a pilot in command or second in command in operations under this part if the initial cadre check pilot or check captain has satisfied the following two requirements:

(1) Has accumulated at least 5 hours of operating experience as the pilot flying in the aircraft type.

(2) Has made at least two takeoffs and landings as the pilot flying within the previous 60 days in the aircraft type.

(h) Notwithstanding contrary provisions of § 121.1237 for crew pairing, an initial cadre check pilot or check captain may perform the duties of a pilot in command or second in command in operations under this part without respect to the minimum number of hours of line operating flight

time in that aircraft type accumulated by the pilot occupying the other pilot position if the initial cadre check pilot or check captain has satisfied the following two requirements:

(1) Has accumulated at least 5 hours of operating experience as the pilot flying in the aircraft type.

(2) Has made at least two takeoffs and landings as the pilot flying within the previous 60 days in the aircraft type.

Aircrew Program Designee Qualification

§ 121.1271 Aircrew Program Designee (APD): Training, evaluation, and recent experience.

No certificate holder may use any person, nor may any person serve, as a pilot APD or a flight engineer APD in a training program established under this subpart, with respect to the aircraft type involved, unless the person meets the requirements of § 121.1251 and has satisfied the requirements of this section.

(a) Training:

(1) For pilot APDs, the following:

(i) The certificate holder's approved academic and job performance training for check pilots, as required by §§ 121.1381 and 121.1383.

(ii) The seat dependent task training from both seats, in accordance with the QPS.

(2) For flight engineer APDs, the certificate holder's approved academic and job performance training for check flight engineers, as required by §§ 121.1381 and 121.1383.

(b) Evaluation:

(1) For pilot APDs, the following observation checks:

(i) To be authorized to conduct proficiency tests, the APD must be observed conducting a proficiency test in an FFS by an FAA inspector, and the pilot undergoing the proficiency test for this observation must be signed off by the FAA inspector as the evaluator of record.

(ii) To be authorized to conduct line checks, the APD must be observed conducting a line check by an FAA inspector, and the pilot undergoing the line check for this observation must be signed off by the FAA inspector as the evaluator of record.

(2) For flight engineer APDs, to be authorized to conduct proficiency tests, the person must be observed conducting a proficiency test in an FFS by an FAA inspector, and the flight engineer undergoing the proficiency test for this observation must be signed off by the FAA inspector as the evaluator of record.

(c) Approval:

(1) For pilot APDs, after completing the requirements of paragraphs (a) and (b) of this section, the pilot APD may be issued an FAA letter of authorization and a certificate of designation to conduct the following, as applicable:

(i) Proficiency tests, or

(ii) Line checks.

(2) For flight engineer APDs, after completing the requirements of paragraphs (a) and (b) of this section, the flight engineer APD may be issued an FAA letter of authorization and a certificate of designation to conduct proficiency tests.

(3) APDs may conduct only those activities listed on the FAA letter of authorization.

(d) Recent experience:

(1) APDs must maintain recency as a pilot or flight engineer as required by § 121.1229 or § 121.1231, as applicable. APDs who use the authorizations of § 121.1229(c) or § 121.1231(c), as applicable, to maintain this recency requirement, must also, within 90 days before performing the duties of an APD, satisfy the following requirements:

(i) The pilot APD must have made at least five takeoffs and landings in an FFS qualified in accordance with part 60 of this chapter and approved for performing takeoffs and landings.

(ii) The flight engineer APD must have served as a flight engineer on five takeoffs in an FFS qualified in accordance with part 60 of this chapter and approved for performing takeoffs and landings.

(2) After a person has been an APD for 12 months, within the 12 months preceding performing the duties of a pilot or flight engineer APD, the APD must:

(i) Have attended all standardization meetings (required by § 121.1355(a)(2)) for each aircraft type in which the person is authorized to conduct APD duties; and

(ii) If the APD has met the requirements of paragraph (d)(1) of this section by completing § 121.1229(c) or § 121.1231(c), complete a Principal Operations Inspector approved line-observation program by observing the certificate holder's line operations from the observer seat.

Flight Instructor Qualification

§ 121.1281 Flight instructor: Qualification and training.

No certificate holder may use any person, nor may any person serve, as a flight instructor in a training program established under this subpart, with respect to the aircraft type involved, unless the person meets the requirements of § 121.1251 and has satisfied the requirements of this section.

(a) Training:

(1) For a pilot flight instructor, the following:

(i) The FAA-approved training program for the certificate holder in the appropriate category of academic and job performance training for pilots, as required by § 121.1365; and, when applicable, the recurring academic and job performance training for pilots, as required by § 121.1367.

(ii) The part 119 certificate holder's approved academic training for pilot flight instructors, as required by § 121.1377, and the part 119 certificate holder's job performance training for pilot flight instructors, as required by § 121.1379.

(iii) The seat-dependent task training from both seats, in accordance with the QPS.

(2) For a flight engineer flight instructor, the following:

(i) The FAA-approved training program for the certificate holder in the appropriate category of academic and job performance training for flight engineers, as required by § 121.1365; and, when applicable, the recurring academic and job performance training for flight engineers, as required by § 121.1367.

(ii) The part 119 certificate holder's approved academic training for flight engineer flight instructors, as required by § 121.1377, and the part 119 certificate holder's job performance training for flight engineer flight instructors, as required by § 121.1379.

(b) Evaluation:

(1) For pilot flight instructors, the following observation checks:

(i) To be authorized to conduct flight training:

(A) The flight instructor must be observed conducting flight training in an FFS by a check pilot; and

(B) The pilot undergoing the flight training for this observation must be signed off by the check pilot as the instructor of record.

(ii) To be authorized to conduct proficiency reviews:

(A) The flight instructor must be observed conducting a proficiency review by a check pilot; and

(B) The pilot undergoing the proficiency review for this observation must be signed off by the check pilot as the evaluator of record.

(2) For flight engineer flight instructors, to be authorized to conduct flight training:

(i) The flight instructor must be observed conducting flight training in an FFS by a check flight engineer; and

(ii) The flight engineer undergoing the flight training for this observation must

be signed off by the check flight engineer as the instructor of record.

(c) Acceptance and approval:

(1) Acceptance of flight instructors: The certificate holder must submit a list of all flight instructors and authorized activities to the Principal Operations Inspector. The flight instructors must be acceptable to the FAA.

(2) Approval of flight instructors to conduct proficiency reviews: The flight instructor must receive a letter of authorization from the Principal Operations Inspector to conduct proficiency reviews.

(d) Recent experience:

(1) Flight instructors must maintain recency as a pilot or flight engineer as required by § 121.1229 or § 121.1231, as applicable. Flight instructors who use the authorizations of § 121.1229(c) or § 121.1231(c), as applicable, to maintain this recency requirement, must also, within 90 days before performing the duties of a flight instructor, satisfy the following requirements:

(i) The pilot flight instructor must have made at least five takeoffs and landings and the maneuvers and procedures prescribed in the QPS in an FFS qualified in accordance with part 60 of this chapter and approved for performing takeoffs and landings.

(ii) The flight engineer flight instructor must have served as a flight engineer on five takeoffs in an FFS qualified in accordance with part 60 of this chapter and approved for performing takeoffs and landings.

(2) After a person has been a flight instructor for 12 months:

(i) The person may not serve as a flight instructor unless in the preceding 12 months the person has completed at least eight instructor activities for the certificate holder. The minimum of eight instructor activities must include at least one period of job performance training, one LOFT, and, if authorized, one proficiency review. If the person fails to conduct at least eight activities within the previous 12-month period, that person may not serve as a flight instructor until:

(A) The person is observed conducting job performance training or LOFT by a check pilot or check flight engineer. This observation will allow the person to conduct job performance training or LOFT.

(B) The person is observed conducting a proficiency review by a check pilot or check flight engineer. This observation will allow the person to conduct job performance training, LOFT, or proficiency reviews.

(C) During the observation required by paragraph (d)(2)(i)(A) or (d)(2)(i)(B) of this section, the check pilot or check flight engineer must be the instructor or evaluator of record.

(ii) If the person conducts at least eight activities within the previous 12-month period, but one or more of the authorized activities was not conducted within that period:

(A) Before conducting the job performance training, LOFT, or proficiency reviews, the person must be observed by a check pilot or check engineer, as described in paragraph (d)(2)(i) of this section, as appropriate; or

(B) The certificate holder must revise the list of authorized activities described in paragraph (c)(1) of this section to eliminate the activities that were not conducted. If the person fails to conduct a proficiency review, the certificate holder must advise the Principal Operations Inspector and the letter of authorization will be rescinded.

(iii) Within the 12 months preceding performing the duties of a pilot or flight engineer flight instructor, the flight instructor must have attended all standardization meetings (required by § 121.1355(a)(2)) for each aircraft type and for each certificate holder for which the person is authorized to conduct flight instructor duties.

(e) If the flight instructor is authorized to conduct proficiency reviews, the flight instructor must, within the preceding 24 months, conduct a proficiency review under the observation of a check pilot or check flight engineer approved by the Principal Operations Inspector to conduct the observation. The proficiency review must be accomplished in an FFS qualified under part 60 of this chapter as prescribed in the applicable QPS.

Flight Attendant Instructor Qualification

§ 121.1291 Flight attendant instructor: Qualification and training.

(a) Except as provided in paragraph (b) of this section, no certificate holder may use any person, nor may any person serve, as a flight attendant instructor in a training program established under this subpart unless that person meets the following requirements:

(1) Within the past 12 months, completed basic qualification or recurrent flight attendant training for the certificate holder, except those performance drills that the person cannot physically perform. A person may provide instruction only in those performance drills that the person can perform at the time of instruction and that the person has completed within the past 12 months as part of the person's basic qualification or recurrent flight attendant training for the certificate holder.

(2) Within the past 12 months completed initial or recurrent flight attendant instructor training as follows:

(i) Training policies and procedures.

(ii) Instructor duties, functions and responsibilities.

(iii) The applicable regulations of this chapter and the certificate holder's policies and procedures.

(iv) Appropriate methods, procedures and techniques for conducting academic training to include performance drills.

(v) Evaluation of student performance.

(vi) Appropriate action in the case of unsatisfactory performance.

(vii) The approved methods, procedures and limitations for instructing and evaluating in the required normal, abnormal and emergency procedures applicable to the aircraft.

(viii) Curriculum review.

(b) A person who is a subject matter expert with specific technical knowledge on a subject may be used to conduct flight attendant training in accordance with the Flight Attendant QPS.

Flight Attendant

§ 121.1301 Flight attendant: Training and evaluation.

No certificate holder may use any person, nor may any person serve, as a required flight attendant in operations under this part unless that person has completed the required curriculum for that aircraft type and crewmember duty position.

(a) A curriculum consists of the programmed hours, including training and evaluation, as specified in § 121.1335 and in the flight attendant QPS, and the following training categories.

(1) New hire training as prescribed in § 121.1363.

(2) Initial training as prescribed in § 121.1369.

(3) Emergency training as prescribed in § 121.1373.

(4) Differences training as prescribed in § 121.1391.

(5) Transition training as prescribed in § 121.1369 for flight attendants eligible under § 121.1371.

(6) Recurrent training as prescribed in § 121.1375, according to the schedule prescribed in § 121.1303.

(7) Requalification training, if necessary, as prescribed in § 121.1309.

(8) Special training, if necessary, as prescribed in § 121.1337.

(b) *Continuity of training.* Within 120 days of beginning first time qualification

for the certificate holder, a person must have completed in the following order:

(1) New hire training as prescribed in § 121.1363.

(2) Initial training as prescribed in § 121.1369.

(3) Emergency training as prescribed in § 121.1373.

(c) *Failure to complete training within 120 days.* If a person fails to complete the required curriculum within the 120 days, as required by paragraph (b) of this section, the person must repeat the required training categories. No credit is given for any of the training previously completed if the entire curriculum is not completed within 120 days.

§ 121.1303 Flight attendant: Continuing qualification.

No certificate holder may use any person, nor may any person serve, as a flight attendant unless the person has completed the training required by paragraph (a), (b), or (c) of this section within the previous 12 months:

(a) New hire training, initial training, transition training, emergency training, and differences training, as applicable, as described in § 121.1301(a)(1) through (5).

(b) Recurrent training as required by § 121.1375.

(1) A flight attendant must complete recurrent academic and job performance training modules by the end of the eligibility period. The eligibility period consists of the base month, the month before the base month and the month after the base month.

(2) A flight attendant who has not completed recurrent training by the end of the base month may continue to serve until the end of the eligibility period.

(c) Requalification training as prescribed in § 121.1309.

§ 121.1305 Flight attendant: Aircraft operating experience.

No certificate holder may use any person, nor may any person serve, as a flight attendant, unless that person has completed, for the certificate holder, the aircraft operating experience required by this section and the Flight Attendant QPS.

(a) A person must complete aircraft operating experience for the aircraft type on which the person is to serve as a flight attendant within 90 days of completing initial training on that aircraft type.

(b) A person receiving aircraft operating experience may not serve as a required crewmember on that aircraft type.

(c) Aircraft operating experience must be completed in passenger carrying operations under this part or in proving flights conducted under part 91 of this chapter.

(d) A person may not begin aircraft operating experience for a specific aircraft type until the person has completed initial training for the aircraft type.

(e) A check flight attendant qualified under this part must supervise aircraft operating experience. In addition the following requirements apply:

(1) A check flight attendant may not supervise more than four persons receiving aircraft operating experience on any one operating cycle.

(2) Not more than two check flight attendants may supervise aircraft operating experience on any one operating cycle.

(3) The number of persons receiving aircraft operating experience on a particular aircraft may not exceed twice the number of flight attendants required by § 121.391 for that aircraft.

(f) A person receiving aircraft operating experience must perform the duties of a flight attendant on at least two operating cycles in the aircraft type with a check flight attendant on board.

(g) A person receiving aircraft operating experience must perform the assigned duties of a flight attendant for a combined total of at least 5 hours of aircraft operating experience.

(h) Flight attendants completing transition training are not subject to the aircraft operating experience requirements of this section.

§ 121.1307 Flight attendant: Recent experience.

(a) After a flight attendant has served for the first time in operations under this part for the certificate holder, no certificate holder may use that flight attendant, nor may any flight attendant continue to serve as a flight attendant, unless within the preceding 6 months the person has served as a flight attendant for at least one operating cycle for the certificate holder.

(b) If a person has not met the recent experience requirements of paragraph (a) of this section, the person must reestablish recent experience as follows:

(1) If it has been more than 6 months, but less than 36 months, since the person served as a flight attendant for at least one operating cycle for the certificate holder, the person must participate in a ground-based briefing on all policies, procedures, and security requirements pertinent to flight attendants that have been updated, modified, or implemented since the last time the person served as a flight attendant for the certificate holder. The briefing must be conducted by a knowledgeable person employed by the certificate holder.

(2) If it has been 36 months or more since the person served as a flight attendant for at least one operating cycle for the certificate holder, the person must do the following:

(i) Meet the briefing requirements of paragraph (b)(1) of this section.

(ii) Serve as a flight attendant for one operating cycle on any aircraft type for that certificate holder, but not as a required crewmember.

§ 121.1309 Flight attendant: Requalification.

No certificate holder may use any person, nor may any person serve, as a flight attendant if that person has become unqualified by failing to meet the recurrent training requirements of § 121.1303(b). The requalification requirements for each phase must be completed before the end of the applicable phase of requalification. To be requalified the person must repeat the training required by § 121.1301(a)(1), (a)(3), (a)(4), and (a)(5), or satisfy one of the following requirements:

(a) *Phase I Requalification program.* If less than 12 months have elapsed since the end of the person's base month for recurrent training, the person may be requalified by completing either of the following:

(1) If the part 119 certificate holder is presently conducting the recurrent flight attendant training cycle that the person missed, the person must complete that training. The base month for recurrent training does not change.

(2) If the part 119 certificate holder is not presently conducting the recurrent flight attendant training cycle that the person missed, the person must complete the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this section, and if applicable paragraph (a)(2)(iii) of this section. The base month for recurrent training may be changed.

(i) The current recurrent flight attendant training cycle.

(ii) All missed training, including all study materials and evaluations from the previous recurrent flight attendant training cycle, which is still applicable but is not included in the current recurrent flight attendant training cycle.

(iii) Flight attendants qualified in extended overwater operations must participate in a cabin preparation and evacuation drill (water), if not part of the current recurrent flight attendant training cycle.

(b) *Phase II Requalification program.* If 12 months or more, but less than 24 months, have elapsed since the end of the person's base month for recurrent

training, the person may be requalified by completing the requirements of this paragraph. The base month may be changed.

(1) The current recurrent flight attendant training cycle.

(2) All missed training, including all study materials and evaluations from the previous recurrent flight attendant training cycle(s), which is still applicable but is not included in the current recurrent flight attendant training cycle.

(3) Flight attendants qualified in extended overwater operations must participate in a cabin preparation and evacuation drill (water), if not part of the current recurrent flight attendant training cycle.

(4) Attend a ground-based briefing to review all new policies, procedures, and security requirements, applicable to flight attendant duties that have been implemented since the last time the flight attendant completed recurrent training. The briefing must be conducted by a knowledgeable person employed by the certificate holder. The briefing must include all policies, procedures, and security requirements applicable to flight attendants that have been updated, modified, or implemented since the person last served as a flight attendant for that certificate holder.

(c) *Phase III Requalification program.* If 24 months or more have elapsed since the end of the person's base month for recurrent training, the person may be requalified by completing the requirements of this paragraph. The flight attendant's recurrent base month may be changed to correspond to the month in which the Phase III requirements were completed.

(1) New hire training, transition training, emergency training, and differences training, as applicable, as described in § 121.1301.

(2) The flight attendant must receive 5 hours of aircraft operating experience and two operating cycles on at least one aircraft type in accordance with the Phase III Requalification requirements in the Flight Attendant QPS.

(3) The Administrator determines the number of programmed hours required for each training category, but in no case will the programmed hours be less than the minimum hours required in the Flight Attendant QPS.

Check Flight Attendant Qualification

§ 121.1321 Check flight attendant: Eligibility, approval, qualification, and continuing qualification.

(a) *Eligibility for Training.* To be eligible for training as a check flight attendant for an aircraft type, a person must meet the following requirements:

(1) Have served as a flight attendant for at least the previous 12 months for the part 119 certificate holder.

(2) Be current and qualified to serve as a flight attendant on that aircraft type for the part 119 certificate holder.

(b) *Approval by the Administrator.* A check flight attendant must be approved by the Administrator for the specific duties to be performed on the aircraft type. To be approved as a check flight attendant, the flight attendant must meet the following requirements:

(1) Continue to meet the requirements of paragraph (a) of this section.

(2) Complete the check flight attendant training requirements in accordance with § 121.1381.

(c) *Initial qualification.* No certificate holder may use any person, nor may any person serve, as a check flight attendant for the first time on the aircraft type, unless the person meets the following requirements for the part 119 certificate holder:

(1) Meets the requirements of paragraphs (a) and (b) of this section.

(2) Supervises operating experience for at least one operating cycle on the aircraft type under the observation of a check flight attendant or an FAA inspector. The person undergoing operating experience must be signed off by the check flight attendant or the FAA inspector conducting the observation.

(3) Meets the recent experience requirements of § 121.1307(a) to serve as a flight attendant.

(d) *Continuing qualification.* No certificate holder may use a check flight attendant, nor may any check flight attendant serve as a check flight attendant, unless the check flight attendant meets the following requirements for the part 119 certificate holder:

(1) Maintains approval by the Administrator to perform specific duties of a check flight attendant, as specified in paragraph (b) of this section.

(2) Meets the recent experience requirements of § 121.1307(a) to serve as a flight attendant.

(3) Within the preceding 12 months, has completed recurrent check flight attendant training in accordance with § 121.1381(c)(1) and (c)(3).

(4) Within the preceding 12 months, has completed at least one operating cycle as a flight attendant or check flight attendant on that aircraft type.

(5) Within the preceding 12 months, supervised aircraft operating experience for at least one operating cycle.

(e) *Reestablishing recent experience.* If the requirements of paragraphs (d)(4) or (d)(5) of this section are not met, the person may not serve as a check flight attendant until the person is observed supervising aircraft operating experience in the aircraft type for at least one cycle by another check flight attendant or an FAA inspector.

§ 121.1323 Check flight attendant: Initial cadre.

(a) A certificate holder may use a person as a check flight attendant even though the person does not meet the experience or recency requirements of the subpart, if the person meets the initial cadre requirements of this section. The FAA will determine the period of initial cadre status and may terminate initial cadre status entirely or for an individual check flight attendant, if necessary. In no case will initial cadre status exceed a period of 24 months.

(b) To be an initial cadre check flight attendant for a part 119 certificate holder, and to continue to serve in that capacity for the authorized period, a person must meet all of the following requirements:

(1) Be employed by the part 119 certificate holder.

(2) Have served at least 3 years in the past 6 years as a flight attendant on an aircraft of the same group in which the person is to perform duties as an initial cadre check flight attendant.

(3) Have completed the training as specified in § 121.1301(a)(1) through (6), as appropriate.

(4) Be approved by the FAA for the specific duties to be performed.

(c) To be an initial cadre check flight attendant for a part 119 certificate holder, a person must:

(1) Meet all of the requirements of paragraph (b) of this section; and

(2) Perform the duties of a check flight attendant for the new part 119 certificate holder or a certificate holder transitioning to a new aircraft type under the observation of an FAA inspector. This observation check can be conducted during operations under this part or during proving flights conducted under part 91 of this chapter. When an observed activity must be made part of a training record, the people undergoing the observed activities must be signed off by the FAA inspector as the evaluator of record.

(d) If the certificate holder wants FAA approval for a person to be an initial cadre check flight attendant but that person has not met the requirements of § 121.1305, he or she can satisfy those requirements by meeting the following:

(1) Being observed by the FAA while supervising other flight attendants, while supervising other check flight attendants, or while performing the duties of a flight attendant; and

(2) During operations conducted under this part or during proving flights conducted under part 91 of this chapter.

(e) Only employees of a part 142 certificate holder, part 119 certificate holder, or the aircraft manufacturer may administer the training and evaluation activities for initial cadre check flight attendants, in accordance with the Flight Attendant QPS and as approved by the FAA. In addition, current and qualified check flight attendants for the part 119 certificate holder that is adding a new aircraft type do not need to meet the observation requirements of paragraph (c)(2) of this section for the new aircraft type.

General Training Program Requirements

§ 121.1331 Training program: General.

(a) Each certificate holder must establish and maintain a current training program for each aircraft type used. Each curriculum in a training program must be kept current with respect to any changes in the requirements of this chapter or the certificate holder's policies and operation. Each certificate holder must obtain initial and final approval of its training program, as specified in § 121.1337.

(b) The training program must contain all of the following:

(1) The requirements of this subpart.

(2) The requirements of the crewmember QPS, as applicable.

(3) The operating procedures for each required task in the crewmember's QPS. These operating procedures are contained in the information, duties, and responsibilities of crewmembers that are contained in the manual required by § 121.133.

(4) For flight crewmembers, the procedures, limitations, and performance information from the Flight Crew Operating Manual required by §§ 121.133 and 121.135.

(c) Each certificate holder is responsible for ensuring that its crewmembers are adequately trained and crewmember training and evaluation is conducted in accordance with the certificate holder's approved training program.

(d) Persons other than employees of the certificate holder may be trained by the certificate holder for the purpose of instructing in the certificate holder's training program, conducting evaluations in the certificate holder's training program, or conducting evaluations of the certificate holder's training program.

(e) A certificate holder's training program must provide the following, as applicable:

(1) Curricula, categories of training, segments of training, modules, and lessons applicable for use for the specific certificate holder as required by this subpart and approved by the Administrator.

(2) A sufficient number of academic and job performance instructors, trained and qualified in accordance with this subpart, to provide the approved training and evaluation.

(3) A sufficient number of check pilots, check flight engineers and check flight attendants, trained and qualified in accordance with this subpart, to complete the training and evaluations required by this subpart.

(4) Flight simulation training devices required by this subpart, qualified under part 60 of this chapter, and approved for use by the Principal Operations Inspector responsible for approving the certificate holder's training program. Flight simulation training devices must be available in sufficient quantity to conduct the training program as approved.

(5) Training equipment other than flight simulation training devices in accordance with § 121.1351. This training equipment must be available in sufficient quantity to conduct the training program as approved.

(6) Adequate academic and job performance training facilities.

(7) Current training materials, examinations, forms, instructions, and procedures for use in conducting the training and evaluation required by this part with respect to each aircraft type, and if applicable, the particular variations within that aircraft type.

(f) No certificate holder may use a person as a crewmember, unless the person responsible for instructing or evaluating an academic training subject or job performance training task or environment, has certified in writing or electronically that the crewmember is knowledgeable and proficient in the specific subject, task, or environment.

(1) The documentation required by this paragraph must be made a part of the crewmember's record required by subpart V of this part.

(i) For flight attendants, the record must show if the individual satisfactorily or unsatisfactorily completed each of the training categories in § 121.1301, as appropriate.

(ii) For flight crewmembers, the record must show if the individual satisfactorily or unsatisfactorily completed each of the training categories in § 121.1221, as appropriate. In addition, the record must show if the individual satisfactorily or unsatisfactorily completed each of the proficiency tests, proficiency checks, or proficiency reviews required by this part. Records of unsatisfactory results must include the specific items for which performance was unsatisfactory.

(2) When the record of certification required by this paragraph is made by an entry in a computerized recordkeeping system, the identity of the certifying instructor, check pilot, check flight engineer, or check flight attendant must be recorded, and the record of the certification must be completed by a means approved by the Administrator.

§ 121.1333 Training program: General curriculum by aircraft type.

(a) Each certificate holder must establish and maintain a current written training program curriculum for each aircraft type operated by that certificate holder under this part. Curricula must be available for each crewmember position required for that aircraft type. Each curriculum must include categories of training with segments containing the appropriate subjects, tasks, and environments required by this subpart and the appropriate QPS. The curriculum will be provided for approval in accordance with paragraphs (c)(1) through (c)(7) of this section.

(b) Each training program curriculum must provide training and evaluation as necessary to ensure that each crewmember:

(1) Remains trained and proficient with respect to each aircraft type, crewmember position, and type of operation in which the crewmember serves.

(2) Remains trained and proficient in the duties and responsibilities for the aircraft type that are contained in the manual required by § 121.133 as outlined in § 121.135.

(3) For each flight crewmember, remains trained and knowledgeable in the current operating limitations, procedures, loading, and performance sections of the current Flight Crew Operating Manual or any FAA approved alternative.

(4) Qualifies in new equipment, facilities, procedures, and techniques, including modifications to aircraft. Pilots must also qualify in designated special airports and navigation routes and areas as required by § 121.1235.

(5) Understands the nature and effects of safety hazards, and for flight crewmembers, periodic weather extremes and their effect on operations.

(6) Knows and is able to apply, through all phases of flight, crew resource management skills identified in the QPS.

(c) Each training program curriculum must include all of the following:

(1) A list of academic training and evaluation modules including the subjects that are provided.

(2) A list of all job performance training and evaluation modules including the tasks and environments. The list must include the level(s) of FSTD in which each job performance task must be performed and in which each environment may be encountered, unless the certificate holder has been granted a deviation from the FSTD requirements of this subpart in accordance with § 121.1345.

(3) Detailed descriptions or pictorial displays of the approved standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures that will be performed during job performance training and evaluation. For a certificate holder that has been granted a deviation under § 121.1345, detailed descriptions or pictorial displays of the approved normal, abnormal, and emergency maneuvers, procedures, and functions that will be performed during each job performance training module or during each proficiency test, check, or review, indicating those maneuvers, procedures and functions that are to be performed during job performance training and during each proficiency test, check, or review.

(4) An outline of the curriculum that includes academic and job performance training and evaluation modules by subject, task, and environment, as applicable.

(5) Differences that relate to the variations of a particular aircraft type to be included in all academic and job performance training segments for purposes of training and evaluation.

(6) A list of all the FSTD, and other training and evaluation equipment that the certificate holder will use, including approval for particular tasks or functions.

(7) The approved programmed hours for each training segment.

(8) A copy of each statement issued by the Administrator under § 121.1335(c) for reduction of baseline programmed hours.

§ 121.1335 Training program: Category of training programmed hours.

(a) Each certificate holder's training program submitted for initial approval under this subpart must have at least the programmed baseline hours of training as specified in the applicable crewmember QPS. Training programmed hours include training and evaluation.

(1) Academic training hours must be in a classroom provided by the certificate holder unless otherwise approved by the Administrator. Proposals for a training environment other than a classroom provided by the certificate holder must be accompanied by a plan for assessing the knowledge and cognitive skill requirements to be supported by the proposed alternative environment, and for providing the testing of each student to ensure the knowledge and skill requirements are met.

(2) Programmed hours for flight crewmember job performance training are for FSTD lessons for a specific duty position.

(3) Programmed hours for flight attendant job performance training must be completed in an environment that complies with the requirements of the Flight Attendant QPS.

(b) The certificate holder must have programmed hours approved by the Principal Operations Inspector. A certificate holder may apply for a reduction of training programmed hours based on the factors outlined in § 121.1337(f). The Administrator will not approve a reduction of programmed hours below the minimum hours set forth in the applicable crewmember QPS.

(c) If approval of a reduction in training programmed hours is granted, the Administrator provides the certificate holder with a statement of the basis for the approval.

(d) The Administrator may grant a deviation to certificate holders described in § 135.3 (b) and (c) of this chapter to allow reduced programmed hours of academic training if the Administrator determines that a reduction is warranted based on the certificate holder's operations and the complexity of the make, model, and series of the aircraft used.

(e) The certificate holder must have the required programmed hours approved by the Principal Operations Inspector for initial, transition, and recurrent academic training for flight instructors, check pilots, check flight engineers, check flight attendants, flight attendant instructors, and persons authorized to conduct flight attendant proficiency checks.

§ 121.1337 Training program: Approval and amendment process.

(a) Each training program described in this subpart must be approved by the Administrator. To obtain initial or final approval of a training program, or to request a revision to an approved training program, each certificate holder must provide the Administrator the following information in a form acceptable to the Administrator:

(1) An outline of the proposed program or revision, including an outline of the proposed or revised curriculum required in § 121.1333, that provides all of the information needed for a preliminary evaluation of the proposed training program or revised training program.

(2) Curricula, categories of training, and segments of training applicable for use by the certificate holder as required by this subpart.

(3) The number of academic and job performance instructors trained and qualified in accordance with this subpart to provide the approved training and evaluation.

(4) The number of check pilots, check flight engineers, and check flight attendants, trained and qualified in accordance with this subpart to conduct the required evaluations.

(5) A list of the FSTD that are to be used in the training program.

(6) A list of training equipment, other than FSTD, that is to be used in the training program.

(7) A description of the academic and job performance training facilities.

(8) A synopsis of the materials, examinations, forms, instructions, and procedures to be used for the training and evaluation required by this subpart with respect to each aircraft type, and if applicable, the particular variations within that aircraft type.

(9) A statement as to whether training will be provided by persons other than the part 119 certificate holder's employees in accordance with § 121.1339.

(10) A copy of the Flight Crew Operating Manual and Flight Attendant Operating Manual for each aircraft type to be included in the training program. The Flight Crew Operating Manual and Flight Attendant Operating Manual must be current at the time of submission. Amendments must be made as required.

(11) A copy of the current manual required by § 121.133 as outlined in § 121.135.

(12) Additional relevant information requested by the Administrator.

(b) If the proposed training program or proposed revision complies with this subpart, the Administrator grants initial approval in writing, after which the certificate holder may conduct the training and evaluation in accordance with that program. The Administrator then evaluates the effectiveness of the initially approved training program and advises the certificate holder of any deficiencies that must be corrected.

(c) A revision to an approved training program may be proposed as a special training category that reflects changes to

the certificate holder's operation, or as a differences training category that reflects differences in configuration within an aircraft type.

(1) The proposed special training category will include modules of training and evaluation for training segments within existing training categories. These modules will be initially approved and evaluated. Upon satisfactory evaluation, the special training category modules will receive final approval and be integrated into the training segments of the existing training categories. Once integrated, it will no longer be called a special training category, but will be part of the approved training program. The Principal Operations Inspector will determine the number of programmed hours.

(2) The proposed differences training category will include modules of training and evaluation for applicable segments of training. These modules will be initially approved, evaluated and upon satisfactory evaluation, added to the previously approved differences training. The Principal Operations Inspector will determine the number of programmed hours.

(d) The Administrator grants final approval of a training program if the certificate holder shows that the training and evaluation conducted under the initial approval obtained under paragraph (b) of this section ensures that each person who completes the training and evaluation is adequately trained to perform his or her assigned duties.

(e) The Administrator may require revisions to an approved training program anytime the FAA finds that revisions are necessary in the interest of safety or security. If the FAA finds that revisions are necessary for the continued adequacy of a training program that has been granted initial or final approval, the certificate holder must, after notification by the FAA, make all changes in the program that the FAA finds necessary.

(1) Within 30 days after the certificate holder receives a notice to revise the program, it may file a petition with the Director of Flight Standards to reconsider the notice. The filing of a petition to reconsider stays the notice pending a decision by the Director of Flight Standards.

(2) If the FAA finds that there is an emergency that requires immediate action in the interest of safety or security, the FAA may, upon a statement of the reasons, require a change effective without stay.

(f) The Administrator considers the following factors in approving revisions or requiring revisions to a training program:

(1) The pass and fail rate in the curriculum under consideration.

(2) The quality and effectiveness of the teaching-learning process (e.g., quality of instructors, training equipment, methods, and procedures listed in the certificate holder's curriculum required by § 121.1333).

(3) The experience levels of the student population.

(4) The experience levels of the instructors and check persons.

(5) The type and scope of operations conducted by the certificate holder.

(6) The complexity of make, model, and series of aircraft used.

§ 121.1339 Training program: Special rules.

A certificate holder may contract with, or otherwise arrange to use the services of, another certificate holder certificated under part 119 of this chapter or a training center certificated under part 142 of this chapter as allowed by this subpart if all of the following conditions are satisfied:

(a) The curriculum, categories of training, segments, modules, lessons, programmed hours, manuals, and checklists are approved by the Administrator of the certificate holder seeking training services in accordance with this subpart.

(b) The facilities, personnel, FSTD, other training equipment, and courseware meet the applicable requirements of this subpart.

(c) The instructors and check persons selected by the certificate holder must meet the following criteria:

(1) Qualified under this subpart.

(2) Approved by the Administrator for specific training and evaluation duties.

§ 121.1341 Training program: Administering training, evaluation, and operating experience.

(a) No certificate holder may use a person to administer, nor may any person administer, training, evaluation, or operating experience, except:

(1) In accordance with this section; or

(2) If applicable, as provided in the initial cadre requirements of §§ 121.1257 and 121.1323.

(b) Persons who administer academic or job performance training must be knowledgeable in the facilities, equipment, and procedures.

(c) Persons who administer academic training, job performance training, or evaluation must use only the equipment and the facilities that are specifically approved for the certificate holder's training program.

(d) Training and evaluation for crewmembers must be administered as follows:

(1) In accordance with this subpart, including the appropriate QPS.

(2) In accordance with the approved training program.

(e) Operating experience for crewmembers and observation of check pilots, check flight engineers, check flight attendants, and aircrew program designees must be administered as follows:

(1) In accordance with this subpart, including the appropriate QPS.

(2) In accordance with the approved training program.

(f) Training and evaluation activities must be administered by the persons listed in the appropriate QPS.

(g) For flight crewmembers, the certificate holder must maintain a record of failures of proficiency tests, proficiency checks, and proficiency reviews. This record must be maintained for a period of 2 years.

(h) Credit will not be given for any training, evaluation, observation, or supervision activities when the certificate holder—

(1) Uses facilities, equipment, and materials that are not specifically approved for that activity as part of the certificate holder's approved training program; or

(2) Uses persons to administer the activity who are not authorized in accordance with the applicable crewmember QPS or who do not meet the requirements of this subpart.

(i) A person will not be given credit for completing a proficiency test or proficiency check if the person did not complete all required portions of the training curriculum before taking the proficiency test or proficiency check.

§ 121.1343 Training program: Knowledge and comprehension assessment.

(a) The certificate holder must develop a knowledge and comprehension assessment program that is approved by the Administrator as part of the approved training program. The knowledge and comprehension assessment program must include development and maintenance of the examination, methods to establish the validity of the examination, required student remediation, and adjustment of instruction when required.

(b) The QPS provides job tasks and related areas of required instruction. Each area of instruction is provided with subjects that must be trained and evaluated. A knowledge and comprehension assessment examination must include the minimum number of questions indicated in the QPS for each

subject. Students must achieve a performance of 100% in each area of instruction. Student performance of at least 80% in an area of instruction must be corrected to 100%, but the student is not required to undergo retraining and reevaluation. Student performance below 80% in an area of instruction must be corrected to 100% after the student is retrained and reevaluated in each area of instruction where the student missed one or more questions.

(c) An examination question repository must be developed to include a minimum number of questions for each subject, as required by the QPS.

(d) The certificate holder must use the repository to create tests that allow random selection of questions from which alternative examinations will be created.

(e) The certificate holder must ensure that each student receives a different test each time the student is tested on an area of instruction.

§ 121.1345 Training program: Mandatory use of flight simulation training devices.

(a) All flight training and evaluation must be completed in FSTD approved by the Administrator in accordance with the applicable Pilot or Flight Engineer QPS. No credit will be given in the QPS for training and evaluation conducted in an aircraft.

(b) A certificate holder may request a deviation from paragraph (a) of this section to conduct training and evaluation activities in an aircraft only if one of the following applies:

(1) The certificate holder has an approved program or has submitted a training program for review and approval prior to [date 120 days after publication of final rule]. The certificate holder must request the deviation no later than [date 40 months after the publication date of the final rule].

(2) The certificate holder requests the deviation as part of a request for approval of an initial cadre program. If approved, the deviation will become effective at the same time as the initial cadre program.

(c) Deviation requests must be submitted to the FAA for review and approval, and must include:

(1) The number of FSTD training hours the certificate holder's flight crewmembers would need to meet the training requirements in this part.

(2) An FSTD availability assessment, including hours by specific FSTD and location of the FSTD.

(3) An FSTD shortfall analysis that includes the tasks and environments that cannot be completed in an FSTD qualified at the level specified in the applicable QPS.

(4) Proposed alternative means to address the shortfall in task and environment training and evaluation. The requester must identify the tasks and environments the requester believes:

(i) Can be completed in an FSTD qualified at a lower level than that specified in the applicable QPS.

(ii) Can be completed in the aircraft.

(5) An alternative training program for using the airplane instead of an FSTD or using an airplane in combination with an FSTD, including methods of achieving an acceptable level of safety.

(d) A certificate holder may request an extension of a deviation issued under this section.

(e) Deviations or extensions to deviations will be issued for a period not to exceed 12 months.

§ 121.1347 Training program: Qualification and approval of flight simulation training devices.

(a) Each aircraft flight simulation training device used in an approved training program required under this part must be evaluated, qualified, and maintained in accordance with part 60 of this chapter and approved by the Administrator for training or evaluating tasks required by the applicable QPS.

(b) The qualification level of the FSTD required to be used by an applicant to demonstrate flight crewmember task proficiency is specified in the applicable QPS.

(c) The level of FSTD that may be used for initial training and evaluation is dependent on the pilot's experience requirements as specified in the Pilot QPS.

§ 121.1349 Training program: Limitations on the use of flight simulation training devices.

(a) An FSTD may not be used for credit for the following:

(1) The pilot-in-command line check required by § 121.1233.

(2) Exterior preflight checks.

(3) The pilot and flight engineer operating experience required by § 121.1225.

(4) Consolidation required by § 121.1227.

(b) To receive credit for training and evaluation of required tasks and LOFT, the flight crewmember must complete these activities in FSTD that are approved for those tasks and LOFT as part of the certificate holder's training program.

§ 121.1351 Training program: Training equipment other than flight simulation training devices.

Training equipment, other than FSTD qualified under part 60 of this chapter, used in an approved training program required under this part must be approved and used in accordance with the following:

(a) The FAA must approve training equipment used to functionally replicate aircraft equipment or furnishings for the certificate holder and the crewmember duty or procedure involved.

(b) The certificate holder must demonstrate that the training equipment meets all of the following:

(1) The form, fit, function, and weight, as appropriate, of the equipment as installed in the aircraft, including all equipment and furnishings that may affect the operation of that equipment.

(2) Normal operation (and abnormal and emergency operation, if appropriate) including the following:

(i) The required force and travel of the equipment.

(ii) Variations in equipment operated by the certificate holder, if applicable.

(3) Operation of the equipment under adverse conditions, if appropriate.

(c) Training equipment must be modified to ensure that it maintains the performance and function of the aircraft type or aircraft equipment replicated.

(d) All training equipment must have a discrepancy log in close proximity. The discrepancy log must be readily available for review by each instructor or check person prior to conducting training or evaluation with that equipment.

(1) Each instructor or check person conducting training or evaluation, and each person conducting an inspection of the equipment who discovers a discrepancy, including any missing, malfunctioning, or inoperative components, must write or cause to be written a description of that discrepancy into the discrepancy log at the end of the inspection or the training session.

(2) All corrections to discrepancies must be recorded when the corrections are made, and the dates of the discrepancies and corrections must be recorded.

(3) A discrepancy log must be maintained for at least 60 days.

(e) No person may use, allow the use of, or offer the use of training equipment with a missing, malfunctioning, or inoperative component to meet the crewmember training or evaluation requirements of this chapter for tasks that require the use of the correctly operating component.

§ 121.1353 Training program: Line Oriented Flight Training (LOFT) and Flight Simulation Training Device (FSTD) Course of Instruction.

(a) *Line Oriented Flight Training (LOFT).* Qualification and recurrent

LOFT must meet the following requirements:

(1) The LOFT must be administered by a pilot flight instructor or a check pilot qualified in accordance with this subpart. A flight engineer flight instructor or a check flight engineer may assist the pilot flight instructor or check pilot.

(2) LOFT must be accomplished in an FFS that is qualified in accordance with part 60 of this chapter and that has the qualification level specified in the applicable QPS.

(3) Each LOFT must include at least two operating cycles. Each cycle must be representative of the certificate holder's operation.

(4) LOFT must be conducted with a complete flight crew, with each duty position filled by a person who is qualified or in student status to serve in that duty position.

(5) LOFT must be conducted as a line operation without interruption by the instructor during the session, except for a non-disruptive acceleration of uneventful en route segments.

(6) Any person serving in a flight crewmember position during a LOFT who does not perform satisfactorily, may not serve as a required crewmember in operations under this part without receiving training to correct the deficiencies and demonstrating that the deficiencies have been corrected. The training must occur during a separate training session.

(7) The LOFT must include at least 4 hours of training. For pilots, 2 hours of the training must be with the pilot flying and 2 hours of the training must be with the pilot monitoring, plus briefing(s) before or after the training.

(b) *Flight Simulation Training Device (FSTD) Course of Instruction.*

(1) An FSTD course of instruction must be administered by a pilot flight instructor or a check pilot qualified in accordance with this subpart. A flight engineer flight instructor or a check flight engineer may assist the pilot flight instructor or check pilot.

(2) An FSTD course of instruction must be accomplished in an FFS or FTD that is qualified in accordance with part 60 of this chapter and that has the qualification level specified in the applicable QPS.

(3) An FSTD course of instruction must be conducted with a complete flight crew, with each duty position filled by a person who is qualified or in student status to serve in that duty position.

(4) Any person serving in a flight crewmember position during an FSTD course of instruction who does not perform satisfactorily, may not serve as a required crewmember in operations under this part without receiving training to correct the deficiencies and demonstrating that the deficiencies have been corrected. The training must occur during a separate training session.

(5) An FSTD course of instruction must provide an opportunity to practice the tasks and operate in the environments addressed in the pilot QPS, and to demonstrate or practice tasks identified as areas of concern related to fleet operations, route structure, environmental conditions, aircraft type operations, or other circumstances.

(6) An FSTD course of instruction must include at least 4 hours of training. For pilots, 2 hours of the training must be with the pilot flying and 2 hours of the training must be with the pilot monitoring, plus briefing(s) before or after the training.

§ 121.1355 Training program: Continuous analysis process.

(a) Each certificate holder must establish and maintain a process for the continuous analysis of the performance and effectiveness of its training program and operation that will allow the certificate holder the ability to evaluate the effectiveness of the training program. This process must:

(1) Incorporate procedures to ensure that the training program and the standards of qualification for each duty position are documented, and provide a means for updating as changes are required.

(2) Provide for the review of training program content, application, and results through semiannual standardization meetings for each aircraft type.

(3) Continually measure and monitor the outcome of the training program in terms of crewmember's performance and qualification, and provide a means to identify and correct deficiencies in the crewmember performance and qualification and in the training program and operation. Procedures must include correction of deficiencies by the certificate holder(s) or by persons providing training and evaluation in the certificate holder's training program and operation.

(b) The FAA will notify the certificate holder in writing when it finds that the continuous analysis process described in paragraph (a) of this section does not contain adequate procedures and standards to meet the requirements of this section. The certificate holder must make any changes that are necessary to meet the requirements of this section.

(c) A certificate holder may petition the FAA to reconsider the notice to make a change to the continuous analysis process. The petition must be filed with the FAA certificate holding district office charged with the overall inspection of the certificate holder's operations within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the FAA.

Training Category Requirements

§ 121.1361 Training category requirements: Standards used in academic and job performance training segments.

The certificate holder must include the training, evaluation, and qualification requirements set forth in the applicable QPS for academic and job performance training segments.

§ 121.1363 Training category requirements: Crewmember new hire.

(a) Each training program must include new hire training for all of the following:

(1) Each person who is qualifying for the first time as a pilot or flight engineer for the certificate holder.

(2) Each person who is qualifying for the first time as flight attendant for the certificate holder.

(3) Each person who is required to complete Flight Attendant Phase III Requalification training in accordance with § 121.1309(c) and the Flight Attendant QPS.

(b) The content of the new hire training category must include the following:

(1) The subjects required in the applicable QPS.

(2) A knowledge and comprehension assessment of the new hire training subjects administered in accordance with the applicable QPS.

§ 121.1365 Training category requirements: Pilot and flight engineer initial, conversion, transition, and upgrade, academic and job performance training.

(a) *Academic training.* Initial, conversion, transition, and upgrade academic training segments for flight crewmember must include training in all of the subjects specified in the applicable QPS for a flight crewmember's assigned duties.

(b) *Job performance training.* Initial, conversion, transition, and upgrade job performance training segments for pilots and flight engineers must include all of the following:

(1) Training and evaluation in the tasks and environments set forth in the applicable QPS. Following training, the pilot or flight engineer must

demonstrate the knowledge and skills required for the aircraft type and duty position. The demonstration must be accomplished by a proficiency test that also may be used for airman certification or type rating. This proficiency test must be conducted by a check pilot, a check flight engineer, a pilot APD, or a flight engineer APD, as appropriate, who is an employee of the certificate holder and who is a line qualified pilot or line qualified flight engineer, as appropriate, for the certificate holder.

(2) Qualification LOFT is conducted after a person completes the proficiency test at the end of initial, conversion, transition, or upgrade training. Qualification LOFT must meet the requirements of § 121.1353 and must contain at least two operating cycles with routes and airports approved by the Principal Operations Inspector. These cycles must meet the following requirements:

(i) One cycle contains normal line operations and the other cycle contains abnormal, non-normal, and emergency flight operations.

(ii) The pilot in command and second in command share pilot flying and pilot monitoring duties during each cycle.

(c) A pilot or flight engineer is qualified after completing the proficiency test prescribed in paragraph (b)(1) of this section and the Qualification LOFT.

§ 121.1367 Training category requirements: Pilot and flight engineer recurrent academic, recurrent job performance, and recurrent aircraft emergency equipment training.

(a) Each recurrent academic training module must include:

(1) Training in the subjects prescribed in the applicable QPS for the training category last completed.

(2) A knowledge and comprehension assessment of the flight crewmember's knowledge of the subjects in which training has occurred.

(b) Each recurrent job performance training module must include at least 8 hours for pilots, and at least 4 hours for flight engineers, of job performance training in the tasks and environments, and at the intervals specified in the applicable QPS. The FSTD used must be qualified in accordance with part 60 of this chapter and approved at the level required by the applicable QPS. This job performance training must:

(1) Include a recurrent LOFT or an FSTD course of instruction as prescribed in § 121.1353 addressing the applicable tasks and environments in accordance with the applicable QPS. The first recurrent job performance training module following the proficiency test required by § 121.1365(b)(1) must include a recurrent LOFT. Subsequent 9-month recurrent job performance training modules may include either a recurrent LOFT or an FSTD course of instruction. After the second recurrent job performance training module, neither the recurrent LOFT nor the FSTD course of instruction may be repeated in 2 successive 9-month recurrent job performance training modules.

(2) Include a proficiency test, a proficiency check, or a proficiency review addressing the applicable tasks and environments in accordance with the applicable QPS. The first recurrent job performance training module following the proficiency test required by § 121.1365(b)(1) must include a proficiency test. Subsequent 9-month recurrent job performance training modules may include a proficiency test, a proficiency check, or a proficiency review. After the second job performance training module, a proficiency review may not be repeated in 2 successive 9-month recurrent job performance training modules.

(3) Be conducted with a complete flight crew. Each person assigned a duty position in the FSTD must be qualified to serve in that duty position in the aircraft.

(c) Each recurrent aircraft emergency equipment training drill must be completed once every 36 months.

§ 121.1369 Training category requirements: Flight attendant initial and transition training.

Initial and transition training for flight attendants must include all of the following:

(a) Training in the subjects and tasks specified in the Flight Attendant QPS.

(b) A test of the flight attendant's knowledge with respect to the aircraft and crewmember duty position.

(c) Practice in the performance of specific tasks in accordance with the Flight Attendant QPS to determine ability to perform assigned duties and responsibilities for each aircraft type on which the flight attendant is to serve.

(d) For newly hired flight attendants, the initial training required by this section may not begin until the new hire training required by § 121.1363 is complete.

§ 121.1371 Training category requirements: Flight attendant eligibility for transition training.

No person is eligible for flight attendant transition training unless that person has been qualified for at least 180 days and served in the previous 180 days on an aircraft as a flight attendant for that certificate holder.

§ 121. 1373 Training category requirements: Flight attendant emergency training.

Each emergency training program given after new hire training and initial training must include the following:

(a) The emergency training requirements as specified in the Flight Attendant QPS with respect to each aircraft type, model, and configuration, and each kind of operation conducted by the certificate holder.

(b) A test of the flight attendant's knowledge with respect to the aircraft type and crewmember duty position involved.

(c) Completion of proficiency tests to determine the flight attendant's ability to perform assigned duties and responsibilities for each aircraft type on which the flight attendant is to serve.

§ 121.1375 Training category requirements: Flight attendant recurrent training.

Recurrent training for flight attendants must include the following:

(a) Training in the subjects and tasks specified in the Flight Attendant QPS.

(b) A test of the flight attendant's knowledge with respect to the aircraft type and crewmember duty position involved.

(c) Completion of proficiency tests in accordance with the Flight Attendant QPS to determine the flight attendant's ability to perform assigned duties and responsibilities for each aircraft type on which the flight attendant is to serve.

§ 121.1377 Training category requirements: Flight instructor initial, transition, and recurrent academic training.

(a) *Initial flight instructor academic training.* A 4-hour block of instruction that includes the following:

(1) Training policies and procedures.

(2) Flight instructor duties, functions, and responsibilities.

(3) Appropriate provisions of the regulations of this chapter and the certificate holder's policies and procedures.

(4) The appropriate methods, procedures, and techniques for conducting flight instruction.

(5) Proper evaluation of student performance including the detection of the following:

(i) Improper or insufficient training.

(ii) Student behaviors that could adversely affect safety.

(6) The corrective action in the case of unsatisfactory training progress.

(7) The approved methods, procedures, and limitations for instructing in the required standard

operating procedures, abnormal procedures, non-normal procedures, and emergency procedures applicable to the aircraft.

(8) Except for holders of a flight instructor certificate, the following:

(i) The fundamental principles of the teaching-learning process.

(ii) Teaching methods and procedures.

(iii) The instructor-student relationship.

(9) Use of FSTD for training and evaluation.

(i) Operation of FSTD controls.

(ii) FSTD limitations.

(iii) Minimum FSTD equipment required for each task and environment.

(b) *Transition flight instructor academic training.* Transition academic training for flight instructors must include the approved methods, procedures, and limitations for instructing in the required standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures applicable to the aircraft to which the flight instructor is transitioning.

(c) *Recurrent flight instructor academic training.* The recurrent flight instructor academic training must be a 4-hour block of instruction completed every 18 months and must include the following:

(1) The subjects required in paragraph (a) of this section, if applicable.

(2) FSTD operations, limitations, and minimum required equipment.

(3) Changes in crewmember qualification curricula.

§ 121.1379 Training category requirements: Flight instructor initial and transition job performance training.

Initial and transition job performance training for flight instructors must include training to ensure competence in conducting flight instruction as required by this part and the applicable QPS.

(a) For pilot flight instructors, the methods for conducting the required training from either pilot seat and the instructor's operating station (IOS), as well as the operation of the FSTD from the IOS or either pilot seat if the FSTD is so equipped.

(b) For flight engineer flight instructors, the methods for conducting the required training from the IOS, as well as the operation of the FSTD from the IOS.

§ 121.1381 Training category requirements: Check pilot, check flight engineer, or check flight attendant initial, transition, and recurrent academic training.

(a) The initial academic training for check pilots, check flight engineers, or check flight attendants must include the following:

(1) Evaluation policies and procedures.

(2) Check pilot, check flight engineer, or check flight attendant duties, functions, and responsibilities, as applicable.

(3) The applicable regulations of this chapter and the certificate holder's policies and procedures.

(4) The appropriate methods, procedures, and techniques for conducting the required evaluations.

(5) Proper evaluation of student performance including the detection of:

(i) Improper or insufficient training; and

(ii) Student behaviors that could adversely affect safety.

(6) The appropriate action in the case of unsatisfactory performance.

(7) The approved methods, procedures, and limitations for performing the required standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures applicable to the aircraft type.

(8) FSTD and other training equipment, as applicable, operations, limitations, and minimum equipment required for tasks and environments.

(b) The transition academic training for check pilots, check flight engineers, or check flight attendants must include approved methods, procedures, and limitations for performing the required standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures applicable to the aircraft type to which the check person is transitioning.

(c) The recurrent academic training for check pilots and check flight engineers must be completed every 18 months. The recurrent academic training for check flight attendants must be completed every 12 months. The recurrent academic training for check pilots, check flight engineers, and check flight attendants must include the following:

(1) The subjects required in paragraph (a) of this section, as applicable.

(2) FSTD and other training equipment, as applicable, operations, limitations, and minimum equipment required for tasks and environments.

(3) Changes in crewmember qualification curricula.

§ 121.1383 Training category requirements: Check pilot and check flight engineer initial, transition, and recurrent job performance training.

Initial, transition, and recurrent job performance training for check pilots and check flight engineers must include the following:

(a) Training to ensure competence in conducting job performance evaluation in each of the tasks specified in the applicable QPS.

(b) Each check pilot must have completed the following:

(1) The requirements for qualification and training for flight instructors described in § 121.1379(a).

(2) Training on the methods for conducting required evaluations in an FSTD, including conducting the evaluation from either pilot seat and from the IOS, as well as operation of the FSTD from the IOS or either pilot seat if the FSTD is so equipped.

(c) Check pilots authorized to conduct operating experience or line checks, must do the following in an FSTD:

(1) Learn the safety measures to be taken from either pilot seat for emergency situations that are likely to develop during flight operations.

(2) Learn the potential consequences of improper, untimely or unexecuted safety measures during flight operations.

(3) Complete the seat dependent task training described in the QPS.

(d) Each check flight engineer must have been trained on the methods for conducting the flight engineer evaluation described in paragraph (a) of this section in an FSTD from either the IOS or a flight engineer operating station if the FSTD is so equipped.

§ 121.1385 Qualification requirements: Check pilots authorized to conduct line checks.

Prior to authorizing a person to become a check pilot authorized to conduct line checks from one of the pilot operating seats, the person must, initially, and thereafter once each 24 months, complete the following qualification requirements:

(a) At least two operating cycles in the aircraft during line operations, one operating cycle in each pilot seat, under the supervision of a check pilot authorized to conduct operating experience and line checks, who must occupy the opposite pilot seat.

(b) At least one operating cycle in the aircraft during line operations under the supervision of an FAA inspector or an APD designated to conduct the observation of a check pilot conducting PIC line checks.

§ 121.1387 Training category requirements: Initial, transition, and recurrent academic training for persons authorized to administer flight attendant proficiency tests.

(a) Initial academic training instruction for persons authorized to administer flight attendant proficiency tests must include the following:

(1) Training policies and procedures.

(2) Duties, functions, and responsibilities of persons authorized to administer flight attendant proficiency tests.

(3) The applicable regulations of this chapter and the certificate holder's policies and procedures.

(4) The appropriate methods, procedures, and techniques for conducting the required checks.

(5) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Student behaviors that could adversely affect safety.

(6) The appropriate corrective action in the case of unsatisfactory tests.

(7) The approved methods, procedures, and limitations for instructing and evaluating in the required normal, abnormal, and emergency procedures applicable to the aircraft.

(8) Simulator and trainer operations, limitations, and minimum required equipment, as appropriate.

(b) Transition academic training instruction for persons authorized to administer flight attendant proficiency tests must include approved methods, procedures, and limitations for evaluating the required normal, abnormal, and emergency procedures applicable to the aircraft to which the person authorized to conduct proficiency tests is in transition.

(c) The recurrent academic training for persons authorized to administer proficiency tests must be completed every 12 months. Recurrent academic training instruction for persons authorized to administer proficiency tests must include the following:

(1) The subjects, as necessary, required in paragraph (a) of this section.

(2) Simulator and trainer operations, limitations, and minimum required equipment, as appropriate.

(3) Changes in crewmember qualification curricula.

Other Training Requirements

§ 121.1391 Differences training and evaluation.

(a) A difference category of training must be included in each curriculum when the Administrator finds that differences between aircraft of the same type operated by the certificate holder necessitate additional training, evaluation, or both to ensure that each crewmember is adequately trained to perform their assigned duties.

(b) A certificate holder must consider the differences between two or more aircraft of the same type and report such differences to the Administrator with recommendations for the training needed to provide for these differences.

(c) Differences training and evaluation for all variations of a particular aircraft type must be included in paragraph (c)(1) or (c)(2) of this section as follows:

(1) Initial, transition, conversion, upgrade, and recurrent training categories for the aircraft, and flight attendant emergency training curricula for the aircraft if applicable.

(2) Academic and job performance training segments as required for each differences training category.

(d) Differences training and evaluation for crewmembers must consist of at least the following as applicable to their assigned duties and responsibilities:

(1) Each appropriate subject or task required for the academic training segment for the aircraft unless the Administrator finds that particular subjects are not necessary.

(2) Each appropriate maneuver or procedure required for the job performance training segment for the aircraft unless the Administrator finds that particular maneuvers or procedures are not necessary.

(3) The number of programmed hours of academic and job performance training and evaluation determined by the Administrator to be necessary for the aircraft, the operation, and the duty position. The programmed hours required for differences training and evaluation are in addition to other required programmed hours.

29. Add subpart CC of part 121 to read as follows:

Subpart CC—Aircraft Dispatcher Qualifications

General

Sec.

121.1401 Applicability.
121.1402 Interim requirements for training programs transitioning from the requirements of subparts N and O.
121.1403 Certificate holder responsibility for compliance with this subpart.
121.1405 Definitions.
121.1407 English language requirement.
121.1409 Acceptable time for completing recurrent requirements.

Qualification

121.1411 Aircraft dispatcher: Employment and certificate.
121.1413 Aircraft dispatcher: Training and evaluation.
121.1415 Aircraft dispatcher: Operating familiarization.
121.1417 Aircraft dispatcher: Supervised operating experience.
121.1419 Aircraft dispatcher: Requalification.
121.1421 Dispatcher instructor and check dispatcher: Eligibility, training, and evaluation.
121.1423 Dispatch program designee: Eligibility and qualification.
121.1425 Check dispatcher: Initial cadre.

General Training Program Requirements

121.1431 Training program: General.
121.1433 Training program: General curriculum by aircraft type and operation.
121.1435 Training program: Curriculum programmed hours.
121.1437 Training program: Approval and amendment process.
121.1439 Training program: Administering training and evaluation.
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Training Category Requirements

121.1451 Training category requirements: Standards used in aircraft dispatcher training.
121.1453 Training category requirements: Aircraft dispatcher initial, combined certification and initial, and transition training.
121.1455 Training category requirements: Aircraft dispatcher recurrent training.
121.1457 Training category requirements: Dispatcher instructor initial and recurrent training.
121.1459 Training category requirements: Check dispatcher initial and recurrent training.

Other Training Requirements

121.1471 Differences training and evaluation.

Subpart CC—Aircraft Dispatcher Qualifications

General

§ 121.1401 Applicability.

(a) This subpart provides the following:

(1) Qualification requirements for aircraft dispatchers for certificate holders conducting domestic or flag operations.

(2) Requirements applicable to each certificate holder for establishing, obtaining approval of, and maintaining a training program to qualify certificated aircraft dispatchers and an optional program to certificate aircraft dispatcher candidates.

(b) Any person qualified in a duty position for the certificate holder before [date 120 days after publication of the final rule] or under the provisions of subparts N and O of this part in effect on or before [date 119 days after publication of the final rule] may continue to serve in that duty position for that certificate holder without complying with initial training under § 121.1453.

§ 121.1402 Interim requirements for training programs transitioning from the requirements of subparts N and O.

(a) Contrary provisions of this subpart notwithstanding, a person who has submitted a training program for approval before [date 120 days after publication of the final rule] that was constructed in accordance with the applicable provisions of subparts N and P of this part in effect on or before [date 119 days after publication of the final rule], may complete the approval and implementation process and conduct operations in compliance with the applicable provisions of subparts N and P of this part instead of the provisions of this subpart.

(b) A certificate holder must submit a transition plan to the FAA no later than [date 4 years and 120 days after publication of the final rule]. The transition plan must include the following:

(1) Subpart CC training program(s), as applicable;

(2) Plan for transition for crewmembers and aircraft dispatchers from the applicable provisions of subparts N and P of this part to the provisions of this subpart; and

(3) A transition completion date that is before [date 5 years and 120 days after the publication of the final rule].

(c) During the transition, the certificate holder may use people to conduct operations under this part provided those people are trained under the applicable provisions of subparts N and P of this part, or this subpart. While a certificate holder may simultaneously operate training programs in compliance with the applicable provisions of subparts N and P of this part and this subpart, each aircraft dispatcher must be trained and qualified.

(d) A certificate holder may not use an aircraft dispatcher, nor may an aircraft dispatcher serve, in a duty position unless that person is current and qualified to perform the duties to which he or she is assigned. If more than one aircraft dispatcher is required for an operation, and one aircraft dispatcher is current and qualified in accordance with the applicable provisions of subparts N and P of this part, and the other aircraft dispatcher is current and qualified in accordance with this subpart, then the lesser operating requirements apply for that operation.

§ 121.1403 Certificate holder responsibility for compliance with this subpart.

(a) Each certificate holder is responsible for ensuring that its approved training program, including all portions of the training program that are conducted by individuals other than employees of the part 119 certificate holder, meets the requirements of this subpart.

(b) Each certificate holder is responsible for ensuring that all procedures, manuals, and other materials submitted to obtain initial or final approval of a training program are kept up to date and followed.

§ 121.1405 Definitions.

For the purpose of this subpart, the following terms and their definitions apply:

Base month. The month in which a recurrent activity is due.

Categories of training or training categories. Within a curriculum, categories of training relate to aircraft dispatcher certification requirements, first time qualification for a certificate holder, configuration differences within aircraft type or series, maintaining and regaining qualification, and to changes in operations. Categories include: initial, combined certification and initial, recurrent, requalification, transition, special, and differences.

(1) *Initial training*. A category of training that must be successfully completed to qualify an aircraft dispatcher to serve as an aircraft dispatcher for a certificate holder in operations under this part.

(2) *Combined Certification and Initial training*. An optional category specifically approved under part 121 that integrates an approved certificate holder's initial training category with part 65 requirements. The category allows for both the issuance of an aircraft dispatcher certificate and qualification of the individual to serve as an aircraft dispatcher for the certificate holder. The aircraft dispatcher's certificate is issued under 14 CFR part 65, not part 121.

(3) *Recurrent training*. A category of training that must be successfully completed within the eligibility period to maintain aircraft dispatcher qualification.

(4) *Requalification training*. A category of training that must be successfully completed to restore qualified status to an aircraft dispatcher previously qualified for the certificate holder when qualification is lost due to failure to meet recurrent training requirements.

(5) *Transition training*. A category of training to be completed by an aircraft dispatcher who is presently qualified on an aircraft type in operations under this part for the certificate holder to allow that aircraft dispatcher to serve as an aircraft dispatcher for a different aircraft type.

(6) *Special training*. A category of training necessary to address changes to the certificate holder's operations or to correct deficiencies identified by the certificate holder's continuous analysis process. Special training is temporary and is integrated into the approved training program.

(7) *Differences training*. A category of training on a particular aircraft type and operation when the Administrator finds additional training is necessary before that aircraft dispatcher serves in the same capacity on a particular variation within a series of an aircraft type or a different series within an aircraft type.

Certificate holder. A person certificated under part 119 of this chapter that conducts operations under part 121.

Combined certification and initial training. See definition of *Category of Training*.

Current. Current means satisfying the initial training and evaluation requirements prescribed in § 121.1453 or the recurrent training and evaluation requirements prescribed in § 121.1455, as applicable.

Curriculum. A curriculum is the training agenda to qualify a person for an aircraft dispatcher duty position or a training or evaluation duty position for an aircraft type or operation. The curriculum for each duty position includes categories of training.

Differences training. See definition of *Category of Training*.

Duty Position. A duty position is the position held by an Aircraft Dispatcher that requires unique qualification and currency requirements to serve in operations under this part. The term duty position includes the variations within a position, such as check dispatcher, dispatcher instructor, or dispatch program designee.

Eligibility Period. The eligibility period consists of the month in which the recurrent activity is due (the ''base month''), the month before and the month after (the ''grace month'').

Environment. A combination of external, physical, and surrounding conditions that affect aircraft performance, aircraft and equipment operation, and decisionmaking.

Evaluation. Any testing, checking, or observation activities in which a person's skills and knowledge are assessed by a person authorized to perform that evaluation.

Initial Cadre. The specific persons approved by the FAA for the time frame necessary, not to exceed 24 months, for a new part 119 certificate holder to initiate operations under part 119, or for a current part 119 certificate holder to initiate operations of a new aircraft type

not operated previously or to initiate a new type of operation.

Initial training. See definition of *Category of Training.*

Module. Modules of instruction are subsets of a training segment that include major subject areas for training and evaluation.

Month. Calendar month.

Practical test: The final test required for certification of a person as an aircraft dispatcher.

Proficiency: Demonstrated awareness of existing circumstances, competence in the necessary knowledge and skills, and performance of the relevant task within the operating range of environments to the established standards of performance identified and required by the Aircraft Dispatcher QPS.

Proficiency check. An assessment of dispatcher proficiency during which limited training or practice is allowed. The assessment is of knowledge and skill in tasks to the standards identified and required by the Aircraft Dispatcher QPS.

Proficiency test. An assessment of dispatcher proficiency during which additional training or practice is not allowed. The assessment is of knowledge and skill in tasks to the standards identified and required by the Aircraft Dispatcher QPS.

Programmed hours. The required number of hours (baseline and minimum) set forth in this subpart for categories of training identified and required by the Aircraft Dispatcher QPS.

Qualification Performance Standards (QPS). FAA standards providing all of the tasks, areas of instruction, and evaluation, including activities, procedures, and knowledge needed to certify, qualify, retain currency, and requalify dispatchers for performing in operations under this part. The QPS for dispatchers is part 121 appendix T: Aircraft Dispatcher Qualification Performance Standards.

Qualified. When used in reference to an individual, means an individual who has completed the certificate holder's FAA-approved curriculum under this part and holds an aircraft dispatcher certificate.

Recurrent training. See definition of *Category of Training.*

Requalification training. See definition of *Category of Training.*

Serve. Performing the duties of an aircraft dispatcher, dispatcher instructor, check dispatcher, or dispatch program designee for a certificate holder.

Special training. See definition of *Category of Training.*

Supervised Operating Experience (SOE). Training and other supervised activities conducted for the purpose of demonstrating the ability to perform the duties of an aircraft dispatcher prior to the proficiency test or proficiency check.

Training. Instruction and practice.

Training program. A certificate holder's training curricula, personnel, facilities, equipment, and other resources used to meet the training requirements of this subpart.

Transition training. See definition of *Category of Training.*

§ 121.1407 English language requirement.

No certificate holder may use any person, nor may any person serve, as an aircraft dispatcher under this part, unless that person has demonstrated to an individual qualified to conduct evaluations under this part, the ability to do the following:

(a) Read, write, speak, and understand the English language.

(b) Have their English language and writings understood.

§ 121.1409 Acceptable time for completing recurrent requirements.

(a) An aircraft dispatcher must complete recurrent training, evaluation or operating familiarization during the eligibility period.

(b) An aircraft dispatcher who has not completed recurrent training by the end of the base month may continue to perform dispatcher duties until the end of the eligibility period.

Qualification

§ 121.1411 Aircraft dispatcher: Employment and certificate.

No certificate holder may use any person, nor may any person serve, as an aircraft dispatcher in domestic or flag operations, unless that person is an employee of the part 119 certificate holder and has in his or her possession an aircraft dispatcher certificate issued to the person by the FAA without limitations, in accordance with part 65 subpart C of this chapter.

§ 121.1413 Aircraft dispatcher: Training and evaluation.

No certificate holder may use any person, nor may any person serve, as an aircraft dispatcher in domestic or flag operations, unless that person meets the following requirements:

(a) *Training and evaluation.* The person has successfully completed, in a training program approved under this subpart for the certificate holder, the following:

(1) Training in accordance with the Aircraft Dispatcher QPS, and the associated programmed hours required by § 121.1435, as follows:

(i) Within the preceding 12 months, initial, combined certification and initial, transition, or recurrent training categories as prescribed in § 121.1453 or § 121.1455 as applicable.

(A) An aircraft dispatcher is eligible for transition training only if the aircraft dispatcher is otherwise qualified as an aircraft dispatcher for the certificate holder on another aircraft type in operations under this part.

(B) To be eligible for recurrent training, an aircraft dispatcher must be otherwise qualified and have successfully completed the initial, combined certification and initial, or transition training for the certificate holder.

(ii) Differences training, if necessary, as prescribed in § 121.1471.

(iii) Requalification training, if necessary, as prescribed in § 121.1419.

(iv) Special training, if necessary, as prescribed in § 121.1437.

(2) A proficiency test or check in accordance with § 121.1453(a)(2), § 121.1453(b)(2), or § 121.1455(c), as applicable.

(3) Supervised operating experience, as prescribed in § 121.1417.

(b) *Continuity of training.*

(1) *Initial for certificated dispatchers.* A certificated aircraft dispatcher must successfully complete all of the required initial training category, including the proficiency test, prescribed in § 121.1453(a)(2) within 120 days of beginning the initial training category.

(2) *Combined certification and initial for non-certificated person.* A non-certificated person must successfully complete all of the required combined certification and initial training category, including the practical test and proficiency test, prescribed in § 121.1453(b)(2) within 180 days of beginning the combined certification and initial category.

(c) *Failure to complete training.* If a person fails to successfully complete the training in the time required by paragraph (b) of this section, the person must repeat the initial training, or combined certification and initial training, as required by paragraph (a) of this section within the time period required in paragraph (b) of this section.

(d) *Operating familiarization.* The person has successfully completed operating familiarization every 12 months in accordance with § 121.1415. For domestic operations, the operating familiarization must be conducted within a geographic area into which the person dispatches. For flag operations, the operating familiarization must be conducted within a flag area of operation for which the person

dispatches in accordance with the Aircraft Dispatcher QPS.

(1) If the person dispatches in either domestic operations or flag operations, but not both, the person must have completed operating familiarization in the type of operation, domestic or flag, and in an aircraft type that the person dispatches within the preceding 12 months.

(2) If the person dispatches in both domestic and flag operations, the person must have completed operating familiarization in both domestic and flag operations in an aircraft type that the person dispatches within the preceding 24 months.

(3) If the person dispatches both propeller driven (including reciprocating powered and turbopropeller powered) and turbojet powered aircraft, the person must have completed operating familiarization in both propeller driven and turbojet powered aircraft within the preceding 24 months.

§ 121.1415 Aircraft dispatcher: Operating familiarization.

(a) Except as provided in paragraphs (b) and (c) of this section, the operating familiarization required by § 121.1413(d) must consist of at least 5 hours of observing operations under this part from the flight deck. This observation must be made from the flight deck or, for airplanes without an observer seat on the flight deck, from a forward passenger seat with headset or speaker. This requirement may be reduced by one hour for each additional takeoff and landing, but the reduction must not exceed 2½ hours.

(b) The requirement of paragraph (a) of this section may be satisfied by observation of simulated flight time during a Line Oriented Flight Training (LOFT) session required by subpart BB of this part. The observation must occur in a Full Flight Simulator (FFS) approved in accordance with part 60 of this chapter for the aircraft type and operation. The actual observed simulated flight time must not be reduced below 5 hours.

(c) If the requirement of paragraph (a) and (b) of this section cannot be met, the certificate holder may request a deviation to complete operating familiarization through a ground training program approved by the Administrator.

(d) A person may serve as an aircraft dispatcher for a new type of operation (domestic or flag) without meeting the requirements of this section for 90 days after the certificate holder introduces a new type of operation.

§ 121.1417 Aircraft dispatcher: Supervised operating experience.

(a) No certificate holder may use any person, nor may any person serve, as an aircraft dispatcher unless that person meets all of the following requirements:

(1) The person has been supervised by a current and qualified dispatcher who meets the experience requirements of § 121.1421(b)(1) through (4).

(2) The person has been supervised for the minimum hours prescribed in the Aircraft Dispatcher QPS for each type of operation (domestic or flag) in which the person serves.

(3) The person has successfully completed a proficiency test or check, as appropriate.

(b) No person is eligible to receive the supervised operating experience required in paragraph (a) of this section unless that person has satisfactorily completed initial, combined certification and initial, requalification training, and operating familiarization, as applicable, in accordance with the requirements listed in the Aircraft Dispatcher QPS.

(c) An aircraft dispatcher administering operating experience may not supervise more than one person at a time.

(d) During the supervised operating experience session, the supervising dispatcher must be the dispatcher of record for each flight dispatched or released.

§ 121.1419 Aircraft dispatcher: Requalification.

(a) No certificate holder may use any person, nor may any person serve, as an aircraft dispatcher if that person has become unqualified by not satisfactorily completing recurrent training, including proficiency checks as required by § 121.1413(a).

(b) To be requalified, the person must complete:

(1) The initial training requirements of § 121.1453(a) in accordance with the Aircraft Dispatcher QPS, including supervised operating experience, operating familiarization, and proficiency test, or

(2) All missed recurrent training modules that were not completed by the end of the person's eligibility period and the additional requirements for the applicable phase of requalification training in accordance with the Aircraft Dispatcher QPS, including all applicable proficiency checks or proficiency tests.

(c) The requalification requirements for each phase must be completed:

(1) Within 60 days of beginning the requalification training; and

(2) Before the end of the applicable phase of requalification.

(d) To qualify for:

(1) *Phase I Requalification.* A person may requalify under the Phase I Requalification program if less than 6 months have elapsed since the end of the person's base month for recurrent training. The aircraft dispatcher's base month for recurrent training does not change.

(2) *Phase II Requalification.* A person may requalify under the Phase II Requalification program if at least 6 months, but less than 12 months, have elapsed since the end of the person's base month for recurrent training. The aircraft dispatcher's base month for recurrent training does not change.

(3) *Phase III Requalification.* A person may requalify under the Phase III Requalification program if at least 12 months, but less than 24 months, have elapsed since the end of the person's base month for recurrent training. The aircraft dispatcher's base month for recurrent training must change to the month in which the requalification proficiency check is successfully completed.

(4) *Phase IV Requalification.* A person may requalify under the Phase IV Requalification program if at least 24 months, but less than 36 months, have elapsed since the end of the person's base month for recurrent training. The aircraft dispatcher's base month for recurrent training must change to the month in which the requalification proficiency check is successfully completed.

(5) *Phase V Requalification.* A person may requalify under the Phase V Requalification program if 36 months or more have elapsed since the end of the person's base month for recurrent training. The aircraft dispatcher's base month for recurrent training must change to the month in which the requalification proficiency test is successfully completed.

§ 121.1421 Dispatcher instructor and check dispatcher: Eligibility, training, and evaluation.

(a) *Dispatcher Instructor.* No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as a dispatcher instructor in a training program established under this part unless the person meets one of the following:

(1) The person must meet the applicable requirements of § 121.1439 and hold an aircraft dispatcher certificate. The person must maintain aircraft dispatcher currency in accordance with the certificate holder's approved training program. Within the preceding 12 months, the person has

successfully completed an initial training curriculum or a recurrent training curriculum in accordance with § 121.1457.

(2) A person who does not meet the requirements of paragraph (a)(1) of this section, but who is a subject matter expert with specific technical knowledge on a subject may be used to conduct training in the subjects specified in the Aircraft Dispatcher QPS. The subject matter expert must be acceptable to the FAA.

(b) *Check dispatcher.* No certificate holder conducting domestic or flag operations may use any person, nor may any person serve, as a check dispatcher in a training program established under this subpart unless the person has been approved by the FAA and meets the following requirements:

(1) The person meets the applicable requirements of § 121.1439 and holds an aircraft dispatcher certificate. The person must maintain aircraft dispatcher currency in accordance with the certificate holder's approved training curriculum.

(2) The person has performed the duties of an aircraft dispatcher for at least 8 hours within a 24-hour period in the preceding 60 days.

(3) Within the preceding 12 months, the person has successfully completed an initial training curriculum or a recurrent training curriculum in accordance with § 121.1459.

(4) The person has been current and qualified as an aircraft dispatcher for a part 121 domestic or flag operation for at least 3 of the previous 5 years.

§ 121.1423 Dispatch program designee: Eligibility and qualification.

If the certificate holder elects to establish a combined certification and initial training category, the FAA may approve one or more dispatch program designees to represent the FAA for the purpose of issuing aircraft dispatcher certificates.

(a) To be eligible to become a dispatch program designee and to remain qualified to serve as a dispatch program designee, a person must meet the following requirements:

(1) Be an employee of the certificate holder.

(2) Be a check dispatcher in accordance with § 121.1421 and be currently serving as an aircraft dispatcher for the certificate holder for the aircraft type and operation.

(3) Be a designated aircraft dispatcher examiner in accordance with § 183.25 of this chapter.

(4) Conduct a practical test under the observation of the FAA and be designated as a dispatch program designee by the FAA. The person undergoing the practical test for this purpose must be signed off by the FAA inspector as the evaluator of record.

(5) A designee may continue to conduct practical tests if, within the preceding 12 months, the designee has done one of the following under the observation of the FAA:

(i) Conducted a practical test.

(ii) Conducted a proficiency test.

(iii) Conducted a proficiency check.

(b) The dispatch program designee is only approved to perform the duties of a dispatch program designee for the certificate holder.

§ 121.1425 Check dispatcher: Initial cadre.

(a) *Purpose of this section.* This section is used to qualify an initial cadre of check dispatchers in lieu of the experience and recency requirements of §§ 121.1417 and 121.1421. A certificate holder may use a person as a check dispatcher even though the person does not meet the experience or recency requirements of the subpart, if the person meets the initial cadre requirements of this section.

(b) *Duration of initial cadre status.* The FAA will determine the period of initial cadre status, and may terminate initial cadre status for the certificate holder or for an individual check dispatcher, if necessary. In no case will initial cadre status exceed a period of 24 months.

(c) *Eligibility for initial cadre status for check dispatcher.* To be eligible to become an initial cadre check dispatcher for a part 119 certificate holder, and to continue to serve in that capacity for the authorized period, a person must meet all of the following requirements:

(1) Be an employee of the part 119 certificate holder (or applicant).

(2) Have served at least 3 years in the past 6 years as a dispatcher for the aircraft type for which the person is to perform duties as an initial cadre check dispatcher.

(3) Have an aircraft dispatch certificate without restrictions.

(4) Have successfully completed initial, transition, or differences training, as appropriate, as approved by the FAA for the part 119 certificate holder (or applicant) that is required to serve as an aircraft dispatcher.

(5) Have conducted activities for which the person is to perform duties as a check dispatcher under the observation of an FAA inspector. When an observed activity must be made part of a training record, the people undergoing the observed activities must be signed off by the FAA inspector as the evaluator of record.

(6) Be approved by the FAA for the specific duties to be performed.

(d) *Operating experience for initial cadre check dispatchers.*

(1) An initial cadre check dispatcher may receive credit for his or her own operating experience while administering operating experience to another initial cadre check dispatcher.

(2) Initial cadre check dispatchers may obtain operating experience only if at least one of the other initial cadre check dispatchers has:

(i) Experience with the aircraft type on which the person is to perform duties as a check dispatcher or has received training for the aircraft type in accordance with the QPS.

(ii) Experience within the type of operation, domestic or flag, in which the person is to perform duties as a check dispatcher or has the received training for the type of operation in accordance with the QPS.

(e) *Persons authorized to administer training and evaluation.* As approved by the FAA:

(1) Employees of a part 142 certificate holder, another part 119 certificate holder, or the aircraft manufacturer may administer the training for initial cadre check dispatchers.

(2) Only a person who holds an aircraft dispatcher certificate issued under part 65 who is an employee of the part 119 certificate holder, or the FAA, may administer the evaluation for initial cadre check dispatchers.

(3) Check dispatchers who are employees of an existing part 119 certificate holder that is adding a new aircraft type or operation may continue to serve as check dispatchers for the new aircraft type or operation during the initial cadre period.

General Training Program Requirements

§ 121.1431 Training program: General.

(a) Each certificate holder must establish and keep current an aircraft dispatcher training program. Each curriculum in a training program must be current and must be kept current with respect to any changes in the certificate holder's policies, operations, and requirements of this chapter. Each certificate holder must obtain the appropriate initial and final approval of its training program, as specified in § 121.1437.

(b) The aircraft dispatcher training program must address all of the following:

(1) The requirements of this subpart.

(2) The requirements of the Aircraft Dispatcher QPS.

(c) Each certificate holder is responsible for ensuring that its aircraft

dispatchers are adequately trained and that aircraft dispatcher training and evaluation is conducted in accordance with the certificate holder's approved training program.

(d) As part of its training program, a certificate holder must provide to each student, as applicable, the following:

(1) Curricula, categories of training, and segments of training applicable for use by the certificate holder as required by this subpart and approved by the Administrator.

(2) A sufficient number of dispatcher instructors, trained and qualified in accordance with this subpart, to provide the approved training.

(3) A sufficient number of check dispatchers trained and qualified in accordance with this subpart, to complete the applicable evaluation of knowledge and skills in tasks in accordance with the Aircraft Dispatcher QPS.

(4) Adequate training facilities.

(5) Appropriate and current training materials, examinations, forms, instructions, and procedures for use in conducting the training, evaluation, and supervised operating experience required by this part with respect to each aircraft type and operation, and if applicable, the particular variations within that aircraft type.

(e) No certificate holder may use a person as an aircraft dispatcher unless each dispatcher instructor or check dispatcher who is responsible for a training curriculum, training category, or evaluation under this part has certified in writing or electronically the proficiency and knowledge of the individual being trained or evaluated.

(1) The certification required by this paragraph must be made a part of the aircraft dispatcher's record required by subpart V of this part. The record must indicate whether the individual successfully completed each of the training and evaluation requirements for the specific curriculum listed in this paragraph.

(2) When the record of the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the dispatcher instructor or check dispatcher making the certification must be identified with that entry, and the record must be in a form approved by the Administrator.

§ 121.1433 Training program: General curriculum by aircraft type and operation.

(a) Each certificate holder must prepare and keep current a training curriculum for each aircraft type and operation conducted by that certificate holder under this part. The curriculum must be available to each aircraft dispatcher required for that aircraft type and operation. Each curriculum must include the categories of training and the ground training modules required by this subpart and the Aircraft Dispatcher QPS.

(b) Each training category must provide training and evaluation as necessary to ensure that each aircraft dispatcher meets the following requirements:

(1) Maintains proficiency with respect to each aircraft type and operation (domestic and flag operations) in which the aircraft dispatcher serves.

(2) Maintains proficiency in the duties and responsibilities for the aircraft type and operation that are contained in the § 121.133 manual as outlined in § 121.135.

(3) Is trained and knowledgeable as to the current operating limitations sections of the applicable FCOM.

(4) Remains trained and knowledgeable on the procedures and performance sections of the applicable FCOM.

(5) Qualifies in new equipment, facilities, procedures, techniques, computer applications, and technology required to perform the duties of an aircraft dispatcher.

(6) Understands the nature and effects of safety hazards, weather extremes, and the effects of these on operations.

(7) Knows and is able to apply Dispatch Resource Management (DRM) skills identified in the Aircraft Dispatcher QPS.

(c) Each training category must include the following:

(1) The areas of instruction with subjects and the tasks required by the Aircraft Dispatcher QPS.

(2) A list of all equipment used by the certificate holder for training and evaluation.

(3) An outline of the training category that includes ground training and evaluation modules by subject matter.

(4) The approved programmed hours of training that will be applied to each required training category.

(5) Differences that relate to the variations of a particular aircraft type to be included in all ground training modules for purposes of training and evaluation, as applicable.

(6) A copy of each statement issued by the Administrator under § 121.1435 for a reduction of baseline programmed hours of training and evaluation.

(7) A list of qualified instructors and the letter of authorization from the FAA for the check dispatcher and dispatch program designee.

§ 121.1435 Training program: Curriculum programmed hours.

(a) Each certificate holder's training program submitted for initial approval under this subpart must have at least the baseline programmed hours specified in the Aircraft Dispatcher QPS. Programmed hours include training and evaluation.

(b) The Administrator will not approve a reduction in the baseline programmed hours specified in this subpart during the initial approval of training programs. For a training program that has final approval, a certificate holder may apply for a reduction of programmed hours based on the factors outlined in § 121.1437(e). The Administrator will not approve a reduction of programmed hours below the minimum hours in the Aircraft Dispatcher QPS.

(c) When the Administrator approves a reduction in programmed hours, the Administrator will provide the certificate holder with a statement of the basis for the approval.

(d) The Administrator will determine the required programmed hours for the requalification training category as specified in the Aircraft Dispatcher QPS.

§ 121.1437 Training program: Approval and amendment process.

(a) Each training program described in this subpart must be approved by the Administrator. To obtain initial or final approval of a training program, or to request a revision to an approved training program, each certificate holder must provide the Administrator the following information in a form acceptable to the Administrator:

(1) An outline of the proposed program or proposed revision, including an outline of the proposed or revised curriculum required in § 121.1433, that provides all the information needed for a preliminary evaluation of the proposed program or proposed revision.

(2) Curricula, categories of training, and segments of training applicable for use by the certificate holder as required by this subpart.

(3) The number of dispatcher instructors trained and qualified in accordance with § 121.1421(a)(1) to provide the approved training and evaluation, and the number of dispatcher instructors used in accordance with § 121.1421(a)(2), to provide the approved training.

(4) The number of check dispatchers trained and qualified in accordance with this subpart, to complete the evaluations and observations that are required by this subpart.

(5) A description of the ground training facilities.

(6) A synopsis of the materials, examinations, forms, instructions, and procedures to be used for the training and evaluation required by this subpart with respect to each aircraft type, and if applicable, the particular variations within that aircraft type.

(7) A statement as to whether training will be provided by persons other than the certificate holder's employees in accordance with § 121.1439.

(8) A copy of the Flight Crew Operating Manual for each aircraft type to be included in the training program. The Flight Crew Operating Manual must be current at the time of submission. Amendments must be made as required.

(9) A copy of the current § 121.133 manual as outlined in § 121.135.

(10) Documentation of the certificate holder's continuous analysis process established in accordance with § 121.1441.

(11) Additional relevant information required by the Administrator.

(b) If the proposed training program or proposed revision complies with this subpart, the Administrator grants initial approval in writing, after which the certificate holder may conduct the training and evaluation in accordance with that program. The Administrator then evaluates the effectiveness of the initially approved training program and advises the certificate holder of any deficiencies that must be corrected.

(c) A revision to an approved training program may be proposed as a special training category that reflects changes to the certificate holder's operation, or as a differences training category that reflects differences in configuration within an aircraft type.

(1) The proposed special training category will include modules of training and evaluation for training segments within existing training categories. These modules will be initially approved and evaluated. Upon satisfactory evaluation, the special training category modules will receive final approval and be integrated into the training segments of the existing training categories. Once integrated, it will no longer be called a special training category, but will be part of the approved training program. The Principal Operations Inspector will determine the number for programmed hours.

(2) The proposed differences training category will include modules of training and evaluation for applicable segments of training. These modules will be initially approved, evaluated, and upon satisfactory evaluation, added to the previously approved differences training. The Principal Operations Inspector will determine the number of programmed hours.

(d) The Administrator grants final approval of a training program if the certificate holder shows that the training and evaluation conducted under the initial approval obtained under paragraph (b) of this section ensures that each person who completes the training and evaluation is adequately trained to perform his or her assigned duties.

(e) The Administrator may require revisions to an approved training program anytime the FAA finds that revisions are necessary in the interest of safety or security. If the Administrator finds that revisions are necessary for the continued adequacy of a training program that has been granted initial or final approval, the certificate holder must, after notification by the Administrator, make all changes in the program that the Administrator finds necessary.

(1) Within 30 days after the certificate holder receives a notice to revise the program, it may file a petition with the Director of Flight Standards to reconsider the notice. The filing of a petition to reconsider stays the notice pending a decision by the Director of Flight Standards.

(2) If the Administrator finds that there is an emergency that requires immediate action in the interest of safety or security, the Administrator may, upon a statement of the reasons, require a change effective without stay.

(f) The Administrator considers the following factors in approving revisions or requiring revisions to a training program:

(1) The pass and fail rate in the curriculum under consideration.

(2) The quality and effectiveness of the teaching-learning process (e.g., quality of instructors, training equipment, methods, and procedures listed in the certificate holder's curriculum required by § 121.1433).

(3) The experience levels of the student population.

(4) The experience levels of the instructors and check persons.

(5) The type and scope of operations conducted by the certificate holder.

(6) The complexity of make, model, and series of aircraft used.

§ 121.1439 Training program: Administering training and evaluation.

(a) Persons administering training must be acceptable to the FAA.

(b) Persons who administer evaluation must be approved by the FAA and knowledgeable about the certificate holder's facilities, equipment, and procedures.

(c) Persons who administer training or evaluation must use only the equipment and the facilities that are specifically approved for the certificate holder's training program.

(d) Training, proficiency tests, proficiency checks, and practical tests for aircraft dispatchers must be administered in accordance with the Aircraft Dispatcher QPS.

(e) A dispatch program designee or the FAA must administer the aircraft dispatcher practical test.

(f) The certificate holder must report a failure of a proficiency test, practical test, or proficiency check to the FAA.

(g) A proficiency test, proficiency check, or practical test is not successfully completed if the individual did not successfully complete all required portions of the training curriculum before taking the proficiency test, proficiency check, or practical test.

(h) Training and evaluation is not successfully completed, even if the individual successfully completed the activity, when the certificate holder does one of the following:

(1) Uses facilities, equipment, and materials that are not specifically approved for that activity as part of the certificate holder's approved training program.

(2) Uses persons who are not authorized to administer the activity as specified in the Aircraft Dispatcher QPS, or who do not meet the requirements of this subpart.

§ 121.1441 Training program: Continuous analysis process.

(a) Each certificate holder must establish and maintain a process for the continuous analysis of the performance and effectiveness of its training program and operation that will allow the certificate holder the ability to recognize where improvements are needed. This process must:

(1) Incorporate procedures to ensure that the training program and the standards of qualification for each duty position are documented, and provide a means for updating as changes are required.

(2) Provide for the review of training program content, application, and results for each aircraft type and operation.

(3) Continually measure and monitor the outcome of the training program and operation in terms of the aircraft dispatcher's performance and qualification, and provide a means to identify and correct deficiencies in the aircraft dispatcher's performance and qualification and in the training program and operation. Procedures must include correction of deficiencies

by the certificate holder or by persons providing training and evaluation in the certificate holder's training program and operation.

(b) The FAA will notify the certificate holder in writing when it finds that the continuous analysis process described in paragraph (a) of this section does not contain adequate procedures and standards to meet the requirements of this section. The certificate holder must make any changes in the training program that are necessary to meet the requirements of this section.

(c) A certificate holder may petition the FAA to reconsider the notice to make a change in the continuous analysis process. The petition must be filed with the FAA certificate holding district office charged with the overall inspection of the certificate holder's operations within 30 days after the certificate holder receives the notice. Except in the case of an emergency requiring immediate action in the interest of safety, the filing of the petition stays the notice pending a decision by the FAA.

Training Category Requirements

§ 121.1451 Training category requirements: Standards used in aircraft dispatcher training.

(a) The certificate holder must include in the training categories the subjects, tasks, and standards set forth in the Aircraft Dispatcher QPS.

(b) The QPS requirements for aircraft dispatcher training and evaluation include all of the following:

(1) The subjects and areas of instruction listed in the Aircraft Dispatcher QPS for initial, combined certification and initial, recurrent, transition, differences, and requalification training.

(2) The Dispatch Resource Management (DRM) skills listed in the Aircraft Dispatcher QPS.

(3) The requirements for administering specific evaluations.

(4) The requirements and performance standards for each task and environment.

§ 121.1453 Training category requirements: Aircraft dispatcher initial, combined certification and initial, and transition training.

(a) Initial and transition training for aircraft dispatchers must include all of the following:

(1) Training and evaluation in the subjects listed in the Aircraft Dispatcher QPS.

(2) Successful completion of a proficiency test in accordance with the Aircraft Dispatcher QPS for each aircraft type and operation, and the particular variations within the aircraft type.

(b) Combined certification and initial training must include all of the following:

(1) Training and evaluation in the subjects listed in the Aircraft Dispatcher QPS.

(2) Successful completion of a practical test and proficiency test in accordance with the Aircraft Dispatcher QPS for each aircraft type and operation, and the particular variations within the aircraft type. The FAA or dispatch program designee must administer the practical test.

§ 121.1455 Training category requirements: Aircraft dispatcher recurrent training.

Recurrent training for aircraft dispatchers must include all of the following:

(a) Instruction in the subjects specified in the Aircraft Dispatcher QPS.

(b) An evaluation of the aircraft dispatcher's knowledge with respect to the aircraft type and operation involved.

(c) Successful completion of a proficiency check in accordance with the Aircraft Dispatcher QPS for each aircraft type and operation, and the particular variations within the aircraft type.

§ 121.1457 Training category requirements: Dispatcher instructor initial and recurrent training.

(a) *Initial training.* Initial training for a dispatcher instructor must consist of a 4-hour block of instruction that includes the following subjects:

(1) Aircraft dispatcher instructor duties, functions, and responsibilities.

(2) Appropriate provisions of the regulations of this chapter and the certificate holder's policies and procedures.

(3) Appropriate methods, procedures, and techniques for conducting aircraft dispatcher instruction.

(4) Evaluation of student performance, including recognition of the following:

(i) Improper and insufficient training; and

(ii) Personal characteristics of a student that could adversely affect safety.

(5) Corrective action in the case of unsatisfactory training progress.

(6) Approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the dispatch facility.

(7) Principles of the teaching-learning process.

(8) Teaching methods and procedures.

(9) Instructor-student relationship.

(b) *Recurrent training.* Recurrent training for a dispatcher instructor must consist of a 2-hour block of instruction every 12 months that includes the following:

(1) Subjects required in paragraph (a) of this section.

(2) Instructional and evaluation methods and techniques.

(3) Changes in aircraft dispatcher qualification curricula.

(4) Continuous analysis process review based on the factors addressed in § 121.1441.

§ 121.1459 Training category requirements: Check dispatcher initial and recurrent training.

(a) *Initial training.* Initial training for a check dispatcher must consist of a 4-hour block of instruction that includes the following subjects:

(1) Check dispatcher duties, functions, and responsibilities.

(2) Appropriate provisions of the regulations of this chapter and the certificate holder's policies and procedures.

(3) Appropriate methods, procedures, and techniques for conducting the required tests and checks.

(4) Evaluation of student performance, including recognition of the following:

(i) Improper and insufficient training; and

(ii) Personal characteristics of a student that could adversely affect safety.

(5) Corrective action in the case of unsatisfactory evaluations.

(6) Approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the dispatch facility.

(b) *Recurrent training.* Recurrent training for a check dispatcher must consist of a 2-hour block of instruction every 12 months that includes the following:

(1) Subjects required in paragraph (a) of this section.

(2) Instructional and evaluation methods and techniques.

(3) Changes in aircraft dispatcher qualification curricula.

(4) Continuous analysis process review based on the factors addressed in § 121.1441.

Other Training Requirements

§ 121.1471 Differences training and evaluation.

Each aircraft dispatcher training program must provide differences training if the Administrator finds that, due to differences between aircraft of the same type operated by the certificate holder, additional training is necessary to ensure that each aircraft dispatcher is adequately trained to perform the

assigned duties. The Administrator will determine the number of additional training hours and subjects necessary for the aircraft type and operation.

31. Add appendix Q of part 121 to read as follows:

Appendix Q to Part 121—Pilot, Qualification Performance Standards

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Attachment 4. Generic Pilot Performance Standards for Each Task and Environment (see §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1221; 121.1221; 121.1233; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1333; 121.1337; 121.1351; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

BEGIN INFORMATION

Introduction

A. What is contained in the Pilot QPS?

This QPS contains Information and QPS Requirements.

1. Information: Explanations that clarify or support regulatory requirements found in the Code of Federal Regulations or in this Pilot QPS. Explanations are provided as guidance and are not regulatory. This guidance appears under the heading ''BEGIN INFORMATION'' and uses the terms ''should'' or ''may'' to indicate that it is not mandatory.

2. QPS Requirements: Pilot Qualification Performance Standards contained in this appendix are regulatory and mandatory. These requirements appear under the heading ''BEGIN QPS REQUIREMENTS'' and use the terms ''must,'' ''may not,'' and ''will.''

B. Can the reader rely solely on this document for pilot qualification and training requirements?

No, do not rely solely on this document for regulatory requirements in these areas. The reader must also use 14 CFR part 91 and part 121, subparts G, T, V, X, and BB.

C. How can I get answers to questions about the contents of this appendix?

1. You may mail questions to: U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, Air Transportation Division, AFS–210,800 Independence Avenue, SW., Washington, DC 20591,*Telephone:* (202) 267–816, *Fax:* (202) 267–5229.

2. You may find answers to questions on the Flight Standards Internet Web Site address is: ''*http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/.*'' On this Web Site you will find Flight Standards Programs, Aviation Safety Inspector Handbooks and Documents, the current Aviation Regulations (14 CFR), Advisory Circulars, and other sources of FAA information.

D. Why do we need a QPS for pilots?

1. To provide objective standards for pilot performance and for relating these standards to simulation equipment qualification levels.

2. To provide routine and periodic update capability. This capability is needed to respond to accidents, incidents, or rapidly occurring changes to equipment and operations. All changes made to this appendix will be subject to public notice and comment, unless good cause exists to support a finding that notice and comment would be impracticable, unnecessary, or contrary to the public interest.

3. To provide the certificate holder with a minimum set of standards for developing the following:

(a) Training and certification programs,

(b) Performance standards, and

(c) Evaluation criteria as they relate to the pilot job function.

E. Where can each type of standard be found in the QPS?

1. Attachment 1 contains the programmed hour requirements for new hire, initial, transition, conversion, upgrade, differences, requalification, recurrent, and special training categories.

2. Attachment 2 contains the academic training requirements for new hire, initial, transition, conversion, upgrade, requalification, recurrent, differences, and special training categories.

3. Attachment 3 contains:

(a) The job performance training requirements for initial, transition, upgrade, conversion, requalification, recurrent, difference, and special categories of training.

(b) How evaluations are administered.

(c) What level FSTD must be used for each task or environment.

4. Attachment 4 contains the generic pilot performance standards for each task and environment.

F. [Reserved]

G. Where can definitions and acronyms be found?

You can find definitions in § 121.1205. Acronyms are as follows:

AFD Airport Facility Directory
AFE Above field elevation
AFS–210 Air Carrier Training Branch, Air Transportation Division,Flight Standards Service
AFM Airplane Flight Manual
AGL Above Ground Level
AIM Aeronautical Information Manual
APD Aircrew Program Designee
ASAP Aviation Safety Action Program
ASR Airport Surveillance Radar
ASRS Aviation Safety Reporting System
ATC Air Traffic Control
ATIS Automated Terminal Information System
ATP Airline Transport Pilot
CDI Course Deviation Indicator
CDL Critical Design List
CFIT Controlled Flight into Terrain
COM Crewmember Operating Manual
CRM Crew Resource Management
DA Decision Altitude
DH Decision Height
DME Distance Measurement Equipment
EFIS Electronic Flight Indicating Systems
EGPWS Enhanced Ground Proximity Warning System

EGT Exhaust Gas Temperature
ETOPS Extended Operations (replaces EROPS) (Extended Range Operations)
EFVS Enhanced Flight Vision System
EVAS Emergency Vision Assurance System
FAF Final Approach Fix
FDC Flight Data Center
FE Flight Engineer
FFS Full Flight Simulator
FMS Flight Management System
FOQA Flight Operational Quality Assurance
FSTD Flight Simulation Training Device
FTD Flight Training Device
GPS Global Positioning System
GPWS Ground Proximity Warning System
GS Ground Speed
HUD Head-Up Display
IAP Initial Approach Point
ICAO International Civil Aviation Organization
INS Inertial Navigation System
IOS Instructor's Operating Station
LAHSO Land and Hold Short Operations
LOFT Line Operational Flight Training
LORAN Long Range Navigation
MEA Minimum Enroute Altitude
MEL Minimum Equipment List
MDA Minimum Descent Altitude
METAR Aviation Routine Weather Report
PAR Precision Approach Radar
PBE Protective Breathing Equipment
PF Pilot Flying
PIC Pilot in Command
PM Pilot Monitoring
POI Principal Operations Inspector
PRM Precision Radar Monitor(used as part of a Simultaneous Close Parallel approach)
PTS Practical Test Standards
QFE Corrected Barometric Altitude relative to field elevation
QNE Barometric pressure used for standard altimeter setting(29.92 inHg or 1013 hPa)
QNH Corrected Barometric Altitude relative to sea level
QPS Qualification Performance Standards
QRH Quick Reference Handbook
RA Resolution Alert
RMI Radio Magnetic Indicator
RNAV Area Navigation
RNP Required Navigation Performance
RPM Revolutions Per Minute
SAR Search and Rescue
SIC Second In Command
SID Standard Instrument Departure
SOIR Simultaneous Operations on Intersecting Runways
STAR Standard Terminal Arrival
TA Traffic Alert
TAA Terminal Arrival Area
TAS True Airspeed
TAWS Terrain Avoidance Warning System
TCAS Traffic Collision Avoidance System
TCE Training Center Evaluator
TSA Transportation Security Administration
V_1 Takeoff Decision Speed
V_2 Takeoff Safety Speed
V_{MCA} Minimum Control Speed Air
V_{MCG} Minimum Control Speed Ground
V_R Rotation Speed
V_{REF} Reference Speed
V_{SO} Stall Speed, Landing Configuration
V_{S1} Stall Speed, Specific Configuration
XLS Other Landing System

H. What references are recommended?

The following references (as amended) support the knowledge and skill standards for tasks. They are strongly recommended for providing further details for lesson development. To find 14 CFR parts go to *http://ecfr.gpoaccess.gov*; to find Advisory Circulars go to: *http://www.faa.gov/regulations_policies/advisory_circulars*; and to find FAA handbooks go to: *http://www.faa.gov/other_visit/aviation_industry/airline_operators/handbooks/*.

1. 14 CFR part 1, Definitions and Abbreviations
2. 14 CFR part 60, Qualification of Flight Simulation Devices
3. 14 CFR part 61, Certification: Pilots, Flight Instructors, and Ground Instructors
4. 14 CFR part 91, General Operating and Flight Rules
5. 14 CFR part 121, Operating Requirements: Domestic, Flag, and Supplemental Operations
6. AC 00–6, Aviation Weather
7. AC 0045, Aviation Weather Services
8. AC 25.1581–1, Airplane Flight Manual
9. AC 60–22, Aeronautical Decision Making
10. AC 60–28, English Language Skill Standards
11. AC 61–21, Flight Training Handbook
12. AC 61–27, Instrument Flying Handbook
13. AC 61–84, Role of Preflight Preparation
14. AC 120–28, Criteria for Approval of Category III Landing Weather Minima for Takeoff, Landing, and Rollout
15. AC 120–29, Criteria for Approving Category I and Category II Landing Minima for Approach
16. AC 120–51, Crew Resource Management Training
17. AC 120–53, Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated Under part 121
18. AC 120–54, Advanced Qualification Program
19. AC 120–55, TCAS II Operational Approval for Air Carriers
20. AC 120–59, Air Carrier Internal Evaluation Programs
21. AC 120–71, Standard Operating Procedures for Flight Deck Crewmembers
22. Aeronautical Information Manual (AIM)
23. AC 120–88, Preventing Injuries Caused by Turbulence
24. FAA H–8083–15, Instrument Flying Handbook
25. En Route Low and High Altitude Charts
26. Profile Descent Charts
27. Standard Instrument Departure (SID)
28. Standard Terminal Arrival Routes (STAR)
29. Airport Facility Directory (AFD) and Standard Instrument Approach Procedure Charts (SIAP)
30. National Flight Data Center Notices to Airmen (FDC NOTAM)
31. Integrated Measurement of Crew Resource Management and Technical Flying Skills, DOT/FAA/RD–93/26
32. Transportation Security Regulations (TSRs)
33. HMR 175, Hazardous Materials Regulations, Carriage by Aircraft
34. FAA Order 8040.4, Safety Risk Management
35. Air Transportation Operations Inspector's Handbook, 8400.10

I. What training aids and guides should be used to develop instructional materials?

The FAA and the industry periodically publish training aids and guides in specific technical performance areas (*http://www.faa.gov/other_visit/aviation_industry/airline_operators/training/index.cfm* and *http://www.faa.gov/education_research/training/*). These aids and guides are accepted as the industry standard for their specific technical area. The following training aids and guides are not regulatory, but contain valuable information about safety of flight operations that should be considered when developing instructional materials for the tasks to which each apply.

1. Takeoff Safety Training Aid.
2. Wake Vortex Training Aid.
3. Windshear Training Aid.
4. Upset Recovery Training Aid.
5. Winter Operations Guide to Air Carriers.
6. Controlled Flight Into Terrain.

END INFORMATION

BEGIN QPS REQUIREMENT

J. How must Crew Resource Management (CRM) training be administered?

The pilot must demonstrate knowledge and skills in the technical and CRM competencies for each particular task.

1. Certain CRM-related procedures must be associated with flight tasks and their related pilot performance requirements, as shown in Attachment 4 of this appendix. These procedures must be evaluated during job performance training programs.

2. In addition to the CRM-related procedures, situational awareness must

be evaluated as an integral part of each flight task and environment. A task is not completed unless the evaluator has determined that the pilot has demonstrated knowledge and skills in the technical and CRM competencies.

3. Additionally, the following CRM behaviors are required knowledge to be taught and tested during academic training, as shown in Attachment 2 of this appendix:

(a) Task: Authority of the Pilot In Command

(1) The Captain's authority, including responsibility for the safety of flight in routine and emergency conditions

(2) Chain of command and importance of chain of command

(b) Task: Communication Processes and Decisions

(1) Briefing

(2) Inquiry, advocacy, and assertiveness

(3) Self-critique

(4) Communication with appropriate personnel

(5) Decisionmaking

(6) Conflict resolution

(c) Task: Building and Maintenance of a Flight Team

(1) Leading and following, including the importance of crewmembers functioning as a team

(2) Use of interpersonal skills and leadership styles in a way that fosters crew effectiveness

(3) Significance of cultural differences

(d) Task: Workload Management and Situational Awareness

(1) Preparation and planning

(2) Vigilance

(3) Workload distribution

(4) Distraction avoidance

(e) Task: Communication and Coordination

(1) Flight deck and cabin chimes and interphone signals for routine situations

(2) Flight attendant notification to flight crew that aircraft is ready for movement on the surface.

(3) Flight crew notification to flight attendant to be seated prior to take-off

(4) Flight attendant recognition of critical phases of flight

(5) Crewmember coordination and notification regarding access to flight deck

(6) Notification to flight attendants of turbulent air conditions

(7) Notification between flight crew and flight attendants of emergency or unusual situations

(8) Notification between flight crew and flight attendants of inoperative equipment that is pertinent to flight attendant duties and responsibilities

(9) Normal and emergency communication procedures to be used in the event of inoperative communication equipment

(f) Task: Crewmember Briefing

(1) Crewmember responsibilities regarding briefings

(2) Flight crew briefing

(3) Flight crew to flight attendant(s) briefings

(4) Flight attendant to flight attendant(s) briefings

(5) Required information

(6) Security procedures

(7) Communication procedures

(8) Emergency procedures

(9) MELs affecting flight operations and cabin safety equipment and procedures

(10) Flight information

(g) Task: Communication and Coordination During a Passenger Interference Situation

(1) Certificate holder's written program regarding the handling of passenger interference, including crewmember communication and coordination

(2) Techniques for diffusing a passenger interference situation

(3) Importance of crewmembers and other employees working as a team

(4) Role of management and crewmember in follow-up

(5) Actions to report an occurrence of passenger interference

(h) Task: Communication and Coordination During an Emergency Situation

(1) Actions for each emergency situation

(2) Importance of notification and who must be notified

(3) Alternate actions if unable to notify

(4) Communication during preparation for a planned emergency evacuation, including the time available, type of emergency, signal to brace, and special instructions

END QPS REQUIREMENT

BEGIN INFORMATION

4. CRM refers to the effective use of all available resources, including, human resources, hardware, and information. Human resources include all other groups routinely working with the flight crewmembers who are involved in decisions that are required to operate a flight safely. CRM is not a single task. CRM is a set of competencies that must be evident in all tasks in this QPS as applied to the individual and the multi-crew operation.

5. CRM deficiencies usually contribute to the unsatisfactory technical performance of a task. Therefore, the CRM competencies are valuable for debriefing. For debriefing purposes, an amplified list of these competencies, expressed as behavioral markers, is in AC 120–51, as amended.

6. Certificate holders should conduct flight crewmember and flight attendant CRM scenarios together. When this is not possible, certificate holders should include information in flight crewmember training that addresses the roles of flight attendants during emergency situations.

K. What is the continuous analysis process and how is it incorporated in this QPS? (see § 121.1355)

1. The continuous analysis process is a certificate holder internal evaluation and improvement process. The continuous analysis process will enable the certificate holder to maintain and refine the training process by continually monitoring the effectiveness and efficiency of the process. Various assessment tools (testing, checking, inspection, documenting, evaluation, and analysis) will be used to validate the effectiveness of a training program or the need to change a training program.

END INFORMATION

BEGIN QPS REQUIREMENT

2. A continuous analysis process is incorporated in this QPS through integration with the qualification and training program. The certificate holder is responsible for designating responsibility for the process. The certificate holder must ensure appropriate and adequate assessment tools (testing, checking, critique, inspection, observation, documenting, evaluation, and analysis) are utilized to enable the certificate holder to validate the effectiveness of the qualification and training program, or the need to change that program. The certificate holder must describe the attributes of the continuous analysis process in the certificate holder's FAA approved training program.

END QPS REQUIREMENT

BEGIN INFORMATION

3. Components of a Continuous Analysis Process.

(a) Qualification and training program as approved by the Administrator. Attributes of the continuous analysis process:

(1) Who is responsible?

(2) Who has authority to change the process?

(3) Description of the process.

(4) Controls. policy, procedure, training, evaluation.

(5) Documenting and measurement.

(6) Interfaces between Departments. Consistency (policy, procedures, manuals):

(i) Across Departments

(ii) Across Divisions

(b) Assessment tools (adequate and appropriate)

(1) Testing

(2) Checking

(3) Critique

(4) Inspection and observation

(6) Documenting

(7) Evaluation and analysis

(c) Modification and adjustment of the qualification and training program

(d) Approval for modification and adjustment

END INFORMATION

Attachment 1 of Appendix Q to Part 121

Programmed Hour Requirements for New Hire, Initial, Transition, Conversion, Upgrade, Differences, Requalification, Recurrent, and SpecialTraining Categories

BEGIN QPS REQUIREMENT

A. Programmed Hour Requirements: Pilots (PIC and SIC). (see §§ 121.1205; 121.1331; 121.1333; 121.1335)

1. *Baseline and Minimum Programmed Hours.* Table 1A sets out the baseline and minimum programmed hours for each category of training by segment (academic and job performance). The FAA may approve a reduction in baseline programmed hours if the certificate holder demonstrates that the reduction is warranted. The FAA will not approve a reduction in the programmed hours below the minimum programmed hours.

2. *Required hours for requalification training.* The hours established for requalification training (§ 121.1239) are for individuals in specific circumstances. Therefore, there are no programmed hours in Table 1A for requalification training.

3. *Required hours for differences and special training.* The hours established for differences and special training are in addition to the previously approved programmed hours for the approved training program. For differences training (§ 121.1391), the hours remain in the differences training category. For special training (§ 121.1337(c)), the certificate holder integrates the training into the existing categories in Table 1A. Therefore, there are no programmed hours in Table 1A for differences and special training.

TABLE 1A—PROGRAMMED HOUR REQUIREMENTS: PILOTS (PIC AND SIC)

Training categories	Training segments		
	Academics	Job performance	
	Ground training	Flight training	Emergency equipment drills and demonstrations
NEW HIRE	Baseline 116	N/A	Baseline 4.
	Minimum 20		Minimum 4.
INITIAL	Baseline 116	Baseline 36	Baseline 8.
	Minimum 80	Minimum 36	Minimum 8.
FULL CONVERSION	Baseline 68	Baseline 20	Baseline 4.
	Minimum 52	Minimum 20	Minimum 4.
CORE CONVERSION	Baseline 52	Baseline 20	Baseline 4.
	Minimum 36	Minimum 20	Minimum 4.
TRANSITION	Baseline 92	Baseline 24	Baseline 4.
	Minimum 62	Minimum 24	Minimum 4.
FULL UPGRADE	Baseline 68	Baseline 20	Baseline 4.
	Minimum 52	Minimum 20	Minimum 4.
CORE UPGRADE	Baseline 52	Baseline 20	Baseline 4.
	Minimum 36	Minimum 20	Minimum 4.
RECURRENT	Baseline 18 (each 9-month Recurrent training period).	Baseline 8 (each 9-month Recurrent training period).	Baseline 8. (each 36-month period).
	Minimum 14	Minimum 8	Minimum 8.
REQUALIFICATION	Determined by Administrator	Determined by Administrator	Determined by Administrator.
DIFFERENCES	Determined by Administrator	Determined by Administrator	Determined by Administrator.
SPECIAL	Developed by Certificate Holder, Approved by the Administrator.	Developed by Certificate Holder, Approved by the Administrator.	Determined by Administrator.

END QPS REQUIREMENT

BEGIN INFORMATION

B. Recurrent Training (see § 121.1367)

Recurrent training modules are required each 9 months. Recurrent training modules also will contain academic subjects, job performance tasks and environments, and emergency drills and demonstrations that may be required once each 9 months, once each 18 months, or once each 36 months. The certificate holder may distribute these recurrent training requirements in a manner that best suits its training program structure while ensuring that the required items are included at the appropriate intervals.

Example 1: A 9-month recurrent period includes all of the academic subjects and job performance tasks and environments that are required at each 9-month interval. The certificate holder may decide to include one-half of those academic subjects and job performance tasks and environments that are required every 18 months during this particular 9-month training period, and leave the balance to be completed at the next 9-month period. Also, the certificate holder may decide to include one-fourth of the emergency equipment drills and demonstrations during this 9-month interval, and leave the other three-fourths of those drills and demonstrations to be completed during subsequent 9-month periods.

Example 2: A 9-month recurrent period includes all of the academic subjects and job performance tasks and environments that are required every 9 months. During the next 9-month recurrent period, the certificate holder must include all of the academic subjects and

job performance tasks and environments that are required every 9 months, as well as all of the academic subjects and job performance tasks and environments that are required every 18 months. At the following 9-month interval (27-month point), the certificate holder must include all those academic subjects and job performance tasks and environments that are required every 9 months. Then, at the 36-month point, the certificate holder must include all of the academic subjects and job performance tasks and environments that are required every 9 months, all of the academic subjects and job performance tasks and environments that are required every 18 months, and all of the academic subjects, job performance tasks, and all the emergency equipment drills and demonstrations that are required every 36 months.

END INFORMATION

Attachment 2 of Appendix Q to part 121

Academic Training Segment Requirements—Subjects and Tests—for New Hire, Initial Transition, Conversion, Upgrade, Requalification, Recurrent, Differences, and Special Training Categories

BEGIN INFORMATION

A. Required Academic Training Subjects by Category of Training.

(See §§ 121.1221; 121.1223; 121.1225; 121.1227; 121.1229; 121.1333; 121.1335; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1381; and 121.1391)

1. Attachment 2 contains the Academic Training Segment requirements.

2. When differences and special training are required for academic training, they will be additional training modules or new subjects. For more information about differences and special training categories see attachment 1 of this appendix.

3. How to read Table 2A:

(a) Table 2A contains the Required Academic Training Subjects by Category of Training. In the table, an ''X'' indicates that the subject must be included in the category of training. A ''9'' indicates that the subject must be trained every 9 months. An ''18'' indicates that the subject must be trained every 18 months.

(b) Table 2A item (c)(3) addresses the training subject ''Coordination, communication, and methodology for the performance of each normal, abnormal, and emergency procedure contained in the FCOM.'' For core upgrade, core conversion, phase I requalification, and recurrent training all abnormal and emergency procedures are required. However, only selected normal procedures are required. The selection of normal procedures should be based on procedural changes, feedback from observed procedural irregularities, and system safety initiatives.

END INFORMATION

BEGIN QPS REQUIREMENT

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING

Subject	New hire	Initial and phase III requalification	Transition	Full upgrade, full conversion, and phase II requalification	Core upgrade, core conversion, and phase I requalification	Recurrent
(a) General Subjects:						
(1) Duties and responsibilities of flight crewmembers	X					
(2) Appropriate requirements of the Federal Aviation Regulations		X	X	X	X	18
(3) General relationship of FAA to the certificate holder	X					
(4) General overview of the contents of the certificate holder's Operating Certificate and Operations Specifications	X					
(5) Meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, and high altitude weather situations. Recognizing and avoiding severe weather situations and other hazards	X					
(6) Air traffic control systems, airspace, procedures, and phraseology	X					
(7) Navigation and the use of navigation aids, including instrument approach procedures including how to use the information available on approach charts and maps and on airport diagrams		X	X	X	X	18
(8) Development of and operating in the National Airspace System	X					

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

	New hire	Initial and phase III requalification	Transition	Full upgrade, full conversion, and phase II requalification	Core upgrade, core conversion, and phase I requalification	Recurrent
(9) General Concepts of TCAS Operation	.....	X	X	X	X	18
(i) The meaning of Traffic Alerts (TAs).						
(ii) The meaning of preventive Resolution Advisories (RAs).						
(iii) The meaning of corrective RAs. TCAS equipment components controls, displays, audio alerts, and annunciations; interfaces and compatibility with other aircraft systems; TCAS surveillance range versus display range; altitude ceiling operators; when an intruder will not be displayed; and TCAS performance on the ground.						
(10) High Altitude Physiology—Operations above 10,000 ft.—Aircraft Decompression; Causes and Recognition of cabin pressure loss; Physiological Effects and time of useful consciousness; Immediate Actions; Altitude and Flight Level requiring the wearing of oxygen masks	X	.....	.....	.....	.....	.....
(11) Mechanical and Incident Reporting Procedures	X	.....	.....	.....	.....	.....
(12) Voluntary Safety Program and Participation, including ASAP, FOQA, LOSA, and other government and industry accident prevention programs	X	.....	.....	.....	.....	.....
(13) Normal and emergency communications	X	X	X	X	X	18
(14) General content, control, and maintenance of applicable portions of the certificate holder's operating manual, including the Flight Crewmember Operating Manual (FCOM). Relationship of FCOM to the Airplane Flight Manual	X	.....	.....	.....	.....	.....
(15) Dispatch and flight release procedures. Flight planning as applicable	X	X	.....	.....	X (Upgrade and Conversion training only)	.....
(b) Crew Resource Management (CRM):						
(1) Task: Authority of the Pilot In Command	X	X	.....	.....	.....	.....
(i) The Captain's Authority, including responsibility for the safety of flight in routine and emergency conditions.						
(ii) Chain of command and importance of chain of command.						
(2) Task: Communication Processes and Decisions	X	X	.....	.....	.....	.....
(i) Briefing.						

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

	New hire	Initial and phase III requalification	Transition	Full upgrade, full conversion, and phase II requalification	Core upgrade, core conversion, and phase I requalification	Recurrent
(ii) Inquiry, advocacy, and assertiveness.						
(iii) Self-critique.						
(iv) Communication with available personnel.						
(v) Decisionmaking.						
(vi) Conflict resolution.						
(3) Task: Building and Maintenance of a Flight Team	X	X				
(i) Leading and following, including the importance of crewmembers functioning as a team.						
(ii) Use of interpersonal skills and leadership styles in a way that fosters crew effectiveness.						
(iii) Significance of cultural differences.						
(4) Task: Workload Management and Situational Awareness	X	X				
(i) Preparation and planning.						
(ii) Vigilance.						
(iii) Workload distribution.						
(iv) Distraction avoidance.						
(5) Task: Communication and Coordination	X	X				
(i) Flight deck and cabin chimes and interphone signals for routine situations.						
(ii) Flight attendant notification to flight crew that aircraft is ready for movement on the surface.						
(iii) Flight crew notification to flight attendant to be seated prior to take-off.						
(iv) Flight attendant recognition of critical phases of flight.						
(v) Crewmember coordination and notification regarding access to flight deck.						
(vi) Notification to flight attendants of turbulent air conditions.						
(vii) Notification between flight crew and flight attendants of emergency or unusual situations.						
(viii) Notification between flight crew and flight attendants of inoperative equipment that is pertinent to flight attendant duties and responsibilities.						
(ix) Normal and emergency communication procedures to be used in the event of inoperative communication equipment.						
(6) Task: Crewmember Briefing	X	X				
(i) Crewmember responsibilities regarding briefings.						
(ii) Flight crew briefing.						
(iii) Flight crew to flight attendant(s) briefings.						

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

	New hire	Initial and phase III requalification	Transition	Full upgrade, full conversion, and phase II requalification	Core upgrade, core conversion, and phase I requalification	Recurrent
(iv) Flight attendant to flight attendant(s) briefings.						
(v) Required information.						
(vi) Security procedures.						
(vii) Communication procedures.						
(viii) Emergency procedures.						
(ix) MELs affecting flight operations and cabin safety equipment and procedures.						
(x) Flight information.						
(7) Task: Communication and Coordination During a Passenger Interference Situation ..	X	X	.....	.....	.....	.....
(i) Certificate holder's written program regarding the handling of passenger interference, including crewmember communication and coordination.						
(ii) Techniques for diffusing a passenger interference situation.						
(iii) Importance of crewmembers and other employees working as a team.						
(iv) Role of management and crewmember in follow-up.						
(v) Actions to report an occurrence of passenger interference.						
(8) Task: Communication and Coordination During an Emergency Situation	X	X	.....	.....	.....	.....
(i) Actions for each emergency situation.						
(ii) Importance of notification and who must be notified.						
(iii) Alternate actions if unable to notify.						
(iv) Communication during preparation for a planned emergency evacuation, including the time available, type of emergency, signal to brace, and special instructions.						
(c) Aircraft Type Specific:						
(1) Contents of the certificate holder's operating manual, including the FCOM. Use of any FCOM-based quick reference handbook (QRH)	.....	X	X	X	X	18
(2) Operating limitations	.....	X	X	X	X	18
(3) Coordination, communication, and methodology for the performance of each normal, abnormal, and emergency procedure contained in the FCOM ..	.....	X	X	X	[1] X	[1] 18
(4) Aircraft systems as described in the FCOM	.....	X	X	X	X	18
(5) Instrument procedures and low visibility operations	.....	X	X	X	X	18

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

	New hire	Initial and phase III requalification	Transition	Full upgrade, full conversion, and phase II requalification	Core upgrade, core conversion, and phase I requalification	Recurrent
(6) Aircraft performance determinations and flight planning for all phases of flight, including takeoff and landing requirements considering aircraft, crew, airport, and weather requirements for takeoff, departure, and landing	.....	X	X	X	X	18
(7) Operations Specifications authorizations and limitations	.....	X	X	X	X	18
(8) MMEL, MEL, CDL	.....	X	X	X	X	18
(9) Emergency communications with passengers and other crewmembers	X	X	X	X	X	18
(10) Storage of and how to administer medicinal oxygen	X	.....	.....	X	.....	18
(11) The certificate holder's policy and FCOM procedures on the use of command and control automation and criteria for selecting and deselecting appropriate levels of automation (including manual control of flight) must be included in the lateral and vertical modes of takeoff, approach, and landing	.....	X	X	X	X	18
(d) Special Hazards:						
(1) Preventing controlled flight into terrain (CFIT) and approach and landing accidents	.....	X	X	X	X	18
(2) Recovery from loss of control due to airplane design, airplane malfunction, human performance, and atmospheric conditions	.....	X	X	X	X	18
(3) Low altitude windshear	.....	X	X	X	X	9
(i) Recognition and avoidance.						
(ii) Recovery from inadvertent encounter.						
(4) Takeoff safety: Decision-making and high speed aborts, including propulsion system malfunction analysis, causes, symptoms, recognition, and the effects on aircraft performance and handling	.....	X	X	X	X	18
(5) Airport surface movement safety and runway incursion prevention	.....	X	X	X	X	18
(6) Hazards of operating in or near thunderstorms, turbulent air, icing, hail, volcanic ash, and other potentially hazardous conditions	.....	X	X	.....	.....	.....
(7) Land and hold short operations (LAHSO)	.....	X	X	X	X	9
(8) Ground anti-icing and deicing	.....	X	X	X	X	18
(9) Ice accumulation in flight	.....	X	X	X	X	18
(e) Special Operations Areas:						
(1) Close simultaneous parallel precision approach operations with Precision Radar Monitor (PRM)	.....	X	X	X	X	18
(2) Special routes, areas and airports	.....	X	X	X	X	18
(f) International Operations:						
(1) Area and route characteristics	X	X	X	X	X	18

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

	New hire	Initial and phase III requalification	Transition	Full upgrade, full conversion, and phase II requalification	Core upgrade, core conversion, and phase I requalification	Recurrent
(2) Flight planning, charts, course plotting, and tables	X	X	X	X	X	18
(3) Class II Navigation	X	X	X	X	X	18
(4) Communications	X	X	X	X	X	18
(5) ETOPS or EROS, as applicable	X	X	X	X	X	18
(6) International rules and regulations	X	X	X	X	X	18
(7) Abnormal Operations	X	X	X	X	X	18
(g) Emergency Equipment Training:						
(1) Emergency communications with passengers and other crewmembers	X	X	X	X	X	18
(2) Crewmember-specific roles in dealing with crewmember and passenger injury and illness, and disruptive passengers	X					9
(3) Location and familiarization of contents for first aid and medical kits		X	X	X		9
(4) Location and use of defibrillator		X	X	X		
(5) Certificate holders blood-borne pathogen awareness program	X					9
(6) Location and use of emergency exits		X	X	X		18
(7) Location and use of emergency equipment. Equipment must include:		X	X	X		18
(i) For over water operations: life preservers, flotation seat cushions, life rafts, slides, and slide rafts		X	X	X		18
(ii) For ground or water evacuation: escape ropes, megaphones, flashlight, emergency lighting, emergency locator transmitters, first aid kit, slides, slide rafts, fire extinguishers (each type used), smoke and fume protection (such as PBE and smoke goggles), megaphones, oxygen (portable, passenger oxygen system, flight crew masks), supplemental (flight deck key, demonstration equipment, smoke detectors, trash containers, seat belt extensions)		X	X	X		18
(8) Fires—in flight and on the ground						
(i) Procedures and strategies for fire prevention		X	X			
(ii) Classes of fires and correct methods of extinguishing each		X				
(iii) Flight attendant role in exterior, APU, jetway, and ramp fire		X	X	X		18

[1] All abnormal and emergency procedures are required. Only selected normal procedures are required. *See* paragraph A.(3)(b) of this attachment for information about selecting normal procedures.

END QPS REQUIREMENT

BEGIN QPS REQUIREMENT

B. Knowledge Assessment. (see §§ 121.1341 and 121.1343)

1. Knowledge and understanding of each subject within each area of instruction must be evaluated by written or computer based testing at the end of academic training. When written or computer based methods are used:

(a) A score of 80% or better on each instructional area is required to be satisfactory.

(b) A minimum of 5 questions must be developed for each subject.

(c) Two questions for each subject must be randomly selected for each test.

(d) The form and content of each test must be approved by the Administrator.

(e) The test must be corrected to 100% by a person administering the test.

(f) Correction of missed questions must include a discussion of which answer is correct and why, and why the person's original answer was incorrect.

(g) Retraining is required for each instructional area in which a score of 80% or better is not achieved.

(h) Examination after retraining of the student is required for each instructional area in which retraining was completed.

2. The knowledge assessment for the specific aircraft subjects of limitations, systems, and performance and loading may be used for the oral portion of the proficiency test if completed no more than 60 days prior to the flight portion of the proficiency test (see attachment 3, E.2.(a) of this appendix).

3. The following standards are for evaluating the pilot performance in limitation, systems, and performance and loading subjects.

(a) Limitations—The pilot must know all of the limitations appropriate to the aircraft with respect to:

(1) Systems and components.

(2) Performance.

(b) Systems—The pilot must understand and be knowledgeable about the following subjects (systems and components) and be able to explain their operation as described in the FCOM and their applicability, as appropriate, to the Minimum Equipment List (MEL), Configuration Deviation List (CDL), and the operations specifications:

(1) Landing gear: including, as appropriate, extension and retraction system(s), indicators, brakes, anti-skid, tires, nose-wheel steering, and shock absorbers.

(2) Engine(s): including controls and indications, induction system, carburetor and fuel injection, turbo-charging, cooling, fire detection and protection, mounting points, turbine wheels, compressors, deicing, anti-icing, and other related components.

(3) Propellers (if appropriate): including type, controls, feathering and unfeathering, auto feather, negative torque sensing, synchronizing, and synchro-phasing.

(4) Fuel system: including capacity, drains, pumps, controls, indicators, cross-feeding, transferring, jettison, fuel grade, color and additives, fueling and de-fueling procedures, and allowable fuel substitutions, if applicable.

(5) Oil system: including capacity, grade, quantities, and indicators.

(6) Hydraulic system: including capacity pumps, pressure, reservoirs, grade, and regulators.

(7) Electrical system: including alternators, generators, battery, circuit breakers and protection devices, controls, indicators, and external and auxiliary power sources and ratings.

(8) Environmental systems: including heating, cooling, ventilation, oxygen and pressurization, controls, indicators, and regulating devices.

(9) Avionics and communications: including autopilot; flight director; Electronic Flight Indicating Systems (EFIS); Flight Management System(s) (FMS); Long Range Navigation (LORAN) systems; Doppler Radar, Inertial Navigation Systems (INS); Global Positioning System (GPS/DGPS/WGPS); VOR, NDB, ILS/MLS, RNAV systems and components; indicating devices; transponder; and emergency locator transmitter.

(10) Ice protection (anti-ice and de-ice): including pitot-static system, propeller (if appropriate), windshield, wing and tail surfaces.

(11) Crewmember and passenger emergency equipment and procedures: including oxygen system, survival gear, emergency exits, evacuation procedures with crew duties, and quick donning oxygen mask for crewmembers and passengers.

(12) Flight controls: including ailerons, elevator(s), rudder(s), control tabs, balance tabs, stabilizer, flaps, spoilers, leading edge flaps and slats, and trim systems.

(13) Flightdeck automation: including the certificate holder's written automation policy and written operating procedures for selecting and deselecting appropriate levels of automation. This must include the certificate holder's policy for conducting CAT II and CAT III approaches when authorized.

(14) Pneumatic system.

(c) Performance and loading—The pilot must understand and be proficient in the use of (as appropriate to the aircraft) performance charts, tables, graphs, and other data relating to items such as:

(1) Accelerate—stop distance.

(2) Accelerate—go distance.

(3) Balanced field.

(4) Takeoff performance, all engines and with engine(s) inoperative, as appropriate.

(5) Climb performance including segmented climb performance; with all engines operating; with one or more engines inoperative; and with other engine malfunctions as appropriate.

(6) Service ceiling, all engines, with engines(s) inoperative, including drift down, if appropriate.

(7) Cruise performance.

(8) Fuel consumption, range, and endurance.

(9) Descent performance.

(10) Go-around from rejected landings.

(11) The effects of meteorological conditions on performance characteristics with correct application of these factors to a specific chart, table, graph or other performance data.

(12) How to determine longitudinal and lateral center-of-gravity location for a specific load condition, including how to add, remove, or shift weight to meet longitudinal (forward and aft), and lateral balance limits for takeoff, cruise, and landing.

(13) Correct planning and knowledge of procedures in applying operational factors affecting airplane performance.

(14) Meteorological effects on performance.

(15) METAR and ATIS weather data.

(16) Planning and application of operational factors affecting aircraft performance such as high altitude airports, cluttered and contaminated runways, ground and inflight icing.

(17) Other performance data (appropriate to the aircraft).

END QPS REQUIREMENTS

Attachment 3 of Appendix Q to part 121

Job Performance Training Requirements for All Categories of Training (Tasks, Environments, Drills, and Observations With Instruction, Evaluation, and Simulation Credits)

BEGIN QPS REQUIREMENT

A. Determining the Job Performance (Flight Training) Tasks and Environments Required for Instruction and Evaluation for Each Category of Training

(*see* §§ 121.133; 121.135; 121.1221; 121.1223; 121.1225; 121.1227; 121.1229; 121.1333; 121.1335; 121.1337; 121.1339; 121.1341; 121.1343; 121.1345; 121.1347; 121.1349; 121.1351; 121.1353; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

1. Certificate holder responsibilities with respect to the FCOM and Table 3A.

(a) The certificate holder must use Table 3A of this Attachment to determine the tasks and environments on which each pilot must be instructed and evaluated for each training category in accordance with an FAA approved job performance (flight operations) training program. The tasks listed in the FCOM must reflect the tasks included in the table, as amended and include standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures, as well as the authorizations contained in the certificate holder's operations specifications.

(b) If the certificate holder adds tasks or environments to those listed in Table 3A, it must further develop the tasks or environments to include the requirement and frequency for training and evaluation in each additional task or environment. These changes must be submitted to the POI for approval.

(c) If the certificate holder's operation does not permit, or the operation of the aircraft flown by the certificate holder does not require one or more of the tasks listed in Table 3A, those tasks must not be included in the FCOM.

(d) The recurrent requirements in Table 3A also include the frequency during which each pilot must be trained and evaluated in each task and environment.

(e) Changes to the FCOM must be submitted to the POI for approval.

2. Job Performance Training Requirements.

When differences and special training are required for job performance training, they will be additional training modules or new tasks or environments. For more information about differences and special training categories see attachment 1 of this appendix.

END QPS REQUIREMENT

BEGIN INFORMATION

3. Deviation from § 121.1345 Training program: Mandatory use of flight simulation training devices. If a certificate holder receives a deviation in accordance with § 121.1345, and the certificate holder wants to extend the deviation, the certificate holder should submit the request for an extension at least 60 days before the termination date of the deviation.

END INFORMATION

BEGIN QPS REQUIREMENT

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Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION and PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
1.0 All Operations									
1.1 Normal, Abnormal, and Emergency Procedures	X	X	X	X	X			X	X
1.2 Operation of Systems and Controls at the Flight Engineer's Panel	X	X(1)	X(1)			X			
1.3 Human Factors and CRM	X	X	X	X	X			X	X
1.4 Aircraft Handling Standards	X	X	X	X	X			X	X
1.5 ATC Communications and Procedures	X	X	X	X	X			X	X
1.6 Seat Dependent Training	X	X	X			X			
2.0 Preflight Procedures									
2.1 Planning	X	X(1)	X(1)	X		X		X	
2.2 Flight deck Inspection	X	X(1)	X(1)	X		X		X	
2.3 Cabin Inspection	X	X(1)	X(1)						
2.4 Exterior Inspection	X	X(1)	X(1)	X		X		X	
2.5 Navigation System Setup	X	X	X	X	X			X	

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every 36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
3.0 Ground Operations									
3.1 Engine Start									
3.1.1 Normal	X			Select One			X	Select One	
3.1.2 Non-normal	X	X(1)	X(1)			X			X
3.2 Pushback and Powerback	X	X(1)	X(1)				X		
3.3 Taxi	X	X	X	X	X			X	
3.4 Pre-Takeoff Procedures	X	X	X	X	X			X	X
3.5 After Landing	X				X			X	
3.6 Parking and Securing	X						X		
4.0 Takeoff									
4.1 Normal and Crosswind – With All Engines Operating	X	X	X	X	X			X	X
4.2 Instrument with Lowest Authorized RVR	X	X	X	X	X			X	
4.3 With Engine Failure -									
4.3.1 Between V_1 and V_R	X	X	X	Select One	X			Select One	Select One
4.3.2 Between V_R and 500 ft. above field elevation	X	X	X		X				
4.4 Rejected With Lowest Authorized RVR	X	X	X	X	X			X	

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
5.0 Departure, Climb, Cruise, Descent, and Arrival									
5.1 Instrument Departure	X	X	X	A		X		A	A
5.2 Climb	X	X					X		
5.3 One Engine Inoperative En route	X	X	X				X		
5.4 En route Navigation	X	X(1)	X(1)			X			
5.5 Descent	X	X					X		
5.6 Instrument Arrival	X	X	X	A		X		A	A
5.7 Holding	X	X	X	B		X		B	
5.8 Approach Transition	X	X	X	X		X		X	X

Table 3A – Job Performance Tasks and Environments

CATEGORY of TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
6.0 Aircraft Handling									
6.1 Recognition of, and Recovery from, Approach to Stall									
6.1.1 Clean	X	X	X	Select One	Select at least One	Select at least one other.		Select One	Select One
6.1.2 Takeoff and Maneuvering	X	X	X						
6.1.3 Landing	X	X	X						
6.1.4 Landing with Auto Pilot Engaged.	X	X	X						
6.2 Asymmetric Thrust									
6.2.1 Engine Shutdown	X								
6.2.2 Maneuvering with One Engine Inoperative	X	X	X			X			
6.2.3 Engine Restart	X					X			

Table 3A – Job Performance Tasks and Environments

CATEGORY of TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every 36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
6.3 Runaway Trim and Stabilizer	X	X(1)	X(1)				X		
6.4 Jammed Trim and Stabilizer	X	X(1)	X(1)				X		
6.5 Upset Recognition and Recovery	X	X	X		X				
6.6 Slow Flight	X	X	X				X		
6.7 Turns with and without Spoilers	X	X(1)	X(1)						
6.8 Stability Augmentation Inoperative	X	X(1)	X(1)						
6.9 Mach Tuck and Mach Buffet	X	X(1)	X(1)						
6.10 High Sink Rate	X	X	X				X		
6.11 Flight Envelope Protection Demonstration	X	X(1)	X(1)						

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
6.12 Windshear Avoidance and Encounter									
6.12.1 Takeoff	X	X	X		Select One				
6.12.2 Departure	X	X	Select One						
6.12.3 Approach	X	X							
6.13 Traffic Avoidance (TCAS)	X	X	X				X		
6.14 Terrain Avoidance (EGPWS or TAWS)	X	X	X			X			

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERTION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every 36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
7.0 Instrument Approaches									
7.1 All Engines Operating - Autopilot Coupled	X	X	X	X	X			Select one	Select One
7.2 All Engines Operating – Manually Flown	X	X	X			X			
7.3 One Engine Inoperative – Manually Flown	X	X	X	X	X				
7.4 Approach Type									
7.4.1 Category II and III	X	X	X	X	X			X	
7.4.2 Precision Groups[D]	C	C	C	X	X			X	X
7.4.3 Non-Precision Groups[D]	C	C	C	X(2)	X			X(2)	X
7.4.4 Ground Based Radar Approach	X	X	X	X			X		X

Table 3A – Job Performance Tasks and Environments

CURRICULUM	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
8.0 Visual Approach									
8.1 All Engines Operating (Normal)	X	X	X	Select One		X		Select One	
8.2. One Engine Inoperative	X	X	X			X			
8.3 Two Engines Inoperative (3 and 4 Engine Aircraft)	X	X	X			X			
9.0 Missed Approach									
9.1 All Engines Operating	X	X	X	X		X		X	Select One
9.2 One Engine Inoperative	X	X	X	X	X			X	
9.3 From a Circling Approach (when authorized)	X	X	X	X		X		X	
9.4 Descending Break-Out Maneuver from PRM Approach (when authorized)	X	X	X			X			

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
10.0 Landing									
10.1 All Engines Operating	X	X	X	X	X			X	
10.2 Crosswind	X	X	X	X	X			X	
10.3.1 One Engine Inoperative	X	X	X	X		X		X	X
10.3.2 Two Engines Inoperative (3 and 4 Engine Aircraft)	X	X	X			X			
10.4 Landing Transition									
10.4.1 From a Precision Approach	X	X	X	X	X			X	Select One
10.4.2 From a Non-Precision Approach	X	X	X	X	X			X	
10.4.3 From a Visual Approach	X	X	X	X			X	X	
10.4.4 From a Circling Approach	X	X	X			X			
10.5 Rejected Landing	X	X	X	X	X				
10.6 Zero or Partial Flaps	X	X		X		X			
10.7 Auto-Land	X	X	X	X		X			X
10.8 Enhanced Flight Vision System (EFVS)	X	X	X	X		X			X
10.9 Head-up Display (HUD)	X	X	X	X		X		X	

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
11.0 Abnormal Procedures									
11.1 Un-Annunciated	All	All	All	I		F		I	I
11.2.0 Systems (ATA Code)									
11.2.1. Air Conditioning (21)	F	G	H	I			G	I	I
11.2.2 Auxiliary Power Unit (49)	F	G	H	I			G	I	I
11.2.3. Autopilot (22)	F	G	H	I			G	I	I
11.2.4 Brakes (32)	F	G	H	I			G	I	I
11.2.5 Communications (23)	F	G	H	I		F		I	I
11.2.6 Doors (52)	F	G	H	I			G	I	I
11.2.7 Electrical Power (24)	F	G	H	I			G	I	I
11.2.8 Emergency Equipment (25)	F	G	H	I			G	I	I
11.2.9 Engine (72)	F	G	H	I		F		I	I
11.2.10 Fire Protection (26)	F	G	H	I			G	I	I

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every 36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
Abnormal Procedures									
11.2.11 Flaps (27)	F	G	H	I			G	I	I
11.2.12 Flight Controls (27)	F	G	H	I		F		I	I
11.2.13 Fuel (28)	F	G	H	I			G	I	I
11.2.14 EGPWS or TAWS (34)	F	G	H	I			G	I	I
11.2.15 HUD	F	G	H	I			G	I	I
11.2.16 Hydraulic Power (29)	F	G	H	I			G	I	I
11.2.17 Ice and Rain Protection (30)	F	G	H	I			G	I	I
11.2.18 Instruments (31)	F	G	H	I			G	I	I
11.2.19 Landing Gear (32)	F	G	H	I			G	I	I
11.2.20 Navigation (34)	F	G	H	I		F		I	I
11.2.21 Oxygen (35)	F	G	H	I			G	I	I
11.2.22 Pneumatic (36)	F	G	H	I			G	I	I
11.2.23 Propellers (61)	F	G	H	I		F		I	I
11.2.24 Stall Warning (27)	F	G	H	I			G	I	I
11.2.25 Thrust Reversers (78)	F	G	H	I			G	I	I
11.2.26 Warning Systems (various)	F	G	H	I		F		I	I

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
12.0 Emergency Procedures									
12.1 Fire and Smoke in Aircraft	X	X(1)	X(1)	Select any Two		X		Select any Two	
12.2 Un-annunciated Fire in Flight	X	X(1)	X(1)			X			
12.3 Ditching	X	X(1)	X(1)						
12.4 Emergency Descent (Maximum Rate)	X	X(1)	X(1)				X		
12.5 Rapid Decompression	X	X(1)	X(1)				X		
12.6 Emergency Evacuation	X	X(1)	X(1)			X			
12.7 Engine Fire, Severe Damage, or Separation	X	X(1)	X(1)			X			
12.8 Landing with Degraded Flight Controls	X	X(1)	X(1)			X			
12.9 Pilot Incapacitation	X	X(1)	X(1)			X			
12.10 All other emergencies in accordance with the FCOM	X	X(1)	X(1)	X		X			X

Table 3A – Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, UPGRADE, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL, TRANSITION, and PHASE III REQUAL	FULL CONVERSION/ UPGRADE, and PHASE II REQUAL	CORE CONVERSION/ UPGRADE, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
13.0 Line Oriented Operations Environments									
13.1 Anti-Icing and Deicing Before Takeoff	X	X	X			X			
13.2 Structural Icing, Airborne	X	X				X			
13.3 Thunderstorm Avoidance	X	X				X			
13.4 Contaminated Runway Operations	X	X	X			X			
13.5 High Density Altitude Runway Operations	X	X	X			X			
13.6 CFIT and Terrain Avoidance	X	X	X			X			
13.7 ETOPS Procedures	X	X	X				X		
13.8 Altimeter settings (U.S. and International operations)	X	X	X				X		
13.9 Air Hazard Avoidance	X	X	X			X			

NOTES:

X – Task must be completed X(1) means the task is required only for Conversion X(2) means that the task must be completed twice.

A – Either Departure (5 1) or Arrival (5 6) is required.

B – May be waived for pilots who maintain landing recency on the line

C – MEL relief will be in accordance with the certificate holders specific MEL

D – Trained to proficiency in each specific approach authorized in operations specifications for this airplane group

E – Reserved

F – Select at least one procedure from the indicated system.

G – Select at least 50% of the systems and complete a minimum of one procedure for each.

H – Select at least 30% of the systems and complete a minimum of one procedure for each

I – Select as many of the systems and devices necessary for the applicant to demonstrate that he or she has a practical knowledge of the use of the systems and devices appropriate to the aircraft type.

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B. Aircraft Emergency Equipment Training Requirements. Aircraft Emergency Procedures Drills and Observations. (see §§ 121.1205; 121.1233; 121.1255; 121.1333; 121.1337; 121.1351; 121.1365; 121.1367; 121.1337; 121.1381; 121.1383; 121.1387; and 121.1391)

1. An individual performance drill is a hands on training and evaluation demonstration that is performed by each flight crewmember using the specified emergency equipment.

2. A group performance drill allows a flight crewmember to participate as part of a group of persons completing a specific drill. During these situations, it is not necessary for each flight crewmember to complete each task in the performance drill. However, each flight crewmember participant must observe the actions and activities of the other persons who are completing the performance drill tasks.

3. An observation drill is one during which a flight crewmember observes a specific procedural drill being conducted by other persons in a live setting or through an audio-visual medium.

4. Table 3B provides a list of the drills and observations that are required in each training curriculum. The frequency for recurrent drills and observations is every 36 months. Attachment 4 of this appendix contains the performance standards for each drill and observation.

5. Each flight crewmember must operate each exit on each aircraft type on which the flight crewmember is to serve in both the normal and emergency modes, including the actions and forces required in the deployment of emergency evacuation slides.

6. Each flight crewmember must complete the required emergency training drills during the specified training periods, using those items of installed emergency equipment for each aircraft type on which the flight crewmember is to serve.

7. Each piece of emergency equipment and training device must be in its fully secured, pinned, bracketed, or stowed condition, as installed on the aircraft, prior to being operated by each flight crewmember during each performance drill. The removal and stowage of each piece of emergency equipment may be completed separately from the performance drill as part of the equipment mountings drill.

8. Flight crewmembers must demonstrate proficiency by completing each performance drill without reference to any guidance material or instruction.

9. Individual evaluations of each flight crewmember's performance by an instructor is required. Flight crewmembers who do not complete emergency training drills must be retrained in accordance with the certificate holder's approved training program prior to reevaluation.

TABLE 3B—AIRCRAFT EMERGENCY EQUIPMENT TRAINING REQUIREMENTS

Emergency equipment training drills	New hire	Initial, transition, conversion, upgrade, and Phase II and III requalification	Recurrent every 36 months
No certificate holder may use nor may any person serve as a flight crewmember unless the following training has been completed by that person.			
(a) Performance Drills			
Individual			
(1) Fire Extinguishers		X	X
(2) Oxygen Systems		X	
(3) Equipment Mountings		X (only required if mountings differ by equipment)	
(4) Flight Deck Oxygen Systems		X	X
(5) Firefighting (Actual Fire)	X		
(6) Emergency Exits		X	X
(7) Emergency Evacuation (with Escape Slide)		X	X
(8) Emergency Evacuation (without Escape Slide)		X	X
(9) Flotation Devices		X	X
Group			
(10) Ditching Survival (Dry Training Environment)		X	X
(11) Ditching Survival (Wet Training Environment)	X		
(b) Observation Drills			
(1) Preparation of Emergency Exits in Emergency Mode		X	X
(2) Emergency Evacuation Using an Escape Slide		X	X
(3) Deployment, Inflation, and Detachment of Slide, Raft, or Slide-Raft		X	X

See attachment 4 for the Performance Standards for the Emergency Equipment Training Drills.

C. Determining the Level of Flight Simulation Training Device That Must Be Used for Training, Evaluation, and Recent Experience (See §§ 121.1345; 121.1347; 121.1349; and 121.1351)

To use an FSTD for training, evaluation, and recent experience the following general requirements must be met. The code shown in Table 3C for the task or environment indicates the lowest FSTD qualification level that may be used.

1. *General Requirements.* In addition to the approval of the POI required by part 121, to be used for any task or environment, an FSTD must:

(a) Have a qualification level assigned in accordance with part 60 of this chapter.

(b) Be maintained in accordance with part 60 of this chapter.

(c) Have all of the aircraft and FSTD systems installed and operating that are necessary to complete the task or environment.

(d) Be operated in accordance with § 60.25 of this chapter. Operation with missing, malfunctioning, or inoperative components.

(e) Have the qualification level indicated in Table 3C, or a higher qualification level, for the task or environment and the category of training indicated. Certain tasks may be trained in an FSTD at a different level than required for evaluating that specific task. The instructor must observe the pilot perform the task to proficiency in the level of FSTD required for the evaluation prior to the evaluation by a check person.

2. *Loft Requirements.* For Qualification LOFT, a level C or D FFS is required. For Recurrent LOFT, a level B, C, or D may be used.

3. *Takeoff and Landing 90-Day Recency of Experience.* The three takeoffs and three landings required for maintaining or regaining 90-day recency of experience must include at least one takeoff with a simulated failure of the most critical engine, at least one landing from a precision category approach to the lowest minimums authorized for the certificate holder, at least one landing to a full stop, and at least one visual traffic pattern and landing. For maintaining recency of experience in a FFS, a level B, C, or D must be used. For regaining recency of experience, a level C or D is required.

4. *FSTD Requirements for the Proficiency Test, Check, or Review.*

(a) The proficiency test administered at the conclusion of initial, transition, conversion, upgrade, or requalification training must be conducted in no more than two levels of FSTD.

(b) The proficiency test, check, or review administered as part of the recurrent qualification requirements may only be conducted in a Level B or higher FFS.

5. *Experience Requirements for Allowing Credit for Level C Full Flight Simulators.* Where a Level D FFS is indicated in Table 3C, a Level C FFS may be used to complete the training and the proficiency test if the pilot applicant meets the following prerequisite experience requirements:

(a) For first time qualification in group, the pilot must have a minimum of 1500 hours of flight time as a pilot in an aircraft, including a minimum of 750 hours of multiengine time.

(b) For upgrade to PIC, the pilot must have a minimum of 200 hours in the aircraft type.

(c) For SIC training and evaluation, the pilot must have a minimum of 1500 hours as a pilot, 500 hours of multiengine time, and 500 hours in the aircraft type as a flight crewmember.

6. *Seat Dependent Task Training.* Seat dependent task training must be provided for all check pilots, check captains, pilot flight instructors, and for PIC and SIC if a certificate holder authorizes the PIC to operate the aircraft from the right hand pilot seat and the SIC to operate the aircraft from the left hand pilot seat. Seat dependent task training must include all of the following:

(a) At least one LOFT scenario operating from the opposite pilot seat with qualified flight crewmember(s) occupying the remaining flight deck positions.

(b) The use of systems that involve the flight path or speed of the aircraft; or

(c) The use of systems that have controls not centrally located, or are accessible or operable from only the left or from the right pilot seat.

(d) Each of the following tasks in the opposite pilot seat.

(1) Preflight, including engine start.

(2) Push back or power back, as appropriate for the certificate holder.

(3) Taxi.

(4) Normal takeoff.

(5) Rejected takeoff.

(6) Takeoff with the failure of an engine.

(7) Climb to, cruise at, or descent from an intermediate operating altitude.

(8) Precision instrument approach and landing.

(9) Non-precision instrument approach and landing with an engine failed.

(10) Parking at a gate or jetway if appropriate for the certificate holder.

(11) For check pilots and pilot flight instructors authorized to conduct training or evaluation functions, training and practice in conducting flight training or flight checks from the left hand and right hand pilot seats, including the required standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures sufficient to ensure competence to conduct the pilot training and flight checks required by this sub-part; and

(12) For check pilots and check captains who are authorized to conduct operating experience or line checks in the airplane during flight, the safety measures to be taken from either pilot seat for emergency situations that are likely to develop during flight operations.

(13) Training and evaluation in the airplane is limited to certificate holders operating in accordance with the deviation described in § 121.1345(b) through (e).

7. The level of FSTD authorized for each of the tasks described in paragraph C.6 of this attachment is the same as the level of FSTD authorized for the same tasks during the proficiency test, check, or review as outlined in Table 3C in this appendix.

END QPS REQUIREMENT

BEGIN INFORMATION

8. Tasks or environments that are not dependent on the pilot's seat occupied, that do not use systems involved with the flight path or speed of the aircraft, and have controls that are centrally located and completely accessible and operable from both the left and right pilot seats, are not required to be addressed in seat dependent task training.

9. If the certificate holder adds tasks or environments to those listed in Table 3C, it must further develop the tasks or environments to include the requirement and frequency for training and evaluation in each specific category of training listed in the table. These changes must be submitted to the POI for approval.

END INFORMATION

BEGIN QPS REQUIREMENT

TABLE 3C—MINIMUM FSTD REQUIRED FOR CREDIT

Training category	Initial, transition, conversion, upgrade, and requalification		Recurrent	
Tasks Each task may be performed in the FSTD level specified or any higher level of FSTD.	Training [1]	At least one training session and the proficiency test [2]	Training [1]	Proficiency test, check, or review [3]
1.0 General				
1.1 Operation of Systems and Controls at the Flight Engineer's Panel	4	A	4	B
1.2 Human Factors and CRM	Must be incorporated throughout training and evaluation.			
1.3 Aircraft Handling Standards	As authorized for each task or environment.			
1.4 ATC Communications and Procedures	As authorized for each task or environment.			
1.5 Seat Dependent Training	Each task as authorized under the "Proficiency Test, Check, or Review" column set out in this table. See paragraph C.6 of this attachment.			
2.0 Preflight Procedures				
2.1 Flight Deck (Inspection or Preflight)	4	A	4	B
2.2 Cabin Inspection	Aircraft or approved pictorial means.			
2.3 Exterior Inspection	Aircraft or approved pictorial means.			
2.4 Navigation System Setup	4	A	4	B
3.0 Ground Operations				
3.1 Engine Start	4	A	4	B
3.2 Pushback and Powerback	A	A	A	B
3.3 Taxi	A	[4] D	A	B
3.4 Pre-Takeoff Procedures	4	A	4	B
3.5 After Landing	4	A	4	B
3.6 Parking and Securing	A	A	A	B
4.0 Takeoff				
4.1 Normal and Crosswind—All Engines Operating	A	D	A	B
4.2 Instrument with Lowest Authorized RVR	A	A	A	B
4.3 With Engine Failure	A	A	A	B
4.4 Rejected With Lowest Authorized RVR	A	A	A	B
5.0 Departure, Climb, Cruise, Descent, and Arrival				
5.1 Instrument Departure	6	[4] D	6	B
5.2 Climb	6	A	6	B
5.3 One Engine Inoperative En Route	6	A	6	B
5.4 En Route Navigation	6	A	6	B
5.5 Descent	6	A	6	B
5.6 Instrument Arrival	6	[4] D	6	B
5.7 Holding	6	A	6	B
5.8 Approach Transition	6	[4] D	6	B
6.0 Aircraft Handling				
6.1 Recognition of, and Recovery from, Approach to Stall.				
6.1.1 Clean configuration	A	[4] D	A	B
6.1.2 Takeoff or maneuvering configuration	A	[4] D	A	B
6.1.3 Landing configuration	A	[4] D	A	B
6.1.4 Landing configuration with autopilot engaged	A	D	A	B
6.2 Asymmetric Thrust	A	A	A	B
6.3 Runaway Trim and Stabilizer	A	A	A	B
6.4 Jammed Trim and Stabilizer	A	A	A	B
6.5 Upset Recognition and Recovery	A	[4] D	A	B
6.6 Slow Flight	A	[4] D	A	B
6.7 Turns With and Without Spoilers	A	A	A	B
6.8 Stability Augmentation Inoperative	A	A	A	B
6.9 Mach Tuck and Mach Buffet	A	A	A	B
6.10 High Sink Rate	A	[4] D	A	B
6.11 Flight Envelope Protection Demonstration	A	A	A	B
6.12 Windshear Avoidance and Encounter	A	A	A	B
6.13 Traffic Avoidance (TCAS)	[#5] 6	A	[#5] 6	B
7.0 Instrument Approaches				
7.1 All Engines Operating—Autopilot Coupled	5	[4] D	5	B
7.2 All Engines Operating—Manually Flown	5	[4] D	5	B
7.3 One Engine Inoperative—Manually Flown	A	[4] D	A	B
7.4 Approach Type				

TABLE 3C—MINIMUM FSTD REQUIRED FOR CREDIT—Continued

Training category	Initial, transition, conversion, upgrade, and requalification		Recurrent	
Tasks Each task may be performed in the FSTD level specified or any higher level of FSTD.	Training [1]	At least one training session and the proficiency test [2]	Training [1]	Proficiency test, check, or review [3]
7.4.1 Category II and III	A	[4] D	A	B
7.4.2 Precision Groups	A	A	A	B
7.4.3 Non-Precision Groups	A	A	A	B
7.4.4 Ground Based Radar Approach (ASR and PAR)	6	6	6	B
8.0 Visual Approach				
8.1 All Engines Operating (Normal)	A	[4] D	A	B
8.2 One Engine Inoperative	A	A	A	B
8.3 Two Engines Inoperative (3 and 4 Engine Aircraft)	A	[4] D	A	B
9.0 Missed Approach				
9.1 All Engines Operating	A	[4] D	A	B
9.2 One Engine Inoperative	A	A	A	B
9.3 From a Circling Approach	A	A	A	B
9.4 Descending Break-Out Maneuver from PRM Approach	A	A	A	B
10.0 Landing				
10.1 All Engines Operating	A	[4] D	A	B
10.2 Crosswind	A	B	A	B
10.3 Engine(s) Inoperative	A	[4] D	A	B
10.4 Landing Transition	A	B	A	B
10.5 Rejected Landing	A	A	A	B
10.6 Zero or Partial Flaps	A	A	A	B
10.7 Auto-Land	** 6	* A	** 6	B
10.8 EFVS	* A	* A	* A	B
10.9 HUD	* A	* A	* A	B
11.0 Abnormal Procedures [6]				
11.1 Un-annunciated	4	A	4	B
11.2.0 Systems (ATA Code)				
11.2.1 Air Conditioning (21)	4	A	4	B
11.2.2 APU (49)	4	A	4	B
11.2.3 Autopilot (22)	5	A	5	B
11.2.4 Brakes (32)	4	A	4	B
11.2.5 Communications (23)	4	A	4	B
11.2.6 Doors (52)	4	A	4	B
11.2.7 Electrical Power (24)	4	A	4	B
11.2.8 Emergency Equipment (25)	4	A	4	B
11.2.9 Engine (72)	4	A	4	B
11.2.10 Fire Protection (26)	4	A	4	B
11.2.11 Flaps (27)	4	A	4	B
11.2.12 Flight Controls (27)	5	A	5	B
11.2.13 Fuel (28)	4	A	4	B
11.2.14 EGPWS or TAWS (34)	5	A	5	B
11.2.15 HUD	5	A	5	B
11.2.16 Hydraulic Power (29)	4	A	4	B
11.2.17 Ice and Rain Protection (30)	4	A	4	B
11.2.18 Instruments (31)	5	A	5	B
11.2.19 Landing Gear (32)	4	A	4	B
11.2.20 Navigation (34)	5	A	5	B
11.2.21 Oxygen (35)	4	A	4	B
11.2.22 Pneumatic (36)	4	A	4	B
11.2.23 Propellers (61)	4	A	4	B
11.2.24 Stall Warning (27)	5	A	5	B
11.2.25 Thrust Reversers (78)	4	A	4	B
11.2.26 Warning Systems (various)	4	A	4	B
12.0 Emergency Procedures				
12.1 Fire or Smoke in Aircraft	4	A	4	B
12.2 Un-annunciated Fire in Flight	4	A	4	B
12.3 Ditching	4	A	4	B
12.4 Emergency Descent (Maximum Rate)	5	A	5	B
12.5 Rapid Decompression	4	A	4	B
12.6 Emergency Evacuation	4	A	4	B
12.7 Engine Fire, Severe Damage, or Separation	A	A	A	B
12.8 Landing with Degraded Flight Controls	* A	* A	* A	* B
12.9 Pilot Incapacitation	5	A	5	B
12.10 All other emergencies in accordance with the FCOM	5	* A	5	* B
13.0 Line Oriented Operations Environments				
13.1 Anti-Icing and Deicing Before Takeoff	4	A	4	B

TABLE 3C—MINIMUM FSTD REQUIRED FOR CREDIT—Continued

Training category	Initial, transition, conversion, upgrade, and requalification		Recurrent	
Tasks Each task may be performed in the FSTD level specified or any higher level of FSTD.	Training [1]	At least one training session and the proficiency test [2]	Training [1]	Proficiency test, check, or review [3]
13.2 Structural Icing, Airborne	A	A	A	B
13.3 Thunderstorm Avoidance	A	A	A	B
13.4 Contaminated Runway Operations	A	A	A	B
13.5 Low Air Density, High Altitude Runway Operations	A	A	A	B
13.6 CFIT and Terrain Avoidance	6	A	6	B
13.7 ETOPS Procedures	6	A	6	B
13.8 Altimeter settings (U.S. and International operations)	6	A	6	B
13.9 Air Hazard Avoidance	[5] # 6	A	[5] # 6	B
13.10 Terrain Avoidance (EGPWS or TAWS)	4	A	4	B

Footnotes:
[1] Where Level 4 or 5 FTD is shown, all systems (and systems interoperability) necessary for the task must be installed in the FTD and operating correctly.
[2] A maximum of 2 levels of FSTD may be used to complete the proficiency test following initial, transition, conversion, upgrade, or requalification training.
[3] A maximum of 1 level of FFS may be used to complete the recurrent proficiency test, check, or review.
[4] See paragraph C.6 of this attachment for requirements to use Level C FFS in place of Level D FFS.
[5] Interactive Computer Based Instruction is an acceptable method for training.
[6] The pilot must demonstrate the proper use of as many of the systems and devices listed as the person administering the test, check, or review finds are necessary to determine that the pilot has a practical knowledge of the use of the systems and devices installed on the aircraft.

Legend:
* Check for appropriate system installation and for FSTD qualification for this task.
** The FTD may be used, but a visual system meeting Level C FFS requirements must be installed and working properly.
# The FTD may be used, but a visual system meeting Level A FFS requirements must be installed and working properly.

END QPS REQUIREMENT

BEGIN INFORMATION

D. Persons Authorized To Administer Pilot Training, Evaluation, and Observation Activities Under Subpart BB. (see §§ 121.1347; 121.1349; 121.1251; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1341; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

Table 3D identifies who must administer certain required training and evaluation for pilots, and who must supervise and observe instructors and check pilots.

END INFORMATION

BEGIN QPS REQUIREMENT

TABLE 3D—PERSONS ELIGIBLE TO BE AUTHORIZED TO ADMINISTER PILOT TRAINING, EVALUATION, AND OBSERVATION ACTIVITIES UNDER SUBPART BB FOR THE PART 119 CERTIFICATE HOLDER *

Pilot training, evaluation, and observation activities under subpart BB (by aircraft type)	Affiliation and Position							
	Contractor			The part 119 certificate holder				
	Other than part 142 or other part 119 certificate holder	Part 142 or other part 119 certificate holder						
	Ground instructor	Ground instructor	Flight instructor	Ground instructor	Flight instructor	Check pilot	Aircrew program designee	Check captain
Academic (Ground School) Training	X	X	X	X				
Job Performance (Flight) Training			X		X			
Certificate or Rating Examination							X	
Proficiency Test (Initial, Transition, Conversion, Upgrade, Recurrent, Requalification)						X [1]	X	

TABLE 3D—PERSONS ELIGIBLE TO BE AUTHORIZED TO ADMINISTER PILOT TRAINING, EVALUATION, AND OBSERVATION ACTIVITIES UNDER SUBPART BB FOR THE PART 119 CERTIFICATE HOLDER *—Continued

Pilot training, evaluation, and observation activities under subpart BB (by aircraft type)	Affiliation and Position							
	Contractor			The part 119 certificate holder				
	Other than part 142 or other part 119 certificate holder	Part 142 or other part 119 certificate holder						
	Ground instructor	Ground instructor	Flight instructor	Ground instructor	Flight instructor	Check pilot	Aircrew program designee	Check captain
Qualification LOFT					X[2]	X		
Supervision of Operating Experience						X		X
PIC Initial Line Observation							X	
PIC Line Check (all flight crew observed)						X		
Proficiency Check						X		
Proficiency Review					X[2]	X		
Observation of:								
• Flight Instructor—Initial						X		
• Flight Instructor—Recurring						X		
• Check Pilot—Initial							X[3]	
• Check Pilot—Recurring						X	X[3]	
• Check Pilot—PIC Line Check							X[3]	

* *See* § 121.1343 for special limited authorizations for Initial Cadre Personnel. When POI authorization is required, the designation will specifically state the authorizations granted to the instructor, check pilot, or APD. Part 142 TCEs and other part 119 certificate holders' check pilots may be qualified and authorized as check pilots or APDs by the part 119 certificate holders' POI in accordance with subpart BB of this part. When qualified and authorized, these check pilots and APDs are considered a component of the part 119 certificate holders' training program resources.

[1] When the proficiency test does not involve the issuance of a certificate or rating, a check pilot may conduct a Proficiency Test.

[2] With POI authorization, employees of the part 119 certificate holder who are specifically designated flight instructors may conduct Qualification LOFT and Proficiency Reviews.

[3] With POI authorization, employees of the part 119 certificate holder who are designated as APDs and specifically designated to do so, may conduct the Initial or Recurring Check Pilot Observation.

END QPS REQUIREMENT

BEGIN QPS REQUIREMENT

E. Administering Evaluations. (see §§ 121.1221; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

The following requirements apply to the evaluation activity indicated. Refer to Table 3D of this attachment for who may administer each type of evaluation.

1. *Line Checks.* A line check must be completed in accordance with § 121.1233.

2. *Proficiency Tests.*

(a) Proficiency tests must be administered for first time qualification in a duty position. They also must be administered at the end of the first 9-month recurrent training period following the proficiency test required by § 121.1365(b)(1), and for phase II and III requalification. Employees of the certificate holder who are used or will be used in the certificate holder's operations and who have completed all of the required training may use the proficiency test obtain a certificate or rating.

(b) When conducting a proficiency test, the evaluator (FAA, APD, or check pilot), must evaluate the success of each task as it is performed. If the proficiency test is a second attempt, and the first attempt was within the previous 60 days, the only tasks the evaluator is required to assess are those that were failed or were not assessed on the first attempt. However, during this retest, and at the discretion of the evaluator, any task may be reevaluated, including those previously judged satisfactory.

(c) During a proficiency test, a task is judged as either satisfactory or unsatisfactory. However, in limited circumstances, the evaluator may judge a task to be incomplete or may not be certain about the outcome of the task. In these limited circumstances, the evaluator may require the applicant to repeat that task, or portions of that task; however, this provision does not authorize instruction or practice. The remaining tasks of the proficiency test must be completed before repeating the questionable task. If the second attempt to perform a questionable task is not clearly satisfactory, the evaluator must consider it unsatisfactory.

(d) Unsatisfactory performance is demonstrated by consistently exceeding the parameters set out for the specific task, consistently exceeding the parameters for aircraft handling standards, or failing to take prompt, corrective action when those parameters are exceeded. If the pilot fails a task, the evaluator must decide if the entire test must be repeated or if the test can continue. If the entire proficiency test must be repeated, the evaluation must be terminated. If a single task has been judged unsatisfactory, and both the pilot and the evaluator agree, the test may continue, but only the tasks that have not been evaluated may be attempted. If

the pilot fails a second task, the evaluator must terminate the test.

(e) If the proficiency test must be terminated for unsatisfactory performance, the FAA notification (and notice of disapproval, if appropriate) must list the tasks or areas of operation that have not been evaluated and which tasks or areas of operation that have been found unsatisfactory. These tasks and areas of operation must be evaluated, or re-evaluated, on any subsequent proficiency test.

(f) If a proficiency test is discontinued for reasons other than unsatisfactory performance (e.g., equipment failure, weather, sickness), the evaluator must complete one of the following:

(1) If the test is part of an application for an FAA-issued certificate or rating, the evaluator must appropriately annotate FAA Form 8710–1, ''Airman Certificate and/or Rating Application.'' The evaluator must return FAA Form 8710–1 and, if applicable, AC Form 8080–2, Airman Written Test Report to the pilot. The evaluator must also issue a Letter of Discontinuance to the pilot. The Letter of Discontinuance must identify the portions of the test that were successfully completed. The pilot must present the Letter of Discontinuance to the evaluator when the test is resumed. The Letter of Discontinuance must become part of the certification file.

(2) If the test is not part of an application for an FAA-issued certificate or rating, the evaluator must properly annotate the pilot's training record to indicate the tasks and areas of operation that were satisfactorily completed and the tasks and areas of operation that were not evaluated.

(g) If the proficiency test is conducted as part of an application for an FAA-issued certificate or rating the pilot must have completed training for and demonstrated satisfactory performance on the rejected takeoff task as the pilot flying from either the left-hand or right-hand pilot's seat and satisfactorily completed the training for and demonstrated satisfactory performance on the remaining required tasks and environments listed in this QPS for a proficiency test.

(h) If the proficiency test is conducted as part of an application for an FAA-issued certificate or rating, and the pilot has not completed training for and demonstrated satisfactory performance on the circle to land task as the pilot flying from either the left-hand or right-hand pilot's seat, but has satisfactorily completed the training for and demonstrated satisfactory performance on the remaining required tasks and environments listed in this QPS for a proficiency test, the evaluator must annotate any certificate or rating issued with one of the following limitations:

(1) If the airline transport pilot certificate is issued coincident with a type rating, the certificate must be annotated, ''ATP CIRC. APCH. VMC ONLY, (insert aircraft type) CIRC. APCH–VMC ONLY.''

(2) If the airplane type rating is added to an airline transport pilot certificate, the certificate must be annotated, ''(insert aircraft type) CIRC. APCH–VMC ONLY.''

(i) The evaluator must submit FAA Form 8081.5C, ''Airman Performance Report, Airline Transport Pilot and Aircraft Type Rating for Airplane,'' to the FAA for all tests administered under subpart BB of part 121.

3. *Proficiency Checks and Reviews.*

(a) Proficiency checks and reviews must include job performance evaluation of the tasks identified in Table 3B and an equipment knowledge assessment outlined in section B of Attachment 2 of this appendix. The equipment knowledge assessment may be replaced by the academic knowledge test as outlined in Attachment 2 of this appendix if the pilot completes the proficiency test within 60 days of the knowledge test. If the pilot does not complete the academic knowledge test in these areas within 60 days of the proficiency test, the pilot must complete a test of these knowledge areas in conjunction with the proficiency check or review. This test may be completed with oral, written, or computer based methodology. A passing score of 80% is required in each of the three areas of:

(1) Aircraft systems;

(2) Handbooks, manuals, MEL, CDL, and operations specifications; and

(3) Aircraft performance and limitations.

(b) Evaluators who conduct proficiency checks and reviews and instructors who conduct proficiency reviews may provide limited training to a pilot. The limits are:

(1) No more than two tasks may be trained, and no more than a total of three attempts (including the first unsatisfactory, a rehearsal, and a final assessment) in each of the two tasks is allowed.

(2) The pilot has not satisfactorily completed the check or review if the pilot has three or more unsatisfactory tasks, or fails to demonstrate satisfactory performance in three attempts at any one task.

(3) The check or review must be completed within the approved scheduled time period.

4. *Other Assessments.*

(a) After qualification, the pilot's performance in all job performance training activities (including LOFT) must be assessed for a satisfactory level of task proficiency based upon this QPS.

(b) During a scheduled FSTD course of instruction, if a task is performed unsatisfactorily the pilot may retrain on the unsatisfactory task; however, all scheduled tasks, including any retraining, must be completed within the approved scheduled time period.

(c) Unsatisfactory task performance during LOFT may not be retrained and reevaluated during that scheduled time period.

5. *Satisfactory or Unsatisfactory Performance.*

(a) No evaluator or instructor may assess the pilot's performance as satisfactory unless that pilot:

(1) Performs the tasks in accordance with the standards and tolerances established in the QPS.

(2) Demonstrates mastery of the aircraft or simulated aircraft with the successful outcome of each task never in doubt.

(3) Demonstrates performance such that no corrective or instructive action is required by another pilot to maintain safe flight.

(4) Demonstrates CRM competencies in accordance with duties outlined in the FCOM requiring crew interactions, including in a crew briefing before each takeoff and before each approach.

(5) Demonstrates sound judgment.

(b) The evaluator or instructor must assess a pilot's performance as unsatisfactory if the pilot consistently exceeds tolerances established in this QPS or fails to take prompt corrective action when tolerances are exceeded.

6. *Recording, Reporting and Correcting Unsatisfactory Performance.* The certificate holder must report a failure of a test, check, or review to the FAA in accordance with § 121.1331(f)(1). The pilot must be retrained and reevaluated to a satisfactory level before the pilot may begin or be returned to line operations.

END QPS REQUIREMENT

Attachment 4 of Appendix Q to Part 121

Generic Pilot Performance Standards for Each Task and Environment

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BEGIN QPS REQUIREMENT

A. Developing Pilot Performance Requirements for Each Task and Environment. (see §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1221; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

1. *General Requirements.*

(a) Certificate holders must develop training curricula and performance requirements for each required task and environment that include:

(1) Conditions: Environmental conditions and circumstances, including those that compound the difficulty of the task when encountered.

(2) Awareness criteria: Identify specific aspects of the task and environment that indicate proper operation, a need to seek further information, or a need to take action to prevent encountering a hazard or compounding the difficulty unnecessarily.

(3) Action criteria: Procedures for completing a task, including operations in or near a critical environment, when appropriate. Provide relevant parameters with tolerances to reflect satisfactory levels of performance.

(b) This attachment describes performance requirements and generic procedures for completing a task or operating in or near a critical environment. The certificate holder must tailor these performance requirements to the specific aircraft type and the certificate holder's approved operations. The FAA approved procedures for each task must include duties that apply to the pilot flying (PF) the aircraft and the pilot monitoring (PM) the aircraft in accordance with the procedures the certificate holder uses in operations under this part. The certificate holder must include the PF and PM procedures in the FCOM required by § 121.133(c).

2. [Reserved]

B. Generic Tasks and Environments. (see §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1221; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

1.0 AREA: All Operations

The pilot must demonstrate the awareness criteria and action criteria under the prescribed conditions. The certificate holder must train pilots in all authorized conditions. Any selected condition may be evaluated unless a particular condition is specified.

1.1 Task: Normal, Abnormal, and Emergency Procedures

(a) Condition(s). All.

(b) Awareness criteria.

(1) Maintain situational awareness of the events and circumstances at all times.

(2) Demonstrate ability to continuously monitor and to identify any potential hazards or threats to the safety of the flight.

(3) Demonstrate ability to communicate and manage available resources.

(4) Maintain adequate lookout and traffic avoidance for the conditions.

(5) Maintain awareness of aircraft position relative to a ''nearest suitable airport.''

(6) Monitor system indications to ensure normal operation or identify abnormal situations.

(c) Action criteria.

(1) Ensure operation of the aircraft within the limitations established by the FCOM.

(2) Comply with the provisions of the FCOM, SOP, and MEL (if appropriate) as they pertain to the particular aircraft, through all phases of flight and all operations.

(3) Make correct use of instruments, flight director, autopilot, and navigation and communication equipment as prescribed by the FCOM and as appropriate to the phase of flight.

(4) Plan and brief automation modes and configurations.

(5) Follow guidelines for PF and PM duties for operation of automated systems.

(6) Plan workload and allow sufficient time for programming FMS.

(7) Verbalize entries and changes made to automated systems. The pilot not making changes must ask for these verbalizations and verbalize that crosscheck is completed.

(8) Change level of automation to correspond to situational awareness and workload requirements.

(9) Call for and complete the proper normal, abnormal, or emergency checklist(s).

(10) Alert ATC and the certificate holder as necessary and obtain appropriate level of service.

(11) Ensure proper crew and passenger briefings are completed.

(12) The PF must conduct the takeoff briefing according to the FCOM prior to taking the active runway.

(13) The PF must ensure that the approach is briefed according to the FCOM prior to initial descent.

(14) Ensure potential terrain or obstacle threats are included in departure and arrival briefings.

(15) Ensure that passengers, crew, and cargo are properly secured for take-off or landing.

(16) Locate and proceed to the nearest suitable airport when necessary.

(17) Determine the best course of action when an immediate landing is required, but not possible.

1.2 Task: Operation of Systems and Controls at the Flight Engineer's Panel

(a) Condition(s). All.

(b) Awareness criteria

(1) Demonstrate an understanding and proper use of the systems, controls and displays represented on the flight engineer's panel.

(2) Demonstrate an understanding of the relationship of the aircraft's phase of flight, how to assess the status of the aircraft's systems, and when to take necessary corrective actions.

(c) Action criteria. Properly exercise the controls and systems represented at the flight engineer's panel during all phases of flight.

1.3 Task: Human Factors and CRM

(a) Condition(s). All.

(b) Awareness criteria

(1) Demonstrate terrain awareness.

(2) Demonstrate orientation, division of attention, and proper planning.

(3) Observe indication of situation, condition, or problem.

(4) Consider the risks of alternate courses of action.

(5) Demonstrate an awareness of environmental factors that are potentially hazardous to safety of flight operations.

(c) Action criteria

(1) Demonstrate sound judgment and operating practices in those instances where specific instructions or checklist items are not published.

(2) Confirm fault diagnosis with crew and review possible causes.

(3) Identify alternative course(s) of action; discuss with crew; monitor the course of action selected by evaluating progress toward a goal.

(4) Involve other crewmembers, aircraft dispatchers, and maintenance control personnel in option analysis.

(5) Demonstrate effective communications with other crewmembers.

(6) Coordinate actions with other crewmembers prior to execution, except where safety of flight would be in jeopardy.

(7) Ensure that coordination with flight or ground crew is completed where necessary.

(8) Acknowledge any ATC clearance (after it has been read back) or crew callout.

(9) Demonstrate the necessary flight crew coordination required for the tasks being completed.

1.4 Task: Aircraft Handling Standards

(a) Condition(s). All.

(b) Awareness criteria.

(1) Demonstrates awareness of the aircraft's trim condition.

(2) Demonstrates awareness of the aircraft's configuration.

(3) Demonstrates awareness of the auto-flight mode when in use.

(4) Demonstrates awareness of the aircraft's flight path and speed with respect to the horizon.

(5) Demonstrates awareness of the dangerous combinations of sideslip angles, rudder positions, or other flight parameters resulting from maximum, indiscriminate, uncoordinated, or rapid deflection of the rudder.

(c) Action criteria.

(1) General.

(i) Maintain smooth, positive aircraft attitude control in pitch, roll, and yaw to achieve and maintain appropriate flight path.

(ii) Maintain an airspeed appropriate to the aircraft configuration and flight conditions.

(iii) Use the appropriate aircraft configuration for normal and abnormal situations and procedures.

(iv) Properly trim for the configuration or condition, if not automatic.

(v) The outcome of a procedure or maneuver must never be in doubt.

(vi) Continuously correct back to the target parameter.

(2) Speed. Maintain the appropriate airspeed within ±10 knots, but never less than V_2–5 knots during takeoff or V_{REF}–5 knots during approach.

(3) Pitch attitude must not exceed the maximum established in the FCOM (if applicable).

(4) Roll (Bank).

(i) The angle of bank must not exceed 30° +5°.

(ii) The bank angle must be limited to 15° until an airspeed is reached that will safely permit bank angles larger than 15°.

(iii) With an engine inoperative, if appropriate and recommended by the FCOM, establish a bank of approximately 5° toward the operating engine(s).

(5) Altitude.

(i) Maintain altitude within ±100 feet (30 meters), when a constant altitude is specified and is within the capability of the aircraft.

(ii) An error of more than 100 feet, but less than 200 feet, which is promptly corrected, is acceptable.

(6) Rate of Descent.

(i) Maintain a stabilized rate of descent not to exceed 2,000 feet per minute below an altitude of 2,000 feet AGL.

(ii) Maintain a stabilized rate of descent not to exceed 1,000 feet per minute below an altitude of 1,000 feet AGL.

(iii) Maintain a stabilized rate of descent not to exceed 1,000 feet per minute unless the instrument approach procedure or an abnormal condition requires a higher descent rate, and the approach is briefed accordingly.

(7) Maintain heading within ±10° of the specified heading.

(8) Course. Maintain the specified course within one-quarter scale deflection of the CDI, ±5° on the RMI or bearing pointer, ±1 Nm on a DME arc, or RNAV course within a cross-track error not to exceed the specified RNP.

(9) Track (Ground track flown without electronic navigation aid guidance). Maintain the specified track within ±5°.

(10) Final approach segment, maintain a stabilized approach.

(i) Have the aircraft in the desired configuration for landing with the engines spooled and stable.

(ii) Maintain a constant pitch attitude.

(iii) Maintain a constant heading (within ±10°) or maintain electronic navigation indication with no more than one-quarter scale deviation vertically and laterally.

(iv) Maintain a constant airspeed within +5 and − 0 knots.

(v) Maintain a constant rate of descent (not to exceed 2,000 fpm below 2,000 ft AGL or 1,000 fpm below 1,000 ft AGL).

(vi) Keep the aircraft trimmed.

(vii) Maintain altitude at MDA, when reached within +50 to − 0 ft.

(viii) For constant angle non-XLS approaches, execute a missed approach when reaching the MDA, DA, or DH (as appropriate).

(ix) Except where the required visual references for the runway are distinctly visible and identifiable, going below the MDA, DA, or DH prior to the initiation of the missed approach procedure, is unsatisfactory performance.

1.5 Task: ATC Communication and Procedures

(a) Condition(s). All.

(b) Awareness criteria.

(1) Interpret all ATC clearances received and, when necessary, request clarification, verification, or change.

(2) Recognize the indication(s) of navigational station or waypoint passage.

(3) Recognize navigation signal loss or RNP-related alerting.

(4) Demonstrate the necessary flight crew coordination required for the tasks.

(c) Action criteria.

(1) Select and use the appropriate communication frequencies.

(2) Establish communications with ATC, using proper phraseology or data link procedures.

(3) Comply with all ATC clearances, instructions, or airspace restrictions.

(4) Advise ATC when unable to comply with a clearance.

(5) Comply with ATC reporting requirements.

(6) Demonstrate competency in two-way radio communications or ATC data link failure procedures.

(7) Use the current and appropriate navigation publications for the proposed flight.

(8) Identify the navigation aids associated with non-XLS approach procedures.

(9) Select and correctly identify the appropriate navigation frequencies and facilities associated with navigation if not using RNAV.

(10) Select, tune, identify, and confirm the operational status of ground and aircraft navigation equipment to be used for the approach. Low frequency (NDB) identification must be continuously monitored when used as the primary navigation reference. Where applicable, check automatic navigational aid identification on the navigation display.

(11) Set the correct RNP reference prior to any procedure where the default RNP is not appropriate.

(12) Locate the aircraft position using radials, bearing, DME range, coordinates, or navigation displays, as appropriate.

(13) Adhere to airspeed restrictions and adjustments.

(14) Intercept all courses, radials, bearings, or DME arcs appropriate to the procedure, route, and clearance in a timely manner.

(15) Comply with the procedures for the instrument or circling approach (terminal instrument procedures chart).

(16) Perform correct altimetry procedures, in accordance with the regulations, FCOM operational procedures, and ATC requirements.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) The AIM is a reference to the generally accepted practices of basic flight rules and instrument flight operations.

END INFORMATION

BEGIN QPS REQUIREMENT

1.6 Seat Dependent Task Training

(a) Condition(s). All.

(b) Awareness criteria. Demonstrate awareness of the restrictions, limitations or modifications to procedures or maneuvers due to seat-dependency.

(c) Action criteria. Complete seat-dependent procedures or maneuvers.

1.7 Task: MEL Relief

(a) Condition(s). All.

(b) Awareness criteria.

(1) Understand MEL application.

(2) Consider factors that restrict aircraft operation.

(c) Action criteria. Apply the provisions of the appropriate MEL entry for operation restrictions.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) The purpose of this task is to require specific training that addresses safe operation of the aircraft while carrying an MEL item that requires training to take advantage of the relief.

END INFORMATION

BEGIN QPS REQUIREMENT

2.0 AREA: Preflight Procedures

2.1 Task: Planning

(a) Condition(s). All.

(b) Awareness criteria.

(1) Consider factors such as wind, wake turbulence, aircraft gross weight, temperature, obstructions, pressure altitude, density altitude, possible windshear, runway surface condition and length, and other related factors in calculating or selecting proper performance data.

(2) Consider factors to be applied to the approach and landing such as displaced thresholds, meteorological conditions, NOTAMs, and ATC instructions.

(c) Action criteria.

(1) Apply the provisions of the appropriate operations specifications, operating limitations, FCOM, MEL or CDL, weight and balance data, and the maintenance logbook as they pertain to the planned operation described in the dispatch release.

(2) Apply the necessary adjustments to the published DA or DH and visibility criteria for the aircraft approach category as required:

(i) FDC NOTAMS.

(ii) Inoperative aircraft and ground navigation equipment.

(iii) Inoperative visual aids associated with the landing environment.

(iv) Weather service reporting factors and criteria.

2.2 Task: Flight deck (Inspection or Preflight)

(a) Condition(s). All.

(b) Awareness criteria.

(1) Coordinate with ground crew and ensure adequate clearance prior to supplying power to, or operating, any devices such as doors, hatches, or flight control surfaces.

(2) Know the maintenance or system tests that the pilot or other designated crewmember must perform.

(c) Action criteria.

(1) Demonstrate proper operation of applicable aircraft systems.

(2) Note any discrepancies and take proper corrective action.

(3) Determine that the aircraft is airworthy and safe for flight.

(4) Locate the documents required for flight, including airworthiness and registration certificates, operations specifications (if appropriate), FCOM, MEL, CDL, weight and balance data, and the maintenance logbook.

(d) The pilot must verify that the aircraft is safe for flight by examining and, if appropriate, servicing items such as:

(1) Engine(s), including controls and indicators.

(2) Fuel quantity (if interior inspection is appropriate to the aircraft).

(3) Oil quantity (if interior inspection is appropriate to the aircraft).

(4) Hydraulic fluid quantity (if interior inspection is appropriate to the aircraft).

(5) Oxygen quantity and pressures for crew and passengers (if interior inspection is appropriate to the aircraft).

(6) Fire protection and detection systems for proper operation, pressures, and discharge indications.

(7) Pneumatic system pressures (if interior inspection is appropriate to the aircraft).

(8) Ground environmental systems for proper operation.

(9) Auxiliary power unit (APU).

(10) Anti-ice and de-ice systems.

2.3 Task: Cabin Inspection

(a) Condition(s).

(1) All.

(2) The pilot must prepare the cabin for a positioning flight with no cabin crew aboard. The pilot is not required to prepare the cabin for passenger safety in revenue service.

(b) Awareness criteria. Awareness of emergency equipment location and stowage, emergency exit location and operation, and noticeable inoperative cabin equipment.

(c) Action criteria.

(1) Visually inspect the aircraft cabin to ensure the aircraft is safe for flight.

(2) Take necessary actions prescribed by the FCOM for safe flight or crew evacuation.

2.4 Task: Exterior Inspection

(a) Condition(s).

(1) All.

(2) An approved pictorial must realistically portray the location and detail of inspection items, and may be used instead of the aircraft to conduct an actual exterior inspection.

(3) Flight Instructors, Check Pilots, and Check Captains may be approved to certify a pilot's proficiency in exterior inspections.

END QPS REQUIREMENT

BEGIN INFORMATION

(4) The exterior inspection is a demonstration of a pilot's ability to perform appropriate safety checks. It is not an extension of the systems knowledge evaluation.

The person conducting the evaluation should limit questions to those necessary to determine if a pilot can properly conduct the inspection and recognize an unsafe condition.

END INFORMATION

BEGIN QPS REQUIREMENT

(b) Awareness criteria. Check the general area around the aircraft for hazards to the safety of the aircraft and personnel.

(c) Action criteria.

(1) Note any discrepancies and take proper corrective action.

(2) Determine that the aircraft is airworthy and safe for flight.

(d) The pilot must verify that the aircraft is safe for flight by examining and, if appropriate, servicing items such as:

(1) Engines, for closed and latched access panels, leaks other than normal drainage, intake and exhaust areas for freedom from FOD hazards, and pylon alignment marks, as appropriate.

(2) Fuel quantity (if exterior inspection is appropriate to the aircraft).

(3) Oil quantity (if exterior inspection is appropriate to the aircraft).

(4) Hydraulic fluid quantity (if exterior inspection is appropriate to the aircraft).

(5) Oxygen quantity and pressures for crew and passengers (if exterior inspection is appropriate to the aircraft).

(6) Landing gear, brakes, and steering system.

(7) Tires for condition, inflation, and correct mounting, where applicable.

(8) Fire protection and detection systems for pressures and absence of discharge indications (if exterior inspection is appropriate to the aircraft).

(9) Pneumatic system pressures (if exterior inspection is appropriate to the aircraft).

(10) Auxiliary power unit (APU).

(11) Flight control systems including trim, spoilers, ailerons, leading and trailing edge slats and flaps, elevator, stabilizer, and rudder, as appropriate.

(12) Anti-ice and de-ice systems.

(13) General airframe and structural integrity, including scratches, tears, holes, or dents and the fit and security of panels, doors, and hatches.

2.5 Task: Navigation System Setup

(a) Condition(s).

(1) All.

(2) This includes, but is not limited to, FMC, INS, and GPS navigation systems.

(b) Awareness criteria.

(1) Monitor the navigation system for fault indication, or for the results of self-tests.

(2) Ensure the system is operating normally.

(c) Action criteria.

(1) Verify aircraft, engine, and other data for accuracy.

(2) Enter or recall the planned route of flight.

(3) Enter performance-related data, such as thrust levels, planned speeds and other vertical navigation profile information.

(4) Perform crosschecks and crew verification procedures in accordance with the FCOM.

3.0 AREA: Ground Operations

(a) Condition(s). All.

(b) Awareness criteria.

(1) Maintain constant vigilance and lookout of the general area around the aircraft for hazards to the safety of the aircraft, personnel, other aircraft, vehicles, equipment, and structures.

(2) Properly divide attention inside and outside flight deck.

(3) Consider effect of jet blast on personnel, other aircraft, vehicles, ground equipment, and structures.

(4) Use airport diagram (surface movement) chart to aid in maintaining positional awareness.

(5) Comply with sterile flight deck requirements.

(c) Action criteria.

(1) Use the minimum thrust necessary to breakaway and to maintain taxi speed.

(2) Maintain proper spacing from other aircraft, obstructions, and personnel.

(3) Obtain appropriate clearance before crossing or entering active runways.

(4) Observe runway hold lines, localizer and glide slope critical areas, beacons, and other surface movement guidance control markings and lighting.

(d) The certificate holder must provide crewmembers with specific requirements for unique parking situations, or unique crewmember responsibilities that must be completed before the door closes or after it is opened in accordance with the FCOM. The certificate holder must also submit these unique requirements to the FAA for acceptance or approval as required.

END QPS REQUIREMENT

BEGIN INFORMATION

(e) Ground operations begin when the aircraft door is closed and includes all activities until the brakes are released for the takeoff roll. Ground operations resume again when the landing roll has been completed to a safe taxi speed just as the aircraft exits the landing runway, and continues until the aircraft has been parked and the door opened.

END INFORMATION

BEGIN QPS REQUIREMENT

3.1 Task: Engine Start

(a) Condition(s).

(1) All.

(2) Includes hot or cold weather, tailwinds, icing conditions, low density altitude.

(b) Awareness criteria. Ensure the ground safety procedures are followed during the before-start, start, and after-start phases of ground operations.

(c) Action criteria. Use required ground crew personnel during the before-start, start, and after-start phases (as appropriate).

3.1.1 Task: Engine Start—Normal

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor appropriate RPM and EGT indicators.

(2) Be able to identify abnormal RPM and EGT indications.

(c) Action criteria.

(1) Start the engine(s):

(2) Under varying environmental conditions;

(3) Using normal, auxiliary power unit, external power, pneumatic sources, or cross-bleed, as appropriate.

3.1.2 Task: Engine Start—Abnormal

(a) Condition(s). All

(b) Awareness criteria.

(1) Monitor appropriate RPM and EGT indicators.

(2) Be able to identify abnormal RPM and EGT indications.

(c) Action criteria.

(1) Start the engine(s):

(2) Take appropriate action in the event of a malfunction during the start process.

3.2 Task: Pushback or Powerback

(a) Condition(s). All.

(b) Awareness criteria.

(1) Maintain communications with ground crew.

(2) Avoid use of brakes unless requested by ground crew.

(c) Action criteria.

(1) Exhibit adequate knowledge of pushback or powerback procedures (as appropriate to the aircraft).

(2) [Reserved]

3.3 Task: Taxi

(a) Condition(s).

(1) All.

(2) Training must be conducted in taxi operations at the lowest visibility (RVR) authorized. Evaluation can be in any conditions.

(b) Awareness criteria.

(1) Comply with low visibility procedures, as applicable.

(2) [Reserved]

(c) Action criteria. Demonstrate safe taxi procedures.

3.4 Task: Pre-Takeoff Procedures

(a) Condition(s). All.

(b) Awareness criteria. Be aware of the operational factors that could affect the takeoff such as takeoff warning inhibit systems or other aircraft characteristics, runway length, surface conditions, wind, wake turbulence, obstructions, and other related factors that could adversely affect safety.

(c) Action criteria.

(1) Interpret information and clearances received and ensure all instrument references, flight director and autopilot controls, and navigation and communications equipment have been set.

(2) Confirm that the aircraft trim and wing high lift devices are configured properly.

(3) Obtain (or acknowledge, as appropriate) the takeoff and departure clearance as issued by ATC.

3.5 Task: After Landing

(a) Condition(s). All.

(b) Awareness criteria. Promptly clear the runway, avoiding an incursion on any other runway in the process.

(c) Action criteria. Take no other action until the aircraft is clear of the

runway and a suitable ATC clearance has been received.

3.6 Task: Parking and Securing

(a) Condition(s). All.

(b) Awareness criteria. Be aware of or acknowledge other aircraft and ground vehicles that might be a hazard to your operation.

(c) Action criteria.

(1) Use available visual docking system and marshaller to properly park the aircraft.

(2) Complete the post-flight entries in the maintenance logbook, including any discrepancies encountered during the flight.

4.0 AREA: Takeoff

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor engine and other aircraft controls, settings, and instruments during takeoff to ensure all predetermined parameters are maintained.

(2) Monitor aircraft airspeed to determine normal acceleration during take-off ground roll.

(3) Assess take-off and climb hazards particularly those related to obstacles.

(4) Consider the effect of LAHSO or SOIR if conducted on a runway that crosses the takeoff runway.

(c) Action criteria.

(1) The flight crewmembers must ensure takeoff clearance is received and that the correct runway is being entered for takeoff prior to crossing the hold short line.

(2) Taxi into position to maximize the available runway.

(3) Align the aircraft on the runway centerline.

(4) Apply the controls correctly to maintain longitudinal alignment on the centerline of the runway prior to and during the takeoff.

(5) Maintain aircraft alignment with the runway centerline during the takeoff roll.

(6) Adjust the engine controls for the existing conditions and verify the expected engine performance.

(7) Maintain a wings-level attitude during the takeoff roll and during the rotation to proper pitch attitude.

(8) Rotate at the proper airspeed, at the proper rate, to the proper pitch attitude for the aircraft configuration.

(9) Maintain a positive rate of climb throughout the takeoff and initial climb.

(10) Adjust to the desired pitch attitude at the predetermined airspeed or V-speed to attain the desired performance for the particular takeoff segment.

(11) Use the applicable noise abatement and wake turbulence avoidance procedures, as required.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Takeoff begins at brake release (or the application of thrust with the intention of flight for those aircraft not using brakes). Takeoff ends when the aircraft is airborne, or in the event of a rejected takeoff, when the aircraft has reached a safe taxi speed.

END INFORMATION

BEGIN QPS REQUIREMENT

4.1 Task: Normal and Crosswind—With All Engines Operating

(a) Condition(s).

(1) All.

(2) Takeoffs must be demonstrated and practiced to proficiency during training at the maximum demonstrated crosswind for the aircraft. For evaluation purposes the crosswind component need not exceed 12 knots.

(b) Awareness criteria.

(1) All awareness criteria listed in Area 4.0(b), Takeoff.

(2) Assess the changing effect of the crosswind component to make control corrections as required.

(c) Action criteria.

(1) All action criteria listed in Area 4.0(c), Takeoff.

(2) Transition smoothly and accurately into a stabilized climb.

(3) After liftoff, maintain required ground track or heading, as appropriate, until a turn is required.

4.2 Task: Instrument With Lowest Authorized RVR

(a) Condition(s).

(1) All.

(2) Takeoff must be demonstrated and practiced to proficiency in training under the lowest visibility authorized for takeoff.

(b) Awareness criteria. All awareness criteria listed in Area 4.0(b), Takeoff.

(c) Action criteria.

(1) Transition smoothly and accurately from outside visual reference(s) to instrument meteorological conditions.

(2) Transition smoothly and accurately into a stabilized climb.

(3) After liftoff maintain required heading or assigned navigation radial, as appropriate, until a turn is required.

4.3 Task: With Engine Failure

(a) Condition(s).

(1) All.

(2) Takeoff must be demonstrated and practiced to proficiency in training with the failure of the most critical engine.

(b) Awareness criteria.

(1) Observe flight and engine instruments or divergence from the runway centerline to assess loss of thrust.

(2) Identify those situations that require a rejected takeoff and make timely decision to continue the takeoff or reject the takeoff.

(3) Identify the side of the aircraft on which the failure has occurred.

(c) Action criteria.

(1) Apply rudder as required to counteract asymmetric thrust, keeping the inclinometer reference (''the ball'') centered.

(2) Maintain wings level.

(3) Maintain the aircraft alignment with the runway.

4.3.1 Task: Takeoff With Engine Failure Between V_1 and V_R

(a) Condition(s).

(1) All

(2) Takeoff must be demonstrated and practiced to proficiency in training with the engine failure after V_1 and prior to V_2; or as close as possible after V_1 when V_1 and V_2, or V_1 and V_R are identical.

(b) Awareness criteria.

(1) All awareness criteria in Task 4.3.Takeoff with Engine Failure.

(2) [Reserved]

(c) Action criteria.

(1) All action criteria in Task 4.3. Takeoff with Engine Failure.

(2) Continue the takeoff if abnormality or emergency (in accordance with FCOM procedures) occurs at or after V_1 speed.

(3) Transition smoothly and accurately into a stabilized climb.

(4) Maintain required ground track (or heading) and attitude appropriate for climb performance and terrain clearance as appropriate, until a turn is required.

(5) Make suitable decision to return to airport or divert, as appropriate.

4.3.2 Task: Takeoff with Engine Failure Between V_R and 500 ft Above Field Elevation

(a) Condition(s).

(1) All

(2) Takeoff must be demonstrated and practiced to proficiency in training with the failure after V_R such that nosewheel steering provides no directional control assistance and that visual cues for lateral direction are not available.

(b) Awareness criteria. All awareness criteria in Task 4.3. Takeoff with Engine Failure.

(c) Action criteria.

(1) All action criteria in Task 4.3. Takeoff with Engine Failure.

(2) Maintain a stabilized climb with wings level.

(3) Maintain required ground track (or heading) and attitude appropriate for

climb performance and terrain clearance as appropriate, until a turn is required.

(4) Make suitable decision to return to airport or divert, as appropriate.

4.4 Task: Rejected With Lowest Authorized RVR

(a) Condition(s).

(1) All

(2) The takeoff must be demonstrated and practiced to proficiency in training with the cause (for the decision to reject) presented so that the decision may be made prior to V_1 speed.

(b) Awareness criteria.

(1) All awareness criteria in Task 4.3.Takeoff with Engine Failure.

(2) Abort the takeoff if abnormality or emergency (in accordance with FCOM procedures) occurs prior to V_1 speed.

(3) Identify critical situation and make timely decision to reject the take-off.

(c) Action criteria.

(1) Reduce the power promptly to idle and simultaneously apply maximum wheel brakes when an engine failure or other cause for aborting the takeoff is recognized.

(2) Use spoilers, thrust or propeller reverse, and other drag or braking devices, as appropriate, to bring the aircraft to a safe stop on the runway or stopway surface.

5.0 AREA: Departure, Climb, Cruise, Descent, and Arrival

5.1 Task: Instrument Departure

(a) Condition(s). All.

(b) Awareness criteria. Understand the requirements of the climb profile, departure profile, or any other authorized departure procedure(s).

(c) Action criteria.

(1) Maintain assigned heading, course, or track, or comply with ATC clearance.

(2) Comply with the provisions of the climb profile, departure profile, or any other authorized departure procedure(s).

(3) Conduct the departure to a point where the transition to the en route environment is complete.

5.2 Task: Climb

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor the climb profile to ensure intermediate crossing altitudes and the ATC clearance can be met.

(2) Understand speed restrictions as dictated by airspace, procedure, or ATC.

(c) Action criteria.

(1) Select and maintain an airspeed (best angle, best rate, best economy, or cost index) suitable for the conditions and in compliance with speed and crossing restrictions as dictated by airspace, procedure, or ATC.

(2) Perform correct altimetry procedures, setting QNE at the transition altitude or as dictated by airspace or ATC.

5.3 Task: One Engine Inoperative En route

(a) Condition(s). All

(b) Awareness criteria.

(1) Review route segments for proximity of high terrain and the MEA.

(2) Compare climb capability with MEA and high terrain.

(c) Action criteria.

(1) Maintain an appropriate thrust setting in the remaining engine(s).

(2) Maintain the airspeed for drift-down or engine-out (cruise) climb.

(3) Select the proper flight altitude for the configuration and environmental conditions (e.g., icing, thunderstorms, terrain).

5.4 Task: En route Navigation

(a) Condition(s). All

(b) Awareness criteria.

(1) Monitor fuel burn, cruise speed, and thrust to achieve planned performance.

(2) Monitor navigation system performance.

(3) Understand maximum operating altitude and optimum cruise altitude.

(c) Action criteria.

(1) Use Class I or Class II navigation procedures as authorized by the operations specifications and prescribed by the FCOM.

(2) Navigate to the degree of accuracy required by the airspace in which the aircraft is being operated.

(3) Conduct required navigation system crosschecks.

(4) Perform correct altimetry procedures and monitor flight level or altitude clearances.

(5) Report equipment failure that may degrade navigation as dictated by airspace or regional differences.

(6) Determine the optimum cruise altitude for a given gross weight and desired airspeed or Mach.

(7) Use appropriate on-board reference to determine the maximum cruise altitude for the gross weight that affords the required maneuver buffet margin.

(8) Determine the correct airspeed for both maximum endurance and maximum range for the gross weight and altitude.

5.5 Task: Descent

(a) Condition(s). All

(b) Awareness criteria. Monitor the descent profile to ensure crossing altitudes, speed restrictions, and ATC clearances can be met.

(c) Action criteria.

(1) At the appropriate point, begin a rate of descent consistent with safe aircraft operating characteristics and company procedures.

(2) Maintain or adjust rate of descent, airspeed, and aircraft configuration for the conditions and to comply with speed and crossing restrictions as dictated by airspace, procedure, or ATC.

(3) Perform correct altimetry procedures, setting QNH (or QFE, as required or appropriate) at the transition level or as dictated by airspace or regional differences.

5.6 Task: Instrument Arrival

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor the descent profile to ensure crossing altitudes, speed restrictions, and ATC clearances can be met.

(2) Comply with the provisions of the profile descent, STAR, or other arrival procedure(s).

(c) Action criteria. Conduct the arrival to a point where the transition from the en route environment to the terminal environment is complete.

5.7 Task: Holding

(a) Condition(s). All.

(b) Awareness criteria.

(1) Recognize arrival at the clearance limit or holding fix.

(2) Be aware of winds as they affect wind-drift correction techniques to maintain the desired radial, track, or bearing.

(3) Apply knowledge of holding endurance, including fuel on board, fuel flow while holding, and fuel required to alternate.

(c) Action criteria.

(1) Select holding airspeed appropriate for the aircraft configuration and holding altitude.

(2) Adjust airspeed to cross the holding fix at or below maximum holding airspeed.

(3) Follow appropriate entry procedures for a standard, non-standard, published, or non-published holding pattern.

(4) Use the proper timing criteria required by the holding altitude and ATC, or comply with the navigation system holding procedure, as appropriate.

(5) Comply with the holding pattern leg length when a DME distance is specified.

(6) Arrive over the holding fix as close as possible to the Expect Further Clearance (EFC) time.

5.8 Task: Approach Transition

(a) Condition(s). All.

(b) Awareness criteria. Monitor the navigation instruments and ensure that airspeeds, aircraft configurations,

crossing altitudes will meet approach procedures or ATC clearance requirements.

(c) Action criteria. Complete a procedure turn, DME arc, RNAV transition, TAA, or follow ATC radar vectors to align with the intermediate or final approach course as applicable.

6.0 AREA: Aircraft Handling

(a) Condition(s). All.

(b) Awareness criteria.

(1) Recognize the deviation from normal flight (such as buffeting, stick shaker, visual or aural flight deck annunciations or warnings, decay of control effectiveness, or any other cues related to the specific aircraft design characteristics).

(2) Practice maneuvering the aircraft and experience how the aircraft performs and responds to flight control inputs in various pitch, power, and configuration combinations.

(c) Action criteria. Return the aircraft to a safe state.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) The purpose of these maneuvers is to provide familiarity with the handling behavior of the aircraft, including operations outside the normal flight envelope. The intent is to teach the pilot to recognize the deviation from normal flight, and to practice the return of the aircraft to a safe state. In this context a safe state is considered an aircraft attitude (pitch, bank, yaw), airspeed, trim, and thrust setting appropriate for the aircraft configuration, altitude, and geographic location, and at which the pilot is able to maintain control of the aircraft. The pilot should not be expected to execute the procedures to enter a maneuver. If the instructor requires the assistance of the pilot to maneuver or configure the aircraft, to fly a particular airspeed, or to set a particular power or trim setting, the instructor should provide progressive instructions to the student to achieve the desired ''set up'' position for the task. Additionally, recoveries from such situations should not be taught or practiced as regimented procedures. Returning the aircraft to a safe state requires that the pilot continue to control the aircraft away from attitudes and airspeeds that are outside of the normal flight envelope without exceeding critical performance parameters (e.g., engine temperature or RPM limits and ''g'' loading) until that safe state is reached. The only meaningful criterion for satisfactory demonstration of these tasks is the return of the aircraft to a safe state without exacerbating the condition.

END INFORMATION

BEGIN QPS REQUIREMENT

6.1 Task: Recognition of and Recovery From Approach to Stall

(a) Condition(s).

(1) All

(2) At least one recovery from Approach-to-Stall must be completed while in a turn using a bank angle of 15° to 30°.

(b) Awareness criteria.

(1) Recognize the first indication of an impending stall.

(2) Awareness of the current position and circumstance:

(i) The immediately preceding change in aircraft configuration, trim, or attitude.

(ii) The potential of sacrificing altitude for airspeed.

(iii) The proximity of terrain, laterally and vertically.

(c) Action criteria.

(1) Announce the first indication of an impending stall.

(2) Adjust pitch, bank, and thrust to recover from the approach-to-stall.

(3) Maintain heading control throughout the recovery, including:

(i) At low altitudes (traffic pattern altitude and below), minimum airspeed and altitude loss.

(ii) At intermediate and higher altitudes, loss of airspeed or altitude not necessary for the safe and expeditious recovery must be avoided.

(4) Recover to an airspeed appropriate for the configuration and establish the appropriate altitude and heading.

(5) Recovery is complete when straight and level, un-accelerated flight is achieved.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) It is preferable to conduct slow flight training tasks in section 6.6 prior to training recovery from approaches to stall (stall avoidance) in section 6.1.2 through 6.1.4. The clean configuration scenario in section 6.1.1 should be used to practice the cruise configuration or holding pattern stall, typically at intermediate and higher altitudes, where there is usually more altitude available to use for recovery. The configuration scenarios in sections 6.1.2 through 6.1.4 should be used to practice the low energy and high drag configurations, typically at very low altitudes, where there is very little altitude available to use for recovery. One or more of these should be practiced at an altitude between 300 and 500 feet AGL.

END INFORMATION

BEGIN QPS REQUIREMENT

6.1.1 Task: Clean Configuration

(a) Condition(s). Altitudes, airspeeds, aircraft configurations, and environmental conditions representative of normal operations outside of departures or arrivals, including en route portion of flight.

(b) Awareness criteria. All awareness criteria described in Task 6.1. Recognition of and Recovery from Approach to Stall.

(c) Action criteria. All action criteria described in Task 6.1. Recognition of and Recovery from Approach to Stall.

6.1.2 Task: Takeoff or Maneuvering Configuration

(a) Condition(s). Altitudes, airspeeds, aircraft configurations, and environmental conditions representative of normal operations during departures or arrivals.

(b) Awareness criteria. All awareness criteria described in Task 6.1. Recognition of and Recovery from Approach to Stall.

(c) Action criteria. All action criteria described in Task 6.1. Recognition of and Recovery from Approach to Stall.

6.1.3 Task: Landing Configuration

(a) Condition(s). Altitudes, airspeeds, aircraft configuration, and environmental conditions representative of normal operations immediately after takeoff or inside the final approach fix prior to landing.

(b) Awareness criteria. All awareness criteria described in Task 6.1. Recognition of and Recovery from Approach to Stall.

(c) Action criteria. All action criteria described in Task 6.1. Recognition of and Recovery from, Approach to Stall.

6.1.4 Task: Landing Configuration With Auto Pilot Engaged

(a) Condition(s). Altitudes, airspeeds, aircraft configuration, and environmental conditions representative of normal operations inside the final approach fix prior to landing, with the autopilot engaged.

(b) Awareness criteria. All awareness criteria described in Task 6.1. Recognition of and Recovery from, Approach to Stall.

(c) Action criteria. All action criteria described in Task 6.1. Recognition of and Recovery from, Approach to Stall.

6.2 Task: Asymmetric Thrust

(a) Condition(s).
(1) All
(2) The most critical engine must be shut down and a restart must be demonstrated.
(b) Awareness criteria.
(1) Exhibit adequate knowledge of the flight characteristics and controllability associated with maneuvering with engine(s) inoperative (as appropriate to the aircraft).
(2) Maintain the operating engine(s) within acceptable operating limits.
(c) Action criteria.
(1) Establish the proper configuration, and properly set all engine controls for the conditions, taking into account, wind, turbulence, and icing conditions.
(2) Maintain straight and level flight at the required speed throughout the shutdown and restart.
(3) Experience the roll and yaw handling change(s) due to the engine shutdown and startup transient(s).

6.2.1 Task: Engine Shutdown

(a) Condition(s). All
(b) Awareness criteria. All awareness criteria described in Task 6.2., Asymmetric Thrust.
(c) Action criteria.
(1) All action criteria described in Task 6.2., Asymmetric Thrust.
(2) Use the prescribed FCOM procedures for identifying, verifying, and securing the engine that should be shut down.

6.2.2 Task: Maneuvering With One Engine Inoperative

(a) Condition(s).
(1) All
(2) Altitudes, airspeeds, aircraft configurations, and environmental conditions representative of engine inoperative operations after departure or prior to arrival.
(b) Awareness criteria. All awareness criteria described in Task 6.2., Asymmetric Thrust.
(c) Action criteria.
(1) All action criteria described in Task 6.2., Asymmetric Thrust.
(2) Practice maneuvering in the clean, approach and landing configurations, with normal turns, thrust and speed changes, and climbs and descents.

6.2.3 Task: Engine Restart

(a) Condition(s).
(1) All
(2) Altitudes, airspeeds, aircraft configurations, and environmental conditions representative of engine inoperative operations after departure or prior to arrival.
(b) Awareness criteria.
(1) Determine if it is appropriate to attempt a restart.
(2) [Reserved]
(c) Action criteria.
(1) Demonstrate proper restart procedures in accordance with FCOM.
(2) [Reserved]

6.3 Task: Runaway Trim or Stabilizer

(a) Condition(s). All.
(b) Awareness criteria.
(1) Experience the pitch handling qualities of the aircraft with runaway stabilizer or runaway pitch trim, and pitch mistrim during takeoff or landing and during cruise flight.
(2) Observe the effects of early versus late detection and de-activation or correction.
(c) Action criteria. Practice the prescribed FCOM procedures for recovery.

6.4 Task: Jammed Trim or Stabilizer

(a) Condition(s). All
(b) Awareness criteria.
(1) Experience the pitch handling qualities of the aircraft with jammed stabilizer or pitch trim during cruise flight and carry the scenario through to landing.
(2) Observe the effect of an increase and decrease in airspeed.
(3) Recognize the insidious nature of the failure during periods of un-accelerated flight.
(c) Action criteria. Practice operating the aircraft without the availability of a movable stabilizer or pitch trim, following the procedures described in the FCOM.

6.5 Task: Upset Recognition and Recovery

(a) Condition(s).
(1) All
(2) Altitudes, airspeeds, aircraft configurations, and environmental conditions representative of normal operations including departures, arrivals, and en route portion of flight.
(b) Awareness criteria.
(1) Recognize situations that may lead to aircraft upsets so they can be prevented.
(2) Recognize aircraft upset.
(3) Apply flight control knowledge about pitch, roll and yaw rates, and the interrelationship with thrust, particularly for under-wing-mounted engines.
(4) Understand the risk of catastrophic damage caused by rapidly reversing controls, including rapidly reversing controls at speeds below the design maneuvering speed.
(5) Understand that as speed increases, the maximum available rudder deflection can be obtained with comparatively light pedal forces and comparatively small pedal movements.
(6) Assess the energy and ''G''-loading.
(7) Control the aircraft before seeking to determine the cause of the upset.
(8) Recognize the relationship between what is seen outside the aircraft and the instrument indications, to help better understand the actual attitude of the aircraft and overcome the possibly counter-intuitive vestigial sense.
(9) Understand the proper direction (and magnitude) of control and thrust input necessary to recover.
(c) Action criteria.
(1) Callout the situation.
(2) Disengage the autopilot and autothrottle.
(3) Confirm attitude by reference to other instruments.
(4) Deliberately and promptly use up to full control inputs, as may be required to regain control of each axis.
(5) Practice recovering from a nose-high aircraft upset.
(6) Practice recovering from a nose-low aircraft upset.
(7) Practice recovering from low-speed and high-speed accelerated stall.
(8) Practice recovering from a nose-high, low-energy aircraft upset.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Reference the most current version of the Industry's Airplane Upset Recovery Training Aid. An aircraft upset is almost universally described as exceeding one or more of the following:
(1) Pitch attitude greater than 25° nose up.
(2) Pitch attitude greater than 10° nose down.
(3) Bank angle greater than 45°.
(4) Pilots completing any training category, except recurrent training, should train and practice maneuvers such as:
(i) Roll rate with full aileron and spoiler input.
(ii) Roll rate with rudder input.
(iii) Pitch change with use of only stabilizer trim.
(iv) Pitch change with the use of thrust adjustments.
(v) Pitch change with the use of speedbrakes.
(vi) Yaw motion and resultant roll due to asymmetric thrust with autopilot.
(vii) Yaw motion and resultant roll due to asymmetric thrust without autopilot.
(viii) Approach to stall recovery using only pitch control.

END INFORMATION

BEGIN QPS REQUIREMENT

6.6 Task: Slow Flight

(a) Condition(s).

(1) All

(2) The pilot must demonstrate slow flight in the landing configuration at maximum landing gross weight, with minimum maneuvering airspeed for the configuration and weight.

(b) Awareness criteria. Recognize the low energy or high drag configuration and the slow response to flight control and thrust inputs.

(c) Action criteria.

(1) While maintaining altitude, slowly establish the pitch attitude (using trim or elevator or stabilizer), bank angle, and power setting that will allow a controlled reduction to establish the desired, target airspeed.

(2) Maneuver in straight and level flight to stabilize speed and trim.

(3) Turn through 90° left and right, using only 15° of bank.

(4) Climb and descend at 500 FPM while in a turn.

(5) Recover to an airspeed appropriate for the configuration and establish the appropriate altitude and heading.

(6) Recovery is complete when straight and level un-accelerated flight is achieved.

(d) This task is required only for pilots completing initial, transition, or conversion categories of training on the aircraft type. Performing this task during other categories of training is optional.

(e) Target speeds must be below the speeds that are appropriate for the various configurations, ending with a speed below V_{REF}. The maximum speed must not exceed 20% above V_{SO} to avoid stick shaker.

END QPS REQUIREMENT

BEGIN INFORMATION

(f) This training should be conducted from a clean configuration, slowing to landing configuration, and illustrating the concept on minimum maneuvering speed for the configuration along the way.

END INFORMATION

BEGIN QPS REQUIREMENT

6.7 Task: Turns with and without Spoilers

(a) Condition(s). All.

(b) Awareness criteria. Experience the handling qualities of the aircraft without spoilers.

(c) Action criteria.

(1) Make turns left and right with a normal flight control configuration.

(2) Deploy the spoilers to a position one-half extended and make turns left and right.

(3) Deploy the spoilers to a fully deployed position and make turns left and right.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) This training should focus on the turning characteristics of some aircraft with partial in-flight spoilers (speedbrakes) deployed, rather than on the remote mechanical failure leading to loss of the spoilers. The pilot should experience an increase in spoiler deployment on the down wing and a decrease in spoiler deployment on the up wing, which causes a markedly different roll characteristic than with full or no spoiler deployment.

END INFORMATION

BEGIN QPS REQUIREMENT

6.8 Task: Stability Augmentation System Inoperative

(a) Condition(s). All.

(b) Awareness criteria.

(1) Awareness of the mechanical and aerodynamic circumstances involved in the phenomenon known as ''Dutch Roll.''

(2) This maneuver is only applicable to swept wing, turbojet powered, transport category aircraft.

(c) Action criteria.

(1) If Dutch roll is encountered and the yaw dampers are off, rather than inoperative, the pilot must turn on the damper(s). The pilot must be able to stop the rolling tendency without prolonging the Dutch roll or aggravating the yaw.

(2) If Dutch roll is encountered and the yaw dampers are inoperative, the pilot must:

(i) ''Freeze'' the rudder pedals in position and give one firm correction on the aileron control against the upcoming wing.

(ii) Move the aileron correction immediately to the neutral position.

(3) If Dutch roll is still present, maintain the rudder pedals in a constant position and again apply one firm aileron control input against the upcoming wing and immediately move the aileron control to the neutral position. Apply this correction in this manner until the Dutch roll is corrected.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) This maneuver is designed to acquaint the pilot with the adverse characteristics of a swept wing turbojet transport category aircraft at relatively high altitudes and airspeeds; e.g., at or above FL250 at an appropriate cruise airspeed for the altitude selected. Typically, a Dutch roll would only be experienced when (all) the yaw damper(s) is (are) inoperative or turned off, and could be initiated as a result of an uncoordinated roll or an adverse yaw input. Recovery from a Dutch roll may be accomplished by turning on the yaw damper or executing the aileron technique described here. The aileron technique involves more advanced skills and additional practice. This method ensures that the proper control inputs will be applied to stop the rolling motion. In addition to practicing the task at relatively high altitudes, the task should be demonstrated at an intermediately low altitude and airspeed; e.g., between 10,000 and 15,000 feet at an airspeed of 250 to 300 knots.

END INFORMATION

BEGIN QPS REQUIREMENT

6.9 Task: Mach Tuck and Mach Buffet

(a) Condition(s). All.

(b) Awareness criteria. Experience the handling qualities of the aircraft at high MACH numbers.

(c) Action criteria.

(1) Increase airspeed slowly.

(2) Observe the performance of the compensating device or system, if installed.

(3) Disable the compensating device or system, if installed, and continue to accelerate until the tuck or buffet occurs.

(4) Observe the airframe vibration or flight instrument indications.

(5) Make small aileron inputs and feel for the increase in buffet.

6.10 Task: High Sink Rate

(a) Condition(s). All.

(b) Awareness criteria. Experience the handling qualities of the aircraft at high sink rates.

(c) Action criteria.

(1) The pilot must demonstrate a hazardous landing approach profile, conducted as close to maximum gross landing weight as possible. The descent must be entered at sufficient altitude to stabilize airspeed and vertical speed. The maneuver must be performed at normal approach altitudes.

(2) The pilot must use the following configuration: flaps or slats (as

appropriate) set to landing configuration; landing gear down; throttles at idle; establish and maintain threshold airspeed. When configuration is established, the pilot must trim and maintain proper airspeed with power at idle thrust and a high rate of descent.

(3) The pilot must perform the following two separate recoveries from a high rate of descent:

(i) After descent rate is established, the instructor will announce the designated altitude at which level off is to occur. When the designated altitude is reached, the pilot must initiate recovery to level flight in the landing configuration using maximum permissible thrust while maintaining threshold airspeed. At the completion of the maneuver, the instructor must discuss with the pilot the loss of altitude during recovery.

(ii) The second recovery must be initiated in the same manner as in paragraph (a) of this section to the point of reaching the designated altitude. When the designated altitude is reached, the pilot must initiate recovery to level flight in the landing configuration and leaving the throttles at idle. The pilot must observe loss of airspeed below threshold airspeed. The pilot must recover using FCOM recommended stall recovery procedures. At the completion of the maneuver, the instructor must discuss with the pilot the loss of altitude during recovery.

(4) The pilot must demonstrate a basic understanding and knowledge of the hazards associated with the high sink rates near the ground on the landing approach.

6.11 Task: Flight Envelope Protection Demonstration

(a) Condition(s). All.

(b) Awareness criteria. Awareness of aircraft programming for attitudes outside of the protected envelope.

(c) Action criteria.

(1) Practice maneuvering the aircraft and experience how the aircraft performs and responds to flight control inputs in various pitch, power and configuration combinations that are beyond the protected envelope.

(2) Release control to observe aircraft return to within protected envelope.

(3) Hold control beyond protected limits to observe control input required to maintain attitude.

(4) Return the aircraft to a safe state.

6.12 Task: Windshear Avoidance and Encounter—

(a) Condition(s). All.

(b) Awareness criteria.

(1) Know the sources of information that indicate the possible presence of windshear or turbulence.

(2) Observe the visual indications that usually indicate the presence of windshear or turbulence.

(3) Understand the effect of windshear or turbulence on the performance of the aircraft during low altitude operations.

(c) Action criteria.

(1) Avoid indicated areas of possible windshear or turbulence, if possible.

(2) Be able to recognize the indications of windshear or turbulence during takeoff and landing profiles.

(3) Execute the FCOM procedure for avoiding windshear; and, if not possible to avoid, execute the FCOM procedure for escaping windshear or turbulence during low altitude operations.

(4) Practice avoiding and escaping windshear or turbulence during low altitude operations to include:

(i) Takeoff.

(ii) Departure.

(iii) Approach.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Refer to the most current version of the FAA Windshear Training Aid. Demonstrations and practice are primarily for the purpose of enabling pilots to avoid windshear encounters. However, this practice will also enable pilots to execute the proper escape maneuver should windshear be encountered.

END INFORMATION

BEGIN QPS REQUIREMENT

6.12.1 Task: Takeoff

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria described in Task 6.12., Windshear Avoidance and Encounter.

(c) Action criteria. All action criteria described in Task 6.12., Windshear Avoidance and Encounter.

6.12.2 Task: Departure

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria described in Task 6.12., Windshear Avoidance and Encounter.

(c) Action criteria. All awareness criteria described in Task 6.12., Windshear Avoidance and Encounter.

6.12.3 Task: Approach

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria described in Task 6.12., Windshear Avoidance and Encounter.

(c) Action criteria. All awareness criteria described in Task 6.12., Windshear Avoidance and Encounter.

6.13 Task: Traffic Avoidance (TCAS)

(a) Condition(s).

(1) All

(2) The pilot must demonstrate each type of Traffic Alert (TA) and Resolution Alerts (RA) described in the FCOM.

(b) Awareness criteria. Understand the capabilities and limitations of TCAS equipment.

(c) Action criteria.

(1) Use TCAS equipment to determine the proximity of other aircraft.

(2) Respond immediately to RAs by quickly executing the proper evasive maneuver within 5 seconds of displayed command.

7.0 AREA: Instrument Approaches

(a) Condition(s). All.

(b) Awareness criteria.

(1) Awareness of the gross weight of the aircraft, the aircraft condition, the appropriate configuration for that condition, and the proper airspeeds for the approach.

(2) Awareness of the weather conditions, including winds (and the potentials for wind shifts or windshear) and limitations to forward and lateral visibility.

(3) Awareness of the requirements for navigation aid tuning, identifying, and monitoring; including proper and complete instrument set up for the approach.

(4) Awareness of the requirements for determining which pilot is to fly and which pilot is to monitor, and of the respective duties and responsibilities of the PF and the PM.

(5) Awareness of the approach profile, including the method(s) used to determine the missed approach point and the requirements for complete crew briefing (including missed approach procedures) prior to initiation of the approach.

(c) Action criteria.

(1) Select and comply with the appropriate precision instrument approach procedure to be performed.

(2) Select and correctly identify the appropriate navigation frequencies and facilities associated with the arrival.

(3) Establish the appropriate aircraft configuration and airspeed or V-speed considering turbulence, windshear, microburst conditions, or other meteorological and operating conditions.

(4) Apply the necessary adjustments to the published DH or DA and visibility criteria for the aircraft approach category.

(5) Apply the necessary adjustments to the published MDA and visibility criteria for the aircraft approach category as required.

(6) Cross the final approach fix, or the point at which the final approach begins, at the proper altitude, in the proper aircraft configuration, with the proper airspeed for the approach.

(7) Maintain a stabilized final approach through transition to missed approach or transition to landing.

(8) Insure a timely decision at DA or DH to either initiate a missed approach or proceed to a landing with suitable visual reference.

(9) Initiate the missed approach procedure, when at the DH or DA, and the required visual references for the runway, or the intended landing area, are not distinctly visible or identifiable.

(10) Transition to a normal landing approach only when the required visual references for the runway, or the intended landing area, are distinctlyvisible and identifiable, and the aircraft is in a position from which a descent to a landing on the runway, or the intended landing area, can be at a normal rate of descent using normal maneuvering.

END INFORMATION

BEGIN INFORMATION

(d) Instrument approaches begin when the aircraft is over the initial approach fix for the procedure being used and end when the aircraft touches down on the runway or landing area, or when transition to a missed approach configuration is completed.

END INFORMATION

BEGIN QPS REQUIREMENT

7.1 Task: All Engines Operating—Autopilot Coupled

(a) Condition(s). All.

(b) Awareness criteria.

(1) All awareness criteria listed in Task 7.0, Instrument Approaches.

(2) Awareness of the requirements and limitations for an Autopilot Coupled approach.

(c) Action criteria.

(1) All action criteria listed in Task 7.0, Instrument Approaches.

(2) Engage (and disengage, if appropriate) the flight director(s) and autopilot(s) at the appropriate points during the approach.

7.2 Task: All Engines Operating—Manually Flown

(a) Condition(s). All.

(b) Awareness criteria.

(1) All awareness criteria listed in Task 7.0., Instrument Approaches.

(2) Awareness of the requirements and limitations for a manually flown instrument approach.

(c) Action criteria.

(1) All action criteria listed in Task 7.0., Instrument Approaches.

(2) Engage (and disengage, if appropriate) the flight director(s) at the appropriate points during the approach.

7.3 Task: One Engine Inoperative—Manually Flown

(a) Condition(s). All.

(b) Awareness criteria.

(1) All awareness criteria listed in Task 7.0, Instrument Approaches.

(2) Awareness of the requirements and limitations for a manually flown instrument approach with an engine inoperative.

(3) Monitor the operating engine(s) and make adjustments as necessary.

(4) Maintain coordinated flight with thrust changes.

(5) Coordinate between PF and PM regarding rudder trim application and removal.

(c) Action criteria.

(1) All action criteria listed in Task 7.0., Instrument Approaches.

(2) Establish and maintain the recommended flight attitude and configuration for optimum performance during all maneuvering necessary for the instrument approach procedure.

7.4 Task: Approach Type

7.4.1 Task: Category II or III

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria for Task 7.1, All Engines Operating—Autopilot Coupled, or, if appropriate, Task 7.2, All Engines Operating—Manually Flown.

(c) Action criteria. All action criteria for Task 7.1, All Engines Operating—Autopilot Coupled, or, if appropriate, Task 7.2, All Engines Operating—Manually Flown.

7.4.2 Task: Precision Group

(a) Condition(s).

(1) All

(2) Use aircraft navigational aid equipment for centerline and glideslope guidance.

(3) Two precision approaches must be completed in simulated instrument conditions to the minimums appropriate for the type of approach being flown.

(4) When the precision instrument approach is flown with an engine failure, the engine failure must occur before initiating the final approach segment and must continue to touchdown or throughout the missed approach procedure.

(b) Awareness criteria. All awareness criteria for Task 7.1, All Engines Operating—Autopilot Coupled, or, if appropriate, Task 7.2, All Engines Operating—Manually Flown.

(c) Action criteria.

(1) All action criteria for Task 7.1, All Engines Operating—Autopilot Coupled, or, if appropriate, Task 7.2, All Engines Operating—Manually Flown.

(2) Establish a rate of descent at the point where the electronic glide slope begins which approximates that required for the aircraft to follow the glide slope.

7.4.3 Task: Non-Precision Group

(a) Condition(s).

(1) All

(2) Non-precision instrument approaches must be completed in simulated instrument conditions to the minimums appropriate for the type of approach being flown.

(3) When the non-precision instrument approach is flown with a failure of one engine, the engine failure must occur before initiating the final approach segment and must continue to touchdown or throughout the missed approach procedure.

(b) Awareness criteria.

(1) All awareness criteria listed in Task 7.0, Instrument Approaches.

(2) Awareness of the requirements and limitations for Task 7.1, Autopilot Coupled instrument approach, or of the requirements and limitations for Task 7.2, Manually Flown instrument approach, as appropriate.

(c) Action criteria.

(1) Cross the final approach fix at the appropriate altitude, airspeed, and configuration.

(2) After passing the final approach fix, establish a stabilized rate of descent that will ensure arrival at MDA at, or prior to, a point from which a descent to a landing on the intended runway or landing area can be made at a normal rate using normal maneuvering.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) The rate of descent should be established as soon as possible (immediately) after passing the final approach fix. Final approach fix passage may be determined by radial passage, radar fix, marker beacon, or navigation aid passage (e.g. VOR, NDB). This will help ensure that the pilot does not have to descend at a much higher rate or execute a missed approach.

END INFORMATION

BEGIN QPS REQUIREMENT

(4) Maintain the MDA, when reached, to the missed approach point or until descent is initiated toward the runway of intended landing.

(5) Execute the missed approach procedure if the required visual references for the intended runway are not distinctly visible and identifiable at the missed approach point.

7.4.4 Task: Ground-Based Radar Approaches (ASR and PAR)

(a) Condition(s). All.
(b) Awareness criteria. All the awareness criteria in Task 7.0., Instrument Approaches; and
(1) For ASR, all the awareness criteria in Task 7.4.3., Non-Precision Group.
(2) For PAR, all the awareness criteria in Task 7.4.2., Precision Group.
(c) Action criteria. All the action criteria in Task 7.0., Instrument Approaches; and
(1) For ASR, all the action criteria in Task 7.4.3., Non-Precision Group.
(2) For PAR, all the action criteria in Task 7.4.2., Precision Group.

8.0 AREA: Visual Approach

(a) Condition(s). All.
(b) Awareness criteria.
(1) Understand and apply wake turbulence and traffic separation requirements.
(2) Understand and apply altitude, airspeed, configuration, and associated requirements and limitations for the airport of intended landing as applied to the aircraft being flown.
(c) Action criteria.
(1) Establish the aircraft on downwind, base leg, or straight-in final approach at the proper altitude, at the proper airspeed, and in the proper configuration, making appropriate adjustments to all three factors as the approach continues to landing.
(2) Maintain a ground track that ensures the desired traffic pattern is flown, accounting for any obstructions, other traffic, and ATC instructions.
(3) Use XLS, RNAV, and other guidance, including visual guidance (as available), to maintain a normal vertical descent path to the runway.
(4) The visual approach ends in the landing transition phase, described in Task 10.4.3, when the landing is assured. The pilot must use all available lateral and vertical approach aids, and the pilot must be prepared to transition to flight using flight instruments due to darkness or other restrictions to visibility.

END QPS REQUIREMENT

BEGIN INFORMATION

(5) The visual approach phase begins after reporting the airport or traffic to follow as ''in sight,'' and receiving clearance for a visual approach.

END INFORMATION

BEGIN QPS REQUIREMENT

8.1 Task: All Engines Operating (Normal)

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria for Task 8.0, Visual Approach.
(c) Action criteria. All action criteria for Task 8.0, Visual Approach.

8.2 Task: One Engine Inoperative

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria for Task 8.0, Visual Approach.
(c) Action criteria. All action criteria for Task 8.0, Visual Approach.

8.3 Task: Two Engines Inoperative (3 and 4 Engine Aircraft)

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria for Task 8.0, Visual Approach.
(c) Action criteria. All action criteria for Task 8.0, Visual Approach.

9.0 AREA: Missed Approach

(a) Condition(s).
(1) All.
(2) The pilot must perform at least one missed approach from an XLS approach.
(3) The pilot must perform at least one missed approach from a non-XLS approach.
(4) The pilot must perform at least one complete, published missed approach procedure.
(5) The pilot must perform at least one missed approach with an engine inoperative.
(b) Awareness criteria.
(1) If a stabilized approach is not achieved by the required height, initiate a go-around without prompting from another crewmember.
(2) Comply with the appropriate missed approach procedure or ATC clearance.
(3) Know the aircraft position with respect to the missed approach point (MAP).
(c) Action criteria.
(1) Initiate the missed approach procedure promptly.
(2) Apply go-around thrust promptly; establish the proper pitch attitude; and reconfigure the aircraft for the missed approach in accordance with the approved procedures.
(3) Follow the published missed approach procedure (or follow the assigned clearance), maintaining proper airspeed and altitude for the configuration.
(4) Request clearance for another approach, to a holding fix, or to the alternate airport.
(5) If the approach is abandoned prior to reaching the MAP, begin a climb, but continue to navigate to the MAP before complying with the published procedure.
(6) Certificate holders must train to proficiency using all instrument approaches for which they hold Operations Specification approval.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) The missed approach phase begins when the decision to abandon the approach is made, and ends when the aircraft has been reconfigured to allow maneuvering for a second approach or a return to the en route environment.
(e) Certificate holders are required to train on all instrument approaches for which they hold operations specification approval, but this does not need to be done during each recurrent training period.

END INFORMATION

BEGIN QPS REQUIREMENT

9.1 Task: All Engines Operating

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria for Task 9.0., Missed Approach.
(c) Action criteria. All action criteria for Task 9.0., Missed Approach.

9.2 Task: One Engine Inoperative

(a) Condition(s). All.
(b) Awareness criteria.
(1) All awareness criteria for Task 9.0., Missed Approach.
(2) Monitor the operating engine(s) and make adjustments as necessary.
(3) Establish and maintain the recommended flight attitude and configuration for optimum performance during all necessary maneuvering.
(c) Action criteria.
(1) All action criteria for Task 9.0., Missed Approach.
(2) As the power is advanced for the missed approach, maintain coordinated flight with rudder as required to counter asymmetric thrust, and maintain wings level.

9.3 Task: From a Circling Approach

(a) Condition(s). All.
(b) Awareness criteria. Maintain awareness of the positional relationship between the MAP, the aircraft, and the center of the airport.
(c) Action criteria. If a missed approach is needed after starting the circle-to-land maneuver, turn in the appropriate direction and climb according to the published missed approach procedure.

9.4 Task: Descending Break-Out Maneuver From Instrument Landing System and Precision Radar Monitor (PRM) Approach

(a) Condition(s). All.
(b) Awareness criteria.
(1) Awareness of the prerequisite PRM training to accept a PRM approach.
(2) Understand the requirements when issued a ''breakout'' command from ATC.
(i) Understand that when another aircraft penetrates the ''no transgression zone,'' the threatened aircraft will be instructed to ''breakout.''
(ii) Understand that ''descent'' commands issued as part of a ''breakout'' instruction will not be issued to fly below an altitude that provides a minimum of 1,000 feet of obstacle clearance protection.
(c) Action criteria.
(1) All PRM ''breakouts'' must be hand flown.
(2) Initiate a ''breakout'' immediately on receiving breakout instructions and follow the turn and climb or descent commands issued by ATC.

10.0 Area: Landing

(a) Condition(s).
(1) All
(2) When a proficiency test will result in issuance of an airline transport pilot certificate or a type rating, the pilot must make at least three landings.
(b) Awareness criteria.
(1) Apply gust and wind factors, and take into account meteorological phenomena such as windshear, microburst, and other related safety of flight factors.
(2) Verify existing wind conditions, make proper corrections for drift, and maintain a precise ground track.
(3) Use the appropriate aircraft configuration for normal and abnormal situations and procedures, including becoming airborne again after touching down.
(4) Consider the takeoff traffic aspects of LAHSO or SOIR.
(c) Action criteria.
(1) Establish the approach and landing configuration appropriate for the runway and meteorological conditions, and adjust the engine controls as required.
(2) Maintain a stabilized approach; see Task 1.4(c)(10) of this attachment.
(3) Touchdown must be 500 to 3,000 feet (150 to 900 meters) past the runway threshold, not to exceed one-third of the runway length, with the runway centerline between the main gear, and with the airplane tracking parallel to the runway centerline.
(4) Use spoilers, propeller reverse or thrust reverse, and wheel brakes in a manner that ensures bringing the aircraft to a safe speed considering the point of touchdown and the runway remaining.
(5) Maintain positive directional control and crosswind correction during the after-landing roll.

10.1 Task: All Engines Operating (Normal)

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria in Area 10.0., Landing.
(c) Action criteria. All action criteria in Area 10.0., Landing.

10.2 Task: Crosswind

(a) Condition(s).
(1) All
(2) Landings must be demonstrated and practiced to proficiency during training at the maximum demonstrated crosswind for the aircraft. For evaluation purposes, the crosswind component must not exceed 12 knots.
(b) Awareness criteria.
(1) Assess the changing effect of the crosswind component and adjust controls as required.
(2) Assess the relationship between the aircraft limitation(s), performance data and any surface contaminant(s).
(c) Action criteria.
(1) Maintain positive directional control using an approved means of controlling the effects of the crosswind.
(2) Touchdown with the airplane tracking parallel to the runway centerline. Maximum bank angles must not be exceeded.

10.3 Task: Engine Inoperative

(a) Condition(s). All.
(b) Awareness criteria. Monitor the operating engine(s) and make adjustments as necessary.
(c) Action criteria.
(1) Maneuver with inoperative engine(s).
(2) Maintain coordinated flight by application of rudder as required to counter asymmetric thrust.
(3) Maintain wings level.
(4) Use reverse thrust symmetrically, or as described in the FCOM.

10.3.1 Task: One Engine Inoperative (2 Engine Aircraft)

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria in Task 10.3., Engine Inoperative.
(c) Action criteria. All action criteria in Task 10.3., Engine Inoperative.

10.3.2 Task: Two Engines Inoperative (3 and 4 Engine Aircraft)

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria in Task 10.3., Engine Inoperative.
(c) Action criteria. All action criteria in Task 10.3., Engine Inoperative.

10.4 Task: Landing Transition

(a) Condition(s). All.
(b) Awareness criteria.
(1) Decide to reject or continue the landing.
(2) Ensure an aircraft or vehicle does not occupy the runway.
(c) Action criteria.
(1) Transition to outside visual references.
(2) Determine that a landing is assured.
(3) Complete a smooth, positively controlled transition from descent flight path to touchdown.
(i) Achieve and maintain the longitudinal axis of the aircraft parallel with the runway centerline and the centerline between the main landing gear.
(ii) At the flare initiation point, begin to increase the pitch attitude to that necessary to achieve level flight in the present circumstances.
(iii) Reduce power to bring the throttles to the idle position as the main landing gear touch the runway.
(iv) As the aircraft slows, apply additional backpressure to maintain the level flight attitude, allowing the aircraft to continue a shallow rate of descent and a shallow rate of airspeed reduction.
(v) As touchdown occurs, ensure that the throttles are at idle; ensure that the spoilers have deployed; and without delay, fly the nose gear onto the runway.
(vi) Apply wheel brakes, select reverse thrust as appropriate for the conditions, maintain directional control with aerodynamic controls throughout the landing roll, until the ground speed allows directional control with rudder pedal steering or nose wheel steering, as appropriate.

10.4.1 Task: From a Precision Approach

(a) Condition(s). All.
(b) Awareness criteria. All awareness criteria in Task 10.4., Landing Transition.
(c) Action criteria. All action criteria in Task 10.4., Landing Transition.

10.4.2 Task: From a Non-Precision Approach

(a) Condition(s). All
(b) Awareness criteria. All awareness criteria in Task 10.4., Landing Transition.
(c) Action criteria. All action criteria in Task 10.4., Landing Transition.

10.4.3 Task: From a Visual Approach

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria in Task 10.4., Landing Transition.

(c) Action criteria. All action criteria in Task 10.4., Landing Transition.

10.4.4 Task: From a Circling Approach

(a) Condition(s). All.

(b) Awareness criteria.

(1) Consider the environmental, operational, and meteorological factors that affect landing from a circling approach.

(2) Respect the circling maneuvering area for the category of aircraft and do not exceed the associated visibility criteria.

(3) All awareness criteria in Task 10.4., Landing Transition.

(c) Action criteria.

(1) Avoid excessive maneuvering.

(2) Avoid descent below the appropriate circling MDA until in a position from which a descent to a normal landing can be made.

(3) All awareness criteria in Task 10.4., Landing Transition.

10.5 Task: Rejected Landing

(a) Condition(s). All.

(b) Awareness criteria. Decide to reject the landing, if appropriate.

(c) Action criteria.

(1) Apply the appropriate thrust setting for the flight condition and establish the correct pitch attitude necessary to obtain the desired performance, assuming the aircraft may touch down.

(2) Establish a positive rate of climb.

(3) Retract the landing gear and wing flaps (and other drag devices if appropriate), in the correct sequence and at a safe altitude and airspeed.

(4) Maintain the proper ground track or heading during the rejected landing procedure.

(5) Combined with instrument, circling, or missed approach procedures.

(6) Initiate between 30 feet and 50 feet above the runway.

10.6 Task: Zero or Partial Flaps

(a) Condition(s). All.

(b) Awareness criteria.

(1) Use runway of sufficient length for the zero or partial flap condition.

(2) Use the correct airspeeds or V-speeds for this configuration.

(c) Action criteria.

(1) Maintain the proper aircraft pitch attitude and flight path for the configuration, gross weight, and other applicable operational considerations.

(2) Adjust the attitude for touchdown only as prescribed by the FCOM.

10.7 Task: Auto-Land

(a) Condition(s). All.

(b) Awareness criteria. Demonstrate awareness of auto-flight annunciation(s).

(c) Action criteria.

(1) Guard flight controls throughout the maneuver.

(2) Respond to cues from the auto-flight annunciation(s).

10.8 Task: EFVS

(a) Condition(s). All.

(b) Awareness criteria.

(1) Awareness of the training requirements prior to initiating an approach and landing or takeoff using EFVS.

(2) Awareness of the existing weather conditions and the limitations of the EFVS system.

(c) Action criteria.

(1) Practice with the proper use of the system in visual conditions and in weather limiting conditions, including all instrument approach procedures authorized using the EFVS.

(2) Practice the transition to instrument flight due to interruption or malfunction of the EFVS system.

10.9 Task: HUD

(a) Condition(s). All.

(b) Awareness criteria. Demonstrate awareness of HUD symbology, including normal and failure annunciation(s).

(c) Action criteria.

(1) Respond to cues depicted in the HUD.

(2) Practice the transition to instrument flight due to interruption or malfunction of the HUD system.

11.0 Area: Abnormal Procedures

(a) Condition(s). All.

(b) Awareness criteria. Consider the impact of the abnormal condition on the safety of the flight and on the need to turn back, or continue to destination airport or another suitable airport.

(c) Action criteria.

(1) Complete immediate action (memory) items, if appropriate.

(2) Follow checklist requirements.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Operation of the systems, devices, and equipment in the aircraft through normal and abnormal procedures are concurrent tasks that may occur at some time during the tasks in any of the other areas of operation. These systems, devices, and equipment, with related normal and abnormal procedures, are contained in the FCOM. Crews should not ''troubleshoot.'' They are expected to observe, identify, use the FCOM, apply systems knowledge, and resolve the situation to the safest possible outcome.

END INFORMATION

BEGIN QPS REQUIREMENT

11.1 Task: Un-Annunciated

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria in Task 11.0, Abnormal Procedures.

(c) Action criteria. All action criteria in Task 11.0, Abnormal Procedures.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Unannunciated abnormal conditions include: Vibration, tailpipe fire, loss of engine thrust control, engine severe damage, volcanic ash, window damage, tail strike, various smoke or fumes, rapid depressurization, evacuation, jammed stabilizer, jammed or restricted flight controls, fuel leak on the engine, and engine stall.

END INFORMATION

BEGIN QPS REQUIREMENT

11.2.0 Task: System (ATA Code)

The following criteria apply to system tasks 11.2.1 through 11.2.26:

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria in Task 11.0, Abnormal Procedures.

(c) Action criteria. All action criteria in Task 11.0, Abnormal Procedures.

11.2.1 Air Conditioning (21)
11.2.2 APU (49)
11.2.3 Autopilot (22)
11.2.4 Brakes (32)
11.2.5 Communications (23)
11.2.6 Doors (52)
11.2.7 Electrical Power (24)
11.2.8 Emergency Equipment (25)
11.2.9 Engine (72)
11.2.10 Fire Protection (26)
11.2.11 Flaps (27)
11.2.12 Flight Controls (27)
11.2.13 Fuel (28)
11.2.14 EGPWS and TAWS (34)
11.2.15 HUD
11.2.16 Hydraulic Power (29)
11.2.17 Ice and Rain Protection (30)
11.2.18 Instruments (31)
11.2.19 Landing Gear (32)
11.2.20 Navigation (34)
11.2.21 Oxygen (35)
11.2.22 Pneumatic (36)
11.2.23 Propellers (61)
11.2.24 Stall Warning (27)
11.2.25 Thrust Reversers (78)
11.2.26 Warning Systems (various)

12.0 Area: Emergency Procedures

(a) Condition(s). All.

(b) Awareness criteria. Consider the impact of the emergency condition on the safety of the flight and on the need to turn back, or continue to destination airport or another suitable airport.

(c) Action criteria.

(1) Complete the immediate action (memory) items in proper sequence, if appropriate.

(2) Land as soon as possible.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) An emergency condition that requires execution of a procedure(s) is a concurrent task(s) that may occur at some time during the normal tasks in any of the other areas of operation. These emergency procedures are contained in the FCOM. Crews should not ''troubleshoot.'' They are expected to observe, identify, use the FCOM, and apply systems knowledge only as required and resolve the emergency to the safest possible outcome.

END INFORMATION

BEGIN QPS REQUIREMENT

12.1 Task: Fire or Smoke in Aircraft

(a) Condition(s). All.

(b) Awareness criteria.

(1) Initiate emergency descent, diversion, or evacuation, as appropriate.

(2) Apply knowledge of fire detection and extinguishing systems, as necessary.

(c) Action criteria.

(1) Promptly acknowledge the smoke, fumes, or fire event.

(2) Direct the use of oxygen and smoke goggles or EVAS to keep crew functioning, and establish crew communications.

(3) Identify the source of smoke, fumes, or fire, if possible.

(4) Initiate correct procedure or checklist for the type of smoke, fumes, or fire.

(5) Descend, land, and evacuate as quickly as possible.

12.2 Task: Unannunciated Fire in Flight

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria in Task 12.0, Emergency Procedures.

(c) Action criteria. All action criteria in Task 12.0, Emergency Procedures.

12.3 Task: Ditching

(a) Condition(s). All.

(b) Awareness criteria.

(1) Awareness of the time requirements for cabin crew to prepare the cabin.

(2) Awareness and application of the procedures to be used to ditch the aircraft.

(c) Action criteria.

(1) Follow the appropriate descent and before landing checklists.

(2) Follow the appropriate ditching checklist, if available.

(3) Touch down:

(i) Between the crests of any wave activity, parallel to the wave crest:

(ii) At the slowest speed possible.

(iii) Tail first, if controllability allows.

(iv) With the landing gear retracted.

(4) Evacuate the aircraft.

12.4 Task: Emergency Descent (Maximum Rate)

(a) Condition(s). All.

(b) Awareness criteria.

(1) Consider the appropriate configuration for descent if aircraft damage is known or suspected.

(2) Choose an altitude for level-off suitable to the terrain and conditions.

(c) Action criteria.

(1) Apply knowledge of the descent maneuvering capabilities of the aircraft.

(2) Perform emergency descent in a smooth, positive, and timely manner without exceeding limitations.

12.5 Task: Rapid Decompression

(a) Condition(s). All.

(b) Awareness criteria.

(1) Promptly acknowledge the rapid decompression event.

(2) Consider the altitude of the aircraft and the need for an emergency descent or an alternative course of action, including the need for crew or passenger oxygen.

(c) Action criteria.

(1) Determine whether cabin pressure control can be regained.

(2) Direct use of oxygen by crew as necessary.

(3) Establish crew communications.

12.6 Task: Emergency Evacuation

(a) Condition(s). All.

(b) Awareness criteria.

(1) Consider the need for evacuation against the inherent risk of injury during its conduct.

(2) Consider the area around the aircraft and the direction from which SAR responders are approaching.

(c) Action criteria.

(1) Ensure the aircraft is depressurized before directing evacuation.

(2) Direct evacuation to the safest area in relation to the aircraft through exits with the minimum likelihood of post-evacuation injury.

12.7 Task: Engine Fire, Severe Damage or Separation

(a) Condition(s). All.

(b) Awareness criteria. All awareness criteria in Task 12.0, Emergency Procedures.

(c) Action criteria. All action criteria in Task 12.0, Emergency Procedures.

12.8 Task: Landing with Degraded Flight Controls

(a) Condition(s). All.

(b) Awareness criteria.

(1) Recognize the degraded control condition.

(2) Demonstrate and apply knowledge of the maneuvering capabilities of the aircraft in a non-standard or degraded configuration.

(c) Action criteria. Maintain speeds suitable for the degraded conditions or configurations.

12.9 Task: Pilot Incapacitation

(a) Condition(s). All.

(b) Awareness criteria.

(1) Maintain focus on the flying task and a safe flight path.

(2) Ensure the crewmember is clear of flight controls.

(c) Action criteria.

(1) Promptly acknowledge the incapacitation event.

(2) [Reserved]

12.10 Task: All Other Tasks described in the FCOM

(a) Condition(s). All.

(b) Awareness criteria. As described in the FCOM.

(c) Action criteria. As required in the FCOM.

13.0 Area: Line Oriented Operations Environments

The specific operational environments below must be integrated into instruction modules for initial, conversion, transition, upgrade, recurrent, and requalification training.

13.1 Task: Anti-Icing and Deicing Before Takeoff

(a) Condition(s). All.

(b) Awareness criteria.

(1) Understand the certificate holder's ground anti-icing and deicing program.

(2) Be able to determine the need for anti-icing or deicing prior to takeoff.

(c) Action criteria.

(1) Inspect the aircraft to ensure all surfaces are free of ice before flight.

(2) Correctly operate anti-icing and de-icing systems or equipment.

(3) Coordinate the application of a proper mix of anti-icing or deicing fluid.

(4) Determine hold over time.

(5) Comply with the hold over time restrictions for takeoff.

13.2 Task: Structural Icing, Airborne

(a) Condition(s). All.
(b) Awareness criteria.
(1) Know the conditions that can lead to structural ice.
(2) Understand the effects of structural icing on aircraft performance.
(3) Plan and execute ice avoidance if necessary.
(c) Action criteria.
(1) Know when and how to apply the procedures in the FCOM for operating in icing conditions or conditions that may lead to structural icing.
(2) Determine when structural icing is present.
(3) Monitor ice accretion during flight.
(4) Correctly operate anti-icing and de-icing systems and equipment.

13.3 Task: Thunderstorm Avoidance, Departure, and Arrival

(a) Condition(s). All.
(b) Awareness criteria. Know the weather information available to determine the probability of thunderstorm activity and its location.
(c) Action criteria. Use weather radar to identify thunderstorm activity and to avoid departing into the threat or circumnavigate in flight.

13.4 Task: Contaminated Runway Operations

(a) Condition(s). All.
(b) Awareness criteria. Identify runway conditions (standing water, slush, snow or ice) that require the use of contaminated runway procedures.
(c) Action criteria. Apply weight or other performance penalties or adjustments, as required.

13.5 Task: Low Air Density, High Altitude Runway Operations

(a) Condition(s). All.
(b) Awareness criteria.
(1) Recognize the higher TAS and GS, and the effect on maneuvering, takeoff, and landing techniques.
(2) Consider the effect on all facets of aircraft performance.
(c) Action criteria. Maneuver to compensate for the higher speeds, greater turn radius, and increased rate of descent.

13.6 Task: CFIT and Terrain Avoidance

(a) Condition(s). All.
(b) Awareness criteria. Recognize the alert modes (audio and visual) of the GPWS.
(c) Action criteria.
(1) Promptly acknowledge and react to ground proximity warnings.
(2) Execute the escape maneuver prescribed by the FCOM.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Refer to the most current version of the FAA CFIT Training Aid for generic escape maneuvers that may be used when the FCOM does not contain specific escape maneuvers.

END INFORMATION

BEGIN QPS REQUIREMENT

13.7 Task: ETOPS Procedures

(a) Condition(s). All.
(b) Awareness criteria.
(1) Awareness of the basis for ETOPS operations.
(2) Understand the definition of ''ETOPS portion of flight'' for aircraft with two engines and for aircraft with three or four engines.
(3) Understand the definition of and requirements for designation as an ''ETOPS Alternate'' airport.
(c) Action criteria. Practice at cruise altitude selection, including computing and achieving maximum range altitudes with an engine inoperative, including ''drift-down.''

13.8 Task: Altimeter Settings (US and International Operations)

(a) Condition(s). All.
(b) Awareness criteria.
(1) Awareness that QFE altimeter setting is the actual surface pressure, uncorrected for sea level.
(2) Awareness that QNH altimeter setting (always 29.92 inches of mercury or 1013 hectoPascals) is used when operating at, climbing through, or operating above the transition altitude.
(c) Action criteria. Practice operating with correct altimeter settings and demonstrate operations with incorrect altimeter settings.

13.9 Task: Air Hazard Avoidance

(a) Condition(s).
(1) All
(2) When FSTD equipped with functional TCAS simulation.
(b) Awareness criteria.
(1) Understand the parameters of the TCAS system installed in the aircraft.
(2) Understand the appropriate responses to aural and visual alerts for both TAs and RAs.
(c) Action criteria. Practice response according to the warning received.
(1) For operations in normal airspace.
(2) For operations in RVSM airspace.

13.10 Task: Terrain Avoidance (EGPWS or TAWS)

(a) Condition(s).
(1) All
(2) When FSTD equipped with functional EGPWS or TAWS simulation.
(b) Awareness criteria. Recognize the predictive alert modes (audio and visual) of the EGPWS or TAWS.
(c) Action criteria.
(1) Promptly acknowledge terrain avoidance alerts.
(2) Execute maneuvers appropriate to the conditions to avoid a GPWS or TAWS warning.

C. Performance Standards for the Emergency Training Drills (see §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1233; 121.1255; 121.1333; 121.1337; 121.1351; 121.1365; 121.1367; 121.1337; 121.1381; 121.1383; and 121.1391)

1. Emergency training equipment must be identical to that installed in the certificate holder's aircraft on which the flight crewmember is to be qualified with respect to weight, dimensions, appearance, features and operation. Equipment may be substituted when it is similar with respect to weight, dimensions, appearance, features, and operations, and the pilot has been provided with training on differences between the training equipment and the actual aircraft equipment.
2. Performance Drills—Individuals
(a) *Fire extinguishers*
(1) *Environment:* The hand fire extinguisher must be charged; but does not have to contain the actual extinguishing agent.
(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill for each type of installed hand fire extinguisher:
(i) Prepare extinguisher for use (e.g., rotate handle to pressurize, break tamper seals, pull pin, release safety latch).
(ii) Operate extinguisher discharge mechanism.
(iii) Aim and discharge extinguisher at the base of the fire (actual or simulated) using proper discharge pattern, bottle position, and flight crewmember body position (appropriate to the location of the fire).

END QPS REQUIREMENT

BEGIN INFORMATION

(3) Effective training scenarios for firefighting should include realistic drills with emphasis on combating hidden fires. To provide realistic training, drills should simulate locations of hidden fires such as behind sidewall panels, in overhead areas and panels, or in air conditioning vents. The intent of the training is to provide

crewmembers with the typical obstacles that they would encounter onboard the aircraft, but it is not intended to have each student tear apart sidewall panels. A training program should incorporate a method to assess and combat a hidden fire, such as locating the exact source of the fire before applying an extinguishing agent. Depending on the sophistication of the training device, the flight crewmember could use a manual release tool that is designed to open the enclosed area to gain access to a fire that is suspected in that region.

(4) The hand fire extinguisher does not have to be positioned in the same location as installed in the aircraft. This drill is not required for the type of hand fire extinguisher used in the firefighting drill that is completed during the same training period.

END INFORMATION

BEGIN QPS REQUIREMENT

(b) *Oxygen Systems*

(1) *Crewmember Performance:* The flight crewmember must complete the following during the drill for each type of installed oxygen system equipment:

(i) Don and activate the oxygen and test for flow, position, seal, and security of the mask or hood to the face or head.

(ii) Demonstrate proper precautions.

(iii) Secure the oxygen bottle, canister, or cartridge (as appropriate) and position it to monitor the supply.

(iv) Demonstrate proper handling techniques if using portable solid state units.

(v) Deactivate and stow equipment.

END QPS REQUIREMENT

BEGIN INFORMATION

(2) This drill is not required for the type of protective breathing equipment used in the firefighting drill that is completed during the same training period.

END INFORMATION

BEGIN QPS REQUIREMENT

(c) *Equipment Mountings*

(1) *Environment:* Each piece of emergency equipment must be in its fully secured or pinned condition using the identical bracketing or mounting system that is used on the aircraft in which the equipment is installed.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill:

(i) Completely remove each piece of emergency equipment from its bracketing or securing system.

(ii) Secure each piece of emergency equipment in its bracketing and securing system or properly stow according to certificate holder procedures.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) Unless otherwise specified, it is not necessary to have the emergency equipment installed within locations or compartments as installed in the actual aircraft.

END INFORMATION

BEGIN QPS REQUIREMENT

(d) *Flight Deck Oxygen Systems*

(1) *Environment:* This drill must provide the flight crewmember with practice in donning and using the flight deck supplemental oxygen systems or related vision protection equipment as it would be used in a smoke-filled or fume-filled flight deck. The flight deck supplemental oxygen systems equipment must be identical to that installed in the aircraft with respect to dimensions, appearance, features, controls, charge duration, and operation.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill for each type of installed oxygen system equipment:

(i) Remove the bottle, canister, hood, or mask from the bracket or stowage.

(ii) Don and activate the oxygen and test for flow, position, seal, and security of the mask or hood to the face or head. Additionally, if smoke goggles are separate from oxygen, they must be donned.

(iii) Demonstrate proper precautions.

(iv) Secure the oxygen bottle, canister, or cartridge (as appropriate) and position it to monitor the supply.

(v) Demonstrate proper handling techniques if using portable solid state units.

(vi) Deactivate and stow equipment.

(e) *Firefighting (actual fire)*

(1) *Environment:* The flight crewmember must complete the firefighting drill while combating an actual fire. The flight crewmember must combat the fire using at least one type of hand fire extinguisher that is appropriate for the type of fire being fought, while using the type of installed PBE.

(i) This is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember is employed.

(ii) For the purpose of this drill, protective breathing equipment and the hand fire extinguisher must be installed in the appropriate bracket or stowage compartment or stowage pouch (if not completed during the equipment mountings drill).

(iii) The hand fire extinguisher must be charged; but does not have to contain the actual extinguishing agent.

END QPS REQUIREMENT

BEGIN INFORMATION

(iv) A self-contained PBE may be substituted with a training smoke hood which is not operational.

END INFORMATION

BEGIN QPS REQUIREMENT

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill:

(i) Recognize the type of fire.

(ii) Locate source of fire or smoke.

(iii) Remove PBE from stowage container and pouch (as appropriate).

(iv) Don the PBE and activate oxygen in proper sequence (activation of oxygen may be simulated).

(v) Verify seal.

(vi) Select appropriate hand fire extinguisher for the class of fire.

(vii) Prepare extinguisher for use (e.g., rotate handle to pressurize, break tamper seals, pull pin, release safety latch).

(viii) Approach fire or smoke.

(ix) Combat fire using proper techniques.

(x) Operate extinguisher discharge mechanism properly.

(xi) Aim and discharge extinguisher at the base of the fire using proper discharge pattern, bottle position, and flight crewmember body position.

(xii) Maintain an appropriate distance from the fire in order to complete the task and maintain personal safety.

(xiii) Be aware of PBE oxygen duration.

(xiv) Be aware of signals that PBE is no longer generating oxygen to wearer.

(xv) Use protective techniques to back away.

(xvi) Ensure fire is extinguished.

(xvii) Use proper techniques for PBE removal.

(xviii) Properly secure equipment.

(f) *Emergency Exits.*

(1) *Task (Normal Operation):* The flight crewmember must complete the following drill, with respect to the normal operation of each flight crewmember emergency exit:

(i) Identify conditions under which each exit should be opened or closed, if appropriate.

(ii) Assess the exterior and interior conditions for obstacles or hazards to persons or the exit during the opening or closing (e.g., jetway, stairs, barrier straps).

(iii) Follow procedure to ensure flight crewmember awareness at armed boarding door prior to aircraft pushback (if applicable to the exit).

(iv) Identify signal for arming and disarming.

(v) Coordinate and communicate with other crewmembers.

(vi) Properly arm and disarm the exit.

(vii) Verify girt bar is armed or disarmed as appropriate.

(viii) Verify exit is in the correct mode for intended operation.

(ix) Use proper techniques for the operating mechanism (such as handles to open exit and secure in locked position).

(x) Install safety strap. Stow safety strap.

(xi) Release locking mechanism and properly use control handles to close exit and secure in locked position.

END QPS REQUIREMENT

BEGIN INFORMATION

(2) *Environment:* The operation of each type of flight crewmember emergency exit may be conducted as an observation drill that includes the following tasks as applicable.

END INFORMATION

BEGIN QPS REQUIREMENT

(3) *Task (Emergency Operation):* The flight crewmember must complete the following drill, with respect to the emergency operation of each flight crewmember emergency exit:

(i) Position escape device (if applicable).

(ii) Verify that girt bar is armed or disarmed as appropriate.

(iii) Verify the exit is in the correct mode.

(iv) Identify conditions under which the exit is to be opened in the emergency mode.

(v) Use proper voice commands to passengers (as appropriate).

(vi) Assess conditions outside the exit to determine the exit usability (e.g., clear of obstruction, fire, aircraft attitude).

(vii) Open the exit in the armed mode (as applicable) and secure or stow the exit (as applicable) to ensure a fully open and unobstructed exit.

(viii) Hold onto assist handle (if applicable).

(ix) As applicable, pull the manual inflation handle(s) and verify deployment, inflation (e.g., ramp, slide).

(x) Maintain appropriate protective body and hand positions.

(xi) Follow crew coordination procedures (as appropriate).

(xii) Access release handle(s) (e.g., Slide disconnect, jettison tailcone, ventral stairs).

(xiii) Recognize when it is appropriate to exit the aircraft.

(xiv) Access escape tapes or escape ropes (if applicable).

(g) *Emergency evacuation (with slide).*

(1) *Environment:* This drill is required when the flight crewmember is qualifying on an aircraft that is equipped with emergency escape slides.

(i) This is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember is employed.

(ii) Each flight crewmember must complete an emergency evacuation by egressing the aircraft or approved training device using at least one type of installed emergency escape slide from an aircraft on which the flight crewmember will be qualified to serve.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill:

(i) Observe the airplane exit(s) being opened in the emergency mode and the associated exit slide, or slide raft being deployed and inflated or perform the tasks resulting in the completion of these actions.

(ii) Egress the aircraft or approved training device and descend the slide while using the proper method and technique.

(h) *Emergency evacuation (without slide)*

(1) *Environment:* This drill is required when the flight crewmember is qualifying on an aircraft that is not equipped with an emergency escape slide on any emergency exit.

(i) This is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember will serve.

(ii) Each flight crewmember must complete an emergency evacuation by egressing the aircraft or approved training device through an emergency exit that is not designed to have an escape slide installed and is representative of the aircraft on which the flight crewmember will be qualified to serve.

(2) *Crewmember Performance:* The flight crewmember must satisfactorily accomplish the following during the drill:

(i) Observe the airplane exit(s) being opened in the emergency mode.

(ii) Egress the aircraft or approved training device while using the proper method and technique.

(i) *Flotation devices*

(1) *Environment:* The individual flotation means used for this drill must be identical to each type of life preserver, flotation device, and seat cushion installed in the aircraft with respect to weight, dimensions, controls, types and method of operation.

(2) *Crewmember Performance:* Each flight crewmember must complete the following during the drill:

(i) Life preservers:

(A) Recognize removal procedures for individual flotation devices and also recognize any equipment or furnishings that may complement or hinder the removal of the flotation device or seat cushion.

(B) Don and secure life preserver, and inflate using automatic inflation (if appropriate) of at least one chamber.

(C) Demonstrate proper arm placement and use of the life preserver,

(D) Partially inflate, or simulate inflation of, a second chamber (if appropriate) of life preserver orally.

(E) Practice deflation technique.

(F) Locate and describe light activation.

(ii) Flotation devices:

(A) Recognize removal procedures for flotation devices or seat cushions, and also recognize any equipment or furnishings that may complement or hinder the removal of the flotation device or seat cushion.

(B) Demonstrate proper arm placement and use of the flotation device or seat cushion.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) The individual flotation means installed may consist of life preservers, flotation devices, and seat cushions.

END INFORMATION

BEGIN QPS REQUIREMENT

(j) *Ditching survival (wet and dry training environments)*

(1) *Environment:*

(i) Ditching survival drill in a dry training environment must be conducted on a surface with sufficient space to conduct the drill without interference from nearby objects or structures.

(ii) Ditching survival drill in a wet training environment must be conducted in water with sufficient

depth and width under and around the slide, raft or slide-raft that does not allow participants the ability to touch the bottom or sides of the water containment structure.

(A) Ditching survival drill in a wet training environment is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember is to serve.

(B) Raft boarding and subsequent activities must be done in water for ditching survival drill in a wet training environment.

(2) *Crewmember Performance:* The flight crewmember must participate in the following ditching survival drill for both wet and dry training environments as applicable to the certificate holder's procedures and approved extended overwater operations:

(i) Identify boarding station and board raft.

(ii) Review the need to crawl and stay low.

(iii) Distribute the load.

(iv) Review the need to stay attached to the aircraft as long as possible, and operation of the quick disconnect.

(v) Review the need to get clear of fuel-covered water and debris.

(vi) Locate and deploy the sea anchor.

(vii) Discuss the importance of upwind and downwind.

(viii) Retrieve the survival kit and review contents.

(ix) Identify inflation valve and review operation of inflation pump and raft repair kit.

(x) Identify equipment for bailing raft dry (e.g., bailing bucket or sponge).

(xi) Install the canopy and discuss methods for collecting rain water and water purification techniques.

(xii) Demonstrate how canopy can be used in both hot and cold climates.

(xiii) Review the use of signaling devices located in survival kits.

(xiv) Discuss the cautions associated with flares and sea dye marker and proper use.

(xv) Point out raft lights.

(xvi) Review alternate signaling devices (e.g., mirrors).

(xvii) Locate and demonstrate use of heaving line. Review techniques to retrieve survivors.

(xviii) Review raft maintenance techniques.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) Activities prior to raft boarding for both wet and dry training environments may be done in classroom, aircraft, or aircraft mockup.

END INFORMATION

BEGIN QPS REQUIREMENT

3. Observation Drills—During the observation drill, the flight crewmember observes the specific procedural drill being conducted by other persons in a live setting or through an audio-visual medium.

(a) Preparation of Emergency Exits In Emergency Mode. Crewmember Performance: Each flight crewmember must observe the preparation of each type of installed flight crewmember emergency exit in the emergency mode, as follows:

(1) Position escape device (if applicable).

(2) Verify that girt bar is armed or disarmed (as appropriate).

(3) Verify the exit is in the correct mode.

(4) Identify conditions under which the exit is to be opened in the emergency mode.

(5) Use proper voice commands to passengers (as appropriate).

(6) Assess conditions outside the exit to determine the exit usability (e.g., clear of obstruction, fire, aircraft attitude).

(7) Open the exit in the armed mode (as applicable) and secure and stow the exit (as applicable) to ensure a fully open and unobstructed exit.

(8) Hold onto assist handle (if applicable).

(9) Pull the manual inflation handle(s) and verify deployment and inflation (e.g., ramp, slide).

(10) Maintain appropriate protective body and hand positions.

(11) Follow crew coordination procedures (as appropriate).

(12) Access release handle(s) (e.g., slide disconnect, jettison tailcone, ventral stairs).

(13) Recognize when it is appropriate to exit the aircraft.

(14) Access escape tapes or escape ropes (if applicable).

(b) *Emergency Evacuation Utilizing an Escape Slide (if applicable).*

Crewmember Performance: Each flight crewmember qualifying on an aircraft equipped with evacuation slides must observe the evacuation of an aircraft with passengers using a slide. The observation must include:

(1) Correct methods of evacuation.

(2) Correct methods of entering the slide.

(3) Necessity for helpers at the bottom of slide.

(c) *Deployment, inflation, and detachment of slide, raft, or slide-raft.*

Crewmember Performance: Each flight crewmember must observe the deployment, inflation, and detachment from the airplane of each type of installed slide, raft, or slide-raft. This observation must include:

(1) Proper use of the exit operating handle.

(2) Location and color of the inflation handle.

(3) Demonstration of forces required to inflate slide or slide-raft.

(4) Attachment to aircraft (if applicable).

(5) Sound of inflating slide, raft, or slide-raft.

(6) Proper inflation and position of the slide, raft, or slide-raft.

(7) Location of the ditching handle or laces.

(8) Launching points (if required).

(9) Procedure to pull ditching handle including secondary actions that may be required.

(10) Lanyard and the removal or cutting of lanyard.

(11) Righting overturned rafts (if applicable).

END QPS REQUIREMENT

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32. Add appendix R of part 121 to read as follows:

Appendix R to Part 121—Flight Engineer, Qualification Performance Standards

Table of Contents

Introduction
A. What is contained in the Flight Engineer QPS?
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I. What training aids and guides should be used to develop instructional materials?
J. How must Crew Resource Management (CRM) training be administered?
K. What is the continuous analysis process and how is it incorporated in this QPS? (See § 121.1355.)
Attachment 1. Programmed Hour Requirements for New Hire, Initial, Transition, Conversion, Differences, Requalification, Recurrent, and Special Training Categories (see §§ 121.1205; 121.1331; 121.1333; 121.1335; 121.1337; 121.1367; 121.1239; and 121.1391)
Attachment 2. Academic Training Segment Requirements—Subjects and Tests—for New Hire, Initial, Transition, Conversion, Requalification, Recurrent, Differences, and Special Training Categories (see §§ 121.1221; 121.1223;

121.1225; 121.1331; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1381; and 121.1391)

Attachment 3. Job Performance Training Requirements for All Categories of Training (see §§ 121.133; 121.135; 121.1205; 121.1221; 121.1223; 121.1221; 121.1225; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1331; 121.1333; 121.1337; 121.1339; 121.1341; 121.1343; 121.1345; 121.1347; 121.1349; 121.1351; 121.1353; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; 121.1387; and 121.1391)

Attachment 4. Generic Flight Engineer Performance Standards for Each Task, Environment, Drill, and Demonstration (see §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1221; 121.1253; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; and 121.1391)

BEGIN INFORMATION

Introduction

A. What is contained in the Flight Engineer QPS?

This QPS contains Information and QPS Requirements.

1. Information: Explanations that clarify or support regulatory requirements found in the Code of Federal Regulations or in this Flight Engineer QPS. Explanations are provided as guidance and are not regulatory. This guidance appears under the heading ''BEGIN INFORMATION'' and uses the terms ''should'' or ''may'' to indicate that it is not mandatory.

2. QPS Requirements: Flight Engineer Qualification Performance Standards contained in this appendix are regulatory and mandatory. These requirements appear under the heading ''BEGIN QPS REQUIREMENTS'' and use the terms ''must,'' ''may not,'' and ''will.''

B. Can the reader rely solely on this document for pilot qualification and related training requirements?

No, do not rely solely on this document for regulatory requirements in these areas. The reader must also use 14 CFR part 91 and part 121, subparts G, T, V, X, and BB.

C. How can I get answers to questions about the contents of this appendix?

1. You may mail questions to:

U.S. Department of Transportation, Federal Aviation Administration, Flight Standards Service, Air Transportation Division, AFS–210,800 Independence Avenue, SW., Washington, DC 20591,*Telephone:* (202) 267–8166,*Fax:* (202) 267–5229.

2. You may find answers to questions on the Flight Standards Internet Web Site address is: *''http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/.''* On this Web Site you will find Flight Standards Programs, Aviation Safety Inspector Handbooks and Documents, the current Aviation Regulations (14 CFR), Advisory Circulars, and other sources of FAA information.

D. Why do we need a QPS for flight engineers?

1. To provide objective standards for flight engineer performance and for relating these standards to simulation equipment qualification levels.

2. To provide routine and periodic update capability. This capability is needed to respond to accidents, incidents, or rapidly occurring changes to equipment and operations. All changes made to this appendix will be subject to public notice and comment, unless good cause exists to support a finding that notice and comment would be impracticable, unnecessary, or contrary to the public interest.

3. To provide the certificate holder with a minimum set of standards for developing the following:

(a) Training and certification programs,

(b) Performance standards, and

(c) Evaluation criteria as they relate to the flight engineer job function.

E. Where can each type of standard be found in the QPS?

1. Attachment 1 contains the programmed hour requirements for new hire, initial, transition, conversion, differences, requalification, recurrent, and special training categories.

2. Attachment 2 contains the academic training requirements for new hire, initial, transition, conversion, requalification, recurrent, differences, and special training categories.

3. Attachment 3 contains:

(a) The job performance training requirements for initial, transition, conversion, upgrade, requalification, recurrent, differences, and special categories of training.

(b) How evaluations are administered.

(c) What level FSTD must be used for each task or environment.

4. Attachment 4 contains the generic flight engineer performance standards for each task and environment.

F. [Reserved]

G. Where can definitions and acronyms be found?

You can find definitions in § 121.1205. Acronyms are as follows:

AFD Airport Facility Directory
AFE Above Field Elevation
AFS–210 Air Carrier Training Branch, Air Transportation Division, Flight Standards Service
AFM Airplane Flight Manual
AGL Above Ground Level
AIM Aeronautical Information Manual
APD Aircrew Program Designee
ASR Airport Surveillance Radar
ATC Air Traffic Control
ATIS Automated Terminal Information System
ATP Airline Transport Pilot
CDI Course Deviation Indicator
CDL Critical Design List
CFIT Controlled Flight into Terrain
COM Crewmember Operating Manual
CRM Crew Resource Management
DA Decision Altitude
DH Decision Height
DME Distance Measurement Equipment
EFIS Electronic Flight Indicating Systems
EGPWS Enhanced Ground Proximity Warning System
EGT Exhaust Gas Temperature
ETOPS Extended Operations(replaces EROPS)
EFVS Enhanced Flight Vision System
EVAS Emergency Vision Assurance System
FAF Final Approach Fix
FDC Flight Data Center
FE Flight Engineer
FFS Full Flight Simulator
FMS Flight Management System
FSTD Flight Simulation Training Device
FTD Flight Training Device
GPS Global Positioning System
GPWS Ground Proximity Warning System
GS Ground Speed
HUD Head-Up Display
IAP Initial Approach Point
ICAO International Civil Aviation Organization
INS Inertial Navigation System
LAHSO Land and Hold Short Operations
LOFT Line Operational Flight Training
LORAN Long Range Navigation
MEA Minimum En route Altitude
MEL Minimum Equipment List
MDA Minimum Descent Altitude
METAR Aviation Routine Weather Report
PAR Precision Approach Radar
PBE Protective Breathing Equipment
PF Pilot Flying
PIC Pilot in Command
PMPOI Pilot Monitoring Principal Operations Inspector
PRM Precision Radar Monitor (used as part of a Simultaneous Close Parallel approach)
PTS Practical Test Standards
QFE Corrected Barometric Altitude relative to field elevation
QNE Barometric pressure used for standard altimeter setting (29.92 inHg or 1013 hPa)
QNH Corrected Barometric Altitude relative to sea level
QPS Qualification Performance Standards
QRH Quick Reference Handbook
RA Resolution Alert
RMI Radio Magnetic Indicator
RNAV Area Navigation
RNP Required Navigation Performance
RPM Revolutions Per Minute
SAR Search and Rescue
SIC Second In Command
SID Standard Instrument Departure

SOIR Simultaneous Operations on Intersecting Runways
STAR Standard Terminal Arrival
TA Traffic Alert
TAA Terminal Arrival Area
TAS True Airspeed
TAWS Terrain Avoidance Warning System
TCAS Traffic Collision Avoidance System
TSA Transportation Security Administration
V_1 Takeoff Decision Speed
V_2 Takeoff Safety Speed
V_{MCA} Minimum Control Speed Air
V_{MCG} Minimum Control Speed Ground
V_R Rotation Speed
V_{REF} Reference Speed
V_{SO} Stall Speed, Landing Configuration
V_{S1} Stall Speed, Specific Configuration
XLS Other Landing System

H. What references are recommended?

The following references (as amended) support the knowledge and skill standards for tasks. They are strongly recommended for providing further details for lesson development. To find 14 CFR parts go to *http://ecfr.gpoaccess.gov*; to find Advisory Circulars go to: *http://www.faa.gov/regulations_policies/advisory_circulars*; and to find FAA handbooks go to: *http://www.faa.gov/other_visit/aviation_industry/airline_operators/*.

1. 14 CFR part 1, Definitions and Abbreviations
2. 14 CFR part 60, Qualification of Flight Simulation Devices
3. 14 CFR part 61, Certification: Pilots, Flight Instructors, and Ground Instructors
4. 14 CFR part 63, Certification: Flight Crewmembers Other Than Pilots
5. 14 CFR part 91, General Operating and Flight Rules
6. 14 CFR part 121, Operating Requirements: Domestic, Flag and Supplemental Operations
7. AC 00–6, Aviation Weather
8. AC 0045, Aviation Weather Services
9. AC 25.1581–1, Airplane Flight Manual
10. AC 60–22, Aeronautical Decision Making
11. AC 60–28, English Language Skill Standards
12. AC 61–21, Flight Training Handbook
13. AC 61–27, Instrument Flying Handbook
14. AC 61–84, Role of Preflight Preparation
15. AC 120–28, Criteria for Approval of Category III Landing Weather Minima
16. AC 120–29, Criteria for Approving Category I and Category II Landing Minima for Approach
17 AC 120–51, Crew Resource Management Training
18. AC 120–53, Crew Qualification and Pilot Type Rating Requirements for Transport Category Aircraft Operated Under part 121
19. AC 120–54, Advanced Qualification Program
20. AC 120–55, TCASII Operational Approval for Air Carriers
21. AC 120–59, Air Carrier Internal Evaluation Programs
22. AC 120–71, Standard Operating Procedures for Flight Deck Crewmembers
23. Aeronautical Information Manual (AIM)
24. En Route Low and High Altitude Charts
25. Profile Descent Charts
26. Standard Instrument Departure (SID)
27. Standard Terminal Arrival Routes (STAR)
28. Airport Facility Directory (AFD) and Instrument Approach Procedure Charts (IAP)
29. National Flight Data Center Notices to Airmen (FDC NOTAM)
30. Integrated Measurement of Crew Resource Management and Technical Flying Skills, DOT/FAA/RD–93/26
31. Transportation Security Regulations (TSRs)
32 HMR 175, Hazardous Materials Regulations, Carriage by Aircraft
33. FAA Order 8040.4, Safety Risk Management
34. Air Transportation Operations Inspector's Handbook, 8400.10

I. What training aids and guides should be used to develop instructional materials?

The FAA and the industry periodically publish training aids and guides in specific technical performance areas (*http://www.faa.gov/other_visit/aviation_industry/airline_operators/training/index.cfm* and *http://www.faa.gov/education_research/training/*). These aids and guides are accepted as the industry standard for their specific technical area. The following training aids and guides are not regulatory, but contain valuable information about safety of flight operations that should be considered when developing instructional materials for the tasks to which each apply.

1. Takeoff Safety Training Aid.
2. Wake Vortex Training Aid.
3. Windshear Training Aid.
4. Upset Recovery Training Aid.
5. Winter Operations Guide to Air Carriers.
6. Controlled Flight Into Terrain.

END INFORMATION

BEGIN QPS REQUIREMENT

J. How must Crew Resource Management (CRM) training be administered?

The flight engineer must demonstrate knowledge and skills in the technical and CRM competencies for each particular task.

1. Certain CRM-related procedures must be associated with flight tasks and their related flight engineer performance requirements, as shown in Attachment 4 of this appendix. These procedures must be evaluated during job performance training programs.

2. In addition to the CRM-related procedures, situational awareness must be evaluated as an integral part of each flight task and environment. A task is not completed unless the evaluator has determined that the flight engineer has demonstrated knowledge and skills in the technical and CRM competencies.

3. Additionally, the following CRM behaviors are required knowledge to be taught and tested during academic training, as shown in Attachment 2 of this appendix:

(a) Task: Authority of the Pilot In Command
(1) The Captain's authority, including responsibility for the safety of flight in routine and emergency conditions
(2) Chain of command and importance of chain of command
(b) Task: Communication Processes and Decisions
(1) Briefing
(2) Inquiry, advocacy, and assertiveness
(3) Self-critique
(4) Communication with appropriate personnel
(5) Decisionmaking
(6) Conflict resolution
(c) Task: Building and Maintenance of a Flight Team
(1) Leading and following, including the importance of crewmembers functioning as a team
(2) Use of interpersonal skills and leadership styles in a way that fosters crew effectiveness
(3) Significance of cultural differences
(d) Task: Workload Management and Situational Awareness
(1) Preparation and planning
(2) Vigilance
(3) Workload distribution
(4) Distraction avoidance
(e) Task: Communication and Coordination
(1) Flight deck and cabin chimes and interphone signals for routine situations
(2) Flight attendant notification to flight crew that aircraft is ready for movement on the surface
(3) Flight crew notification to flight attendant to be seated prior to take-off

(4) Flight attendant recognition of critical phases of flight
(5) Crewmember coordination and notification regarding access to flight deck
(6) Notification to flight attendants of turbulent air conditions
(7) Notification between flight crew and flight attendants of emergency or unusual situations
(8) Notification between flight crew and flight attendants of inoperative equipment that is pertinent to flight attendant duties and responsibilities
(9) Normal and emergency communication procedures to be used in the event of inoperative communication equipment
(f) Task: Crewmember Briefing
(1) Crewmember responsibilities regarding briefings
(2) Flight crew briefing
(3) Flight crew to flight attendant(s) briefings
(4) Flight attendant to flight attendant(s) briefings
(5) Required information
(6) Security procedures
(7) Communication procedures
(8) Emergency procedures
(9) MELs affecting flight operations and cabin safety equipment and procedures
(10) Flight information
(g) Task: Communication and Coordination During a Passenger Interference Situation
(1) Certificate holder's written program regarding the handling of passenger interference, including crewmember communication and coordination
(2) Techniques for diffusing a passenger interference situation
(3) Importance of crewmembers and other employees working as a team
(4) Role of management and crewmember in follow-up
(5) Actions to report an occurrence of passenger interference
(h) Task: Communication and Coordination During an Emergency Situation
(1) Actions for each emergency situation
(2) Importance of notification and who must be notified
(3) Alternate actions if unable to notify
(4) Communication during preparation for a planned emergency evacuation, including the time available, type of emergency, signal to brace, and special instructions

END QPS REQUIREMENT

BEGIN INFORMATION

4. CRM refers to the effective use of all available resources, including, human resources, hardware, and information. Human resources include all other groups routinely working with the flight crewmembers who are involved in decisions that are required to operate a flight safely. CRM is not a single task. CRM is a set of competencies that must be evident in all tasks in this QPS as applied to the individual and the multi-crew operation.

5. CRM deficiencies usually contribute to the unsatisfactory technical performance of a task. Therefore, the CRM competencies are valuable for debriefing. For debriefing purposes, an amplified list of these competencies, expressed as behavioral markers, is in AC 120–51, as amended.

6. Certificate holders should conduct flight crewmember and flight attendant CRM scenarios together. When this is not possible, certificate holders should include information in flight crewmember training that addresses the roles of flight attendants during emergency situations.

END INFORMATION

K. What is the continuous analysis process and how is it incorporated in this QPS? (see § 121.1355)

1. The continuous analysis process is a certificate holder internal evaluation and improvement process. The continuous analysis process will enable the certificate holder to maintain and refine the training process by continually monitoring the effectiveness and efficiency of the process. Various assessment tools (testing, checking, inspection, documenting, evaluation, and analysis) will be used to validate the effectiveness of a training program or the need to change a training program.

END INFORMATION

BEGIN QPS REQUIREMENT

2. A continuous analysis process is incorporated in this QPS through integration with the qualification and training program. The certificate holder is responsible for designating responsibility for the process. The certificate holder must ensure appropriate and adequate assessment tools (testing, checking, critique, inspection, observation, documenting, evaluation, and analysis) are utilized to enable the certificate holder to validate the effectiveness of the qualification and training program, or the need to change that program. The certificate holder must describe the attributes of the continuous analysis process in the certificate holder's FAA approved training program.

END QPS REQUIREMENT

BEGIN INFORMATION

3. Components of a Continuous Analysis Process.
(a) Qualification and training program as approved by the Administrator.
(1) Attributes of the continuous analysis process.
(2) [Reserved]
(i) Who is responsible?
(ii) Who has authority to change the process?
(iii) Description of the process.
(iv) Controls. Policy, procedure, training, evaluation.
(v) Documenting and measurement.
(vi) Interfaces between Departments. Consistency (policy, procedures, manuals):
(A) Across Departments.
(B) Across Divisions.
(b) Assessment tools (adequate and appropriate).
(1) Testing.
(2) Checking.
(3) Critique.
(4) Inspection and observation.
(6) Documenting.
(7) Evaluation and analysis.
(c) Modification and adjustment of the qualification and training program.
(d) Approval for modification and adjustment.

END INFORMATION

Attachment 1 of Appendix R to part 121

Programmed Hour Requirements for New Hire, Initial, Transition, Conversion, Differences, Requalification, Recurrent, and Special Training Categories

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BEGIN QPS REQUIREMENT

A. Programmed Hour Requirements: Flight Engineers (see §§ 121.1205; 121.1331; 121.1333; 121.1335)

1. *Baseline and Minimum Programmed Hours.* Table 1A sets out the baseline and minimum programmed hours for each category of training by segment (academic and job performance). The FAA may approve a reduction in baseline programmed hours if the certificate holder demonstrates that the reduction is warranted. The FAA will not approve a reduction in the programmed hours below the minimum programmed hours.

2. *Required hours for requalification training.* The hours established for

requalification training (§ 121.1239) are for individuals in specific circumstances. Therefore, there are no programmed hours in Table 1A for requalification training.

3. *Required hours for differences and special training.* The hours established for differences and special training are in addition to the previously approved programmed hours for the approved training program. For differences training (§ 121.1391), the hours remain in the differences training category. For special training (§ 121.1337(c)), the certificate holder integrates the training into the existing categories in Table 1A. Therefore, there are no programmed hours in Table 1A for differences and special training.

TABLE 1A—PROGRAMMED HOUR REQUIREMENTS: FLIGHT ENGINEERS

Training categories	Training segments		
	Academics	Job performance	
	Ground training	Flight training	Emergency equipment drills and demonstrations
NEW HIRE	Baseline 24 Minimum 20	N/A	Baseline 4. Minimum 4.
INITIAL	Baseline 116 Minimum 80	Baseline 8 Minimum 8	Baseline 8. Minimum 8.
FULL CONVERSION	Baseline 68 Minimum 52	Baseline 6 Minimum 6	Baseline 4. Minimum 4.
CORE CONVERSION	Baseline 52 Minimum 36	Baseline 6 Minimum 6	Baseline 4. Minimum 4.
TRANSITION	Baseline 76 Minimum 58	Baseline 6 Minimum 6	Baseline 6. Minimum 6.
RECURRENT	Baseline 18 (each 9-month recurrent training period). Minimum 14	Baseline 4 (each 9-month recurrent training period). Minimum 4	Baseline 8. (each 36-month period). Minimum 8.
REQUALIFICATION	Determined by Administrator	Determined by Administrator	Determined by Administrator.
DIFFERENCES	Determined by Administrator	Determined by Administrator	Determined by Administrator.
SPECIAL	Developed by Certificate Holder, Approved by the Administrator.	Developed by Certificate Holder, Approved by the Administrator.	Determined by Administrator.

END QPS REQUIREMENT

BEGIN INFORMATION

B. Recurrent Training (see § 121.1367)

Recurrent training modules are required each 9 months. Recurrent training modules also will contain academic subjects, job performance tasks and environments, and emergency drills and demonstrations that may be required once each 9 months, once each 18 months, or once each 36 months. The certificate holder may distribute these recurrent training requirements in a manner that best suits its training program structure while ensuring that the required items are included at the appropriate intervals.

Example 1: A 9-month recurrent period includes all of the academic subjects and job performance tasks and environments that are required at each 9-month interval. The certificate holder may decide to include one-half of those academic subjects and job performance tasks and environments that are required every 18 months during this particular 9-month training period, and leave the balance to be completed at the next 9-month period. Also, the certificate holder may decide to include one-fourth of the emergency equipment drills and demonstrations during this 9-month interval, and leave the other three-fourths of those drills and demonstrations to be completed during subsequent 9-month periods.

Example 2: A 9-month recurrent period includes all of the academic subjects and job performance tasks and environments that are required every 9-months. During the next 9-month recurrent period, the certificate holder must include all of the academic subjects and job performance tasks and environments that are required every 9-months, as well as all of the academic subjects and job performance tasks and environments that are required every 18 months. At the following 9-month interval (27-month point), the certificate holder must include all those academic subjects and job performance tasks and environments that are required every 9-months. Then, at the 36-month point, the certificate holder must include all of the academic subjects and job performance tasks and environments that are required every 9-months, all of the academic subjects and job performance tasks and environments that are required every 18 months, and all of the academic subjects, job performance tasks, and all the emergency equipment drills and demonstrations that are required every 36 months.

END INFORMATION

Attachment 2 of Appendix R to Part 121

Academic Training Segment Requirements—Subjects and Tests—for New Hire, Initial, Transition, Conversion, Requalification, Recurrent, Differences, and Special Training Categories

BEGIN INFORMATION

A. Required Academic Training Subjects by Category of Training (See §§ 121.1221; 121.1223; 121.1225; 121.1331; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1381; and 121.1391)

1. Attachment 2 contains the academic training segment requirements.

2. When differences and special training are required for academic training, they will be additional training modules or new subjects. For more information about differences and special training categories see attachment 1 of this appendix.

3. How to read Table 2A.

(a) Table 2A contains the required academic training subjects by category of training. In the table, an ''X'' indicates that the subject must be included in the category of training. A ''9'' indicates that the subject must be

trained every 9 months. An ''18'' indicates that the subject must be trained every 18 months.

(b) Table 2A item (c)(3) addresses the training subject ''Coordination, communication, and methodology for the performance of each normal, abnormal, and emergency procedure contained in the FCOM.'' For core conversion, phase I requalification, and recurrent training all abnormal and emergency procedures are required. However, only selected normal procedures are required. The selection of normal procedures should be based on procedural changes, feedback from observed procedural irregularities, and system safety initiatives.

END INFORMATION

BEGIN QPS REQUIREMENT

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING

Subject	New hire	Initial and phase III requalification	Transition	Full coversion and phase II requalification	Core conversion and phase I requalification	Recurrent
(a) General Subjects						
(1) Duties and responsibilities of flight crewmembers	X					
(2) Appropriate requirements of the Federal Aviation Regulations.	.....	X	X	X	X	18
(3) General relationship of FAA to the certificate holder.	X	.....	.....	.....	.....	.....
(4) General overview of the contents of the certificate holder's Operating Certificate and Operations Specifications.	X	.....	.....	.....	.....	.....
(5) Meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, and high altitude weather situations. Recognizing and avoiding severe weather situations and other hazards.	X	.....	.....	.....	.....	.....
(6) Air traffic control systems, airspace, procedures, and phraseology.	X	.....	.....	.....	.....	.....
(7) Navigation and the use of navigation aids, including instrument approach procedures.	.....	X	X	X	X	18
(8) Development of and operating in the National Airspace System.	X	.....	.....	.....	.....	.....
(9) General Concepts of TCAS Operation						
(i) The meaning of Traffic Alerts (TAs).						
(ii) The meaning of preventive Resolution Advisories (RAs).						
(iii) The meaning of corrective RAs. TCAS equipment components controls, displays, audio alerts, and annunciations; interfaces and compatibility with other aircraft systems; TCAS surveillance range versus display range; altitude ceiling operators; when an intruder will not be displayed; and TCAS performance on the ground.	.....	X	X	X	X	18
(10) High Altitude Physiology—Operations above 10,000 feet—Aircraft Decompression; Causes and Recognition of cabin pressure loss; Physiological Effects and time of useful consciousness; Immediate Actions; Altitude and Flight Level requiring the wearing of oxygen masks.	X	.....	.....	.....	.....	18
(11) Mechanical and Incident Reporting Procedures	.....	X	X	X	X	18
(12) Voluntary Safety Program and Participation, including ASAP, FOQA, LOSA, and other government and industry accident prevention programs.	X	.....	.....	.....	.....	18
(13) Normal and emergency communications	X	X	X	X	X	18
(14) General content, control, and maintenance of applicable portions of the certificate holder's operating manual, to include the Flight Crewmember Operating Manual (FCOM). Relationship of FCOM to the Airplane Flight Manual.	X	.....	.....	.....	.....	.....
(15) Dispatch and flight release procedures. Flight planning as applicable.	X	X	X	X	X (Conversion training only).	18
(b) Crew resource management (CRM).						
(1) Task: Authority of the Pilot In Command						
(i) The Captain's Authority, including responsibility for the safety of flight in routine and emergency conditions.	X	X	.....	.....	.....	.....
(ii) Chain of command and importance of chain of command.						

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

Subject	New hire	Initial and phase III requalification	Transition	Full coversion and phase II requalification	Core conversion and phase I requalification	Recurrent
(2) Task: Communication Processes and Decisions (i) Briefing. (ii) Inquiry, advocacy, and assertiveness. (iii) Self-critique. (iv) Communication with available personnel. (v) Decisionmaking. (vi) Conflict resolution.	X	X	.....	.....	.....	.....
(3) Task: Building and Maintenance of a Flight Team (i) Leading and following, including the importance of crewmembers functioning as a team. (ii) Use of interpersonal skills and leadership styles in a way that fosters crew effectiveness. (iii) Significance of cultural differences.	X	X	.....	.....	.....	.....
(4) Task: Workload Management and Situational Awareness (i) Preparation and planning. (ii) Vigilance (iii) Workload distribution. (iv) Distraction avoidance.	X	X	.....	.....	.....	.....
(5) Task: Communication and Coordination (i) Flight deck and cabin chimes and interphone signals for routine situations. (ii) Flight attendant notification to flight crew that aircraft is ready for movement on the surface. (iii) Flight crew notification to flight attendant to be seated prior to take-off. (iv) Flight attendant recognition of critical phases of flight. (v) Crewmember coordination and notification regarding access to flight deck. (vi) Notification to flight attendants of turbulent air conditions. (vii) Notification between flight crew and flight attendants of emergency or unusual situations. (viii) Notification between flight crew and flight attendants of inoperative equipment that is pertinent to flight attendant duties and responsibilities. (ix) Normal and emergency communication procedures to be used in the event of inoperative communication equipment.	X	X	.....	.....	.....	.....
(6) Task: Crewmember Briefing (i) Crewmember responsibilities regarding briefings. (ii) Flight crew briefing. (iii) Flight crew to flight attendant(s) briefings. (iv) Flight attendant to flight attendant(s) briefings. (v) Required information. (vi) Security procedures. (vii) Communication procedures. (viii) Emergency procedures. (ix) MELs affecting flight operations and cabin safety equipment and procedures. (x) Flight information.	X	X	.....	.....	.....	.....
(7) Task: Communication and Coordination During a Passenger Interference Situation (i) Certificate holder's written program regarding the handling of passenger interference, including crewmember communication and coordination. (ii) Techniques for diffusing a passenger interference situation. (iii) Importance of crewmembers and other employees working as a team. (iv) Role of management and crewmember in follow-up. (v) Actions to report an occurrence of passenger interference.	X	X	.....	.....	.....	.....

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

Subject	New hire	Initial and phase III requalification	Transition	Full coversion and phase II requalification	Core conversion and phase I requalification	Recurrent
(8) Task: Communication and Coordination During an Emergency Situation						
(i) Actions for each emergency situation.						
(ii) Importance of notification and who must be notified.						
(iii) Alternate actions if unable to notify	X	X				
(iv) Communication during preparation for a planned emergency evacuation, including the time available, type of emergency, signal to brace, and special instructions.						
(c) Aircraft type specific.						
(1) Contents of the certificate holder's operating manual to include the FCOM. Use of any FCOM-based quick reference handbook (QRH).		X	X	X	X	18
(2) Operating limitations		X	X	X	X	18
(3) Coordination, communication, and methodology for the performance of each normal, abnormal, and emergency procedure contained in the FCOM.		X	X	X	X [1]	18 [1]
(4) Aircraft systems as described in the FCOM		X	X	X	X	18
(5) Instrument procedures and low visibility operations		X	X	X	X	18
(6) Airplane performance determinations and flight planning for all phases of flight.		X	X	X	X	18
(7) Operations Specifications authorizations and limitations.		X	X	X	X	18
(8) MMEL, MEL, CDL		X	X	X	X	18
(9) Emergency communications with passengers and other crewmembers.	X	X	X	X	X	18
(10) Storage of and how to administer medicinal oxygen.	X			X		18
(11) The certificate holder's policy and FCOM procedures on the use of command and control automation and criteria for selecting and deselecting appropriate levels of automation (including manual control of flight) must be included in the lateral and vertical modes of takeoff, approach, and landing.		X	X	X	X	18
(d) Special Hazards.						
(1) Preventing controlled flight into terrain (CFIT) and approach and landing accidents.		X	X	X	X	18
(2) Recovery from loss of control due to airplane design, airplane malfunction, human performance, and atmospheric conditions (or combinations thereof).		X	X	X	X	18
(3) Low altitude windshear.						
(i) Recognition and avoidance		X	X	X	X	9
(ii) Recovery from inadvertent encounter.						
(4) Takeoff safety: Decisionmaking and high speed aborts, including propulsion system malfunction analysis, causes, symptoms, recognition, and the effects on aircraft performance and handling.		X	X	X	X	18
(5) Airport surface movement safety and runway incursion prevention.		X	X	X	X	18
(6) Hazards of operating in or near thunderstorms, turbulent air, icing, hail, volcanic ash, and other potentially hazardous conditions.		X	X			
(7) Land and hold short operations (LAHSO)		X	X	X	X	9
(8) Ground anti-icing, deicing		X	X	X	X	18
(9) Ice accumulation in flight		X	X	X	X	18
(e) Special Operations Areas.						
(1) Close simultaneous parallel precision approach operations with Precision Radar Monitor (PRM).		X	X	X	X	18
(2) Special routes, areas, and airports		X	X	X	X	18
(f) International Operations.						
(1) Area and route characteristics	X	X	X	X	X	18
(2) Flight planning, charts, course plotting, and tables	X	X	X	X	X	18
(3) Class II Navigation	X	X	X	X	X	18
(4) Communications	X	X	X	X	X	18
(5) ETOPS or EROS, as applicable	X	X	X	X	X	18
(6) International rules and regulations	X	X	X	X	X	18
(7) Abnormal Operations	X	X	X	X	X	18

TABLE 2A—REQUIRED ACADEMIC TRAINING SUBJECTS BY CATEGORY OF TRAINING—Continued

Subject	New hire	Initial and phase III requalification	Transition	Full coversion and phase II requalification	Core conversion and phase I requalification	Recurrent
(g) Emergency Equipment Training.						
(1) Emergency communications with passengers and other crewmembers.	X	X	X	X	X	18
(2) Crewmember-specific roles in dealing with crewmember and passenger injury and illness, and disruptive passengers.	X					9
(3) Location and familiarization of contents for first aid and medical kits.		X	X	X		9
(4) Location and use of defibrillator		X	X	X		
(5) Certificate holders blood-borne pathogen awareness program.	X					9
(6) Location and use of emergency exits		X	X	X		18
(7) Location and use of emergency equipment. Equipment must include:.		X	X	X		18
(i) For over water operations: life preservers, flotation seat cushions, life rafts, slides, and slide rafts.		X	X	X		18
(ii) For ground or water evacuation: escape ropes, megaphones, flashlight, emergency lighting, emergency locator transmitters, first aid kit, slides, slide rafts, fire extinguishers (each type used), smoke and fume protection (such as PBE and smoke goggles), megaphones, oxygen (portable, passenger oxygen system, flight crew masks), supplemental (flight deck key, demonstration equipment, smoke detectors, trash containers, seat belt extensions).		X	X	X		18
(8) Fires—in flight and on the ground.						
(i) Procedures and strategies for prevention		X	X			
(ii) Classes of fires and correct methods of extinguishing each.		X				
(iii) Flight attendant role in exterior, APU, jetway, and ramp fire.		X	X	X		18

[1] All abnormal and emergency procedures are required. Only selected normal procedures are required. *See* paragraph A.(3)(b) of this attachment for information about selecting normal procedures.

END QPS REQUIREMENT

BEGIN QPS REQUIREMENT

B. Knowledge Assessment (See §§ 121.1341 and 121.1343)

1. Knowledge and understanding of each subject within each area of instruction must be evaluated by written or computer based testing at the end of academic training. When written or computer based methods are used:

(a) A score of 80% or better on each instructional area is required to be satisfactory.

(b) A minimum of 5 questions must be developed for each subject.

(c) Two questions for each subject must be randomly selected for each test.

(d) The form and content of each test must be approved by the Administrator.

(e) The test must be corrected to 100% by a person administering the test.

(f) Correction of missed questions must include a discussion of which answer is correct and why, and why the person's original answer was incorrect.

(g) Retraining is required for each instructional area in which a score of 80% or better is not achieved.

(h) Examination after retraining of the student is required for each instructional area in which retraining was completed.

2. The knowledge assessment for the specific aircraft subjects of limitations, systems, and performance and loading may be used for the oral portion of the proficiency test if completed no more than 60 days prior to the flight portion of the proficiency test (*see* attachment 3, E.1.(a) of this appendix).

3. The following standards are for evaluating the flight engineer performance in limitation, systems, and performance and loading subjects.

(a) Limitations—The flight engineer must know all of the limitations appropriate to the airplane with respect to:

(1) Systems and components.

(2) Performance.

(b) Systems—The flight engineer must understand and be knowledgeable about the following subjects (systems and components) and be able to explain their operation as described in the FCOM and their applicability, as appropriate, to the Minimum Equipment List (MEL), Configuration Deviation List (CDL), and the operations specifications:

(1) Landing gear: Including, as appropriate, extension and retraction system(s), indicators, brakes, anti-skid, tires, nose-wheel steering, and shock absorbers.

(2) Engine(s): Including controls and indications, induction system, carburetor and fuel injection, turbocharging, cooling, fire detection and protection, mounting points, turbine wheels, compressors, deicing, anti-icing, and other related components.

(3) Propellers (if appropriate): Including type, controls, feathering and unfeathering, auto feather, negative torque sensing, synchronizing, and synchro-phasing.

(4) Fuel system: Including capacity, drains, pumps, controls, indicators, cross-feeding, transferring, jettison, fuel grade, color and additives, fueling and

de-fueling procedures, and allowable fuel substitutions, if applicable.

(5) Oil system: Including capacity, grade, quantities, and indicators.

(6) Hydraulic system: Including capacity pumps, pressure, reservoirs, grade, and regulators.

(7) Electrical system: Including alternators, generators, battery, circuit breakers and protection devices, controls, indicators, and external and auxiliary power sources and ratings.

(8) Environmental systems: Including heating, cooling, ventilation, oxygen and pressurization, controls, indicators, and regulating devices.

(9) Avionics and communications: Including autopilot; flight director; Electronic Flight Indicating Systems (EFIS); Flight Management System(s) (FMS); Long Range Navigation (LORAN) systems; Doppler Radar, Inertial Navigation Systems (INS); Global Positioning System (GPS/DGPS/WGPS); VOR, NDB, ILS/MLS, RNAV systems and components; indicating devices; transponder; and emergency locator transmitter.

(10) Ice protection (anti-ice and de-ice): Including pitot-static system, propeller (if appropriate), windshield, wing and tail surfaces.

(11) Crewmember and passenger emergency equipment and procedures: Including oxygen system, survival gear, emergency exits, evacuation procedures with crew duties, and quick donning oxygen mask for crewmembers and passengers.

(12) Flight controls: Including ailerons, elevator(s), rudder(s), control tabs, balance tabs, stabilizer, flaps, spoilers, leading edge flaps and slats, and trim systems.

(13) Flightdeck automation: Including the certificate holder's written automation policy and written operating procedures for selecting and deselecting appropriate levels of automation. This must include the certificate holder's policy for conducting CAT II and CAT III approaches when authorized.

(14) Pneumatic system.

(c) Performance and Loading—The flight engineer must understand and be proficient in the use of (as appropriate to the airplane) performance charts, tables, graphs, and other data relating to items such as:

(1) Accelerate—stop distance.

(2) Accelerate—go distance.

(3) Balanced field.

(4) Takeoff performance, all engines and with engine(s) inoperative, as appropriate.

(5) Climb performance including segmented climb performance; with all engines operating; with one or more engines inoperative; and with other engine malfunctions as appropriate.

(6) Service ceiling, all engines, with engines(s) inoperative, including drift down, if appropriate.

(7) Cruise performance.

(8) Fuel consumption, range, and endurance.

(9) Descent performance.

(10) Go-around from rejected landings.

(11) The effects of meteorological conditions on performance characteristics with correct application of these factors to a specific chart, table, graph or other performance data.

(12) How to determine longitudinal and lateral center-of-gravity location for a specific load condition, including how to add, remove, or shift weight to meet longitudinal (forward and aft), and lateral balance limits for takeoff, cruise, and landing.

(13) Correct planning and knowledge of procedures in applying operational factors affecting airplane performance.

(14) Meteorological effects on performance.

(15) METAR and ATIS weather data.

(16) Planning and application of operational factors affecting aircraft performance such as high altitude airports, cluttered and contaminated runways, ground and inflight icing.

(17) Other performance data (appropriate to the aircraft).

END QPS REQUIREMENTS

Attachment 3 of Appendix R to Part 121

Job Performance Training Requirements for All Categories of Training

(Tasks, Environments, Drills, and Observations With Instruction, Evaluation, and Simulation Credits)

BEGIN QPS REQUIREMENT

A. Determining the Job Performance (Flight Training) Tasks and Environments Required for Instruction and Evaluation for Each Category of Training. (See §§ 121.133; 121.135; 121.1221; 121.1223; 121.1225; 121.1331; 121.1339; 121.1341; 121.1343; 121.1345; 121.1347; 121.1349; 121.1351; 121.1353; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; and 121.1391)

1. *Certificate holder responsibilities with respect to the FCOM and Table 3A.*

(a) The certificate holder must use Table 3A of this Attachment to determine the tasks and environments on which each flight engineer must be instructed and evaluated for each training category in accordance with an FAA approved job performance (flight operations) training program. The tasks listed in the FCOM must reflect the tasks included in the table, as amended, and include standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures, as well as the authorizations contained in the certificate holder's operations specifications.

(b) If the certificate holder adds tasks or environments to those listed in Table 3A, it must further develop the tasks or environments to include the requirement and frequency for training and evaluation in each additional task or environment. These changes must be submitted to the POI for approval.

(c) If the certificate holder's operation does not permit, or the operation of the aircraft flown by the certificate holder does not require one or more of the tasks listed in Table 3A, those tasks must not be included in the FCOM.

(d) The recurrent requirements in Table 3A also include the frequency during which each flight engineer must be trained and evaluated in each task and environment.

(e) Changes to the FCOM must be submitted to the POI for approval.

2. *Job Performance Training Requirements.*

When differences and special training are required for job performance training, they will be additional training modules or new tasks or environments. For more information about differences and special training categories see attachment 1 of this appendix.

END QPS REQUIREMENT

BEGIN INFORMATION

3. *Deviation from § 121.1345 Training program: Mandatory use of flight simulation training devices.*

If a certificate holder receives a deviation in accordance with § 121.1345, and the certificate holder wants to extend the deviation, the certificate holder should submit the request for an extension at least 60 days before the termination date of the deviation.

END INFORMATION

BEGIN QPS REQUIREMENT

Table 3A - Job Performance Tasks and Environments

CATEGORIES OF TRAINING	INITIAL, TRANSITION, CONVERSION, AND REQUALIFICATION				RECURRENT				
	INSTRUCTION AND PRACTICE			*EVALUATION*	*INSTRUCTION AND PRACTICE*			*EVALUATION*	
					In a LOFT, or in an FSTD Course of Instruction				
Tasks	INITIAL TRANSITION, and PHASE III REQUAL	FULL CONVERSION, and PHASE II REQUAL	CORE CONVERSION, and PHASE I REQUAL	PROFICIENCY TESTS	Every 9 Months	Every 18 Months	Every36 Months	PROFICIENCY TEST or CHECK	PROFICIENCY REVIEW
1.0 All Operations									
1.1 Normal, Abnormal, and Emergency Procedures	X	X	X	X		X		X	
1.2 Human Factors and CRM	X	X	X	X		X		X	
2.0 Preflight Procedures									
2.1 Preflight Inspection-Flight deck Setup	X	X	X	X	X			X	
2.2 Preflight Inspection-Exterior	X	X	X	X		X			X
3.0 Ground Operation									
3.1 Engine Start	X	X	X	X	X				X
3.2 Pushback or Powerback	X	X	X	X	X				X
3.3 Taxi	X	X	X	X	X				X
3.4 Pre-Takeoff Procedures	X	X	X	X	X			X	
3.5 After Landing	X	X	X	X	X			X	
3.6 Parking and Securing	X	X	X	X	X			X	
4.0 Normal, Abnormal, and Emergency Procedures									
4.1 Takeoff	X	X	X	X	X			X	
4.2 Inflight	X	X	X	X		X		X	
4.3 Approach and Landing	X	X	X	X	X			X	
4.4 Engine and Systems Monitoring	X	X	X	X			X	X	
5.0 Line Oriented Environments									
5.1 Anti-icing, Deicing Before Takeoff	X	X	X				X		
5.2 Structural Icing Airborne	X	X	X				X		
5.3 Thunderstorm Avoidance on Departure or Arrival	X	X	X			X			
5.4 Windshear Avoidance and Encounter	X	X	X			X			

NOTES:
X - Task must be completed

B. Airplane Emergency Equipment Training Requirements. Airplane Emergency Procedures Drills and Observations (See §§ 121.1205; 121.1333; 121.1337; 121.1351; 121.1365; 121.1367; 121.1337; 121.1381; 121.1383; 121.1387; and 121.1391)

1. An individual performance drill is a hands on training and evaluation demonstration that is performed by each flight crewmember using the specified emergency equipment.

2. A group performance drill allows a flight crewmember to participate as part of a group of persons completing a specific drill. During these situations, it is not necessary for each flight crewmember to complete each task in the performance drill. However, each flight crewmember participant must observe the actions and activities of the other persons who are completing the performance drill tasks.

3. An observation drill is one during which a flight crewmember observes a specific procedural drill being conducted by other persons in a live setting or through an audio-visual medium.

4. Table 3B provides a list of the drills and observations that are required in each training curriculum. The frequency for recurrent drills and observations is every 36 months. Attachment 4 contains the performance standards for each drill and observation.

5. Each flight crewmember must operate each exit on each aircraft type on which the flight crewmember is to serve in both the normal and emergency modes, including the actions and forces required in the deployment of emergency evacuation slides.

6. Each flight crewmember must complete the required emergency training drills during the specified training periods, using those items of installed emergency equipment for each aircraft type on which the flight crewmember is to serve.

7. Each piece of emergency equipment and training device must be in its fully secured, pinned, bracketed, or stowed condition, as installed on the aircraft, prior to being operated by each flight crewmember during each performance drill. The removal and stowage of each piece of emergency equipment may be completed separately from the performance drill as part of the equipment mountings drill.

8. Flight crewmembers must demonstrate proficiency by completing each performance drill without reference to any guidance material or instruction.

9. Individual evaluation of each flight crewmember's performance by an instructor is required. Flight crewmembers who do not complete emergency training drills must be retrained in accordance with the certificate holder's approved training program prior to reevaluation.

TABLE 3B—AIRCRAFT EMERGENCY EQUIPMENT TRAINING REQUIREMENTS

No certificate holder may use nor may any person serve as a flight crewmember unless the following training has been completed by that person

Emergency equipment training drills	New hire	Initial, transition, conversion, and phase II and III requalification	Recurrent every 36 months
(a) Performance Drills:			
Individual			
(1) Fire Extinguishers		X	X
(2) Oxygen Systems		X	
(3) Equipment Mountings		[1] X	
(4) Flight Deck Oxygen Systems		X	X
(5) Firefighting (Actual Fire)	X		
(6) Emergency Exits		X	X
(7) Emergency Evacuation (with Escape Slide)		X	X
(8) Emergency Evacuation (without Escape Slide)		X	X
(9) Flotation Devices		X	X
Group			
(10) Ditching Survival (Dry Training Environment)		X	X
(11) Ditching Survival (Wet Training Environment)	X		
(b) Observation Drills:			
(1) Preparation of Emergency Exits in Emergency Mode		X	X
(2) Emergency Evacuation Using an Escape Slide		X	X
(3) Deployment, Inflation, and Detachment of Slide, Raft, or Slide-Raft		X	X

[1] Only required if mountings differ by equipment.

See attachment 4 for the Performance Standards for the Emergency Equipment Training Drills.

C. Determining the Level of Flight Simulation Training Device That Must Be Used for Training, Evaluation, and Recent Experience (See §§ 121.1345; 121.1347; 121.1349; and 121.1351)

To use an FSTD for training, evaluation, and recent experience the following general requirements must be met. The code shown in Table 3C for the task or environment indicates the lowest FSTD qualification level that may be used.

1. *General Requirements.*

In addition to the approval of the POI required by part 121, to be used for any task or environment, an FSTD must:

(a) Have a qualification level assigned in accordance with part 60 of this chapter.

(b) Be maintained in accordance with part 60 of this chapter.

(c) Have all of the aircraft and FSTD systems installed and operating that are necessary to complete the task or environment.

(d) Be operated in accordance with § 60.25 of this chapter, Operation with Missing, Malfunctioning, or Inoperative Components.

(e) Have the qualification level indicated in Table 3C, or a higher qualification level, for the task or environment and the category of training indicated. Certain tasks may be trained in an FSTD at a different level than required for evaluating that specific task. The instructor must observe the flight engineer perform the task to proficiency in the level of FSTD required for the evaluation prior to the evaluation by a check person.

2. *Loft Requirements.*

For Qualification LOFT, a level C or D FFS is required. For Recurrent LOFT, a level B, C, or D may be used.

3. *Takeoff and Landing 90 Day Recency of Experience.*

The three takeoffs and three landings required for maintaining or regaining 90 day recency of experience must include at least one takeoff with a simulated failure of the most critical engine, at least one landing from a precision category approach to the lowest minimums authorized for the certificate holder, at least one landing to a full stop, and at least one visual traffic pattern and landing. For maintaining recency of experience in a FFS, a level B, C, or D must be used. For regaining recency of experience, a level C or D is required.

4. *FSTD Requirements for the Proficiency Test, Check, or Review.*

(a) The proficiency test administered at the conclusion of initial, transition, conversion, or requalification training must be conducted in no more than two levels of FSTD.

(b) The proficiency test, check, or review administered as part of the recurrent qualification requirements may only be conducted in a Level B or higher FFS.

TABLE 3C—MINIMUM FSTD REQUIRED FOR CREDIT

Training category	Initial, transition, converson, and requalification		Recurrent	
Tasks Each task may be performed in the FSTD level specified or any higher level of FSTD.	Training	Proficiency test	Training	Proficiency test, check, or review
1.0 General				
1.1 Human Factors and CRM	Must be incorporated throughout training and evaluation.			

TABLE 3C—MINIMUM FSTD REQUIRED FOR CREDIT—Continued

Training category Tasks Each task may be performed in the FSTD level specified or any higher level of FSTD.	Initial, transition, converson, and requalification		Recurrent	
	Training	Proficiency test	Training	Proficiency test, check, or review
2.0 Preflight Procedures				
2.1 Flight Deck (Inspection or Preflight)	4	A	4	B
2.2 Cabin Inspection	Aircraft or approved pictorial means			
2.3 Exterior Inspection	Aircraft or approved pictorial means			
3.0 Ground Operations				
3.1 Engine Start	4	A	4	B
3.2 Pushback and Powerback	A	A	A	B
3.3 Taxi	A	A	A	B
3.4 Pre-Takeoff Procedures	4	A	4	B
3.5 After Landing	4	A	4	B
3.6 Parking and Securing	A	A	A	B
4.0 Normal, Abnormal, and Emergency Procedures				
4.1 Takeoff	6	A	6	B
4.2 Inflight	6	A	6	B
4.3 Approach and Landing	6	A	6	B
4.4 Engine and Systems Monitoring	4	A	4	B
5.0 Line Oriented Environments				
5.1 Anti-icing, Deicing Before Takeoff	4	A	4	B
5.2 Structural Icing Airborne	6	A	6	B
5.3 Thunderstorm Avoidance for departure and arrival	6	A	6	B
5.4 Windshear Avoidance and Encounter	6	A	6	B

END QPS REQUIREMENT

BEGIN QPS REQUIREMENT

D. Persons Authorized To Administer Flight Engineer Training, Evaluation, and Observation Activities Under Subpart BB. (see §§ 121.1347; 121.1349; 121.1251; 121.1253; 121.1255; 121.1257; 121.1271; 121.1281; 121.1341; 121.1377; 121.1379; 121.1381; 121.1383; 121.1385; and 121.1391)

Table 3D identifies who must administer certain required training and evaluation for flight engineers, and who must supervise and observe instructors and check flight engineers.

BEGIN QPS REQUIREMENT

TABLE 3D—PERSONS ELIGIBLE TO BE AUTHORIZED TO ADMINISTER FLIGHT ENGINEER TRAINING, EVALUATION, AND OBSERVATION ACTIVITIES UNDER SUBPART BB*

Flight engineer training, evaluation, and observation activities under Subpart BB (by aircraft type)	Affiliation and Position						
	Contractor			The part 119 certificate holder			
	Other than part 142 or other part 119 certificate holder	Part 142 or other Part 119 certificate holder					
	Ground instructor	Ground instructor	Flight instructor	Ground instructor	Flight instructor	Check flight engineer	Aircrew program designee
Academic (Ground School) Training	X	X	X	X			
Job Performance (Flight) Training			X		X		
Certificate or Rating Examination							X
Proficiency Test (Initial, Transition, Conversion, Recurrent, Requalification)						[1] X	X
Qualification LOFT					[2] X	X	
Supervision of Operating Experience						[3] X	
Proficiency Check						X	
Proficiency Review					[4] X	X	
Observation of:							
• Flight Engineer Instructor—Initial						X	

TABLE 3D—PERSONS ELIGIBLE TO BE AUTHORIZED TO ADMINISTER FLIGHT ENGINEER TRAINING, EVALUATION, AND OBSERVATION ACTIVITIES UNDER SUBPART BB*—Continued

Flight engineer training, evaluation, and observation activities under Subpart BB (by aircraft type)	Affiliation and Position						
	Contractor			The part 119 certificate holder			
	Other than part 142 or other part 119 certificate holder	Part 142 or other Part 119 certificate holder					
	Ground instructor	Ground instructor	Flight instructor	Ground instructor	Flight instructor	Check flight engineer	Aircrew program designee
• Flight Engineer Instructor—Recurring						X	
• Check Flight Engineer—Initial							[5] X
• Check Flight Engineer—Recurring						X	[5] X

See § 121.1343 for special limited authorizations for Initial Cadre Personnel. When POI authorization is required, the designation will specifically state the authorizations granted to the instructor, check flight engineer, or APD. Part 142 TCEs and other part 119 certificate holders' check flight engineers may be qualified and authorized as check flight engineers or APDs by the part 119 certificate holders' POI in accordance with subpart BB of this part. When qualified and authorized, these check flight engineers and APDs are considered a component of the part 119 certificate holders' training program resources.

[1] When the proficiency test does not involve the issuance of a certificate or rating, a check flight engineer may conduct a Proficiency Test.

[2] With POI authorization, employees of the part 119 certificate holder who are specifically designated flight engineer instructors may conduct Qualification LOFT and Proficiency Reviews.

[3] In addition to the Check Flight Engineer, supervision of flight engineer operating experience may also be conducted by a Check Pilot, a Check Captain, or a Flight Engineer who has been specifically authorized by the POI.

[4] With POI authorization, employees of the part 119 certificate holder who are specifically designated flight engineer instructors may conduct the flight engineer portion of Qualification LOFT and flight engineer Proficiency Reviews.

[5] With POI authorization, employees of the part 119 certificate holder who are designated as APDs and specifically designated to do so, may conduct the Initial or Recurring Check Flight Engineer Observation.

E. Administering Evaluations. (See §§ 121.1221; 121.1253; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; and 121.1391)

The following requirements apply to the evaluation activity indicated. Refer to Table 3D of this attachment for who may administer each type of evaluation.

1. *Proficiency Tests.*

(a) Proficiency tests must be administered for first time qualification in a duty position. They also must be administered at the end of the first 9-month recurrent period following the proficiency test required by § 121.1365(b)(1), and for phase II and III re-qualification. Employees of the certificate holder who are used or will be used in the certificate holder's operations and who have completed all of the required training may use the proficiency test to obtain a certificate or rating.

(b) When conducting a proficiency test, the evaluator (FAA, APD, or check flight engineer), must evaluate the success of each task as it is performed. If the proficiency test is a second attempt, and the first attempt was within the previous 60 days, the only tasks the evaluator is required to assess are those that were failed or were not assessed on the first attempt. However, during this retest, and at the discretion of the evaluator, any task may be reevaluated, including those previously judged satisfactory.

(c) During a proficiency test, a task is judged as either satisfactory or unsatisfactory. However, in limited circumstances, the evaluator may judge a task to be incomplete or may not be certain about the outcome of the task. In these limited circumstances, the evaluator may require the applicant to repeat that task, or portions of that task; however, this provision does not authorize instruction or practice. The remaining tasks of the proficiency test must be completed before repeating the questionable task. If the second attempt to perform a questionable task is not clearly satisfactory, the evaluator must consider it unsatisfactory.

(d) Unsatisfactory performance is demonstrated by consistently exceeding the parameters set out for the specific task, consistently exceeding the parameters for aircraft handling standards, or failing to take prompt, corrective action when those parameters are exceeded. If the flight engineer fails a task, the evaluator must decide if the entire test must be repeated or if the test can continue. If the entire proficiency test must be repeated, the evaluation must be terminated. If a single task has been judged unsatisfactory, and both the flight engineer and the evaluator agree, the test may continue, but only the tasks that have not been evaluated may be attempted. If the flight engineer fails a second task, the evaluator must terminate the test.

(e) If the proficiency test must be terminated for unsatisfactory performance, the FAA notification (and notice of disapproval, if appropriate) must list the tasks or areas of operation that have not been evaluated and which tasks or areas of operation that have been found unsatisfactory. These tasks and areas of operation must be evaluated, or re-evaluated, on any subsequent proficiency test.

(f) If a proficiency test is discontinued for reasons other than unsatisfactory performance (e.g., equipment failure, weather, sickness), the evaluator must complete one of the following:

(1) If the test is part of an application for an FAA-issued certificate or rating, the evaluator must appropriately annotate FAA Form 8710–1, ''Airman Certificate and/or Rating Application.'' The evaluator must return FAA Form 8710–1 and, if applicable, AC Form 8080–2, Airman Written Test Report to the flight engineer. The evaluator must also issue a Letter of Discontinuance to the flight engineer. The Letter of Discontinuance must identify the portions of the test that were successfully completed. The flight engineer must present the Letter of Discontinuance to the evaluator when the test is resumed. The Letter of Discontinuance must become part of the certification file.

(2) If the test is not part of an application for an FAA-issued certificate or rating, the evaluator must properly annotate the flight engineer's training record to indicate the tasks and areas of operation that were satisfactorily completed and the tasks and areas of operation that were not evaluated.

(g) The evaluator must annotate any certificate or rating issued as a result of a part 121, subpart BB proficiency test, with ''LIMITED TO AIR CARRIER OPERATIONS.''

(h) The evaluator must submit FAA Form 8081.5C, ''Airman Performance Report, Airline Transport Pilot and Aircraft Type Rating for Airplane,'' to the FAA for all tests administered under subpart BB of part 121.

2. *Proficiency Checks and Reviews.*

(a) Proficiency checks and reviews must include job performance evaluation of the tasks identified in Table 3B and an equipment knowledge assessment outlined in section B of Attachment 2. The equipment knowledge assessment may be replaced by the academic knowledge test as outlined in Attachment 2 if the flight engineer completes the proficiency test within 60 days of the knowledge test. If the flight engineer does not complete the academic knowledge test in these areas within 60 days of the proficiency test, the flight engineer must complete a test of these knowledge areas in conjunction with the proficiency check or review. This test may be completed with oral, written, or computer based methodology. A passing score of 80% is required in each of the three areas of:

(1) Aircraft Systems;

(2) Handbooks, manuals, MEL, CDL, and operations specifications; and

(3) Aircraft performance and limitations.

(b) Evaluators who conduct proficiency checks and reviews and instructors who conduct proficiency reviews may provide limited training to a flight engineer. The limits are:

(1) No more than two tasks may be trained, and no more than a total of three attempts (including the first unsatisfactory, a rehearsal, and a final assessment) in each of the two tasks is allowed.

(2) The flight engineer has not satisfactorily completed the check or review if the flight engineer has three or more unsatisfactory tasks, or fails to demonstrate satisfactory performance in three attempts at any one task.

(3) The check or review must be completed within the approved scheduled time period.

3. *Other Assessments.*

(a) After qualification, the flight engineer's performance in all job performance training activities (including LOFT) must be assessed for a satisfactory level of task proficiency based upon this QPS.

(b) During a scheduled FSTD course of instruction (other than LOFT), if a task is performed unsatisfactorily the flight engineer may retrain on the unsatisfactory task; however, all scheduled tasks, including any retraining, must be completed within the approved scheduled time period.

(c) Unsatisfactory task performance during LOFT may not be retrained and reevaluated during that scheduled time period.

4. Satisfactory or Unsatisfactory Performance

(a) No evaluator or instructor may assess the flight engineer's performance as satisfactory unless that flight engineer:

(1) Performs the tasks in accordance with the standards and tolerances established in the QPS.

(2) Demonstrates mastery of the aircraft or simulated aircraft with the successful outcome of each task never in doubt.

(3) Demonstrates performance such that no corrective or instructive action is required by another flight crewmember to maintain safe flight.

(4) Demonstrates CRM competencies in accordance with duties outlined in the FCOM requiring crew interactions, including in a crew briefing before each takeoff and before each approach.

(5) Demonstrates sound judgment.

(b) The evaluator or instructor must assess a flight engineer's performance as unsatisfactory if the flight engineer consistently exceeds tolerances established in this QPS or fails to take prompt corrective action when tolerances are exceeded.

5. Recording, Reporting and Correcting Unsatisfactory Performance

The certificate holder must report a failure of a test, check, or review to the FAA in accordance with § 121.1331(f)(1). The flight engineer must be retrained and reevaluated to a satisfactory level before the flight engineer may begin or be returned to line operations.

Attachment 4 of Appendix R to Part 121

Generic Flight Engineer Performance Standards for Each Task, Environment, Drill, and Demonstration

BEGIN QPS REQUIREMENT

A. Developing Flight Engineer Performance Requirements for Each Task and Environment. (See §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1221; 121.1253; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; and 121.1391)

1. General Requirements

(a) Certificate holders must develop training curricula and flight engineer performance requirements for each required task and environment that include:

(1) Conditions: Environmental conditions and circumstances, including those that compound the difficulty of the task when encountered.

(2) Awareness criteria: Identify specific aspects of the task and environment that indicate proper operation, a need to seek further information, or a need to take action to prevent encountering a hazard or compounding the difficulty unnecessarily.

(3) Action criteria: Procedures for completing a task, including operations in or near a critical environment, when appropriate. Provide relevant parameters with tolerances to reflect satisfactory levels of performance.

(b) This attachment describes performance requirements and generic procedures for completing a task or operating in or near a critical environment. The certificate holder must tailor these performance requirements to the specific aircraft type and the certificate holder's approved operations.

2. [Reserved]

B. Generic Tasks and Environments (See §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1221; 121.1253; 121.1257; 121.1271; 121.1281; 121.1341; 121.1343; 121.1361; 121.1363; 121.1365; 121.1367; 121.1377; 121.1379; 121.1381; 121.1383; and 121.1391)

1.0 Area: All Operations

The flight engineer must demonstrate the awareness criteria and action criteria under the prescribed conditions. The certificate holder must train flight engineers in all authorized conditions. Any selected condition may be evaluated unless a particular condition is specified.

1.1 Task: Normal, Abnormal, and Emergency Procedures

(a) Condition(s). All.

(b) Awareness criteria.

(1) Maintain situational awareness of the events and circumstances at all times.

(2) Demonstrate ability to continuously monitor and to identify any potential hazards or threats to the safety of the flight.

(3) Demonstrate ability to communicate and manage available resources.

(4) Maintain adequate lookout and traffic avoidance for the conditions.

(5) Maintain awareness of aircraft position relative to a ''nearest suitable airport.''

(6) Monitor system indications to ensure normal operation or identify abnormal situations.

(c) Action criteria.

(1) Ensure operation of the aircraft within the limitations established by the FCOM.

(2) Comply with the provisions of the FCOM, SOP, and MEL (if appropriate) as they pertain to the particular aircraft, through all phases of flight and all operations.

(3) Make correct use of instruments, flight director, autopilot, and navigation and communication equipment as prescribed by the FCOM, and as appropriate to the phase of flight.

(4) Plan workload.

(5) Complete the proper normal, abnormal, or emergency checklist(s).

(6) Alert ATC and the certificate holder as necessary and obtain appropriate level of service.

(7) Ensure proper crew and passenger briefings are completed.

(8) Ensure the takeoff briefing is conducted according to the FCOM prior to taking the active runway.

(9) Ensure that the approach is briefed prior to initial descent and conducted according to the FCOM.

(10) Ensure potential terrain or obstacle threats are included in departure and arrival briefings.

(11) Ensure that passengers, crew, and cargo are properly secured for take-off or landing.

(12) Assist PIC in determining the best course of action when an immediate landing is required, but not possible.

1.2 Task: Human Factors and CRM

(a) Condition(s). All.

(b) Awareness criteria.

(1) Demonstrate terrain awareness.

(2) Demonstrate orientation, division of attention, and proper planning.

(3) Observe indication of situation, condition, or problem.

(4) Consider the risks of alternate courses of action.

(5) Demonstrate an awareness of environmental factors that are potentially hazardous to safety of flight operations.

(c) Action criteria.

(1) Demonstrate sound judgment and operating practices in those instances where specific instructions or checklist items are not published.

(2) Confirm fault diagnosis with crew and review possible causes.

(3) Identify alternative course(s) of action; discuss with crew; monitor the course of action selected by evaluating progress toward a goal.

(4) Involve other crewmembers, aircraft dispatchers, and maintenance control personnel in option analysis.

(5) Demonstrate effective communications with other crewmembers.

(6) Coordinate actions with other crewmembers prior to execution, except where safety of flight would be in jeopardy.

(7) Ensure that coordination with flight or ground crew is completed where necessary.

(8) Demonstrate the necessary flight crew coordination required for the tasks being completed.

1.3 Task: MEL Relief

(a) Condition(s). All.

(b) Awareness criteria.

(1) Understand MEL application.

(2) Consider factors that restrict aircraft operation.

(c) Action criteria. Apply the provisions of the appropriate MEL entry for operation restrictions.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) The purpose of this task is to require specific training that addresses safe operation of the aircraft while carrying an MEL item that requires training to take advantage of the relief.

END INFORMATION

BEGIN QPS REQUIREMENT

2.0 Area: Preflight Procedures

2.1 Task: Flight deck (Inspection or Preflight)

(a) Condition(s). All.

(b) Awareness criteria.

(1) Coordinate with ground crew and ensure adequate clearance prior to supplying power to, or operating, any devices such as doors, hatches, or flight control surfaces.

(2) Know the maintenance or system tests that must be performed.

(c) Action criteria.

(1) Demonstrate proper operation of applicable aircraft systems.

(2) Note any discrepancies and take proper corrective action.

(3) Determine that the aircraft is airworthy and safe for flight.

(4) Locate the documents required for flight, including airworthiness and registration certificates, operations specifications (if appropriate), FCOM, MEL, CDL, weight and balance data, and the maintenance logbook.

(d) Verify that the aircraft is safe for flight by examining and, if appropriate, servicing items such as:

(1) Engine(s), including controls and indicators.

(2) Fuel quantity (if interior inspection is appropriate to the aircraft).

(3) Oil quantity (if interior inspection is appropriate to the aircraft).

(4) Hydraulic fluid quantity (if interior inspection is appropriate to the aircraft).

(5) Oxygen quantity and pressures for crew and passengers (if interior inspection is appropriate to the aircraft).

(6) Fire protection and detection systems for proper operation, pressures, and discharge indications.

(7) Pneumatic system pressures (if interior inspection is appropriate to the aircraft).

(8) Ground environmental systems for proper operation.

(9) APU.

(10) Anti-ice and de-ice systems.

2.2 Task: Cabin Inspection

(a) Condition(s).

(1) All.

(2) The flight engineer must prepare the cabin for a positioning flight with no cabin crew aboard. The flight engineer is not required to prepare the cabin for passenger safety in revenue service.

(b) Awareness criteria. Awareness of emergency equipment location and stowage, emergency exit location and operation, and noticeable inoperative cabin equipment.

(c) Action criteria.

(1) Visually inspect the aircraft cabin to ensure the aircraft is safe for flight.

(2) Take necessary actions prescribed by the FCOM for safe flight or crew evacuation.

2.3 Task: Exterior Inspection

(a) Condition(s).

(1) All.

(2) An approved pictorial must realistically portray the location and detail of inspection items, and may be used instead of the aircraft to conduct an actual exterior inspection.

(3) Flight Instructors, Check Flight engineers, and Check Captains may be approved to certify an flight engineer's proficiency in exterior inspections.

END QPS REQUIREMENT

BEGIN INFORMATION

(4) The exterior inspection is a demonstration of a flight engineer's ability to perform appropriate safety checks. It is not an extension of the systems knowledge evaluation.

(5) The person conducting the evaluation should limit questions to those necessary to determine if a flight engineer can properly conduct the inspection and recognize an unsafe condition.

END INFORMATION

BEGIN QPS REQUIREMENT

(b) Awareness criteria. Check the general area around the aircraft for hazards to the safety of the aircraft and personnel.

(c) Action criteria.

(1) Note any discrepancies and take proper corrective action.

(2) Determine that the aircraft is airworthy and safe for flight.

(d) The flight engineer must verify that the aircraft is safe for flight by examining and, if appropriate, servicing items such as:

(1) Engines, for closed and latched access panels, leaks other than normal drainage, intake and exhaust areas for freedom from FOD hazards, and pylon alignment marks, as appropriate.

(2) Fuel quantity (if exterior inspection is appropriate to the aircraft).

(3) Oil quantity (if exterior inspection is appropriate to the aircraft).

(4) Hydraulic fluid quantity (if exterior inspection is appropriate to the aircraft).

(5) Oxygen quantity and pressures for crew and passengers (if exterior inspection is appropriate to the aircraft).

(6) Landing gear, brakes, and steering system.

(7) Tires for condition, inflation, and correct mounting, where applicable.

(8) Fire protection and detection systems for pressures and absence of discharge indications (if exterior inspection is appropriate to the aircraft).

(9) Pneumatic system pressures (if exterior inspection is appropriate to the aircraft).

(10) Auxiliary power unit (APU).

(11) Flight control systems including trim, spoilers, ailerons, leading and trailing edge slats and flaps, elevator, stabilizer, and rudder, as appropriate.

(12) Anti-ice and de-ice systems.

(13) General airframe and structural integrity, including scratches, tears, holes, or dents and the fit and security of panels, doors, and hatches.

3.0 Area: Ground Operations

(a) Condition(s). All.

(b) Awareness criteria.

(1) Properly divide attention inside and outside flight deck.

(2) Assist PIC in maintaining (surface movement) positional awareness.

(3) Comply with sterile flight deck requirements.

(c) Action criteria.

(1) Monitor and confirm clearance before crossing or entering active runways.

(2) Observe runway hold lines, localizer and glide slope critical areas, beacons, and other surface movement guidance control markings and lighting.

(d) The certificate holder must provide crewmembers with specific requirements for unique parking situations, or unique crewmember responsibilities that must be completed before the door closes or after it is opened in accordance with the FCOM. The certificate holder must also submit these unique requirements to the FAA for acceptance or approval as required.

END QPS REQUIREMENT

BEGIN INFORMATION

(e) Ground operations begin when the aircraft door is closed and includes all activities until the brakes are released for the takeoff roll. Ground operations resume again when the landing roll has been completed to a safe taxi speed just as the aircraft exits the landing runway, and continues until the aircraft has been parked and the door opened.

END INFORMATION

BEGIN QPS REQUIREMENT

3.1 Task: Engine Start

(a) Condition(s).

(1) All.

(2) Includes hot or cold weather, tailwinds, icing conditions, low density altitude.

(b) Awareness criteria. Ensure the ground safety procedures are followed during the before-start, start, and after-start phases of ground operations.

(c) Action criteria. Use required ground crew personnel during the before-start, start, and after-start phases (as appropriate).

3.1.1 Task: Engine Start—Normal

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor appropriate RPM and EGT indicators.

(2) Be able to identify abnormal RPM and EGT indications.

(c) Action criteria.

(1) Start the engine(s):

(2) Under varying environmental conditions;

(3) Using normal, auxiliary power unit, external power, pneumatic sources, or cross-bleed, as appropriate.

3.1.2 Task: Engine Start—Abnormal

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor appropriate RPM and EGT indicators.

(2) Be able to identify abnormal RPM and EGT indications.

(c) Action criteria.

(1) Start the engine(s):

(2) Take appropriate action in the event of a malfunction during the start process.

3.2 Task: Pushback or Powerback

(a) Condition(s). All.

(b) Awareness criteria.

(1) Maintain communications with ground crew.

(2) Avoid use of brakes unless requested by ground crew.

(c) Action criteria.

(1) Exhibit adequate knowledge of pushback or powerback procedures (as appropriate to the aircraft).

(2) [Reserved]

3.3 Task: Taxi

(a) Condition(s).

(1) All.

(2) Training must be conducted in taxi operations at the lowest visibility (RVR) authorized. Evaluation can be in any conditions.

(b) Awareness criteria.

(1) Comply with low visibility procedures, as applicable.

(2) Be aware of the operational factors that could affect the takeoff such as takeoff warning inhibit systems or other aircraft characteristics, runway length, surface conditions, wind, wake turbulence, obstructions, and other related factors that could adversely affect safety.

(c) Action criteria.

(1) Monitor and confirm clearances received and ensure all instrument references, flight director and autopilot controls, and navigation and communications equipment have been set.

(2) Confirm that the aircraft trim and wing high lift devices are configured properly.

(3) Monitor and confirm the takeoff and departure clearance as issued by ATC.

3.4 Task: Pre-Takeoff Procedures

(a) Condition(s). All.

(b) Awareness criteria. Be aware of the operational factors that could affect the takeoff such as takeoff warning inhibit systems or other aircraft characteristics, runway length, surface conditions,

wind, wake turbulence, obstructions, and other related factors that could adversely affect safety.

(c) Action criteria.

(1) Interpret information and clearances received and ensure all instrument references, flight director and autopilot controls, and navigation and communications equipment have been set.

(2) Confirm that the aircraft trim and wing high lift devices are configured properly.

(3) Obtain (or acknowledge, as appropriate) the takeoff and departure clearance as issued by ATC.

3.5 Task: After Landing

(a) Condition(s). All.

(b) Awareness criteria. Promptly clear the runway, avoiding an incursion on any other runway in the process.

(c) Action criteria. Take no other action until the aircraft is clear of the runway and a suitable ATC clearance has been received.

3.6 Task: Parking and Securing

(a) Condition(s). All.

(b) Awareness criteria. Be aware of or acknowledge other aircraft and ground vehicles that might be a hazard to your operation.

(c) Action criteria.

(1) Use available visual docking system and marshaller to properly park the aircraft.

(2) Complete the post-flight entries in the maintenance logbook, including any discrepancies encountered during the flight.

4.0 Area: Normal, Abnormal, and Emergency Procedures

4.1 Task: Takeoff

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor engine and other aircraft controls, settings, and instruments during takeoff to ensure all predetermined parameters are maintained.

(2) Monitor aircraft airspeed to determine normal acceleration during take-off ground roll.

(3) Assess take-off and climb hazards particularly those related to obstacles.

(4) Consider the effect of LAHSO or SOIR if conducted on a runway that crosses the takeoff runway.

(c) Action criteria.

(1) The flight crewmembers must ensure takeoff clearance is received and that the correct runway is being entered for takeoff.

(2) Monitor correct alignment on the centerline of the runway prior to and during the takeoff.

(3) Adjust the engine controls for the existing conditions and verify the expected engine performance.

(4) Monitor rotation at the proper airspeed, at the proper rate, to the proper pitch attitude for the aircraft configuration.

(5) Complete after takeoff checklists.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Takeoff begins at brake release (or the application of thrust with the intention of flight for those aircraft not using brakes). Takeoff ends when the aircraft is airborne, or in the event of a rejected takeoff, when the aircraft has reached a safe taxi speed.

END INFORMATION

BEGIN QPS REQUIREMENT

4.2 Task: Inflight

(a) Condition(s).

(1) All

(2) Normal aircraft systems, controls, indications, and procedures.

(3) High altitude operations.

(b) Awareness criteria.

(1) Understand the requirements of the climb profile, normal cruise, and normal descent.

(2) Aware of high altitude performance and specific flight characteristics.

(3) Aware of aircraft systems, subsystems, and devices (e.g., fuel heat, air conditioning systems, hydraulic systems, pressurization).

(c) Action criteria.

(1) Complete appropriate checklists.

(2) Demonstrate or use aircraft systems, subsystems, and devices, appropriate to the aircraft, such as:

(i) Engines.

(ii) Fuel system.

(iii) Electrical system.

(iv) Hydraulic system.

(v) Environmental and pressurization systems.

(vi) Fire detection and extinguishing systems.

(vii) Navigation and avionics systems.

(viii) Automatic flight control system, electronic flight instrument system, and related subsystems.

(ix) Flight control systems.

(x) Anti-ice and deice systems.

(xi) Aircraft and personal emergency equipment.

(xii) Other systems, subsystems, and devices specific to the aircraft type, including make, model, and series.

(xiii) Pneumatic system(s).

4.3 Task: Approach and Landing

(a) Condition(s). All.

(b) Awareness criteria.

(1) Monitor the navigation instruments and be aware of correct airspeeds, aircraft configurations, crossing altitudes, and ATC clearance requirements.

(2) Awareness of other crewmembers and their activities during approach and landing.

(c) Action criteria.

(1) Correctly compute approach and landing performance requirements.

(2) Adjust engine controls and aircraft systems, as necessary.

(3) Complete appropriate checklist items, interacting with other crewmembers to ensure procedures are complete and aircraft systems are operating properly.

4.4 Task: Engine and Systems Monitoring

(a) Condition (s). Engine systems, controls and indications.

(b) Awareness criteria. Aware of aircraft systems within normal range, normal procedures, and checklists.

(c) Action criteria

(1) Adjust the engine controls and aircraft systems, as necessary.

(2) Complete appropriate checklist items, interacting with other crewmembers to ensure procedures are complete and aircraft systems are operating properly.

5.0 Area: Line Oriented Operations Environments

The specific operational environments below must be integrated into instruction modules for initial, conversion, transition, recurrent, and requalification training.

5.1 Task: Anti-Icing and Deicing Before Takeoff

(a) Condition(s). All.

(b) Awareness criteria.

(1) Understand the certificate holder's ground anti-icing and de-icing program.

(2) Be able to determine the need for anti-icing or de-icing prior to takeoff.

(c) Action criteria.

(1) Inspect the aircraft to ensure all surfaces are free of ice before flight.

(2) Correctly operate anti-icing and de-icing systems or equipment.

(3) Coordinate the application of a proper mix of anti-icing or deicing fluid.

(4) Determine hold over time.

(5) Comply with the hold over time restrictions for takeoff.

5.2 Task: Structural Icing, Airborne

(a) Condition(s). All.

(b) Awareness criteria.

(1) Know the conditions that can lead to structural ice.

(2) Understand the effects of structural icing on aircraft performance.

(c) Action criteria.

(1) Know when and how to apply the procedures in the FCOM for operating in icing conditions or conditions that may lead to structural icing.

(2) Determine when structural icing is present.

(3) Monitor ice accretion during flight.

(4) Correctly operate anti-icing and de-icing systems and equipment.

5.3 Task: Thunderstorm Avoidance, Departure, and Arrival

(a) Condition(s). All.

(b) Awareness criteria. Know the weather information available to determine the probability of thunderstorm activity and its location.

(c) Action criteria. Use weather radar to identify thunderstorm activity and to avoid departing into the threat or circumnavigate in flight.

5.4 Task: Windshear Avoidance and Encounter

(a) Condition(s). All.

(b) Awareness criteria.

(1) Know the sources of information that indicate the possible presence of windshear or turbulence.

(2) Observe the visual indications that usually indicate the presence of windshear or turbulence.

(3) Understand the effect of windshear or turbulence on the performance of the aircraft during low altitude operations.

(c) Action criteria.

(1) Avoid indicated areas of possible windshear or turbulence, if possible.

(2) Be able to recognize the indications of windshear or turbulence during takeoff and landing profiles.

(3) Execute the FCOM procedure for avoiding windshear; and, if not possible to avoid, execute the FCOM procedure for escaping windshear or turbulence during low altitude operations.

(4) Practice avoiding and escaping windshear or turbulence during low altitude operations to include:

(i) Takeoff.

(ii) Departure.

(iii) Approach.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Refer to the most current version of the FAA Windshear Training Aid. Demonstrations and practice are primarily for the purpose of enabling pilots to avoid windshear encounters. This practice will also enable pilots to execute the proper escape maneuver should windshear be encountered.

END INFORMATION

BEGIN QPS REQUIREMENT

C. Performance Standards for the Emergency Training Drills (See §§ 121.133; 121.135; 121.1201; 121.1203; 121.1205; 121.1333; 121.1337; 121.1351; 121.1365; 121.1367; 121.1381; 121.1383; and 121.1391)

1. Emergency training equipment must be identical to that installed in the certificate holder's aircraft on which the flight crewmember is to be qualified with respect to weight, dimensions, appearance, features and operation. Equipment may be substituted when it is similar with respect to weight, dimensions, appearance, features, and operations, and the pilot has been provided with training on differences between the training equipment and the actual aircraft equipment.

2. Performance Drills—Individuals

(a) *Fire Extinguishers*

(1) *Environment:* The hand fire extinguisher must be charged; but does not have to contain the actual extinguishing agent.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill for each type of installed hand fire extinguisher:

(i) Prepare extinguisher for use (e.g., rotate handle to pressurize, break tamper seals, pull pin, release safety latch).

(ii) Operate extinguisher discharge mechanism.

(iii) Aim and discharge extinguisher at the base of the fire (actual or simulated) using proper discharge pattern, bottle position, and flight crewmember body position (appropriate to the location of the fire).

END QPS REQUIREMENT

BEGIN INFORMATION

(3) Effective training scenarios for firefighting should include realistic drills with emphasis on combating hidden fires. To provide realistic training, drills should simulate locations of hidden fires such as behind sidewall panels, in overhead areas and panels, or in air conditioning vents. The intent of the training is to provide crewmembers with the typical obstacles that they would encounter onboard the aircraft, but it is not intended to have each student tear apart sidewall panels. A training program should incorporate a method to assess and combat a hidden fire, such as locating the exact source of the fire before applying an extinguishing agent. Depending on the sophistication of the training device, the flight crewmember could use a manual release tool that is designed to open the enclosed area to gain access to a fire that is suspected in that region.

(4) The hand fire extinguisher does not have to be positioned in the same location as installed in the aircraft. This drill is not required for the type of hand fire extinguisher used in the firefighting drill that is completed during the same training period.

END INFORMATION

BEGIN QPS REQUIREMENT

(b) *Oxygen Systems*

(1) *Crewmember Performance:* The flight crewmember must complete the following during the drill for each type of installed oxygen system equipment:

(i) Don and activate the oxygen and test for flow, position, seal, and security of the mask or hood to the face or head.

(ii) Demonstrate proper precautions.

(iii) Secure the oxygen bottle, canister, or cartridge (as appropriate) and position it to monitor the supply.

(iv) Demonstrate proper handling techniques if using portable solid state units.

(v) Deactivate and stow equipment.

END QPS REQUIREMENT

BEGIN INFORMATION

(2) This drill is not required for the type of protective breathing equipment used in the firefighting drill that is completed during the same training period.

END INFORMATION

BEGIN QPS REQUIREMENT

(c) *Equipment Mountings.*

(1) *Environment:* Each piece of emergency equipment must be in its fully secured or pinned condition using the identical bracketing or mounting system that is used on the aircraft in which the equipment is installed.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill:

(i) Completely remove each piece of emergency equipment from its bracketing or securing system.

(ii) Secure each piece of emergency equipment in its bracketing and securing system or properly stow according to certificate holder procedures.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) Unless otherwise specified, it is not necessary to have the emergency equipment installed within locations or compartments as installed in the actual aircraft.

END INFORMATION

BEGIN QPS REQUIREMENT

(d) *Flight Deck Oxygen Systems.*

(1) *Environment:* This drill must provide the flight crewmember with practice in donning and using the flight deck supplemental oxygen systems or related vision protection equipment as it would be used in a smoke-filled or fume-filled flight deck. The flight deck supplemental oxygen systems equipment must be identical to that installed in the aircraft with respect to dimensions, appearance, features, controls, charge duration, and operation.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill for each type of installed oxygen system equipment:

(i) Remove the bottle, canister, hood, or mask from the bracket or stowage.

(ii) Don and activate the oxygen and test for flow, position, seal, and security of the mask or hood to the face or head. Additionally, if smoke goggles are separate from oxygen, they must be donned.

(iii) Demonstrate proper precautions.

(iv) Secure the oxygen bottle, canister, or cartridge (as appropriate) and position it to monitor the supply.

(v) Demonstrate proper handling techniques if using portable solid state units.

(vi) Deactivate and stow equipment.

(e) *Firefighting (Actual Fire).*

(1) *Environment:* The flight crewmember must complete the firefighting drill while combating an actual fire. The flight crewmember must combat the fire using at least one type of hand fire extinguisher that is appropriate for the type of fire being fought, while using the type of installed PBE.

(i) This is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember is employed.

(ii) For the purpose of this drill, protective breathing equipment and the hand fire extinguisher must be installed in the appropriate bracket or stowage compartment or stowage pouch (if not completed during the equipment mountings drill).

(iii) The hand fire extinguisher must be charged; but does not have to contain the actual extinguishing agent.

END QPS REQUIREMENT

BEGIN INFORMATION

(iv) A self-contained PBE may be substituted with a training smoke hood which is not operational.

END INFORMATION

BEGIN QPS REQUIREMENT

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill:

(i) Recognize the type of fire.

(ii) Locate source of fire or smoke.

(iii) Remove PBE from stowage container and pouch (as appropriate).

(iv) Don the PBE and activate oxygen in proper sequence (activation of oxygen may be simulated).

(v) Verify seal.

(vi) Select appropriate hand fire extinguisher for the class of fire.

(vii) Prepare extinguisher for use (e.g., rotate handle to pressurize, break tamper seals, pull pin, release safety latch).

(viii) Approach fire or smoke.

(ix) Combat fire using proper techniques.

(x) Operate extinguisher discharge mechanism properly.

(xi) Aim and discharge extinguisher at the base of the fire using proper discharge pattern, bottle position, and flight crewmember body position.

(xii) Maintain an appropriate distance from the fire in order to complete the task and maintain personal safety.

(xiii) Be aware of PBE oxygen duration.

(xiv) Be aware of signals that PBE is no longer generating oxygen to wearer.

(xv) Use protective techniques to back away.

(xvi) Ensure fire is extinguished.

(xvii) Use proper techniques for PBE removal.

(xviii) Properly secure equipment.

(f) Emergency Exits.

(1) *Task (Normal Operation):* The flight crewmember must complete the following drill, with respect to the normal operation of each flight crewmember emergency exit:

(i) Identify conditions under which each exit should be opened or closed, if appropriate.

(ii) Assess the exterior and interior conditions for obstacles or hazards to persons or the exit during the opening or closing (e.g., jetway, stairs, barrier straps).

(iii) Follow procedure to ensure flight crewmember awareness at armed boarding door prior to aircraft pushback (if applicable to the exit).

(iv) Identify signal for arming and disarming.

(v) Coordinate and communicate with other crewmembers.

(vi) Properly arm and disarm the exit.

(vii) Verify girt bar is armed or disarmed as appropriate.

(viii) Verify exit is in the correct mode for intended operation.

(ix) Use proper techniques for the operating mechanism (such as handles to open exit and secure in locked position).

(x) Install safety strap. Stow safety strap.

(xi) Release locking mechanism and properly use control handles to close exit and secure in locked position.

END QPS REQUIREMENT

BEGIN INFORMATION

(2) *Environment:* The operation of each type of flight crewmember emergency exit may be conducted as an observation drill that includes the following tasks as applicable.

END INFORMATION

BEGIN QPS REQUIREMENT

(3) *Task (Emergency Operation):* The flight crewmember must complete the following drill, with respect to the emergency operation of each flight crewmember emergency exit:

(i) Position escape device (if applicable).

(ii) Verify that girt bar is armed or disarmed as appropriate.

(iii) Verify the exit is in the correct mode.

(iv) Identify conditions under which the exit is to be opened in the emergency mode.

(v) Use proper voice commands to passengers (as appropriate).

(vi) Assess conditions outside the exit to determine the exit usability (e.g., clear of obstruction, fire, aircraft attitude).

(vii) Open the exit in the armed mode (as applicable) and secure or stow the exit (as applicable) to ensure a fully open and unobstructed exit.

(viii) Hold onto assist handle (if applicable).

(ix) As applicable, pull the manual inflation handle(s) and verify deployment, inflation (e.g., ramp, slide).

(x) Maintain appropriate protective body and hand positions.

(xi) Follow crew coordination procedures (as appropriate).

(xii) Access release handle(s) (e.g., Slide disconnect, jettison tailcone, ventral stairs)

(xiii) Recognize when it is appropriate to exit the aircraft.

(xiv) Access escape tapes or escape ropes (if applicable).

(g) *Emergency Evacuation (With Slide)*

(1) *Environment:* This drill is required when the flight crewmember is qualifying on an aircraft that is equipped with emergency escape slides.

(i) This is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember is employed.

(ii) Each flight crewmember must complete an emergency evacuation by egressing the aircraft or approved training device using at least one type of installed emergency escape slide from an aircraft on which the flight crewmember will be qualified to serve.

(2) *Crewmember Performance:* The flight crewmember must complete the following during the drill:

(i) Observe the airplane exit(s) being opened in the emergency mode and the associated exit slide, or slide raft being deployed and inflated or perform the tasks resulting in the completion of these actions.

(ii) Egress the aircraft or approved training device and descend the slide while using the proper method and technique.

(h) *Emergency Evacuation (Without Slide)*

(1) *Environment:* This drill is required when the flight crewmember is qualifying on an aircraft that is not equipped with an emergency escape slide on any emergency exit.

(i) This is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember will serve.

(ii) Each flight crewmember must complete an emergency evacuation by egressing the aircraft or approved training device through an emergency exit that is not designed to have an escape slide installed and is representative of the aircraft on which the flight crewmember will be qualified to serve.

(2) *Crewmember Performance:* The flight crewmember must satisfactorily accomplish the following during the drill:

(i) Observe the airplane exit(s) being opened in the emergency mode.

(ii) Egress the aircraft or approved training device while using the proper method and technique.

(i) *Flotation Devices*

(1) *Environment:* The individual flotation means used for this drill must be identical to each type of life preserver, flotation device, and seat cushion installed in the aircraft with respect to weight, dimensions, controls, types and method of operation.

(2) *Crewmember Performance:* Each flight crewmember must complete the following during the drill:

(i) Life preservers:

(A) Recognize removal procedures for individual flotation devices and also recognize any equipment or furnishings that may complement or hinder the removal of the flotation device or seat cushion.

(B) Don and secure life preserver, and inflate using automatic inflation (if appropriate) of at least one chamber.

(C) Demonstrate proper arm placement and use of the life preserver.

(D) Partially inflate, or simulate inflation of, a second chamber (if appropriate) of life preserver orally.

(E) Practice deflation technique.

(F) Locate and describe light activation.

(ii) Flotation devices:

(A) Recognize removal procedures for flotation devices or seat cushions, and also recognize any equipment or furnishings that may complement or hinder the removal of the flotation device or seat cushion.

(B) Demonstrate proper arm placement and use of the flotation device or seat cushion.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) The individual flotation means installed may consist of life preservers, flotation devices, and seat cushions.

END INFORMATION

BEGIN QPS REQUIREMENT

(j) Ditching Survival (Wet and Dry Training Environments)

(1) *Environment:*

(a) Ditching survival drill in a dry training environment must be conducted on a surface with sufficient space to conduct the drill without interference from nearby objects or structures.

(b) Ditching survival drill in a wet training environment must be conducted in water with sufficient depth and width under and around the slide, raft or slide-raft that does not allow participants the ability to touch the bottom or sides of the water containment structure.

(i) Ditching survival drill in a wet training environment is a one-time emergency drill requirement that the flight crewmember must complete for the certificate holder for which the flight crewmember is to serve.

(ii) Raft boarding and subsequent activities must be done in water for ditching survival drill in a wet training environment.

(2) *Crewmember Performance:* The flight crewmember must participate in the following ditching survival drill for both wet and dry training environments as applicable to the certificate holder's procedures and approved extended overwater operations:

(i) Identify boarding station and board raft.

(ii) Review the need to crawl and stay low.

(iii) Distribute the load.

(iv) Review the need to stay attached to the aircraft as long as possible, and operation of the quick disconnect.

(v) Review the need to get clear of fuel-covered water and debris.

(vi) Locate and deploy the sea anchor.

(vii) Discuss the importance of upwind and downwind.

(viii) Retrieve the survival kit and review contents.

(ix) Identify inflation valve and review operation of inflation pump and raft repair kit.

(x) Identify equipment for bailing raft dry (e.g., bailing bucket or sponge).

(xi) Install the canopy and discuss methods for collecting rain water and water purification techniques.

(xii) Demonstrate how canopy can be used in both hot and cold climates.

(xiii) Review the use of signaling devices located in survival kits.

(xiv) Discuss the cautions associated with flares and sea dye marker and proper use.

(xv) Point out raft lights.

(xvi) Review alternate signaling devices (e.g., mirrors).

(xvii) Locate and demonstrate use of heaving line. Review techniques to retrieve survivors.

(xviii) Review raft maintenance techniques.

END QPS REQUIREMENT

BEGIN INFORMATION

(3) Activities prior to raft boarding for both wet and dry training environments may be done in classroom, aircraft, or aircraft mockup.

END INFORMATION

BEGIN QPS REQUIREMENT

3. Observation Drills—During the observation drill, the flight crewmember observes the specific procedural drill

being conducted by other persons in a live setting or through an audio-visual medium.

(a) *Preparation of Emergency Exits in Emergency Mode.*

(1) *Crewmember Performance:* Each flight crewmember must observe the preparation of each type of installed flight crewmember emergency exit in the emergency mode, as follows:

(i) Position escape device (if applicable).

(ii) Verify that girt bar is armed or disarmed (as appropriate).

(iii) Verify the exit is in the correct mode.

(iv) Identify conditions under which the exit is to be opened in the emergency mode.

(v) Use proper voice commands to passengers (as appropriate).

(vi) Assess conditions outside the exit to determine the exit usability (e.g., clear of obstruction, fire, aircraft attitude).

(vii) Open the exit in the armed mode (as applicable) and secure and stow the exit (as applicable) to ensure a fully open and unobstructed exit.

(viii) Hold onto assist handle (if applicable).

(ix) Pull the manual inflation handle(s) and verify deployment and inflation (e.g., ramp, slide).

(x) Maintain appropriate protective body and hand positions.

(xi) Follow crew coordination procedures (as appropriate).

(xii) Access release handle(s) (e.g., slide disconnect, jettison tailcone, ventral stairs).

(xiii) Recognize when it is appropriate to exit the aircraft.

(xiv) Access escape tapes or escape ropes (if applicable).

(b) Emergency Evacuation Utilizing an Escape Slide (if applicable).

(1) *Crewmember Performance:* Each flight crewmember qualifying on an aircraft equipped with evacuation slides must observe the evacuation of an aircraft with passengers using a slide. The observation must include:

(i) Correct methods of evacuation.

(ii) Correct methods of entering the slide.

(iii) Necessity for helpers at the bottom of slide.

(c) Deployment, inflation, and detachment of slide, raft, or slide-raft.

(1) *Crewmember Performance:* Each flight crewmember must observe the deployment, inflation, and detachment from the airplane of each type of installed slide, raft, or slide-raft. This observation must include:

(i) Proper use of the exit operating handle.

(ii) Location and color of the inflation handle.

(ii) Demonstration of forces required to inflate slide or slide-raft.

(v) Attachment to aircraft (if applicable).

(v) Sound of inflating slide, raft, or slide-raft.

(vi) Proper inflation and position of the slide, raft, or slide-raft.

(vii) Location of the ditching handle or laces.

(viii) Launching points (if required).

(ix) Procedure to pull ditching handle including secondary actions that may be required.

(x) Lanyard and the removal or cutting of lanyard.

(xi) Righting overturned rafts (if applicable).

END QPS REQUIREMENT

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33. Add appendix S of part 121 to read as follows:

Appendix S to Part 121—Flight Attendant Qualification Performance Standards

Table of Contents

Introduction
A. What is contained in the Flight Attendant QPS?
B. Can the reader rely solely on this document for flight attendant qualification and related training requirements?
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G. Where can definitions and acronyms be found?
H. What references are recommended?
I. How must Crew Resource Management (CRM) training be administered?
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Attachment 1. Flight Attendant Training—Evaluation Requirements and Programmed Hours (see §§ 121.1301; 121.1331; 121.1335; 121.1341; 121.1343; and 121.1361)
Attachment 2. Tasks for Flight Attendant Training—Task Requirements and Performance Standards by Area of Instruction (see §§ 121.1301; 121.1331; 121.1333; 121.1341; and 121.1361)
Attachment 3. Training and Evaluation Requirements for Flight Attendant Training Curricula (Basic Qualification), Categories (New Hire, Initial, Transition, Emergency, Recurrent, and Requalification), and Aircraft Operating Experience (*see* §§ 121.1301; 121.1303; 121.1309; 121.1331; 121.1341; 121.1361; 121.1363; 121.1369; 121.1373; and 121.1375)

BEGIN INFORMATION

Introduction

A. What is contained in the Flight Attendant QPS?

This QPS contains Information and QPS Requirements.

1. *Information:* Explanations that clarify or support regulatory requirements found in the Code of Federal Regulations or in this Flight Attendant QPS. Explanations are provided as guidance and are not regulatory. This guidance appears under the heading ''BEGIN INFORMATION'' and uses the terms ''should'' or ''may'' to indicate that it is not mandatory.

2. *QPS Requirements:* Flight Attendant Qualification Performance Standards, contained in this appendix, are regulatory and mandatory. These requirements appear under the heading ''BEGIN QPS REQUIREMENTS'' and use the terms ''must,'' and ''may not.''

B. Can the reader rely solely on this document for flight attendant qualification and related training requirements?

No, do not rely solely on this document for regulatory requirements in these areas. The reader must also use 14 CFR part 91 and part 121, subparts G, T, V, X, and BB.

C. How can I get answers to questions about the contents of this appendix?

1. You may contact: U.S. Department of Transportation, Federal Aviation Administration Flight Standards Service, Air Transportation Division, AFS–210, 800 Independence Avenue, SW, Washington, DC 20591, *Telephone:*(202) 267–8166, *Fax:* (202) 267–5229.

2. You may find answers to questions on the:

(a) Flight Standards Internet Web Site: ''*http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/*.'' On this Web Site you will find Flight Standards Programs, Aviation Safety Inspector Handbooks, the current Aviation Regulations (14 CFR), Advisory Circulars, and other sources of FAA information.

(b) Flight Standards Cabin Safety Web Site: *http://www.faa.gov/safety/programs_initiatives/aircraft_aviation/cabin_safety/*. On this Web Site you will find links to FAA rules and guidance documents, legal interpretations and other sources of FAA information that are pertinent to cabin safety. Also linked from this site are additional Department of Transportation information sources.

D. Why do we need a QPS for flight attendants?

1. To provide an objective means of establishing performance based standards for flight attendant training and qualification.

2. To provide routine and periodic update capability. This capability is needed to respond to accidents, incidents, or rapidly occurring changes to equipment and operations. All changes made to this appendix will be subject to public notice and comment, unless good cause exists to support a finding that notice and comment would be impracticable, unnecessary, or contrary to the public interest.

3. To provide the certificate holder with a minimum set of standards for developing the following:

(a) Training programs,

(b) Performance standards, and

(c) Evaluation criteria as they relate to the flight attendant job function.

E. Where can each type of standard be found in the QPS?

1. Attachment 1 contains general evaluation requirements and programmed hours for flight attendant training.

2. Attachment 2 contains tasks for flight attendant training by area of instruction.

3. Attachment 3 contains specific instruction and evaluation requirements for flight attendant training curricula (basic qualification), categories (new hire, initial, transition, emergency, recurrent, and requalification), and aircraft operating experience.

F. [Reserved]

G. Where can definitions and acronyms be found?

You can find definitions in § 121.1205. Acronyms are as follows:

Acronyms

AED Automated External Defibrillator
AFS 200 Air Transportation Division, Flight Standards Service
ASAP Aviation Safety Action Program
ASRS Aviation Safety Reporting System
CIA Central Intelligence Agency
CPR Cardiopulmonary Resuscitation
CRM Crew Resource Management
CRS Child Restraint System
CSI Aviation Safety Inspector—Cabin Safety
DOT Department of Transportation
ELT Emergency Locator Transmitter
EMK Emergency Medical Kit
FAOM Flight Attendant Operating Manual
FBI Federal Bureau of Investigations
FOQA Flight Operational Quality Assurance
NTSB National Transportation Safety Board
MEL Minimum Equipment List
PBE Protective Breathing Equipment
PED Portable Electronic Devices
PIC Pilot in Command
POC Portable Oxygen Concentrator
POI Principal Operations Inspector
QPS Qualification Performance Standards
TSA Transportation Security Administration

H. What references are recommended?

The following references (as amended) support the knowledge and skill standards for tasks. They are strongly recommended for providing further details for lesson development. To find 14 CFR parts go to *http://ecfr.gpoaccess.gov;* to find Advisory Circulars go to: *http://www.faa.gov/regulations_policies/advisory_circulars*; and to find FAA handbooks go to: *http://www.faa.gov/other_visit/aviation_industry/airline_operators/handbooks/.*

1. 14 CFR part 1, Definitions and Abbreviations

2. 14 CFR part 121, Operating Requirements: Domestic, Flag, and Supplemental Operations

3. FAA Order 8400.10, Volume 3, Air Transportation Operations Inspector's Handbook

4. AC 60–28, English Language Skill Standards

5. AC 120–51, Crew Resource Management Training

6. AC 120–54, Advanced Qualification Program

7. AC 120–44A, Air Carrier First Aid Programs

8. AC 120–47, Survival Equipment for Use in Overwater Operations

9. AC 120–59, Air Carrier Internal Evaluation Programs

10. AC 121–29B, Carry-On Baggage

11. AC121–24B, Passenger Safety Information Briefing and Briefing Cards

12. AC 121–33B, Emergency Medical Equipment

13. AC 121–34B, Emergency Medical Equipment Training

14. AC 121–35, Management of Passengers During Ground Operations Without Cabin Ventilation

15. AC 121–36, Management of Passengers Who May Be Sensitive to Allergens

16. AC 120–87, Use of Child Restraint Systems on Aircraft

17. AC 120–88 A, Preventing Injuries Caused by Turbulence

END INFORMATION

BEGIN QPS REQUIREMENT

I. How must Crew Resource Management (CRM) training be administered?

The flight attendant must demonstrate knowledge and skills in the technical and CRM competencies for each particular task.

1. Certain CRM-related knowledge and skills must be associated with one or more flight attendant performance tasks and must be evaluated during flight attendant training as shown in Attachment 2 of this appendix.

2. The flight attendant must demonstrate knowledge and skills in both the technical and CRM competencies for each task. A task is not completed unless the evaluator has determined that the flight attendant has demonstrated knowledge and skills in the technical and CRM competencies.

END QPS REQUIREMENT

BEGIN INFORMATION

3. CRM refers to the effective use of all available resources, including human resources, hardware, and information. Human resources include all other groups routinely working with the flight crew who are involved in decisions that are required to operate a flight safely. CRM is not a single task. CRM is a set of competencies that must be evident in all tasks in this QPS as applied to the individual and the multi-crew operation.

4. CRM deficiencies usually contribute to the unsatisfactory technical performance of a task. Therefore, the CRM competencies are valuable for debriefing. For debriefing purposes, an amplified list of these competencies, expressed as behavioral markers, is in AC 120–51, as amended.

5. Certificate holders should conduct flight crewmember and flight attendant CRM scenarios together. When this is not possible, certificate holders should include information in flight attendant training that addresses the role of flight crewmembers during emergency situations.

J. How are these standards used to develop training and evaluation requirements for flight attendants?

Training categories provide the framework for the lessons and modules necessary to train and evaluate flight attendants.

1. *Knowledge (Academic)*: New hire training and portions of initial, transition, emergency, requalification, and recurrent training are for the purpose of acquiring and maintaining the knowledge required for safe operations. The required areas of instruction, including the CRM competencies, are combined with the information and procedures contained in the certificate holder's Flight Attendant Operating Manual (FAOM),

and other pertinent references to create the knowledge requirements. Curricula are then developed to support these knowledge requirements and ensure that knowledge is obtained and maintained.

2. *Cognitive, Procedural, and Motor Skills (Job Performance)*: The job performance tasks in basic qualification, requalification, and recurrent training are for the purpose of combining the knowledge obtained in the academic training with cognitive, procedural, and motor skills. The cognitive, procedural, and motor skill requirements should be developed from the tasks, hazards, and environments required in this QPS, from the generic flight attendant performance standards, the certificate holder's FAOM and from other references that directly address specific tasks, hazards, or environments. Curricula should be developed to support acquiring these skills and ensuring that knowledge is maintained.

3. Training categories contain requirements for two different segments of training within that training category. These two segments are ''academic'' training and ''job performance'' training. For example, a flight attendant receives academic training on a certificate holder's procedures regarding the preflight crewmember briefing, and receives a knowledge test on those procedures. In addition, the flight attendant receives job performance training in the form of ''practice'' of his or her ability to actually perform a preflight crewmember briefing. In another example, a flight attendant receives academic training on a certificate holder's procedures regarding opening an aircraft exit door in the emergency mode, and receives a knowledge test on those procedures. In addition, the flight attendant receives job performance training in the form of ''practice'' and a proficiency test of his or her ability to open the aircraft exit door in the emergency mode.

K. What is the continuous analysis process and how is it incorporated in this QPS? (see § 121.1355)

1. The continuous analysis process is a certificate holder internal evaluation and improvement process. The continuous analysis process will enable the certificate holder to maintain and refine the training process by continually monitoring the effectiveness and efficiency of the process. Various assessment tools (testing, checking, inspection, documenting, evaluation, and analysis) will be used to validate the effectiveness of a training program or the need to change a training program.

END INFORMATION

BEGIN QPS REQUIREMENT

2. A continuous analysis process is incorporated in this QPS through integration with the qualification and training program. The certificate holder is responsible for designating responsibility for the process. The certificate holder must ensure appropriate and adequate assessment tools (testing, checking, critique, inspection, observation, documenting, evaluation, and analysis) are utilized to enable the certificate holder to validate the effectiveness of the qualification and training program, or the need to change that program. The certificate holder must describe the attributes of the continuous analysis process in the certificate holder's FAA approved training program.

END QPS REQUIREMENT

BEGIN INFORMATION

3. Components of a Continuous Analysis Process.

(a) Qualification and training program as approved by the Administrator.

(1) Attributes of the continuous analysis process.

(i) Who is responsible?

(ii) Who has authority to change the process?

(iii) Description of the process.

(iv) Controls. Policy, procedure, training, evaluation.

(v) Documenting and Measurement.

(vi) Interfaces between Departments. Consistency (policy, procedures, manuals).

(A) Across Departments.

(B) Across Divisions.

(b) Assessment tools (adequate and appropriate).

(1) Testing.

(2) Checking.

(3) Critique.

(4) Inspection and observation.

(5) Documenting.

(6) Evaluation and analysis.

(c) Modification and adjustment of the qualification and training program.

(d) Approval for modification and adjustment.

END INFORMATION

Attachment 1 of Appendix S to part 121

Flight Attendant Training Evaluation Requirements and Programmed Hours (§ 121.1331)

BEGIN QPS REQUIREMENT

A. Evaluation Requirements (see §§ 121.1301, 121.1331, 121.1341, 121.1343, 121.1361)

1. *Proficiency Checks.*

If an evaluator conducting proficiency checks provides training, the training must be conducted as follows:

(a) No more than two tasks may be trained and no more than a total of three attempts (including the first unsatisfactory, a rehearsal, and a final assessment) in each of the tasks are permitted.

(b) Three or more unsatisfactory tasks, or failure to demonstrate satisfactory performance in three attempts at any one task, makes the check unsatisfactory.

2. *Proficiency Tests.*

(a) Evaluators who conduct proficiency tests may not provide training to the flight attendant during the test.

(b) If, in the judgment of the evaluator, the flight attendant's performance of any task during a proficiency test is unsatisfactory, the test in that task is failed.

(c) When a flight attendant fails a proficiency test, the flight attendant must be retrained in the task and reevaluated on the schedule specified in the certificate holder's approved training program.

3. *Knowledge Checks.*

Evaluators who conduct knowledge checks during aircraft operating experience may provide training to the flight attendant during the knowledge check as follows:

(a) No more than two tasks may be trained, and no more than a total of three attempts to complete a knowledge check in each of the tasks is allowed.

(b) Three or more unsatisfactory tasks, or failure to satisfactorily complete a knowledge check in three attempts at any one task, makes the check unsatisfactory.

4. *Qualified Evaluators.*

Evaluations may only be conducted by those persons as outlined in Table 3A of this Attachment.

B. Programmed Hours (see §§ 121.1335, 121.1361)

1. *Baseline and Minimum Programmed Hours* (*see* §§ 121.1335, 121.1361). Table 1A sets out the baseline and Table 1B sets out the minimum programmed hours for each category of training by segment (academic and job performance). The baseline programmed hours may be reduced after demonstration that the reduction is warranted and approved by the Administrator. The FAA may

approve a reduction in baseline programmed hours if the certificate holder demonstrates that the reduction is warranted. The FAA will not approve a reduction in the programmed hours below the minimum programmed hours.

2. *Required hours for requalification training* (*see* §§ 121.1309, 121.1361). The hours established for requalification training (§ 121.1309) are for individuals in specific circumstances. Therefore, there are no programmed hours in Table 1A and 1B for requalification training.

3. *Required hours for differences and special training* (*see* §§ 121.1337, 121.1361). The hours established for differences and special training are in addition to the previously approved programmed hours for the approved training program. For differences training (§ 121.1391), the programmed hours remain in the differences category of training. For special training (§ 121.1337(c)), the certificate holder integrates the training into the existing categories in Table 1A. Therefore, there are no programmed hours in Table 1A or Table 1B for differences and special training.

4. *Security training.* Security training programmed hours required for crewmembers by the Transportation Security Administration (TSA) may not be included in the required programmed hours contained in Tables 1A and 1B.

TABLE 1A—FLIGHT ATTENDANTS BASELINE PROGRAMMED HOURS* BY CATEGORY OF TRAINING AND TRAINING SEGMENT
[See § 121.1335]

Training segment	Category of training								
	New hire	Initial		Emergency training	Transition (each additional aircraft type)	Recurrent			
		General topics	Each aircraft type			1 type aircraft	2 to 5 types aircraft	6 to 9 types aircraft	10 to 13 types aircraft
Academic	20	8	8	8**	8	8	8	8	8
Job Performance	20	4	4	16**	4	4	5	6	7
Total	40	12	12	24**	12	12	13	14	15

*Programmed hours do not include differences training, as required in § 121.1391.
**Academic and job performance programmed hours are each reducible by 1 hour if the flight attendant is not qualified to serve in extended overwater operations.

TABLE 1B—FLIGHT ATTENDANTS MINIMUM PROGRAMMED HOURS* BY CATEGORY OF TRAINING AND TRAINING SEGMENT
[See § 121.1335]

Training segment	Category of training								
	New hire	Initial		Emergency training	Transition (each additional aircraft type)	Recurrent			
		General topics	Each aircraft type			1 type aircraft	2 to 5 types aircraft	6 to 9 types aircraft	10 to 13 types aircraft
Academic	16	Not reducible	6	Not reducible	6	Not reducible.			
Job Performance	16		2		2				
Total	32		8		8				

*Programmed hours do not include differences training, as required in § 121.1391.

5. Periods of time when training is not occurring, such as lunch or travel between facilities, do not count toward required programmed hours.

END QPS REQUIREMENT

BEGIN INFORMATION

6. Programmed hours for flight attendants are divided into academic and job performance segments for each training category. These segments are specifically designed to allow flexibility in instructional design regarding integration of academic and job performance programmed hour requirements. The job performance segment includes the practice and proficiency requirements in Attachment 3 of this appendix.

7. A reduction to the 8 hour minimum of initial training on aircraft types may be appropriate for several reasons. For example, a certificate holder may operate several types of aircraft from the same manufacturer with similar cabin configurations and equipment, or a certificate holder may carefully design a training approach that incorporates the use of extensive training on a ''base'' aircraft type upon which training on other aircraft types is based. The 12 and 8 hours apply to each aircraft type. Aircraft operating experience is required on each aircraft type for which a flight attendant receives initial training.

8. If the flight attendant has already served in an active duty status as a flight attendant for the certificate holder for at least 180 days, that flight attendant is eligible for transition training on a new aircraft type. Aircraft operating experience is not required for each aircraft type for which a flight attendant receives transition training. A flight attendant does not have to be a required flight attendant in accordance with § 121.391 to ''serve,'' the flight attendant only needs to ''perform the duties of a required flight attendant.'' Transition training has the same required number of hours and subjects for aircraft specific training as initial training, a 12-hour baseline required for each aircraft type which can be reduced to an 8-hour minimum. A reduction to the 8-hour minimum of transition training on aircraft types may be appropriate. For example, the new aircraft type may be very similar to a different aircraft type on which the flight attendant is already qualified.

9. If the flight attendant has not served as a flight attendant for the certificate holder for at least 180 days, including days off or days on reserve, and the certificate holder wants to qualify the flight attendant on a new aircraft type, then the flight attendant must have initial training on that aircraft type and the associated aircraft operating experience by type.

Attachment 2 of Appendix S to Part 121

Tasks for Flight Attendant Training Task Requirements and Performance Standards by Area of Instruction

BEGIN INFORMATION

I. Introduction (*see* §§ 121.1301, 121.1331,121.1333, 121.1341, 121.1361)
II. General Task Requirements (*see* §§ 121.1301, 121.1331, 121.1333, 121.1341, 121.1361, 121.1373)
A. Area of Instruction: Flight Attendant Duties and Responsibilities—Normal Operations (*see* § 121.1363)
1. Subject: Preflight
2. Subject: Pre-Movement on the Surface
3. Subject: Ground Movement
4. Subject: Inflight
5. Subject: Arrival
6. Subject: During Stops
7. Subject: Federal Aviation Regulations
8. Subject: General Contents, Control and Maintenance of Applicable Portions of the Certificate Holder's Manual
9. Subject: Contents of the Certificate Holder's Operations Specifications
10. Subject: Crew Resource Management
11. Subject: Theory of Flight
B. Area of Instruction: Flight Attendant Duties and Responsibilities—Abnormal Situations (*see* § 121.1369)
1. Subject: Handling Passengers Whose Conduct May Jeopardize Safety
2. [Reserved]
C. Flight Attendant Duties and Responsibilities—Emergency (*see* § 121.1373)
1. Subject: Emergency Equipment
2. Subject: Emergency Situations
III. Aircraft Specific Task Requirements (*see* § 121.1369)
A. For Each Aircraft Type
1. Subject: A General Description of the Aircraft
2. [Reserved]
B. [Reserved]
IV. Emergency Training Drill Requirements (*see* § 121.1373)
V. Emergency Training Drills—General (*see* § 121.1373)
A. Subject: Job Performance Drills
B. Subject: One Time Job Performance Drills
C. Subject: Observation Drills
VI. Emergency Training Drills—Aircraft Specific. Subject: Exit Device Operation (see § 121.1373)

END INFORMATION

BEGIN QPS REQUIREMENT

I. Introduction (*see* §§ 121.1301, 121.1331, 121.1333, 121.1361)

A. This attachment establishes task requirements and performance standards. Sections *II. General Task Requirements* and *III. Aircraft Specific Task Requirements* of this attachment list the academic requirements to the subtask level. Sections *IV. Emergency Training Drills Requirements, V. Emergency Training Drills—General, and VI. Emergency Training Drills—Aircraft Specific* list the performance requirements to the subtask level. Attachment 3 lists the tasks that must be trained and evaluated for each training category. Attachment 3 includes tables that contain the various combinations of academic and job performance tasks taken from attachment 2, that, when combined, make up the requirements for training in each of the required training categories. (see §§ 121.1301, 121.1331, 121.1333, 121.1341, 121.1361)

B. Each certificate holder must have a training program that includes the areas of instruction, subjects, tasks, subtasks, and performance standards in this attachment. The certificate holder must use this Attachment to determine the tasks on which each flight attendant must be trained and evaluated for each training category in accordance with their FAA approved training program. The tasks listed in the FAOM must reflect the tasks included in this attachment, as amended and include standard operating procedures, abnormal procedures, non-normal procedures, and emergency procedures, as well as the authorizations contained in the certificate holder's operations specifications. (*see* §§ 121.1301, 121.1331)

C. Training under each task is required except when a particular piece of equipment is not on an aircraft in which the flight attendant is to serve or a procedure is not applicable to operations conducted by the certificate holder for the aircraft on which the flight attendant serves. (*see* §§ 121.1301,121.1361)

D. The flight attendant must demonstrate that he or she is able to meet the academic and job performance standards in this QPS. (*see* §§ 121.1301, 121.1335, 121.1341, 121.1343, 121.1361)

E. In Attachment 3, training is required in all areas for persons who are qualifying for the first time in a flight attendant duty position for a certificate holder, and selected portions are required for persons required to complete requalification, transition, and recurrent training. (*see* §§ 121.1301, 121.1303, 121.1309, 121.1341, 121.1361, 121.1363, 121.1369, 121.1373, 121.1375)

F. Recurrent training job performance segments must include training and evaluation at the subtask level. Recurrent training academic segments must include training and evaluation at the task level. Recurrent training academic subjects are identified on table 3E of Attachment 3 by a ''T.'' (*see* §§ 121.1303, 121.1361, 121.1375)

END QPS REQUIREMENT

BEGIN INFORMATION

1. The FAA anticipates that recurrent training academic tasks will be developed through an analysis of events, reports, feedback, issues, or changes to certificate holder safety policies, procedures, regulations, or FAA guidance that has occurred in the previous year to determine what should be incorporated in the appropriate training programs.

2. This gives certificate holders the flexibility to determine what will be included at the subtask level for recurrent academic tasks. The certificate holder may choose to use the subtasks listed in the Flight Attendant QPS as a guide, but the certificate holder is not required to use these specific subtasks for training and evaluation.

END INFORMATION

BEGIN QPS REQUIREMENT

G. Recurrent training must include all changes made to the subject matter in the training categories in the basic qualification curriculum since the person received basic qualification training. Each subject in recurrent training must be covered every year. Certain tasks, as indicated in table 3E, must be trained and evaluated at least once every 3 years. (*see* §§ 121.1303, 121.1361,121.1375)

H. A knowledge test must be in the form of a written, oral, or computer administered test in each area of instruction. The form, content and method of administration must be approved by the Administrator in each area of instruction. Each test must contain at least one question on each task within a subject. The certificate holder must develop an examination question repository that includes a minimum number of 2 questions for each required question. (*see* §§ 121.1341, 121.1343, 121.1361)

END QPS REQUIREMENT

BEGIN INFORMATION

I. This repository will allow random selection of questions when creating examinations. This allows students in a particular examination to receive a different set of exam questions or the same exam questions in a different order. This also permits students to be retested with questions that are different from questions they received on a prior examination.

END INFORMATION

BEGIN QPS REQUIREMENT

J. An individual must complete the knowledge test. To complete the knowledge test, a score of 80% or better in each area of instruction is required and the test must be corrected to 100% by a person qualified to administer the examination. Correction of incorrect answers must include a discussion of which answer is correct and why, and why the person's original answer was incorrect. Retraining is required in each area of instruction for which a score of 80% or better is not achieved. Retraining is followed by reevaluation of the flight attendant in each retrained area of instruction. The form and content of the reevaluation must be approved by the Administrator. (*see* §§ 121.1341, 121.1343, 121.1361)

K. The certificate holder must conduct a proficiency test so that the flight attendant physically performs the required task and meets the performance standards in Attachment 2 of the Flight Attendant QPS. (*see* §§ 121.1341,121.1361)

END QPS REQUIREMENT

BEGIN INFORMATION

L. Section 121.1209 of this part requires a flight attendant to be able to read, write, and understand the English language. The flight attendant may demonstrate English language proficiency in several ways. For example, an individual's successful completion of approved crewmember training conducted solely in English would be a successful demonstration of the flight attendant's ability to read, write, and understand the English language.

M. If there is doubt about a flight attendant's ability to read English, the flight attendant should read aloud a short paragraph from an appropriate source, such as a safety related announcement. If there is doubt about the flight attendant's ability to write in English, the person evaluating the flight attendant should read a short statement and have the flight attendant write it in English. The certificate holder should have in place a process to ensure a final determination of whether the applicant meets the English language requirement for those times when the test indicates to the person evaluating the flight attendant that the flight attendant is not able to read, write, understand, or speak the English language.

END INFORMATION

BEGIN QPS REQUIREMENT

II. General Task Requirements (*see* §§ 121.1301, 121.1331, 121.1333, 121.1341, 121.1361, 121.1373)

A. Area of Instruction: Flight Attendant Duties and Responsibilities—Normal Operations

1. Subject: Preflight

(a) Task: General (Preflight)

Subtasks:

(1) Review all certificate holder issued memorandums and orders.

(2) Verify currency of FAOM.

(3) Ensure presence of certificate holder required items.

(4) Attend or provide crewmember briefing.

(5) Stow crew baggage and personal carry-on baggage properly.

(6) Stow the FAOM properly so it is accessible when performing duties.

(7) Identify seats with movable aisle armrests for seating of passengers with disabilities.

(8) Adjust cabin lighting in accordance with certificate holder's procedures.

(9) Report safety discrepancies to the PIC.

(10) Report any discrepancies in the aircraft cabin, systems, and equipment in accordance with certificate holder procedures.

(11) Cabin position specific duties as defined in the FAOM.

(b) Task: Crewmember Briefing (Preflight)

Subtasks:

(1) Security procedures.

(2) Communication procedures.

(3) Emergency procedures.

(4) MELs with any effect on cabin safety equipment or procedures.

(5) Flight information.

(6) Review and follow procedures concerning supernumerary personnel.

(c) Task: Cabin and Galley Security (Preflight)

Subtask: Implement cabin and galley security procedures in accordance with certificate holder's security program.

(d) Task: Check of Emergency Equipment (Preflight)

Subtasks:

(1) Proper preflight techniques.

(2) Procedures to be followed if equipment fails to meet preflight requirements.

(3) Check the flight attendant jumpseat and restraint system, including automatic seat retraction, proper operation, no missing or broken components on flight attendant jump seat, and presence of jumpseat headrest.

(4) Check flight attendant panel to ensure switches, controls, and indicators are working.

(5) Verify no abnormal indications are present on any panels or gauges.

(6) Check portable oxygen equipment.

(7) Check fire extinguishers.

(8) Check first aid kits.

(9) Check EMK.

(10) Check AEDs.

(11) Check megaphones.

(12) Check PBEs.

(13) Check ELTs.

(14) Visual check of crash ax.

(15) Check emergency lighting system.

(16) Check emergency flashlights.

(17) Check survival kits.

(18) Verify position of circuit breakers.

(19) Check communication systems, including passenger address and interphone systems.

(20) Ensure chimes, chime indicator lights, and associated annunciator panel indicators are working.

(21) Check general condition of emergency exits in the passenger and galley areas.

(22) Check assist handles.

(23) Check lavatory fire detection system, flapper doors, ashtrays, and placards.

(24) Check for flotation equipment, as required.

(25) Check that class B cargo compartments are clear for crew fire fighting.

(26) Check emergency equipment stowage areas for unapproved items.

(e) Task: Check of Safety Equipment (Preflight).

Subtasks:

(1) Check presence of and prepare demonstration equipment.

(2) Check audio/visual safety demonstration equipment.

(3) Verify that the universal precaution kit and CPR masks, or the kit that contains these items, is onboard.

(4) Verify that onboard wheelchair is present and properly secured.

(f) Task: Galley Check (Preflight)

Subtasks:

(1) Ensure all latches, locks, and flapper doors work properly.

(2) Ensure only approved items are stowed in ovens.

(3) Check circuit breakers located in the galley.

(4) Ensure lower lobe galley lift works properly.

(g) Task: Check of Cabin and Cabin Systems (Preflight)

Subtasks:

(1) Check circuit breakers located in the cabin.
(2) Check temperature and ventilation controls.
(3) Check lighting systems to ensure proper working condition.
(4) Check photo luminescent emergency pathway lighting systems, and preflight and charging procedures.
(5) Ensure all lock-out mechanisms are engaged on emergency exit seats.
(6) Stow inflight service and entertainment items.

2. Subject: Pre-Movement on the Surface

(a) Task: General (Pre-Movement on the Surface)

Subtasks:
(1) Ensure minimum required number of flight attendants are onboard during the entire boarding process.
(2) Assume proper station during passenger boarding.
(3) Identify possible able bodied passengers.
(4) Provide all required announcements to passengers.
(5) Provide all required individual passenger briefings.

(b) Task: Passenger Boarding (Pre-Movement on the Surface)

Subtasks:
(1) Observe passengers for acceptance according to regulation and certificate holder policy (e.g., intoxicated passengers and unaccompanied minors).
(2) Monitor carry-on baggage for excessive size, quantity, or evidence of hazardous materials.
(3) Monitor exit seat occupants according to certificate holders approved exit seat program.
(4) Monitor passenger behavior and maintain situational awareness.
(5) Report passengers who appear to be intoxicated or are otherwise disruptive immediately to the PIC and customer service personnel.
(6) Ensure certificate holder procedures are followed regarding the passenger use of Portable Oxygen Concentrators (POC).
(7) Ensure certificate holder procedures are followed regarding child restraint systems.
(8) Ensure certificate holder procedures are followed regarding lap held children.
(9) Ensure lap held children are distributed with regard to oxygen availability.
(10) Comply with certificate holder procedures for child and infant flotation equipment.
(11) Ensure certificate holder procedures are followed regarding passenger count.
(12) Conduct compliance check to ensure carry-on baggage is properly stowed.
(13) Ensure that use of portable electronic devices is in compliance with certificate holder's procedures.
(14) Conduct appropriate passenger briefing for exit seat occupants.
(15) Verify (must be verified by the assigned required crewmember) that all exit seat occupants meet exit seat criteria, prior to aircraft movement on the surface.
(16) Ensure proper handling of passengers with additional needs, such as armed passengers, prisoners, escorts, passengers with personal oxygen, and unaccompanied minors.
(17) Ensure any medical oxygen being used by a passenger was supplied by the certificate holder and follow appropriate procedures for use.
(18) Ensure the PIC is notified that medical oxygen or POC is in use.
(19) Ensure the passenger using medical oxygen or POC is seated per the certificate holder's procedures.
(20) Ensure the medical oxygen bottles or POC are properly located and secured when they are being used and before and after use.
(21) Ensure no persons are allowed to smoke within 10 feet of any oxygen or POC in use.
(22) Apply weight and balance procedures as directed by the PIC.
(23) Ensure compartment restraints are secured for compliance with carry-on baggage regulation.
(24) Ensure all items carried on by the passenger are properly stowed (e.g., purses and assistive devices).
(25) Ensure unusual items (e.g., organs for transplant) are stowed in accordance with certificate holder's approved carry-on baggage program.
(26) Follow approved method for removing carry-on baggage that cannot be stowed.
(27) Verify (must be verified by assigned required crewmember) that all carry-on baggage is stowed prior to closing last passenger entry door.

(c) Task: Passengers With Disabilities (Pre-Movement on the Surface)

Subtasks:
(1) Review part 382 of 14 CFR, Nondiscrimination on the Basis of Disability in Air Travel.
(2) Review certificate holder responsibilities regarding compliance with 14 CFR 382, including the role of the compliance resolution official (CRO).
(3) Review crewmember responsibilities regarding compliance with 14 CFR 382.
(4) Review cabin accommodations, such as onboard wheelchairs, accessible lavatories, movable armrests, and collapsible armrests.
(5) Review types of service animals, including unique service animals, lap-held service animals, and emotional support service animals.
(6) Review location and placement of service animals.
(7) Review types of assistive devices that are designed for, and used by, people with disabilities.
(8) Review location and placement of assistive devices, including specific certificate holder procedures regarding stowage of a passenger's folding wheelchair in the cabin.
(9) Review exclusion of assistive devices from the number of carry-on items that each passenger is allowed to bring onboard.
(10) Review use of orthotic positioning devices by people with disabilities.
(11) Review passenger briefings for people with disabilities.
(12) Review procedures for handling passenger disputes regarding compliance with 14 CFR 382.

(d) Task: Galley Security (Pre-Movement on the Surface)

Subtasks:
(1) Ensure all catering and galley supplies are stowed properly.
(2) Ensure latches and locks are positioned properly.
(3) Ensure secondary locking mechanisms are engaged.
(4) Ensure carts are secured on permanent tie downs for surface movement and take-off.
(5) Ensure curtains and doors are properly secured.

(e) Task: Preparation of Exits (Pre-Movement on the Surface)

Subtasks:
(1) Ensure doors are closed.
(2) Ensure timely arming of exits, including positioning of warning devices and cross check requirements.
(3) Ensure passengers are seated with seat belts fastened.
(4) Ensure no items are improperly stowed at jumpseats, passenger seats, lavatories or galleys.
(5) Signal or communicate with flight crew regarding cabin readiness for aircraft movement.

(f) Task: Compliance Check (Pre-Movement on the Surface)

Subtasks:
(1) Ensure that a normal or emergency means of egress is available when passengers are on board the aircraft.
(2) Ensure proper closure of overhead compartments and closets.
(3) Ensure that all carry on baggage is properly stowed.

(4) Ensure that all passengers, except those meeting lap child criteria, are seated with seat belts fastened.

(5) Ensure that seat belt extensions have been provided to all passengers who need them.

3. Subject: Ground Movement

(a) Task: General (Ground Movement)

Subtask:

(1) Flight attendants must occupy assigned jumpseats during taxi unless performing safety related duties.

(2) Flight attendants must understand the impact of conducting non-safety related duties during taxi.

(b) Task: Passenger Information (Ground Movement)

Subtask:

(1) Use public address system properly.

(2) Provide appropriate information:

(i) Compliance with Fasten Seat Belt and No Smoking signs.

(ii) Stowage of tray tables.

(iii) Positioning seat backs in the upright position (leg rests retracted).

(iv) Location of emergency exits.

(v) Proper use of portable electronic devices.

(vi) Stowage of carry-on baggage.

(vii) Smoking restrictions.

(viii) Use of oxygen (if applicable).

(ix) Availability of flotation devices.

(3) Use safety video correctly.

(4) Ensure safety demonstration is coordinated with announcement.

(5) Give safety demonstration from approved location.

(6) Assume proper position during the safety demonstration to ensure even distribution of flight attendants.

(7) Give safety demonstration at individual seats if passengers' view is obstructed.

(8) Ensure additional information regarding extended over water flights is provided.

(9) Ensure that any passengers needing the assistance of another to move quickly to an exit during an emergency and any attendants are briefed on the routes to each appropriate exit, the most appropriate time to begin moving to the exit, and inquire as to the most appropriate way to assist that person.

(c) Task: Sterile Flight Deck Procedures (Ground Movement)

Subtask:

Comply with sterile flight deck procedures.

(d) Task: Compliance Check (Ground Movement)

Subtasks:

(1) Ensure that all exits are accessible.

(2) Ensure carry-on baggage is stowed.

(3) Ensure that certificate holder procedures are followed regarding child restraint systems.

(4) Ensure that portable electronic devices are turned off and stowed.

(5) Ensure that overhead bins are closed and latched.

(6) Ensure tray tables are stowed and secured.

(7) Ensure seat backs are in the upright position (leg rests retracted).

(8) Ensure seat belts are fastened.

(9) Ensure lap seated infants and children are held or secured in a seat.

(10) Ensure all galley service items have been picked up and stowed.

(11) Ensure galley equipment is secured.

(12) Ensure that all cabin divider systems are secured open.

(13) Ensure that all video screens are retracted.

(14) Ensure that all lavatories are vacant.

(15) Ensure that cabin lighting is adjusted as per certificate holder procedures.

(16) Return to flight attendant jumpseat.

(17) Secure barrier strap.

(18) Don seat belt and shoulder harness.

(19) Signal or communicate with flight crew regarding cabin readiness for take-off.

(20) Perform silent review.

(21) Assume flight attendant protective brace position.

4. Subject: Inflight

(a) Task: General (Inflight)

Subtask:

Secure flight attendant restraint system upon leaving jumpseat in accordance with certificate holder procedures.

(b) Task: Inflight Procedures (Inflight)

Subtasks:

(1) Review flight deck entry and communication procedures.

(2) Review procedures for flight attendants to enter and secure flight deck door, including requesting a briefing on the location, donning and use of the fixed oxygen system available for the flight attendant's emergency use when one flight crewmember has to leave the flight deck.

(3) Check cabin and passengers periodically throughout the flight.

(4) Check lavatories periodically throughout the flight for potential fire hazards, overly filled trash receptacles, flapper doors that will not close, evidence of smoking or tampering with smoke detectors.

(5) Collect and stow service items properly.

(c) Task: Passenger Information (Inflight)

Subtasks:

(1) Provide after take-off announcement(s).

(2) Provide seat belt announcement when seat belt sign is turned on or off according to certificate holder procedures.

(3) Coordinate proper timing of passenger removal of shoulder harnesses.

(d) Task: Passenger Handling Procedures (Inflight)

Subtasks:

(1) Follow proper certificate holder's alcohol procedures.

(2) Ensure passengers seated in exit seats meet exit seat criteria.

(3) Follow proper certificate holder's passenger handling and reporting procedures.

(4) Follow the certificate holder's program outlining flight attendant duties regarding the use of portable electronic devices (PED).

(5) Ensure passengers are given information about times, conditions, and limitations on PED use.

(6) Understand the regulations regarding PEDs, including the effects of the use of PEDs on aircraft avionics during critical phases of flight.

(7) Ensure passengers terminate the use of any devices suspected of causing interference.

(8) Coordinate between cabin and flight deck with regard to PED use.

(e) Task: Proper Use of Service Carts and Service Equipment (Inflight)

Subtasks:

(1) Secure unattended carts properly.

(2) Engage permanent tie-downs or pop-up tie-downs correctly.

(3) Secure galley compartments when not in use.

(4) Secure food and beverage items when not in use.

(5) Comply with galley lift restrictions.

(6) Ensure that at least one flight attendant is not more than 10 feet away from service cart when in use.

(7) Stow service carts properly.

(8) Set brakes properly.

(9) Latch cart doors and utilize secondary locks.

(10) Report any malfunctioning galley equipment including restraints and brakes.

(f) Task: Communication and Coordination Procedures (Inflight)

Subtasks:

(1) Communicate with flight crew regarding turbulence.
(2) Communicate with flight crew regarding potential security threats or disruptive passengers.
(3) Communicate with flight crew regarding any abnormal or emergency situation.
(4) Report maintenance discrepancies (airworthiness and non-airworthiness).

(g) Task: Pre-landing (Inflight)

Subtasks:
(1) Provide appropriate pre-landing announcements for initial descent.
(2) Perform lavatory vacancy check.
(3) Adjust cabin lighting.
(4) Collect all service items.
(5) Close and secure galley compartments properly.
(6) Set primary and secondary locks.
(7) Ensure carts are secured on permanent tie downs for landing and surface movement.
(8) Ensure curtains and doors are properly secured.
(9) Turn off electrical appliances not in use.
(10) Comply with Fasten Seat Belt signs.
(11) Re-verify that passengers seated in exit seats meet exit seat criteria.
(12) Reengage lock out mechanism at exit seats.
(13) Ensure only approved child restraint systems are in use and are properly positioned.
(14) Ensure lap infants are held or secured in seat.
(15) Ensure tray tables are stowed and secured.
(16) Place seat backs in the upright position (leg rests retracted).
(17) Discontinue use of PEDs.
(18) Stow carry-on baggage.

(h) Task: Sterile Flight Deck Procedures (Inflight)

Subtask: Comply with sterile flight deck procedures.

(i) Task: Compliance Check (Inflight)

Subtasks:
(1) Provide appropriate pre-landing announcements for final approach.
(2) Verify completion of all of the pre-landing activities required by paragraph II.A.4.(g)(2) through (18) of this attachment.
(3) Verify that all exits are accessible.
(4) Verify that overhead bins are closed and latched.
(5) Verify that all video screens are retracted in accordance with carrier procedures.
(6) Comply with certificate holder's charging procedures for photoluminescent light path.
(7) Return to flight attendant jumpseat.
(8) Secure barrier strap.
(9) Don seat belt and shoulder harness.
(10) Signal or communicate with flight crew if the cabin is not prepared for landing.
(11) Perform silent review.
(12) Assume flight attendant protective brace position.

5. Subject: Arrival

(a) Task: General (Arrival)

Subtasks:
(1) Perform all required arrival announcements.
(2) Make reminder announcements to any passengers who may stand or place carry on bags in the aisle during taxi.
(3) Adjust cabin lighting.
(4) Perform only safety related duties during taxi.

(b) Task: Preparation of Exits (Arrival)

Subtasks:
(1) Ensure that a normal or emergency means of egress is available when passengers are on board the aircraft.
(2) Ensure crew coordination.
(3) Ensure exits are disarmed in accordance with applicable regulations and aircraft specific procedures.
(4) Verify no cabin pressure warnings or indications are present on the door.
(5) Open door and operate stairs.

(c) Task: Passenger Handling (Arrival)

Subtasks:
(1) Monitor passenger deplaning to ensure adherence to all regulatory and certificate holder requirements.
(2) Coordinate with ramp, ground, and station agents and other crewmembers as necessary.
(3) Assume proper position during passenger deplaning to ensure even distribution of flight attendants.
(4) Ensure that the minimum required number of flight attendants are onboard during entire passenger deplaning process.

(d) Task: Cabin Security (Arrival)

Subtasks:
(1) Ensure all passengers have left the aircraft at flight termination by checking the aircraft, including lavatories.
(2) Perform post-flight cabin checks.

6. Subject: During Stops

(a) Task: General (During Stops)

Subtasks:
(1) Follow duty assignments for flight attendants at intermediate stops, including passenger supervision.
(2) Adhere to permissible reduction in the number of flight attendants to at least half the minimum required number (rounded down to the next lower number, but never fewer than one) when passengers remain onboard and boarding or deplaning is not occurring.
(3) Adhere to permissible substitution for the required flight attendants with other persons qualified in emergency evacuation procedures for the airplane when passengers remain onboard and boarding or deplaning is not occurring, if those persons are identified to the passengers.

(b) Task: Aircraft Refueling (During Stops)

Subtasks:
(1) Review duties, regulatory requirements, and procedures regarding refueling with passengers onboard.
(2) Review identification of potential hazards to occupants associated with aircraft refueling.
(3) Review proper steps to be taken should problems develop during refueling, including evacuation.

7. Subject: Federal Aviation Regulations

(a) Task: General

Subtasks:
(1) Comply with certificate holder procedures for interaction with officers and agents of various governmental agencies, including FAA, TSA, FBI, CIA, and NTSB.
(2) Comply with 14 CFR part 252: Smoking Aboard Aircraft.

(b) Task: Federal Aviation Regulations Pertinent to Flight Attendant Performance of Assigned Duties

Subtasks: Understand the regulatory requirements for the following:
(1) Flight attendant duty period limitations and rest requirements.
(2) Crewmember protocols regarding drug and alcohol testing programs, including regulatory requirements and certificate holder policy regarding drug and alcohol testing programs.
(3) Hazardous material recognition and prohibitions.
(4) Admission to the flight deck.
(5) Manipulation of controls in the flight deck.
(6) Inoperable equipment.
(7) Carriage of cargo in passenger compartments.
(8) Exit seating.
(9) Carry on baggage.
(10) Passenger information requirements.
(11) Passenger briefings and demonstrations.
(12) Manual requirements.
(13) Training program requirements.
(14) Crewmember qualification requirements.
(15) Aviation Safety Inspector's credentials.

(16) Oxygen requirements.
(17) Restrictions regarding service of alcoholic beverages.
(18) Boarding restrictions regarding persons who appear to be intoxicated.
(19) Retention of items of mass in passenger and crew compartments.
(20) Stowage of passenger service equipment.
(21) Closing and locking flight crew compartment door.
(22) Security Requirements.
(23) Sterile flight deck requirements.
(24) Required number of flight attendants.
(25) Crewmember requirements at stops where passengers remain on board.
(26) Emergency equipment requirements.
(27) Lavatory fire protection.
(28) Communication systems.
(29) Flotation equipment.
(30) Flightcrew compartment access.
(31) Taxi requirements.
(32) Carriage and briefing of passengers requiring special assistance.
(33) Fueling with passengers on board.
(34) Portable electronic devices.
(35) Flight attendant jumpseat requirements.
(36) Child restraint systems.
(37) Required placards and signs.
(38) Compliance with seat belt and smoking regulations.
(39) Use of medical oxygen and portable oxygen concentrators.
(40) Any other regulations relevant to flight attendant duties and responsibilities.

END QPS REQUIREMENT

BEGIN INFORMATION

Discussion of the regulations should include why they are pertinent to flight attendants and should also include discussion regarding the role of other certificate holder employees and their part in ensuring compliance with the regulations (e.g., gate agents, flight crewmembers).

END INFORMATION

BEGIN QPS REQUIREMENT

8. Subject: General Contents, Control and Maintenance of Applicable Portions of the Certificate Holder's Manual

(a) Task: Flight Attendant Operating Manual (FAOM)

Subtasks: Understand the certificate holder's procedures for the following:
(1) Currency requirements.
(2) Revision process.
(3) Bulletins or notices.
(4) List of effective pages.
(5) Accessibility during flight.
(6) Procedures to ensure manual is current.

(b) Task: Scheduling and Station Operations Policies and Procedures

Subtasks: Understand the certificate holder's procedures for the following:
(1) Scheduling policies and procedures.
(2) Station operations policies and procedures.

9. Subject: Contents of the Certificate Holder's Operations Specifications

(a) Task: General

Subtask: Understand information contained in the certificate holder's operations specifications that is pertinent to the duties and responsibilities of flight attendants.

(b) Task: Exit Seat Program and Procedures

Subtasks: Understand the certificate holder's procedures for the following:
(1) Information regarding the certificate holder's exit seat program.
(2) Selection criteria regarding the capabilities and conditions to be applied to determine the suitability of persons to occupy an exit seat.
(3) Performance functions which a person seated in an exit seat must be willing and able to perform in the event of an emergency.
(4) Seat selection, assessment, and verification process.
(5) Individual exit seat briefings.
(6) Certificate holder procedures that ensure the suitability of each person who occupies an exit seat.
(7) Assessment and verification of suitability by at least one required crewmember prior to movement on the surface.
(8) Re-seating procedures.
(9) Dispute resolutions.
(10) Required announcements.
(11) Definition of an exit seat, including excess flight attendant jumpseats and the location of all exit seats on each aircraft type.
(12) Assessment and verification of suitability prior to landing.

(c) Task: Carry-on Baggage Program and Procedures

Subtasks: Understand the certificate holder's procedures for the following:
(1) The certificate holder's carry-on baggage program as described in the FAOM, including carry-on baggage limitations, procedures for baggage scanning, and procedures for handling carry-on baggage that does not meet these limitations or cannot be accommodated in the passenger cabin.
(2) Person(s) responsible and procedures for scanning for amount and size.
(3) Weight and balance procedures and coordination with flight crew.
(4) Safety implications of improperly stowed carry-on baggage.
(5) Types of articles exempt from carry-on baggage count.
(6) Procedures for handling and stowing carry on items exempt from the carry-on baggage count.
(7) Definition of ''properly stowed,'' including that carry-on baggage may not hinder access to emergency equipment.
(8) Methods of removing carry-on baggage from aircraft when necessary.
(9) Procedures regarding proper stowage of carry-on baggage in the passenger cabin, including underseat stowage.
(10) Procedures for handling cargo or unusual items in the cabin.
(11) Procedures for the handling of cargo and in-seat baggage in the passenger compartment, including the types of cargo that may be carried in the passenger cabin and the location of seats in which it may be stowed.
(12) Procedures to ensure crewmember verification that each piece of carry-on baggage is stowed properly prior to the last passenger entry door being closed, including specific crewmember assignments and responsibilities.
(13) Certificate holder procedures regarding the handling of carry-on baggage during an aircraft evacuation.
(14) Importance of crew consistency in applying these regulations.

(d) Task: Minimum Equipment List (MEL)

Subtasks: Understand the certificate holder's procedures for the following:
(1) Description of the purpose and scope of the MEL as applicable to flight attendant duties.
(2) Crew coordination procedures for reporting inoperative equipment.
(3) Implications of MEL required procedures due to certain pieces of equipment being inoperative, and their effect on flight attendant duties.
(4) Any other information relevant to flight attendant duties and responsibilities.

10. Subject: Crew Resource Management

(a) Task: Authority of the Pilot in Command

Subtasks:
(1) The captain's authority, including responsibility for the safety of flight in routine and emergency conditions.
(2) Chain of command and importance of chain of command.

(3) Chain of command as applicable to specific airplane.

(b) Task: Communication Processes and Decisions

Subtasks:
(1) Briefing.
(2) Inquiry, advocacy, and assertiveness.
(3) Self-critique.
(4) Communication with available personnel.
(5) Decisionmaking.
(6) Conflict resolution.

(c) Task: Building and Maintenance of a Flight Team

Subtasks:
(1) Leading and following, including the importance of crewmembers functioning as a team.
(2) Use of interpersonal skills and leadership styles in a way that fosters crew effectiveness.
(3) Significance of cultural differences.

(d) Task: Workload Management and Situational Awareness

Subtasks:
(1) Preparation and planning.
(2) Vigilance.
(3) Workload distribution.
(4) Distraction avoidance.

(e) Task: Communication and Coordination

Subtasks: Flight attendant must know notification and communication procedures between the cabin and flight deck including:
(1) Flight deck and cabin chimes and interphone signals for routine situations.
(2) Flight attendant notification to flight crew that aircraft is ready for movement on the surface.
(3) Flight crew notification to flight attendant to be seated prior to take-off.
(4) Flight attendant recognition of critical phases of flight.
(5) Crewmember coordination and notification regarding access to flight deck.
(6) Notification to flight attendants of turbulent air conditions.
(7) Notification between flight crew and flight attendants of emergency or unusual situations.
(8) Notification between flight crew and flight attendants of inoperative equipment that is pertinent to flight attendant duties and responsibilities.
(9) Normal and emergency communication procedures to be used in the event of inoperative communication equipment.

(f) Task: Crewmember Briefing

Subtasks:
(1) Crewmember responsibilities regarding briefings.
(2) Flight crew to flight attendant(s) briefings.
(3) Flight attendant to flight attendant(s) briefings (*e.g.*, when PIC has not briefed the entire crew, or when a flight attendant joins a working crew).
(4) Required information.
(5) Security procedures.
(6) Communication procedures.
(7) Emergency procedures.
(8) MELs affecting cabin safety equipment and procedures.
(9) Flight information.
(10) Content of crew briefing as applicable to specific aircraft.
(11) Responsibilities of flight attendants to brief new flight attendant crew during a crew change regarding any unserviceability of equipment, special passengers, and other safety matters pertinent to the flight.

(g) Task: Communication and Coordination During a Passenger Interference Situation

Subtasks:
(1) Certificate holder's written program regarding the handling of passenger interference, including crewmember communication and coordination.
(2) Importance of crewmembers and other employees working as a team.
(3) Role of management and crewmember in follow-up.

(h) Task: Communication and Coordination During an Emergency Situation

Subtasks:
(1) Actions for each emergency situation.
(2) Importance of notification and who must be notified.
(3) Alternate actions if unable to notify.
(4) Communication during preparation for a planned emergency evacuation: Time available, type of emergency, signal to brace, and special instructions.

11. Subject: Theory of Flight

(a) Task: Components of Aircraft

Subtasks:
(1) Wing-leading edge, trailing edge, wing tip, wing root, winglet.
(2) Tail-fixed vertical stabilizer, rudder, elevator.
(3) Miscellaneous-fuselage, spoilers, speed brakes, main gear, nose wheel.
(4) Flight control surfaces and their functions-ailerons, flaps, rudder, elevator.

(b) Task: Principles of Flight

Subtasks:
(1) Forces acting on an aircraft-lift, weight, thrust, drag.
(2) Three axes and movement around each-yaw, pitch and roll.
(3) Weight and balance-weight distribution and center of gravity and their effect on aircraft controllability and stability.

(c) Task: Critical Surfaces and Associated Hazards

Subtasks:
(1) Recognition of critical surfaces.
(2) Recognition of hazards to flight associated with contamination of those surfaces.
(3) Awareness of conditions most likely to produce such contamination (such as snow and ice, volcanic ash and dust).
(4) Importance of timely communication of observed hazards to flight deck.
(5) Awareness of carrier procedures for decontamination of surfaces.

(d) Task: Aviation Terminology

Subtasks:
(1) Identify and define aviation terminology common to the certificate holder, including terms related to airports, ground operations and flight operations.
(2) Identify any specific voluntary safety programs used by certificate holder (such as ASRS, ASAP, FOQA) as they relate to flight attendants.
(3) Identify standard measurement units used in aviation (such as the 24 hour clock, Greenwich Mean Time, time zone changes).

B. Area of Instruction: Flight Attendant Duties and Responsibilities—Abnormal Situations (see § 121.1369)

1. Subject: Handling Passengers Whose Conduct May Jeopardize Safety

(a) Task: General

Subtasks:
(1) The flight attendant must know the certificate holder's procedures for handling passengers who could threaten the safety of the flight or the passengers, including how to do the following:
(i) Identify and manage potential problem passengers who could threaten safety of the flight, passengers, or crew and monitor passenger conduct.
(ii) Monitor and identify potential problem passengers during boarding.
(iii) Identify baggage that may be considered suspect on board an aircraft.
(iv) Recognize hazardous materials labels.
(v) Report hazardous materials to the flight crew.
(vi) Monitor lavatories periodically throughout the flight.

(vii) Perform cabin checks periodically throughout the flight.

(2) The flight attendant must know specific certificate holder procedures for maintaining flight deck security.

(b) Task: Passenger Interference

Subtasks:

(1) The flight attendant must know the following requirements, procedures, and all information for handling passengers who might interfere with crewmembers in the performance of their duties and who could threaten the safety of the flight or the passengers:

(i) Title 14 CFR 121.580, Prohibition on interference with crewmembers.

(ii) Title 49 U.S.C. 46318, Interference with cabin or flight crew.

(iii) Certificate holder's program regarding the handling of disruptive passengers.

(iv) Categories of disturbance and crewmember actions.

(v) How to diffuse the situation with difficult passengers.

(vi) Recommended crew coordination procedures.

(2) The flight attendant must be trained to manage the following:

(i) Address incidents of non-compliance immediately.

(ii) Inform passenger of regulatory requirements and certificate holder policies.

(iii) Manage disruptive or problem passengers by using a team approach or specific certificate holder techniques designed to defuse such situations.

(iv) Maintain crewmember's personal security.

(v) Communicate with flight crew immediately to report non-compliant passengers and maintain communications throughout the event.

(vi) Coordinate with other flight attendants regarding team concept problem management.

(vii) Comply with certificate holder procedures regarding involvement of law enforcement officials.

(viii) Obtain assistance from other crewmembers or passengers.

(ix) Restrain violent passengers as indicated in certificate holder procedures.

(x) Appropriate use of equipment provided by the certificate holder.

(xi) Complete all required certificate holder forms.

(xii) Be able to use techniques to recognize and diffuse passenger panic situations.

(c) Task: Smoking Ban Violations

Subtasks: The flight attendant must know the following for handling of passengers who smoke onboard the aircraft:

(1) Procedures for passengers who smoke while seated.

(2) Procedures for passengers who smoke in the lavatory.

(3) Procedures for passengers who tamper with a smoke detector.

(4) Required crew coordination and communication.

(5) Procedures to address a possible fire hazard from the discarded cigarette.

(6) Reporting procedures.

(d) Task: Intoxication

Subtasks:

(1) The flight attendant must know the following for handling of passengers who appear to be intoxicated:

(i) Required crew coordination, communication, and notification procedures.

(ii) Prohibition against boarding passengers who appear to be intoxicated.

(iii) Certificate holder procedures regarding the removal of a passenger who has boarded the aircraft and appears to be intoxicated.

(iv) Prohibition against serving alcohol to passengers who appear to be intoxicated.

(v) Prohibition against serving alcohol to persons who are escorting a prisoner or who are being escorted.

(vi) Prohibition regarding passengers consuming alcohol not served by the certificate holder and associated certificate holder procedures.

(vii) Prohibition against serving alcohol to any person carrying a dangerous weapon.

(viii) Regulatory requirement to report any alcohol related disturbance onboard an aircraft to the FAA within 5 days.

(ix) Reporting procedures.

(2) The flight attendant must be trained to manage the following:

(i) Passengers appearing to be intoxicated during boarding.

(ii) Passengers appearing to be intoxicated during flight.

(iii) Reseat passengers from exit seats if they appear to become intoxicated in flight.

(iv) Inform passenger of regulatory requirements and certificate holder policies as needed.

(v) Communicate with flight crew immediately to report non-compliant passengers.

(vi) Follow certificate holder procedures when serving alcohol.

(e) Task: Passenger Misconduct

Subtasks:

The flight attendant must know how to diffuse the situation with difficult passengers and recommended crew coordination procedures.

(f) Task: Security Procedures

Subtasks:

The certificate holder must develop a security program that meets the standards of the TSA's security training program for flight attendants. The certificate holder must document that the TSA has approved the security training program for flight attendants and the certificate holder must provide security training to each flight attendant in accordance with a security program approved by the TSA.

2. [Reserved]

C. Flight Attendant Duties and Responsibilities—Emergency (See § 121.1373)

1. Subject: Emergency Equipment

The flight attendant must know the preflight (if applicable), location, function, operation, and limitations of the following equipment in Tasks (a) through (e) of this section:

(a) Task: General Emergency Equipment

Subtasks:

(1) Flight attendant jumpseat and restraint system.

(2) Portable oxygen equipment.

(3) Megaphones.

(4) Protective breathing equipment.

(5) Communication systems (public address system, chimes, interphone, visual indicators,).

(6) Lavatory smoke detector, flapper doors, and placards.

(7) Crash ax.

(8) Flashlights.

(9) Any additional portable emergency equipment or systems pertinent to cabin safety.

(b) Task: Equipment Used in Land and Water Evacuation

Subtasks:

(1) Evacuation alarms.

(2) Emergency lighting systems.

(3) Evacuation slides and slide rafts.

(4) Escape ropes and escape tapes.

(5) ELTs.

(6) Survival kits.

(7) Signaling equipment.

(8) Flotation equipment.

(9) Adult and child life preservers.

(10) Infant flotation equipment.

(11) Rafts.

(12) Any specialized survival equipment specific to an aircraft type or operation.

(c) Task: Emergency Medical Equipment

Subtasks:

(1) EMKs.

(2) First aid kits.

(3) Portable first aid and medical oxygen and oxygen systems.

(4) CPR equipment.

(5) AED.

(6) Universal precautions and associated equipment.

(7) Biohazard kit contents, use, and proper disposal procedures.
(8) Needle disposal kits.
(9) Any additional cabin safety equipment used during inflight medical events.

(d) Task: Portable Fire Extinguishers

Subtasks:
(1) Installed fire extinguishers.
(2) Range and duration of each extinguisher.
(3) Classes of fires with emphasis on proper extinguisher for each class of fire.

(e) Task: Emergency Exit Doors, Plugs and Hatches, Including Doors, Window Exits, Floor Level Exits, Tailcone Exits, Ventral Stairs, Flight Deck Exits, and Any Other Exit Designed for Passenger or Crewmember Emergency Egress from the Aircraft

Subtasks:
(1) Each different emergency exit in the normal and emergency modes, including the actions and forces required in the deployment of the emergency slides or slide rafts.
(2) Signal and conditions under which door can be opened or closed and locked or unlocked.
(3) Procedures to verify door status (open or closed and locked or unlocked).
(4) Slide pressure gauge and door pressure gauge.
(5) Cabin pressurization indications and warnings.
(6) Exterior and interior obstacles or hazards to persons or the exit during the opening or closing (*e.g.*, jetway, stairs, mobile passenger lounge, barrier straps).
(7) Signal for arming or disarming.
(8) Procedures to properly arm and disarm the exit.
(9) Procedures to verify girt bar placement for armed and disarmed.
(10) Procedures to verify door is in the correct mode including window adjustments.
(11) Proper procedures and use of operating mechanism to open exit and secure in locked position.
(12) Proper procedures, operation, and use of stair operating mechanism for normal and emergency use.
(13) Proper use of safety straps.
(14) Proper use of barrier straps.
(15) Proper use of locking mechanisms.
(16) Proper use of escape ropes and escape tapes at overwing exits.
(17) Proper use of control handles to close exits and secure in locked position.
(18) Proper use of door locking override systems.
(19) Proper use of slide override systems.
(20) Understanding of door hazards.
(21) Correct body position for door opening.
(22) Protective positions during an evacuation.
(23) Manual operations if pneumatic operations fail.
(24) Functions of door levers, door opening devices, windows, and manual slide inflation systems.
(25) Operation of exits on the flight deck.
(26) Slide, raft, or slide raft transfer, including required steps for girt detachment, bustle removal, safe handling, positioning, re-attachment of girt, and inflation of slide raft.
(27) Use of slide, raft, or slide raft as application for other survival needs.
(28) Use of following exits in normal and emergency modes:
(i) Exits with slides or slide rafts.
(ii) Exits without slides.
(iii) Window exits.
(iv) Tailcone exits.
(v) Ventral stairs.
(vi) Flight deck exits.

2. Subject: Emergency Situations

(a) Task: Emergency Assignments and Procedures Including Coordination among Crewmembers

Subtask: The flight attendant must know emergency procedures for each type of emergency, including unwarranted evacuations, and planned and unplanned land and water evacuations.

(b) Task: Decompression and Physiological Effects of High Altitude (Required When Flight Operations Are Authorized Over 10,000 Feet)

Subtasks: The flight attendant must know:
(1) Symptoms associated with hypoxia.
(2) Recognition of conditions in the cabin that a slow, rapid, or explosive decompression has occurred.
(3) Principles of respiration and Time of Useful Consciousness and why it is different for cabin and flight crewmembers.
(4) Gas expansion and gas bubble formation and how it could effect the crewmember during a decompression.
(5) Incidents of decompression.
(6) Post decompression duties.
(7) Procedures for inter-crew communication and coordination.
(8) Identification of information to be relayed to the flight crew via communication equipment.
(9) Communication with other crewmembers.
(10) Procedures for a slow, rapid, or explosive decompression while the flight attendant is in the cabin.
(11) Procedures for a slow, rapid, or explosive decompression while the flight attendant is in the flight deck.
(12) Awareness of possible flight crew response (*e.g.*, rapid descent) and its effect on the cabin.
(13) Certificate holder's procedures, including the following actions:
(i) Don the nearest oxygen mask.
(ii) Fasten seat belt or hold on to something solid.
(iii) Await notification from the flight deck before moving around the cabin.
(iv) Follow post decompression duties.
(v) Obtain and carry portable oxygen bottle.
(vi) Monitor condition of passengers.
(vii) Open passenger oxygen compartments that have not deployed if supplemental oxygen is needed.
(viii) Administer first aid and first aid oxygen, if necessary.
(ix) Communicate with fellow crewmembers.
(x) Complete required carrier forms.

(c) Task: Fire Inflight or on the Surface

Subtasks:
(1) Classes of fires.
(2) Types of extinguishers appropriate to each class of fire.
(3) Properties of halon extinguishers, including that the potential harmful effects on passengers and crew are negligible compared to the safety benefits achieved by fighting inflight fires aggressively.
(4) Correct methods for fire fighting, including proper use of PBE.
(5) Methods of communication while wearing PBE and using aircraft communication systems.
(6) Proper techniques for PBE hood removal once away from the fire scene.
(7) Need for crewmembers to take immediate and aggressive action in response to signs of an inflight fire.
(8) Requirement to notify the flight deck as soon as possible and maintain constant communication and coordination.
(9) Procedures to identify smoke in cabin, galleys and lower-lobe galleys, or lavatory.
(10) Procedures for handling fire or smoke of undetermined origin.
(11) Procedures for smoke removal, including crew communication and coordination, as well as passenger management, including any precautions.
(12) Procedures for handling fire hidden behind interior panels or enclosed spaces, including removing or otherwise gaining access to the area behind interior panels (*e.g.*, crash ax or other tools) to effectively apply extinguishing agents to the source of the fire.

(13) Procedures to respond to smoke detector activation in lavatory.

(14) Odor of fire (*e.g.*, electrical fire or burning cloth).

(15) Procedures to identify location and source of fire (*e.g.*, in ovens; volatile fuel vapors; light ballast; cabin furnishings; stowage bins and hat racks; trash containers; clothing; APU; jetway; ramp fires).

(16) Procedures to identify class of fire (if possible).

(17) Procedures to assess the intensity of the fire (if possible).

(18) Procedures to communicate with other crewmembers and passengers and respond to the fire, including:

(i) Fight the fire and call flight crew to inform of fire.

(ii) Obtain assistance of other flight attendants.

(iii) Passenger handling.

(iv) Use of interphone and other communication devices.

(v) Use of passenger address system.

(vi) Assign a passenger to locate and inform another flight attendant or flight crewmember, obtain back-up equipment and provide support.

(vii) Locate and retrieve the nearest PBE.

(viii) Remove PBE from stowage, including container or pouch.

(ix) Don PBE and activate oxygen in proper sequence using proper procedures.

(x) Locate and retrieve the nearest appropriate fire extinguisher.

(xi) Remove extinguisher from securing device.

(xii) Prepare extinguisher for use (*e.g.*, break tamper seal, pull pins, release safety latches, and pressurize bottle).

(xiii) Approach source of fire using protective techniques.

(xiv) Maintain safe distance from fire with PBE on

(xv) Operate extinguisher discharge mechanism properly.

(xvi) Discharge extinguisher at base of fire using proper discharge pattern, bottle position and flight attendant body position.

(xvii) Use aircraft communication system with PBE on (as necessary).

(xviii) Maintain and ensure ongoing communication with flight crew.

(xix) Direct passengers to relocate away from fire location, as appropriate.

(xx) Instruct passengers to breathe through clothing.

(xxi) Distribute wet towels, if possible.

(xxii) Relocate nearby portable oxygen bottles and canisters.

(xxiii) Use additional fire extinguishers and other firefighting equipment.

(xxiv) Coordinate ongoing fire control activity with other flight attendants and flight crewmembers.

(xxv) Accept replacement by another flight attendant with PBE and extinguisher (as necessary) to perform continuous firefighting duties.

(xxvi) Use follow-up procedures once fire appears extinguished.

(xxvii) Monitor indications that PBE is reaching time limits of operation.

(xxviii) Remove PBE as usefulness expires or need is eliminated.

(xxix) Position used PBE and extinguishers according to certificate holder procedure.

(xxx) Check conditions of passengers in immediate area.

(xxxi) Report condition of fire and cabin to the flight crew.

(xxxii) Complete required reports.

(19) Training must also include:

(i) *Fire Prevention:* Flight attendant readiness; cabin checks (including stowage of articles that could contribute to fire); articles that may block air vents in the galley; lavatory checks (including importance of material and condition of trash container, spring-loaded flapper door, smoke detection systems, and fire extinguishers); galley checks (including improper stowage of articles in the oven, safe oven operations, cooking and heating limitations, proper stowage of flammable materials around ovens and heating elements or lights and the importance of keeping areas around vents clear); enforcement of smoking regulations; and proper use of electrical equipment (including use of circuit breakers). Crewmembers must also be alert to fires that can occur on board the aircraft while the aircraft is on the ground (e.g., during boarding).

(ii) *Characteristics of an aircraft fire:* Flash-over and criticality of time management; toxic fumes and chemical irritants; review of function, use, and limitations of fire fighting equipment; fire fighting techniques; special factors (including cabin material flammability and toxicity); location of highly combustible and flammable items and equipment; confined space; evacuation of personnel from lower lobe galleys and cabin ventilation.

(iii) *Electrical Equipment and Circuit Breakers:* Procedures for circuit breaker use associated with galleys, service centers, lifts, lavatories, movie screens and other electrical equipment must be emphasized as well as location of accessible (in the passenger cabin) circuit breakers for each system.

(iv) *External Fires on Ground:* Crew coordination; role of flight attendants for exterior aircraft fires; APU, jetway, ramp fires; notification of appropriate airport personnel if necessary.

(d) Task: Land and Water Evacuation

Subtasks:

(1) Recognition of the need for evacuation.

(2) Crew communication and coordination.

(3) Recognition of the importance of maintaining situational awareness and ability to anticipate and adapt as emergency progresses.

(4) Use of evacuation signals.

(5) Brace for impact position for self and passengers.

(6) Importance of selection and briefing of able bodied passengers.

(7) How to assess conditions.

(8) Initiation of evacuation.

(9) Decision not to evacuate.

(10) Use of commands.

(11) Use of protective position.

(12) Passenger behavior (e.g., passive, aggressive, negative and positive panic, hysteria).

(13) Passenger flow control management.

(14) Evacuation of passengers or crewmembers who need the assistance of others.

(15) Toxic smoke and flashover time criticality.

(16) Care of passengers following evacuation.

(17) Evacuation procedures for each type of evacuation, including passenger preparedness, cabin preparation, and crew coordination procedures in accordance with the certificate holder's procedures.

(18) Crew duties and responsibilities for each crew position on each aircraft type on which the flight attendant will serve.

(19) Primary and secondary exit responsibilities.

(20) Raft responsibilities, including the importance of having an effective raft commander.

(21) Launching and boarding of assigned raft.

(22) Passenger briefings for each assigned exit and duty position.

(e) Task: Illness, Injury or Other Abnormal Situations

Subtasks:

(1) The flight attendant must know the following:

(i) Procedures regarding the proper use of emergency medical equipment.

(ii) Unique aircraft cabin conditions that make giving first aid difficult.

(iii) Incapacitated crewmember procedures, including maintaining coverage of minimum crew positions and responsibilities, reseating, and briefing passengers who may be used for exit responsibilities.

(2) The flight attendant must be trained to do the following:

(i) Respond to request for assistance or identify ill or injured individual in need of first aid.
(ii) Communicate and coordinate information with other crewmembers.
(iii) Use interphone to communicate with flight crewmembers.
(iv) Use interphone, public announcement system, or a passenger to locate and inform other flight attendants or other passengers needed to assist.
(v) Request assistance from onboard medical personnel.
(vi) Use proper techniques to move person to specified place on that configuration of airplane, if needed.
(vii) Request assistance, if needed, from other flight attendants, passengers, or flight crew.
(viii) Retrieve and use components of universal precaution equipment, as needed.
(ix) Comply with procedures for taking universal precautions against blood borne pathogens.
(x) Use gloves, mask, eye shield and other protective gear as needed.
(xi) Properly dispose of biohazard.
(xii) Report possible exposure to blood borne pathogens.
(xiii) Retrieve and use contents of first aid kit, EMK, and other emergency medical equipment, according to certificate holder procedures.
(xiv) Retrieve portable oxygen bottle, if needed.
(xv) Request help from persons qualified to use EMK.
(xvi) Request help from ground (airline contact with medical professionals on the ground).
(xvii) Assess condition of person who is ill or injured, including conducting an interview to obtain medical history.
(xviii) Follow certificate holder's first response medical event procedures.
(xix) Use CPR equipment.
(xx) Perform CPR.
(xxi) Follow procedures for passenger who requires CPR during landing.
(xxii) Use AED.
(xxiii) Ensure someone is monitoring passenger who requires oxygen.
(xxiv) Follow procedures for passenger who requires oxygen during landing.
(xxv) Properly stow, reposition and report the use of portable oxygen bottle(s) and other emergency medical equipment.
(xxvi) Coordinate with Emergency Medical Personnel once on the ground.
(xxvii) Follow procedures to handle other passengers onboard while medical personnel board and care for ill or injured passenger.
(xxviii) Inform flight crewmember of equipment used.
(xxix) Complete required reports.

(3) The flight attendant must be trained to recognize and treat the following:
(i) Bleeding.
(ii) Chest pain.
(iii) Burns.
(iv) Injuries to the extremities.
(v) Shock.
(vi) Unconsciousness.
(vii) Allergic reaction.
(viii) Hyperventilation.
(ix) Stroke.
(x) Seizures.
(xi) Diabetic emergencies.
(xii) Childbirth.
(xiii) Abdominal distress.
(xiv) Airsickness.
(xv) Injuries to the skull, spine, neck and chest.
(xvi) Eye injury.
(xvii) Ear distress.
(xviii) The effects of alcohol or drug abuse.
(xix) Infectious diseases and conditions.

(f) Task: Turbulence

Subtasks:
(1) Awareness of turbulence hazards, aircraft behavior in turbulence and the need to maintain personal safety.
(2) Predeparture briefing regarding forecast turbulence related weather conditions.
(3) Announcement requirements.
(4) Two way communication and coordination procedures between flight crewmembers and flight attendants during all phases of flight, including the use of the Fasten Seat Belt sign.
(5) Standardized phraseology and communications regarding anticipated time, intensity and duration of turbulence encounters.
(6) Procedures promoting voluntary passenger seat belt use and compliance with the Fasten Seat Belt sign.
(7) Review of certificate holder history regarding turbulence encounters and injuries, as appropriate.
(8) Location and use of emergency handholds available in the cabin, galley and lavatories (such as, handles, grab bars, or interior wall cutouts) by flight attendants and passengers who are not seated and restrained during turbulence.
(9) Procedures regarding anticipated and unanticipated turbulence encounters, including:
(i) Flight attendant notification by the flight deck.
(ii) Assessing the severity of the turbulence and initiating standard operating procedures based on that assessment.
(iii) Prioritization of flight attendant duties.
(iv) Securing galley and passenger cabin.
(v) Flight attendant's personal safety.
(vi) Handling flight attendants who may become incapacitated during a turbulence encounter.
(10) Handling passengers who may become injured during a turbulence encounter.

(g) Task: Hijacking or Other Unusual Situations

Subtask:
The certificate holder must develop a security program that meets the standards of the TSA security training program for flight attendants. The certificate holder must document that the TSA has approved the security training program for flight attendants and the certificate holder must provide security training to each flight attendant in accordance with a security program approved by the TSA.

(h) Task: Aircraft Occurrences, Accidents, and Incidents

Subtasks:
(1) Importance of crewmember actions.
(2) How crewmember actions affect the outcome of accidents and incidents.
(3) Review and discuss previous aircraft accidents and incidents.

(i) Task: Survival Skills

Subtasks:
(1) Effective survival skills to use in conditions relevant to the certificate holder's route structure (e.g., arctic, desert, jungle).
(2) Specialized survival equipment on the aircraft.

III. Aircraft Specific Task Requirements (*see* § 121.1369)

A. For Each Aircraft Type.

1. Subject: A General Description of the Aircraft

Description, location, function, and operation of the following:

(a) Task: Aircraft Characteristics and Description

Subtasks:
(1) Design.
(2) Major aircraft components and control surfaces.
(3) Principle dimensions.
(4) Interior configuration.
(5) Powerplant.
(6) Range.
(7) Speed.
(8) Altitude.
(9) Passenger seating capacity.

(b) Task: Cabin Configuration

Subtasks:
(1) Flight attendant panels.
(2) Flight attendant jumpseats and restraint systems.

(3) Passenger seating zones.
(4) Passenger seats.
(5) Galley.
(6) Lavatories.
(7) Stowage areas.
(8) Emergency exits.
(9) Oxygen mask compartments.
(10) Passenger service units.
(11) Passenger convenience panels.
(12) Passenger information signs.
(13) Required placards.
(14) Passenger-cargo configurations.
(15) Escape path lighting.

(c) Task: Passenger Seats

Subtasks:
(1) Seat belts.
(2) Shoulder harnesses.
(3) Armrests, footrests and seat recline controls.
(4) Tray tables.
(5) Passenger service units.
(6) Passenger convenience panels on armrests.
(7) Passenger information signs.
(8) Placards.
(9) Passenger entertainment systems.
(10) Passenger flotation equipment.
(11) Any other passenger seating equipment or systems relevant to flight attendant duties and responsibilities.

(d) Task: Air Conditioning, Ventilation, and Pressurization Systems

Subtasks:
(1) Cabin pressurization indicators and systems.
(2) Aircraft environmental control systems.
(3) Any other air conditioning and pressurization equipment or systems relevant to flight attendant duties and responsibilities.

(e) Task: Flight Attendant Jumpseats

Subtasks:
(1) Preflight.
(2) Automatic seat retraction.
(3) Jumpseat headrest.
(4) Restraint system integrity.
(5) Function and operation of the restraint system.
(6) Securing restraint system when not in use.
(7) Flotation equipment.
(8) Any other flight attendant station equipment or systems relevant to flight attendant duties and responsibilities.

(f) Task: Flight Attendant Panels

Subtasks:
(1) Identification and function of controls, switches and indicators on flight attendant panels.
(2) Preflight and use of controls and switches.
(3) Any other flight attendant panel equipment or systems relevant to flight attendant duties and responsibilities.

(g) Task: Carry On Baggage Stowage

Subtasks:
(1) Overhead compartments.
(2) Open overhead racks.
(3) Closets.
(4) Stowage compartments.
(5) Underseat stowage restraint requirements.
(6) Weight restrictions.
(7) Restraint or latching requirements.
(8) Required placards.
(9) Location requirements for oversized items in the passenger cabin.
(10) Designated areas for the carriage of pet containers in the passenger cabin.
(11) Designated areas for the stowage of passenger assistance aids, such as wheelchairs, canes and crutches.
(12) Any other carry on baggage stowage equipment or systems relevant to flight attendant duties and responsibilities.

(h) Task: Communication Systems

Subtasks:
(1) Call system, including:
(i) Call light switches.
(ii) Chime and light indicators when a call is initiated.
(iii) Routine and emergency call light identification.
(iv) Resetting procedures for call light indicators.
(2) Interphone system, including:
(i) Location of handset controls and indicators.
(ii) Function and operation of routine and emergency controls and indicators.
(iii) Interphone system inoperative procedures.
(3) Passenger address system, including:
(i) Location of handset and microphone controls and indicators.
(ii) Passenger address system inoperative procedures.
(iii) Any other communication equipment or systems relevant to flight attendant duties and responsibilities.

(i) Task: Entertainment and Convenience Systems

Subtasks:
(1) Description of aircraft entertainment and convenience systems.
(2) Location and operation of controls and switches including system indicators.
(3) Problem identification, including probable causes and corrective action procedures.
(4) Location of accessible circuit breakers for each system.
(5) Any other entertainment and convenience equipment of systems relevant to flight attendant duties and responsibilities.

(j) Task: Flight Deck Configuration

Subtasks:
(1) Flight crewmember and observer stations.
(2) Portable emergency equipment.
(3) Use of oxygen systems.
(4) Use of flight deck door securing devices and locking systems.
(5) Operation of observer's jumpseat, including function and operation of the restraint system.
(6) Operation of flight deck door including emergency opening procedures.
(7) Emergency exits and means of egress.
(8) Any other flight deck equipment or systems relevant to flight attendant duties and responsibilities.

(k) Task: Galleys

Subtasks:
(1) Ovens.
(2) Refrigeration Units.
(3) Stowage compartments and latching devices.
(4) Carts and braking mechanisms and restraining devices.
(5) Electrical control panels and circuit breakers.
(6) Water system and water shutoff valves.
(7) Oxygen mask compartments.
(8) Lower lobe galleys including operation of escape exits and lifts.
(9) Any other galley equipment or systems relevant to flight attendant duties and responsibilities.

(l) Task: Lavatories

Subtasks:
(1) Washbasins.
(2) Supply compartments and latching devices.
(3) Oxygen mask compartments.
(4) Passenger information signs.
(5) Required placards.
(6) Automatic fire extinguishers.
(7) Fire detection systems.
(8) Water shut off valves.
(9) Water heater switches and indicators.
(10) Interior door locking mechanism and signs.
(11) Special lavatory components (e.g., doors that may be removed to facilitate access to an incapacitated passenger, lavatory walls which retract to allow for stretcher removal around corners and out of certain exits).
(12) Any other lavatory equipment or systems relevant to flight attendant duties and responsibilities.

(m) Task: Required Signs and Placards

Subtasks:
(1) Passenger information signs, including:
(i) No Smoking signs.
(ii) Fasten Seat Belt signs.
(iii) Lavatory Occupied signs.

(iv) Return To Seat signs in the lavatory.
(v) Exit signs.
(2) Aircraft markings, including:
(i) Interior emergency exit markings indicating location of each passenger emergency exit.
(ii) Emergency exit handle markings indicating location of operating handle and instructions for opening exit.
(iii) Emergency equipment markings to identify equipment location.
(3) Aircraft placards, including:
(i) Placards on each forward bulkhead and passenger seat stating Fasten Seat Belt While Seated.
(ii) Placards in each lavatory stating Federal law provides for a penalty for tampering with the smoke detector installed in this lavatory.

(n) Task: Lighting and Electrical Systems

Subtasks:
(1) Interior and exterior lighting.
(2) Cabin lighting systems, including:
(i) Controls.
(ii) Switches.
(iii) Testing procedures, in accordance with certificate holder procedures.
(3) Cabin circuit breakers, including:
(i) Means of access.
(ii) Switches.
(iii) Indicators.

(o) Task: Oxygen Equipment and Systems

Subtasks:
(1) Flightcrew and observer oxygen system, including:
(i) Location of oxygen regulators and quick-donning oxygen masks.
(ii) Emergency operation of oxygen regulator switches and indicators.
(iii) Distinction between ''on demand'' and ''under pressure'' oxygen flow.
(iv) Proper use of oxygen masks.
(2) Passenger oxygen systems, including:
(i) Description and location of each type of oxygen mask and compartment.
(ii) Location of extra masks.
(iii) Description and location of oxygen mask compartment door latching indicators.
(iv) Method to manually open each type of oxygen mask compartment.
(v) Restrictions for repacking oxygen mask compartments.
(vi) Automatic and manual means of system activation.
(vii) Indicators of oxygen system activation.
(viii) Procedure for initiating oxygen flow to the mask(s).
(ix) Procedure for properly donning oxygen mask and testing for oxygen flow.
(x) Procedure for resetting oxygen system in the event oxygen system is not designed to shut off automatically.
(xi) Procedure for activating aircraft system for first aid oxygen, if available.
(xii) Any other fixed oxygen equipment or systems relevant to flight attendant duties and responsibilities.

(p) Task: Notification of Inoperative Equipment

Subtasks:
(1) MEL, including specific cabin equipment and systems pertinent to flight attendant duties that may be inoperative, including the importance of requesting this information during the preflight briefing.
(2) Impact of inoperative cabin equipment and systems on flight attendant duties and procedures.

(q) Task: Emergency Equipment Location

Location of emergency equipment, if not included in emergency equipment training (see paragraph II.C.1 (a) through (d) of this attachment).

(r) Task: Emergency Exit Doors, Plugs and Hatches, Including Doors, Window Exits, Floor Level Exits, Tailcone Exits, Ventral Stairs, Flight Deck Exits, and Any Other Exit Designed for Passenger or Crewmember Egress From the Aircraft

Subtasks:
(1) Location and description of the normal and emergency operation of each emergency exit if this information is not included in Emergency Equipment Training (see paragraph II.C.1.(e) of this attachment).
(2) Any other exit designed for passenger or crewmember egress from the aircraft.
(i) Procedures for using each exit in the normal mode (if applicable).
(ii) Procedures for using each exit in the emergency mode.

(s) Crewmember Rest Facilities

Subtasks:
(1) Operation of emergency systems.
(2) Operation of escape exits.
(3) Operation of escape lifts.
(4) Oxygen systems.
(5) Communication systems.
(6) Restraint systems.
(7) Any additional equipment or systems in the crewmember rest facilities on the aircraft on which the flight attendant serves.

2. [Reserved]

B. [Reserved]

IV. Emergency Training Drill Requirements (*see* § 121.1373)

A. Each flight attendant must operate each exit on each aircraft type on which the flight attendant is to serve in both the normal and emergency modes, including the actions and forces required in the deployment of emergency evacuation slides.
B. Each flight attendant must complete the following emergency training drills during the specified training periods, using those items of installed emergency equipment for each type of aircraft operated by that part 119 certificate holder in which the flight attendant is to serve.
C. Each piece of emergency equipment and training device must be in its fully secured, pinned, or bracketed position, as installed on the aircraft, prior to being operated by each flight attendant during each drill (if the flight attendant does not complete the equipment mountings drill for that piece of equipment) or prior to being operated for each flight attendant during an observation drill.
D. Flight attendants must complete each drill according to the standards and situational awareness markers (CRM competencies) provided in each drill without manual reference or coaching.
E. Successful individual evaluation of each flight attendant's performance by a person authorized to administer proficiency tests is required. Flight attendants who cannot demonstrate the required level of proficiency during testing must be retrained in accordance with the certificate holder's procedures prior to retesting.
F. The operation of the equipment must be identical to that installed in the certificate holder's aircraft on which the flight attendant is to be qualified with respect to weight, dimensions, appearance (e.g., color, placards and markings), features, charge duration (if applicable), controls, types, and operation.

V. Emergency Training Drills—General (*see* § 121.1373)

A. Subject: Job Performance Drills

1. Task: Operation of Each Type of Installed Hand Fire Extinguisher (Job Performance)

(a) *Environment:* The extinguisher must be charged; however, it may be charged with an environmentally friendly agent.
(b) *Task:* This drill is not required for the type of fire extinguisher used in the

protective breathing equipment and firefighting drill (Task 8). Flight attendants must fight an actual or simulated fire. The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Remove fire extinguisher from the brackets (if not completed during the equipment mountings drill).

(2) Prepare extinguisher for use (e.g., rotate handle to pressurize, break tamper seals, pull pin, release safety latch).

(3) Operate extinguisher discharge mechanism properly.

(4) Aim and discharge extinguisher at the base of the fire (actual or simulated ''open flame'') or as close to the source as possible (''hidden fire'') using proper discharge pattern, bottle position and flight attendant body position.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) Effective training scenarios for firefighting should include realistic drills with emphasis on combating hidden fires. To provide realistic training, drills should simulate locations of hidden fires, such as behind sidewall panels, in overhead areas, air conditioning vents, or overhead panels. For example, electrical fires, lavatory fires or fires erupting from failures of lithium-ion batteries such as those used within laptop computers. The intent of the training is to provide crewmembers with the obstacles that would be encountered onboard the aircraft, but it is not intended to have each student remove sidewall panels. A training program should incorporate a method to assess the hidden fire and to combat the hidden fire such as locating the source of the fire, if possible, before applying an extinguishing agent.

(e) Depending on the sophistication of the training device, the flight attendant could utilize a manual release tool that is designed to open the oxygen compartments to gain access to a fire that is suspected in that region, remove a cabin ceiling speaker cover by simply snapping it out of its fixture, or move carry-on baggage from an overhead compartment.

END INFORMATION

BEGIN QPS REQUIREMENT

2. Task: Operation of Each Type of Portable Oxygen Equipment (Job Performance)

(a) *Environment:* The drill does not need to be repeated using each type of portable oxygen bottle installed in the aircraft provided the procedures, oxygen mask tubing, fittings, and the means to activate the oxygen flow are the same from one bottle to the other, regardless of the size of the portable oxygen bottle. Where types differ, the drills must be repeated with the appropriate equipment.

(b) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Remove the bottle or canister from the bracket or stowage (if not completed during the equipment mountings drill).

(2) Retrieve oxygen mask and hose, attach coupling to the high and low outlets.

(3) Use the carrying strap.

(4) Prepare the ''passenger'' for receiving oxygen administration (i.e., no smoking, possibly relocating passenger, removing petroleum products from passenger's face).

(5) Activate the oxygen and test for flow, position and secure the mask to the passenger's face.

(6) Secure the oxygen bottle or canister and position it to monitor the supply.

(7) Demonstrate proper handling techniques if using portable solid state units.

(8) Demonstrate proper placement of hot generators, as per certificate holder procedures, if using solid state units.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also recognize indications regarding duration of oxygen supply.

3. Task: Operation of Each Type of Fixed Oxygen System in the Cabin (Job Performance)

(a) *Environment:* The drill does not need to be repeated using each type of fixed oxygen system installed in the aircraft provided the procedures and the means to activate the oxygen flow, and the method to manually open the compartment, are the same from one system to another. Where types differ, the drills must be repeated with the appropriate equipment.

(b) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Each flight attendant must manually drop oxygen mask and follow the crewmember coordination procedures.

(2) The flight attendant must demonstrate the ability to ''turn on'' the oxygen system, if necessary.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate.

4. Task: Operation of Each Type of Protective Breathing Equipment (Job Performance)

(a) *Environment:* PBE consisting of a portable oxygen bottle and full-face mask must be fully operational and charged. Self contained PBE may be substituted with a training smoke hood that is not operational.

(b) *Task:* This drill is not required for the type of PBE used in the protective breathing equipment and firefighting drill (Task 8). The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Remove PBE from stowage including stowage container (if not accomplished during the equipment mountings drill) and pouch.

(2) Don PBE and activate oxygen in proper sequence and using proper techniques.

(3) Verify proper seal.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also recognize indications regarding duration of oxygen supply.

5. Task: Operation of Each Type of Installed Life Preserver and Each Type of Individual Flotation Means (Job Performance)

(a) *Environment:* See paragraph IV.F of this attachment.

(b) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Remove life preserver from the sealed or closed (actual or simulated) pouch.

(2) Don and secure life preserver and inflate using automatic inflation of at least one chamber.

(3) Partially inflate or simulate inflation of second chamber of life preserver orally.

(4) Practice deflation technique.

(5) Locate and review light activation.

(6) Demonstrate the procedures to use a life preserver for a child (and infant, if applicable).

(7) Demonstrate proper arm placement and use of seat cushion.

(8) Demonstrate use of seat cushion by infant and small child.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also:

(1) Recognize removal procedures for seat cushions, and also recognize any equipment or furnishings that may complement or may hinder the removal of the seat cushion.

(2) Recognize the hazards that can be associated with inflating life preservers in the aircraft.

6. Task: Operation of Each Type of Automated External Defibrillator (AED) (Job Performance)

(a) *Environment:* See paragraph IV.F of this attachment.

(b) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Remove the AED from the bracket or stowage (if not completed during the equipment mountings drill).

(2) Prepare the AED for use and attach leads if necessary.

(3) Prepare the scene and ''passenger'' for use of an AED.

(4) Follow AED prompts for proper use, including the administration of shocks, rescue breathing and the administration of cardiopulmonary resuscitation (CPR) if so prompted, to include the use of the CPR mask.

(5) Detach leads, if required by certificate holder procedures.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also recognize the need for defibrillation.

7. Task: Cardiopulmonary Resuscitation (CPR)—Adult, Child, and Infant (Job Performance)

(a) *Environment:* This drill must be performed using training equipment that creates an effective environment for the accomplishment of the performance drill.

(b) *Task:* This CPR drill is not required if the flight attendant performs CPR during the operation of each type of installed automated external defibrillator. The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Administer CPR, to include the use of the CPR mask, for adult, child and infant CPR.

(2) [Reserved].

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also recognize the need for CPR.

8. Task: Protective Breathing Equipment and Firefighting Drill (Job Performance)

(a) *Environment:* This drill must be performed using training equipment that creates an effective environment for the accomplishment of performance drills using at least one type of hand fire extinguisher that replicates the features and operating mechanisms of the installed fire extinguishers, with the exception of the extinguishing agent, and is appropriate for the type of actual fire being fought while using the type of installed PBE required by § 121.337 or an approved PBE simulation device. A self-contained PBE may be substituted with a training smoke hood which is not operational.

(b) *Task:* The flight attendant must complete at least one approved protective breathing equipment and firefighting drill in which the flight attendant combats an actual fire, during basic qualification training.

(1) For recurrent training, the flight attendant must combat an actual or simulated fire using at least one type of installed hand fire extinguisher or approved training device that is appropriate for the type of actual fire or simulated fire to be fought while using the type of installed PBE required by § 121.337 or an approved PBE simulation device.

(2) Each 36 months, the flight attendant must combat at least one ''hidden fire'' that is actual or simulated (e.g., behind a panel, in a lavatory or with an undisclosed source of origin).

(3) The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(i) Locate source of fire and smoke.

(ii) Remove PBE from stowage container and pouch.

(iii) Don PBE and activate oxygen in proper sequence (activation of oxygen may be simulated).

(iv) Verify seal.

(v) Demonstrate the use of aircraft communication systems (actual or with a training device).

(vi) Select appropriate fire extinguisher.

(vii) Remove the fire extinguisher from brackets/secured position (if not accomplished during the equipment mountings drill).

(viii) Prepare extinguisher for use (e.g., rotate handle to pressurize, break tamper seals, pull pin, release safety latch).

(ix) Approach fire or smoke.

(x) Fight fire using proper techniques (particularly in the case of a ''hidden fire'').

(xi) Operate extinguisher discharge mechanism properly.

(xii) Demonstrate proper passenger handling/protection techniques.

(xiii) Ensure fire is extinguished.

(xiv) Use protective techniques to back away.

(xv) Use proper techniques for PBE removal.

(xvi) Properly secure equipment as per certificate holder's procedures.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also recognize the problem, be aware of PBE duration, and be aware of signals that PBE is no longer generating oxygen to wearer.

9. Task: Cabin Preparation and Evacuation Drills (Land and Water Evacuation) (Job Performance)

(a) *Environment:* This drill must be performed using training equipment that creates an effective environment for the completion of the performance drill.

(b) *Task:* Each flight attendant must participate as either a flight attendant or a passenger in a full, complete, and uninterrupted cabin preparation as outlined in the ''Cabin Preparation and Evacuation for a Planned Land Evacuation'' drill. In addition, if the flight attendant is to be qualified in extended overwater operations, that flight attendant must participate as either a flight attendant or a passenger in a full, complete and uninterrupted cabin preparation as outlined in the ''Cabin Preparation and Evacuation for a Planned Water Landing (Ditching)'' drill.

(c) For the purposes of recurrent training, flight attendants may complete a ''Cabin Preparation and Evacuation for

a Planned Land Evacuation'' drill and a ''Cabin Preparation and Evacuation for a Planned Water Landing (Ditching)'' drill during alternate recurrent training cycles. If the flight attendant has not participated as a flight attendant in one of the cabin preparation and evacuation drills, then the flight attendant must participate as a flight attendant in at least a portion of another evacuation drill.

(d) The flight attendant must participate as a crewmember or a passenger in at least one of the following approved evacuation drills to include crew coordination procedures, cabin preparation and passenger preparation that is applicable to the certificate holder's operations. The flight attendant must also apply tasks and procedures following the prescribed sequence, as priorities allow.

(e) During the initiation phase of the cabin preparation for the planned land evacuation and the planned water landing (ditching), the flight attendant must:

(1) Receive notification from the flight deck, including:

(i) Use of emergency notification signal.

(ii) Confirmation from the flight deck that an emergency landing and evacuation are anticipated.

(2) Communicate with PIC to obtain the following essential information:

(i) Find out the amount of time remaining until landing.

(ii) Find out what type of landing is anticipated (e.g., aircraft configuration, environmental conditions, which exits can be used).

(iii) Establish and confirm signal to assume brace for impact position.

(iv) Confirm signal to evacuate.

(v) Coordinate with other flight attendants.

(3) Prepare the cabin as follows:

(i) Secure galley ensuring all galley components and supplies are properly restrained.

(ii) Adjust cabin lights to full bright.

(iii) Deliver emergency announcement or demonstration.

(f) The flight attendant must complete the following during the drills, and be evaluated and debriefed on the proper use of equipment and procedures.

(1) Conduct a Cabin Preparation and Evacuation for a Planned Land Evacuation.

(i) Conduct initiation phase of the cabin preparation for the Planned Land Evacuation (see paragraphV.A.9.(e) of this attachment.)

(ii) Instruct passengers to secure seatbelts low and tight and review how to release seat belts.

(iii) Instruct passengers on brace for impact position(s) beginning with the position to be assumed by the majority of passengers.

(iv) Conduct passenger review of passenger safety information card.

(v) Instruct passengers on location of exits (primary and alternate).

(vi) Direct passenger attention to the location of escape path lighting.

(vii) Instruct passengers on how to exit down slides or out windows.

(viii) Instruct passengers on use of escape ropes or escape tapes at overwing exits.

(ix) Direct passengers to leave everything behind.

(x) Direct passengers to stay low in a smoke filled cabin.

(xi) Reseat passengers as necessary.

(xii) Brief able bodied passengers on tasks.

(A) Exit operation.

(B) Signals or commands regarding starting the evacuation.

(C) Slide operation.

(xiii) Conduct compliance check.

(xiv) Prepare for landing.

(xv) Provide last minute instructions to passengers.

(xvi) Check exits to ensure they are ready for evacuation.

(xvii) Adjust cabin lighting to dim setting.

(xviii) Secure barrier strap.

(xix) Use proper techniques to fasten flight attendant restraint system.

(xx) Inform PIC of cabin readiness.

(xxi) Perform silent review.

(xxii) Assume flight attendant protective brace position.

(xxiii) Command passengers to assume protective brace position and continue brace commands until the aircraft has come to a complete stop.

(xxiv) Perform assigned duties following emergency landing, as follows:

(A) Remain seated until the aircraft comes to a complete stop.

(B) Open seat belts.

(C) Assess conditions.

(D) Activate emergency lights.

(E) Aggressively initiate evacuation procedures using communication protocols or manage passenger behavior if decision is made not to evacuate.

(F) Activate evacuation signal.

(G) Shout evacuation commands to passengers.

(H) Conduct evacuation at floor level exits.

(1) Assess conditions at exit.

(2) Apply forces necessary to open door in emergency mode and under possible adverse conditions.

(3) Take appropriate precautions for door hazard conditions.

(4) Hold onto assist handle.

(5) Open the exit in the armed mode.

(6) Use manual operation if pneumatic operations fail.

(7) Block and redirect, if necessary.

(8) Secure the exit in the fully open position.

(9) Hold passengers back until exit is open and ready for evacuation.

(10) Pull the manual inflation handle and verify deployment, inflation (e.g., ramp, slide).

(11) Ensure that stairs are positioned for evacuation.

(12) Maintain appropriate protective body and hand positions.

(13) Shout door commands to passengers.

(14) Use passenger flow management control.

(15) Open exits and manage flow control at more than one exit if procedures require responsibility for opening more than one exit.

(16) Direct passengers to most usable doors.

(17) Give commands to able bodied passengers.

(I) Conduct evacuation at over wing exits.

(1) Go to exit (if part of assigned duties).

(2) Assess conditions at exit.

(3) Remove hatch.

(4) Dispose of hatch.

(5) Maintain appropriate protective body and hand positions.

(6) Give commands to passengers at over wing exit.

(7) Control passenger flow at over wing area.

(8) Use escape ropes or escape tapes.

(J) Ensure evacuation of passengers needing assistance.

(K) Evacuate crewmember through most appropriate exit, if crewmember is incapacitated.

(L) Shout commands to helper passengers at the bottom of the slides, stairs or exit.

(M) Remove emergency equipment.

(N) Check flight deck.

(2) Conduct a Cabin Preparation and Evacuation for a Planned Water Landing (Ditching).

(i) Conduct initiation phase of the cabin preparation for the Planned Water Landing (Ditching) (*see* paragraph V.A.9.(e) of this attachment).

(A) Direct passengers to don life vests and instruct them on use.

(B) Don crew life vest.

(C) Instruct passengers to secure seatbelts low and tight and review how to release seat belts.

(D) Instruct passengers on brace for impact position(s) beginning with the position to be assumed by the majority of passengers.

(E) Conduct passenger review of passenger safety information card.

(F) Instruct passengers on location of exits (primary and alternate).

(G) Direct passenger attention to the location of emergency floor level lighting.
(H) Instruct passengers on how to exit down slides or out windows.
(I) Direct passengers to leave everything behind.
(J) Direct passengers to stay low in a smoke filled cabin.
(K) Reseat passengers as necessary.
(ii) Brief able bodied passengers on tasks:
(A) Exit operation.
(B) Signals or commands regarding starting the evacuation.
(C) Positioning raft according to carrier procedures.
(D) Use of slide raft as raft.
(E) Launching raft or slide raft.
(iii) Continue with cabin preparation:
(A) Complete compliance check.
(B) Prepare for landing.
(C) Provide last minute instructions to passengers.
(D) Check exits to ensure they are ready for evacuation.
(E) Adjust cabin lighting to dim setting.
(F) Secure barrier strap.
(G) Use proper techniques to fasten flight attendant restraint system.
(H) Inform PIC of cabin readiness.
(I) Perform silent review.
(J) Assume flight attendant protective brace position.
(K) Command passengers to assume protective brace position and continue to shout brace commands until the aircraft has come to a complete stop.
(iv) Perform assigned duties following impact to include the following:
(A) Remain seated until the aircraft has stopped.
(B) Open seat belts.
(C) Assess conditions (e.g., watch for water line).
(D) Activate emergency lights.
(E) Aggressively initiate evacuation using communication protocols.
(F) Activate evacuation signal.
(G) Shout commands to passengers.
(H) Conduct evacuation at floor level exits as follows:
(*1*) Assess conditions at exit.
(*2*) Apply forces necessary to open door in emergency mode and under possible adverse conditions.
(*3*) Take appropriate precautions for door hazard conditions.
(*4*) Hold onto assist handle.
(*5*) Open the exit.
(*6*) Use manual operation if pneumatic operations fail.
(*7*) Block and redirect if necessary.
(*8*) Secure the exit in the fully open position.
(*9*) Hold passengers back until exit is open and ready for evacuation.
(*10*) Pull the manual inflation handle(s) and verify deployment, inflation.
(*11*) Review deployment procedures for inflated slide and launch rafts if aircraft equipped with life rafts.
(*12*) Simulate evacuating passengers into raft, slide raft, or water.
(*13*) Maintain appropriate protective body and hand positions.
(*14*) Shout door commands to passengers.
(*15*) Use passenger flow management control.
(*16*) Direct passengers to most useable doors.
(*17*) Give commands to able bodied passengers.
(*18*) Ensure evacuation of passengers needing assistance.
(*19*) Inflate crew life vest.
(I) Conduct evacuation at over wing exit.
(*1*) Go to exit (if part of assigned duties).
(*2*) Remove hatch.
(*3*) Dispose of hatch as per certificate holder procedures.
(*4*) Review raft launching procedures in overwing area.
(*5*) Use escape ropes or tapes at overwing area (if applicable).
(*6*) Give commands to passengers at over wing exit.
(*7*) Control passenger flow at over wing area.
(g) Situational Awareness (CRM Markers): The flight attendant must communicate and coordinate (through discussion or actions) with other crewmembers during the drill, as appropriate. The flight attendant must also:
(1) Demonstrate awareness of his or her duties as a crewmember and duties of other crewmembers during an evacuation
(2) Review procedures for evacuation of passengers or crewmembers needing assistance.

END QPS REQUIREMENT

BEGIN INFORMATION

(h) To create a realistic training environment, a certificate holder may choose to integrate variables into the scenarios that happen during actual emergencies (e.g., running out of time prior to completing a cabin preparation, change in the type of evacuation or landing). For aircraft for which more than one flight attendant is required, drills could also be conducted in which the flight attendant finds himself or herself acting alone (simulating incapacitation of other flight attendants). The ''solo'' drill demonstrates the ability of the flight attendant to take command of a situation using available safety equipment and the capacity to respond to changing situations without the assistance of other crewmembers.
(i) While adding variable to the scenarios is a good training tool, a scenario should not incorporate excessive variables that would overload a flight attendant, nor be so limited on variables that there is a reduced training value to the exercise.
(j) An effective practice is to provide flight attendants a demonstration of ''textbook'' cabin preparation or evacuation drills conducted in accordance with the certificate holder's procedures. Certificate holders should also be aware of the desirability of flight crewmembers and flight attendants performing evacuation scenarios together. When this is not possible, certificate holders should include information addressing the roles of other crewmembers during emergency evacuation situations.

END INFORMATION

BEGIN QPS REQUIREMENT

10. Task: Evacuation Drills (Job Performance)

(a) *Environment:* This drill must be performed using training equipment that creates an effective environment for the accomplishment of performance drills.
(b) The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:
(c) During the initiation phase of the Unplanned land evacuation and the unplanned water evacuation drills, the flight attendant must:
(1) Issue brace for impact commands at the first sign a problem exists that could lead to impact of evacuation.
(2) Remain seated until the aircraft comes to a complete stop.
(3) Open seat belts.
(4) Assess conditions.
(5) Activate emergency lights.
(6) Aggressively initiate evacuation procedures using communication protocols or manage passenger behavior if decision is made not to evacuate.
(7) Activate evacuation signal.
(8) Shout evacuation commands to passengers.
(9) Conduct evacuation at floor level exits.
(10) Assess conditions at exit.
(11) Apply forces necessary to open door in emergency mode and under possible adverse conditions.
(12) Take appropriate precautions for door hazard conditions.
(13) Hold onto assist handle.

(14) Open the exit in the armed mode.
(15) Use manual operation if pneumatic operations fail.
(16) Block and redirect if necessary.
(17) Secure the exit in the fully open position.
(18) Hold passengers back until exit is open and ready for evacuation.

(d) *Task:* Conduct an Unplanned Land Evacuation

(1) Conduct initiation phase of the unplanned land evacuation (See paragraph V.A.10(c) of this attachment.)
(2) Pull the manual inflation handle(s) and verify deployment, inflation (e.g., ramp, slide) (in the case of stairs, ensure they are positioned for evacuation).
(3) Maintain appropriate protective body and hand positions.
(4) Shout door commands (land evacuation) to passengers.
(5) Use passenger flow management control.
(6) Open exits and manage flow control at more than one exit if procedures require responsibility for opening more than one exit.
(7) Direct passengers to most useable doors.
(8) Give commands to able bodied passengers.
(9) Conduct evacuation at over wing exits.
(i) Go to exit.
(ii) Assess conditions at exit.
(iii) Remove hatch.
(iv) Dispose of hatch.
(v) Maintain appropriate protective body and hand positions.
(vi) Give commands to passengers on how to egress through exit.
(vii) Control passenger flow at over wing area.
(viii) Use escape ropes or escape tapes.
(10) Ensure evacuation of passengers needing assistance..
(11) Evacuate crewmember through most appropriate exit, if crewmember is incapacitated.
(12) Shout commands to helper passengers at the bottom of the slides, stairs or exit.
(13) Remove emergency equipment.
(14) Check flight deck.
(e) *Task:* Conduct an Unplanned Water Evacuation.
(1) Conduct initiation phase of the unplanned water evacuation (*See* paragraph V.A.10(c) of this attachment.).
(2) Pull the manual inflation handle(s) and verify deployment and inflation (if applicable).
(3) Review procedures to inflated slide and launch rafts if aircraft equipped with life rafts.
(4) Evacuate passengers into raft, slide raft, or water.
(5) Maintain appropriate protective body and hand positions.
(6) Shout door commands (water evacuation) to passengers.
(7) Use passenger flow management control.
(8) Direct passengers to most useable doors.
(10) Give commands to able bodied passengers.
(11) Ensure evacuation of passengers needing assistance.
(12) Inflate crew life vest.
(13) Conduct evacuation at over wing exit.
(i) Go to exit.
(ii) Remove hatch.
(iii) Dispose of hatch as per certificate holder procedures.
(iv) Review procedures to launch rafts in over wing area.
(v) Use escape ropes or escape tapes at over wing area.
(vi) Give commands to passengers at over wing exit.
(vii) Control passenger flow at over wing area.
(viii) Ensure evacuation of passengers needing assistance.
(f) *Task:* Control An Unwarranted (Unneeded) Evacuation.
The flight attendant must perform the following:
(1) Take protective position if at door.
(2) Coordinate with crew.
(3) Stop evacuation; use strong commands.
(g) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate. The flight attendant must also review procedures for evacuation of passengers needing assistance.

11. Task: Equipment Mountings Drill (Job Performance)

(a) *Environment:* Each piece of emergency equipment or training device must be in the fully secured or pinned position and using the identical bracketing or securing system that is used on the aircraft prior to being operated by each flight attendant during each drill or prior to being operated by each flight attendant during the equipment mountings drill.
(b) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:
(1) Completely remove each piece of portable emergency equipment from its bracket or securing system.
(2) Resecure each piece of portable emergency equipment in its bracket or securing system or properly stow according to certificate holder procedures.
(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate. The flight attendant must also recognize the importance of removing equipment as quickly as possible.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) For realistic training, it is important that the emergency equipment used in the drills is identical to the equipment found on the aircraft in relation to the bracketing or securing systems. For example, location of the equipment in overhead bins, emergency equipment stowage doghouses, and the spacing of equipment relative to other equipment.
(e) The FAA recognizes that some training equipment, facilities and scenarios make this training requirement difficult to support. It is important to give certificate holders maximum flexibility to comply with the performance requirement that each flight attendant completely remove and replace each piece of portable emergency equipment from the bracket or securing system that is identical to those systems that a flight attendant would find on each aircraft on which they are qualified.
(f) It is acceptable that this performance requirement be completed during the individual drills or the equipment mountings drill.

END INFORMATION

BEGIN QPS REQUIREMENT

12. Task: Ditching Survival Drill (Dry Training Environment) (Job Performance)

(a) *Environment:* The certificate holder may substitute a raft, provided there are no substantive differences with respect to weight, dimensions, appearance, features, and operations and the certificate holder provides differences training approved by the FAA. However, when flight attendants are trained and qualified on multiple aircraft types that are extended overwater equipped, the flight attendant must complete ''hands on'' drill training on each different raft and slide raft on a training schedule acceptable to the FAA, not to exceed a 5 year recurrent training cycle.

(b) *Task:* The flight attendant must participate in the following approved dry ditching drill as applicable to the certificate holder's procedures and approved extended overwater operations. The flight attendant may complete this drill in conjunction with the one time wet ditching drill to initially qualify to serve on an aircraft that is used for extended overwater operations. In addition, the flight attendant must perform this drill during recurrent or requalification training, as applicable.

(c) The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Identify boarding station and board raft.

(2) Review the need to crawl and stay low.

(3) Discuss the importance of distributing the load.

(4) Review the need to stay attached to the aircraft as long as possible, and operation of the quick disconnect.

(5) Review the need to get clear of fuel-covered water and debris.

(6) Locate and deploy the sea anchor.

(7) Discuss the importance of upwind and downwind.

(8) Retrieve the survival kit and review contents.

(9) Identify inflation valve and review operation of inflation pump and raft repair kit.

(10) Identify items such as bailing bucket and sponge for bailing raft dry.

(11) Erect the canopy and discuss methods for collecting rain water and water purification techniques.

(12) Demonstrate how canopy can be used in both hot and cold climates.

(13) Review signaling devices located in survival kits or brought to the raft.

(14) Discuss the cautions associated with flares and sea dye marker and proper use.

(15) Point out raft lights.

(16) Review alternate signaling devices (e.g., mirrors).

(17) Locate and demonstrate use of heaving line. Review techniques to retrieve survivors.

(18) Discuss raft management including distribution of duties to passengers and ongoing physiological effects of the situation.

(19) Discuss long term water survival techniques or strategies.

(20) Discuss static line breaking strain.

(21) Discuss transporting incapacitated persons from the aircraft into the rafts.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate.

13. Jumpseat Drill (Job Performance)

(a) *Environment:* Each flight attendant must complete a flight attendant jumpseat drill by using at least one type of installed flight attendant jumpseat from an aircraft on which the flight attendant will be qualified to serve.

(b) *Task:* This is an emergency drill requirement that the flight attendant must complete for the certificate holder for which the flight attendant is employed. This drill is not required if the flight attendant has completed any drill using at least one type of installed flight attendant jumpseat from an aircraft on which the flight attendant will be qualified to serve during an exit device operation drill or evacuation drill. During the completion of proficiency drills, the flight attendant must operate at least one exit starting from a seated position on at least one type of installed flight attendant jumpseat from an aircraft on which the flight attendant will be qualified to serve during an exit device operation drill, evacuation drill or flight attendant jumpseat drill.

(c) The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Preflight check of the flight attendant jumpseat.

(2) Properly secure restraint system.

(3) Demonstrate brace position appropriate for flight attendant jumpseat location on aircraft, as per certificate holder procedures.

(4) Proper methods of releasing restraint device, in accordance with per certificate holder procedures.

(5) Proper method of stowing flight attendant jumpseat and restraint system, in accordance with certificate holder procedures.

(d) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate..

END QPS REQUIREMENT

BEGIN INFORMATION

(e) Proper use of the flight attendant jumpseat and restraint system is integral to a flight attendant being able to initiate an effective aircraft evacuation. The rule has a requirement for flight attendants who receive initial or transition training on any aircraft type to receive academic training on the use the flight attendant jumpseat for that aircraft type. In addition, the rule requires job performance training in each flight attendant jumpseat by aircraft type during basic qualification training or Aircraft Operating Experience (AOE).

(f) Flight attendants will not always be seated in their jumpseats when they initiate the commands and actions to open an exit in the emergency mode during an evacuation. For example, a flight attendant could be in the cabin performing safety related duties during aircraft taxi, or in the cabin of an aircraft that is parked at the gate during boarding when an evacuation may need to be initiated. The drill allows the certificate holder to give flight attendants the opportunity to reinforce effective jumpseat techniques during exit operation, but allows certificate holders the flexibility to incorporate other ''starting points'' into exit device operation scenarios.

END INFORMATION

BEGIN QPS REQUIREMENT

B. Subject: One Time Job Performance Drills

1. Ditching Survival Drill (Wet Training Environment) (Job Performance)

(a) *Environment:* The certificate holder may substitute a raft, provided there are no substantive differences with respect to weight, dimension, appearance, features, and operations, and the certificate holder provides differences training approved by the Administrator.

(b) *Task:* This is a one-time emergency drill requirement that the flight attendant must accomplish for the certificate holder for which the flight attendant is employed. This one time drill must be given in basic qualification or transition training, whichever training initially qualifies the flight attendant to serve on an airplane that is used for extended overwater operations.

(c) Activities prior to raft boarding may be done in classroom, airplane, or airplane mockup. Raft boarding and subsequent activities must be done in water.

(d) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Don and use life vest as a means of flotation.

(2) Use flotation seat cushion for adult and child or infant.

(3) Board the raft.

(4) Demonstrate effective raft management (e.g., distribute passengers and deploy sea anchor).

(5) Use heaving lines and life lines.

(6) Erect the raft canopy.

(7) Manage passengers, including distribution of duties to passengers.

(e) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate.

2. Emergency Evacuation Egress Slide Drill (Job Performance)

(a) *Environment:* Each flight attendant must complete an emergency evacuation slide drill by egressing the aircraft or approved training device using at least one type of installed emergency evacuation slide from an aircraft on which the flight attendant will be qualified to serve.

(b) *Task:* This drill is required when the flight attendant is qualifying on an aircraft that is equipped with emergency evacuation slides. This drill is not required if the flight attendant egresses the aircraft or approved training device using at least one type of installed emergency evacuation slide from an aircraft on which the flight attendant will be qualified to serve during the evacuation drill. (*See* paragraph V.A.10 of this attachment.)

(c) This is a one-time emergency drill requirement that the flight attendant must complete for the certificate holder for which the flight attendant is employed. This one time drill must be given in basic qualification, transition training, or recurrent training, whichever training initially qualifies the flight attendant to serve on an aircraft with evacuation slides.

(d) The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Observe the airplane exits being opened in the emergency mode and the associated exit slide or slide raft pack being deployed and inflated or perform the tasks resulting in the completion of these actions (if not completed during the emergency evacuation including the use of a slide observation drill).

(2) Use the correct method to egress the aircraft and descend the slide.

(e) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate.

3. Emergency Evacuation Egress Drill (Job Performance)

(a) *Environment:* Each flight attendant must complete an emergency evacuation drill by egressing the aircraft or approved training device using at least one type of installed emergency exit, from an aircraft on which the flight attendant will be qualified to serve.

(b) *Task:* This is a one-time emergency drill requirement that the flight attendant must complete for the certificate holder for which the flight attendant is employed. This one time drill must be given in basic qualification or transition, whichever training initially qualifies the flight attendant to serve on an aircraft that is not equipped with evacuation slides. An emergency exit that has stairs may not be used.

(c) The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Observe the aircraft exits being opened in the emergency mode or perform the tasks resulting in the completion of these actions

(2) Use the correct method to egress the aircraft, or training device that is representative of the aircraft in relation to sill height from the ground or window exit to the wing.

(d) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate.

END QPS REQUIREMENT

BEGIN INFORMATION

(e) If the flight attendant will be qualified to serve on an aircraft with emergency evacuation slides (e.g., B–737), as well as an aircraft that does not have emergency evacuation slides (e.g., CRJ), then the flight attendant must complete both the emergency evacuation egress slide drill and the emergency evacuation egress drill. To achieve a realistic training environment, certificate holders are encouraged to integrate these drills into other required performance drill scenarios.

Examples:

(1) If a flight attendant qualifies on a B–737 and a CRJ in basic qualification training, then the flight attendant must complete an emergency evacuation egress slide drill and an emergency evacuation egress drill.

(2) If a flight attendant qualifies on CRJ in basic qualification training, then the flight attendant must complete an emergency evacuation egress drill.

(3) If a flight attendant qualifies on B–737 in basic qualification training and the certificate holder acquires a CRJ 2 years later and the flight attendant has transition training on the CRJ, then the flight attendant must complete and emergency evacuation egress slide drill during basic qualification training and an emergency evacuation egress drill during transition training on the CRJ.

(4) If a flight attendant qualifies on a CRJ in basic qualification training, the certificate holder acquires B–737s 2 years later, and the flight attendant has transition training on the B–737, then the flight attendant must complete an emergency evacuation egress drill during basic qualification training and an emergency evacuation egress slide drill during transition training on the B–737.

END INFORMATION

BEGIN QPS REQUIREMENT

C. Subject: Observation Drills

1. Task: Removal From the Aircraft or Training Device and Inflation of Each Type of Installed Life Raft (Observation Drill)

(a) *Environment:* See paragraph IV.F. of this attachment.

(b) *Task:* The flight attendant must complete the following during the observation drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Specific attachment points in the aircraft.

(2) How and where to attach life raft to aircraft.

(3) Safe inflation techniques.

(4) Launching points.

(5) Righting overturned rafts, if applicable.

2. Task: Deployment, Inflation and Detachment From the Aircraft of Each Type of Installed Slide or Slide Raft Pack (Observation Drill)

(a) *Environment: See* paragraph IV.F. of this attachment.

(b) *Task:* The flight attendant must complete the following during the observation drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Proper use of the exit operating handle.

(2) Location and color of the inflation handle.

(3) Demonstration of forces and actions required to inflate slide or slide raft.

(4) Sound of inflating slide or slide raft.

(5) Proper inflation and position of the slide or slide raft.

(6) Location of the ditching handle or laces.

(7) Demonstration of the forces and actions required to use the ditching handle including secondary actions.

(8) Lanyard and the removal or cutting of lanyard using the certificate holder's procedures.

(9) Righting overturned rafts, if applicable.

3. Task: Emergency Evacuation Including the Use of a Slide (Observation Drill)

(a) *Environment:* See paragraph IV.F. of this attachment.

(b) *Task:* The flight attendant must complete the following during the observation drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Correct methods of evacuation.

(2) Correct methods of entering the slide.

(3) Necessity for helpers at the bottom of slide.

4. Task: Non-Floor Level Exits in the Flight Deck Through Which a Crewmember May Egress the Aircraft (Observation Drill)

(a) *Environment: See* paragraph IV.F. of this attachment.

(b) *Task:* Each flight attendant must observe the operation of any additional exits in the flight deck that crewmembers may use to egress the aircraft type for which the flight attendant is qualifying. The flight attendant may receive AOE credit for observing the exit operation on the aircraft or in an approved training device. The flight attendant must complete the following during the observation drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Assesses conditions outside the exit to determine exit usability.

(2) Correct use of the exit operating mechanism including hand and body position.

(3) Use of proper terms and procedures.

(4) Correct positioning of the escape device.

(5) Method to secure exit in fully opened position or ensuring correct stowage position.

(6) Knows appropriate protective hand and body positions.

(7) Access to escape tapes, escape ropes or inertial reels.

5. Task: Flight Deck Fixed Oxygen System (Observation Drill)

(a) *Environment: See* paragraph IV.F. of this attachment.

(b) *Task:* The flight attendant must complete the following during the observation drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Access oxygen mask and remove from stowage.

(2) Use of proper procedures to don oxygen mask and activate oxygen in proper sequence for an emergency.

(3) Re-securing of equipment.

(4) Observe the locations of the flight deck fixed oxygen system during AOE flight.

VI. Emergency Training Drills—Aircraft Specific (*see* § 121.1373)

A. Subject: Exit Device Operation

1. Task: Floor Level Door Exit Device Operation (Normal Mode) (Job Performance)

(a) *Environment:* See paragraph IV.F. of this attachment. Equipment may be substituted provided there is no substantive difference with respect to weight, dimensions and appearance and the flight attendant has been provided with training on differences between training equipment and the actual aircraft exit. Equipment may not be substituted if the forces and actions necessary to operate the equipment are different or if the operating mechanism is different.

(b) *Task:* The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Identify signal and conditions under which each door can be opened and closed.

(2) Assess the exterior and interior conditions for obstacles or hazards to persons or the exit during the opening and closing (*e.g.*, jetway, stairs, barrier straps).

(3) Follow procedure to ensure flight attendant awareness at armed boarding door prior to aircraft pushback.

(4) Identify signal for arming and disarming.

(5) Coordinate and communicate.

(6) Properly arm and disarm the exit.

(7) Verify girt bar placement for armed and disarmed.

(8) Verify door is in the correct mode.

(9) Use proper techniques for the operating mechanism (such as door handles to open exit and secure in locked position).

(10) Secure safety strap then unsecure safety strap; release locking mechanism.

(11) Properly use control handles to close exit and secure in locked position.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate.

2. Task: Floor Level Door Exit Device Operation (Emergency Mode) (Job Performance)

(a) *Environment:* See paragraph IV.F. of this attachment. Equipment may be substituted provided there is no substantive difference with respect to weight, dimensions and appearance and the flight attendant has been provided with training on differences between training equipment and the actual aircraft exit. Equipment may not be substituted if the forces and actions necessary to operate the equipment are different or if the operating mechanism is different.

(b) *Task:* The drill and door operations must be performed in a manner that resembles an actual evacuation. The flight attendant's voice commands and actions during the drill must be aggressive and easily understood. The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Position escape device.

(2) Verify the exit is in the correct mode.

(3) Recognize the signal for or the conditions under which the exit is to be opened in the emergency mode.

(4) Use proper voice commands to passengers.

(5) Assess conditions outside the exit to determine the exit usability (e.g., clear of obstruction, fire, aircraft attitude).

(6) Open the exit in the armed mode and secure the exit in the fully open position.

(7) Hold onto assist handle.

(8) Pull the manual inflation handle(s) and verify deployment, inflation (e.g., ramp, slide).

(9) Maintain appropriate protective body and hand positions.

(10) Follow crew coordination procedures.

(11) Access release handle(s) (*e.g.*, Slide disconnect, jettison tailcone, ventral stairs).

(12) Recognition of when it is appropriate to exit the aircraft.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate. In addition, the flight attendant must:

(1) Be aware of passenger flow and traffic to all exits during the evacuation.

(2) Be aware of additional exit responsibilities.

3. Task: Cabin Window Exit Device and Plug or Hatch Exit Device Operation (Job Performance)

(a) *Environment:* See paragraph IV.F. of this attachment. Equipment may be substituted provided there is no substantive difference with respect to weight, dimensions and appearance and the flight attendant has been provided with training on differences between training equipment and the actual aircraft exit. Equipment may not be substituted if the forces and actions necessary to operate the equipment are different or if the operating mechanism is different.

(b) *Task:* The drill and door operations must be performed in a manner that resembles an actual evacuation. Commands must be aggressive and easily understood. Each flight attendant must operate each cabin window exit device and plug or hatch exit device, which has a different operating mechanism. The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Recognize the signal for or the conditions under which the exit is to be opened.

(2) Assess conditions outside the exit to determine exit usability (*e.g.*, clear of obstruction, fire, aircraft attitude).

(3) Open and correctly stow the exit (if applicable).

(4) Give commands to passengers for exiting exit.

(5) Verbally describe correct exit placement following removal (if applicable) if the training procedures differ from the operational procedures.

(6) Pull the manual inflation handle (if applicable) and verify deployment (*e.g.*, slide ramp), if applicable.

(7) Assume and maintain appropriate protective body and hand positions.

(8) Access escape tapes or escape ropes.

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate. In addition, the flight attendant must:

(1) Be aware of passenger flow and traffic to all exits during the evacuation.

(2) Be aware of additional exit responsibilities.

4. Task: Any Additional Emergency Exits Required for Type Certification (Job Performance)

(a) *Environment: See* paragraph IV.F. of this attachment. Equipment may be substituted provided there is no substantive difference with respect to weight, dimensions and appearance and the flight attendant has been provided with training on differences between training equipment and the actual aircraft exit. Equipment may not be substituted if the forces and actions necessary to operate the equipment are different or if the operating mechanism is different.

(b) *Task:* The drill and door operations must be performed in a manner that resembles an actual evacuation. Commands must be aggressive and easily understood. Each flight attendant must operate any additional emergency exit devices required for type certification through which crewmembers or passengers may egress the aircraft. In the case of some aircraft, an exit required for type certification may be located on the flight deck. In this case, the flight attendant must complete performance drills on that exit. The flight attendant must complete the following during the drill, and be evaluated and debriefed on the proper use of equipment and procedures:

(1) Recognize the signal for or the conditions under which the exit is to be opened.

(2) Assess conditions outside the exit to determine exit usability (*e.g.*, clear of obstruction, fire, aircraft attitude).

(3) Open and correctly stow the exit (if applicable).

(4) Give commands to passengers for exiting exit.

(5) Verbally describe correct exit placement following removal (if applicable) if the training procedures differ from the operational procedures.

(6) Pull the manual inflation handle (if applicable) and verify deployment (*e.g.*, slide ramp), if applicable.

(7) Assume and maintain appropriate protective body and hand positions.

(8) Access escape tapes or escape ropes and access release handle(s) (*e.g.*, slide disconnect).

(c) *Situational Awareness (CRM Markers):* The flight attendant must communicate and coordinate (through discussion or action) with other crewmembers during the drill, as appropriate. In addition, the flight attendant must:

(1) Be aware of passenger flow and traffic to all exits during the evacuation.

(2) Be aware of additional exit responsibilities.

END QPS REQUIREMENT

BEGIN INFORMATION

(d) The Type Certification Data Sheets for all aircraft are available online at: *http://www.airweb.faa.gov/Regulatory_and_Guidance_Library/rgMakeModel.nsf/MainFrame?OpenFrameSet.*

B. [Reserved]

Attachment 3 of Appendix S to Part 121

Training and Evaluation Requirements for Flight Attendant Training Curricula (Basic Qualification), Categories (New Hire, Initial, Transition, Emergency, Recurrent, and Requalification), and Aircraft Operating Experience

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BEGIN QPS REQUIREMENT

A. Training and Evaluation Requirements (see §§ 121.1301, 121.1331, 121.1341, 121.1343, 121.1361)

1. How must the task requirements required for instruction and evaluation in each curriculum be determined?

(a) To determine the tasks in which each flight attendant must be trained and evaluated, the certificate holder must use the task listings provided in the following table. The tasks must be specific to the aircraft types (as appropriate), and must be adjusted for and kept current with the certificate holder's operation as reflected in the FAA approved operations specifications and FAOM, as amended.

(b) If the certificate holder adds tasks or environments to those listed in Table 2A, it must further develop the tasks or environments to include the requirement and frequency for training and evaluation in each specific category of training listed in the table. These changes must be submitted to the POI for approval.

(c) The recurrent curriculum requirements in the following table also include the frequency during which each flight attendant must be trained and evaluated in each task. The table indicates which tasks must be completed by each flight attendant every 12 months. The table also indicates which tasks must be completed by each flight attendant once every 36 months.

2. Individuals authorized to administer flight attendant training, evaluation, and aircraft operating experience

TABLE 3A—PERSONS AUTHORIZED TO ADMINISTER FLIGHT ATTENDANT TRAINING, EVALUATION, AND OBSERVATION ACTIVITIES UNDER SUBPART BB—SEE § 121.1323 OF THIS PART FOR SPECIAL LIMITED AUTHORIZATIONS FOR INITIAL CADRE PERSONNEL

[See §§ 121.1291,121.1321, 121.1323, 121.1387]

Flight attendant training, evaluation, and observation activities under subpart BB (by aircraft type)	Employer and position						
	Other contractor		Part 142 or other part 119 certificate holder		The part 119 certificate holder		FAA
	Flight attendant instructor [4]	Subject matter expert [3]	Flight attendant instructor [4]	Check flight attendant [1]	Flight attendant instructor [4]	Check flight attendant [1]	Aviation safety inspector (cabin safety)
Academic Training (New Hire, Initial, Emergency, Differences, Recurrent, and Requalification)	X	X	X	X	X	X	
Proficiency Test [2] (Emergency, Recurrent, Requalification)					X	X	X
Supervision of Operating Experience						X	
Proficiency Check (Aircraft Operating Experience)						X	X

[1] Requires authorization by the Administrator for specific duties to be performed.
[2] Persons qualified to administer proficiency tests, with the exception of FAA Aviation Safety Inspectors (Cabin Safety), must meet the requirements of § 121.1387 of this part.
[3] Subject Matter Experts, who meet the requirements of § 121.1291 of this part and this QPS, may conduct specific flight attendant training.
[4] Persons qualified to administer flight attendant training must meet the requirements of § 121.1291 of this part.

END QPS REQUIREMENT

BEGIN INFORMATION

(a) A flight attendant instructor may not be physically able to perform certain performance drills due to injury, pregnancy, or disability. Therefore, the FAA allows those individuals to complete the required training to qualify as a flight attendant instructor, with the exception of those performance drills the person can not physically perform. However, the FAA only allows flight attendant instructors to instruct in performance drills that they were able to physically perform within the past 12 months as part of basic qualification or recurrent flight attendant training.

(b) [Reserved]

END INFORMATION

BEGIN QPS REQUIREMENT

3. The use of Subject Matter Experts

(a) Under § 121.1291, a subject matter expert, with specific technical knowledge on a subject, may be used to conduct training on specific tasks, in accordance with the following:

(1) Except as provided in paragraph A.3.(a)(2) of this attachment, when flight attendant training is provided by a subject matter expert, a qualified flight attendant instructor must be present.

(2) Subject matter experts in certain subject areas may provide flight attendant training on the following specific tasks without a qualified flight attendant instructor present:

(i) Firefighting and firefighting equipment.

(ii) Emergency medical events and emergency medical equipment.

(iii) Hazardous materials recognition.

(b) [Reserved]

END QPS REQUIREMENT

BEGIN INFORMATION

4. How to determine flight attendant eligibility for Requalification Training

TABLE 3B—FLIGHT ATTENDANT: REQUALIFICATION

[§ 121.1309]

No person may serve as a flight attendant if that person becomes unqualified by failing to meet Recurrent training requirements	
To be requalified the flight attendant must complete § 121.1301, as applicable, or comply with the appropriate phase of Requalification	
If the flight attendant has been unqualified for:	Then the flight attendant may requalify by completing:
Less than 12 months:	
A flight attendant who misses Recurrent training but does not miss a complete Recurrent Flight Attendant Training Cycle.	Phase I Requalification (§ 121.1309(a)(1)): • Current Recurrent Flight Attendant Training Cycle. • Base month not changed.
A flight attendant that misses an entire Recurrent Flight Attendant Training Cycle.	Phase I Requalification (§ 121.1309(a)(2)): • Current Recurrent Flight Attendant Training Cycle. • Complete all study materials and evaluations from the previous Recurrent Flight Attendant Training Cycle.

TABLE 3B—FLIGHT ATTENDANT: REQUALIFICATION—Continued

[§ 121.1309]

No person may serve as a flight attendant if that person becomes unqualified by failing to meet Recurrent training requirements	
To be requalified the flight attendant must complete § 121.1301, as applicable, or comply with the appropriate phase of Requalification	
If the flight attendant has been unqualified for:	Then the flight attendant may requalify by completing:
12 months or more, but less than 24 months:	• Flight attendants qualified in extended overwater operations must participate in a cabin preparation and evacuation drill (water) if the drill is not part of the current Recurrent Flight Attendant Training Cycle. • Base month may change.
24 months or more:	Phase II Requalification: • Current Recurrent Flight Attendant Training Cycle. • Complete all study materials and evaluations from the previous Recurrent Flight Attendant Training Cycle. • Flight attendants qualified in extended overwater operations must participate in a cabin preparation and evacuation drill (water) if the drill is not part of the current Recurrent Flight Attendant Training Cycle. • Base month may change. • Ground based briefing with a representative from the certificate holder. The purpose of this briefing is to cover all new policies procedures or security requirements applicable to flight attendant duties that have been updated, modified or implemented since the person last served as a flight attendant for that certificate holder. Phase III Requalification • Basic Qualification Training. • Base month may change. • 5 hours of aircraft operating experience and two operating cycles on at least one aircraft type.

(a) When a flight attendant does not complete recurrent training during the eligibility period, the flight attendant is unqualified on the first day of the month following the grace month. For example, if a flight attendant's base month is February, the flight attendant has until March 31st to complete recurrent training. If the flight attendant does not complete recurrent training by March 31st, the flight attendant becomes unqualified and unable to serve on April 1st. For purposes of determining the applicable phase of requalification, the flight attendant's base month must be used without considering the grace month. Therefore, in the example above, the base month (February) instead of the grace month (March) would be used to determine the applicable phase of requalification.

(b) [Reserved]

5. How to determine the requirements for Aircraft Operating Experience

The following chart illustrates the proposed requirements.

TABLE 3C—AIRCRAFT OPERATING EXPERIENCE (AOE)

(§ 121.1305)

On whose airplanes?	For the certificate holder for which the flight attendant will serve.
What kind of flight?	Passenger carrying revenue flight or in proving flights.
When must it be completed?	AOE must be completed within 90 days of completing Initial training.
Who supervises it?	A check flight attendant.
How many people can one check flight attendant supervise on one flight?.	Not more than four.
How many check flight attendants can supervise people on each flight?.	Not more than two.
Are there any other limits on the number of people accomplishing this on each flight?.	The number of persons receiving aircraft operating experience on an aircraft may not exceed twice the number of flight attendants required by § 121.391 for that aircraft.
What duties must people receiving AOE perform?	The assigned duties of a flight attendant.
Can the person be a required flight attendant?	No.
What is the requirement for completing AOE?	At least 5 hours total combined AOE with at least two operating cycles on each aircraft type. If the flight attendant is qualifying on one aircraft type, the flight attendant must have at least 5 hours of AOE on that aircraft type and complete two operating cycles on that aircraft type. If the flight attendant is qualifying on three aircraft types, the flight attendant must have at least 5 hours of AOE total and complete six operating cycles, two on each aircraft type.

6. How to Determine the Requirements for Recency

The following chart illustrates the proposed requirements.

TABLE 3D—FLIGHT ATTENDANT: RECENT EXPERIENCE
(§ 121.1307)

To reestablish recent experience the person must do the following:	
If the person has not served as a flight attendant for the certificate holder for more than 6 months, but less than 36 months the person must. (§ 121.1307(b)(2))	Participate in a ground based briefing with a person employed by the certificate holder. The purpose of this briefing is to cover any new policies, procedures, and security requirements pertinent to flight attendant duties that have been updated, modified or implemented since the last time the person served as a flight attendant for that certificate holder.
If the person has not served as a flight attendant for the certificate holder for 36 months or more the person must. (§ 121.1307(b)(3))	(a) Participate in a ground based briefing with a person employed by the certificate holder. The purpose of this briefing is to cover any new policies, procedures, and security requirements pertinent to flight attendant duties that have been updated, modified or implemented since the last time the person served as a flight attendant for that certificate holder. (b) Serve as a flight attendant for one operating cycle on any aircraft type for that certificate holder, but not as a required crewmember.

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TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
Task Requirements	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
II. General Task Requirements																														
A. Area of Instruction: Flight Attendant Duties and Responsibilities – Normal Operations																														
1. Subject: Preflight																														
Tasks:																														
(a) General	X	X	X																	X			X							
(b) Crewmember Briefing	X	X	X																					X						
(c) Cabin and Galley Security	X																													
(d) Check of Emergency Equipment	X	X	X																	X				X						
(e) Check of Safety Equipment	X	X	X																					X						
(f) Galley Check	X	X	X																					X						
(g) Check of Cabin and Cabin Systems	X	X	X																					X						
2. Subject: Pre-Movement on Surface																														
Tasks:																														
(a) General	X	X	X																					X						
(b) Passenger Boarding	X	X	X																					X						

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(c) Passengers with Disabilities	X	X	X																				X							
(d) Galley Security	X	X	X																					X						
(e) Preparation of Exits[1]	X	X	X																	X				X						
(f) Compliance Check	X	X	X																					X						
3. Subject: Ground Movement																														
Tasks:																														
(a) General	X		X																					X						
(b) Passenger Information	X	X	X																	X				X						
(c) Sterile Flight Deck Procedures	X	X	X																					X						
(d) Compliance Check[1]	X	X	X																	X				X						
4. Subject: Inflight																														
Tasks:																														
(a) General[1]	X	X	X																	X										
(b) Inflight Procedures	X	X	X																	X										
(c) Passenger Information	X	X	X																					X						
(d) Passenger Handling Procedures	X	X	X																					X						
(e) Proper Use of Service Carts and Service Equipment	X	X	X																					X						
(f) Communication and Coordination Procedures	X	X	X																				X							

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(g) Pre-Landing	X	X	X																					X						
(h) Sterile Flight Deck Procedures	X	X	X																				X							
(i) Compliance Check[1]	X	X	X																					X						
5. Subject: Arrival																														
Tasks:																														
(a) General	X	X	X																				X							
(b) Preparation of Exits[1]	X	X	X																	X				X						
(c) Passenger Handling	X	X	X																					X						
(d) Cabin Security	X	X	X																					X						
6. Subject: During Stops																														
Tasks:																														
(a) General	X	X	X																				X							
(b) Aircraft Refueling	X		X																				X							
7. Subject: Federal Aviation Regulations																														
Tasks:																														
(a) General	X		X																				X							
(b) Pertinent to Flight Attendant Performance of Assigned Duties	X		X																				X							
8. Subject: Certificate Holder's Manual System																														
Tasks:																														

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(a) Crew Operating Manual [FAOM?]	X	X	X																											
(b) Scheduling and Station Operations Policies and Procedures	X	X	X																											
9. Subject: Contents of Certificate Holder's Operations Specifications																														
Tasks:																														
(a) General	X		X																											
(b) Exit Seat Program and Procedures	X	X	X																					X						
(c) Carry on Baggage Program and Procedures	X	X	X																					X						
(d) Minimum Equipment List	X		X																											
10. Subject: Crew Resource Management																														
Tasks:																														
(a) Authority of Pilot in Command													X	X	X															
(b) Communication Processes and Decisions													X	X	X															
(c) Building and Maintenance of a Flight Team													X	X	X															

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(d) Workload Management and Situational Awareness													X	X	X															
(e) Communication and Coordination													X	X	X															
(f) Crewmember Briefing													X	X	X															
(g) Communication and Coordination During a Passenger Interference Situation													X	X	X															
(h) Communication and Coordination During an Emergency Situation													X	X	X															
11. Subject: Theory of Flight																														
Tasks:																														
(a) Components of Aircraft													X		X															
(b) Principles of Flight													X		X															
(c) Critical Surfaces and Associated Hazards													X		X															
(d) Aviation Terminology													X		X															
B. Area of Instruction: Flight Attendant Duties and Responsibilities – Abnormal Situations																														

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
1. Subject: Handling Passengers Whose Conduct May Jeopardize Safety																														
Tasks:																														
(a) General													X	G	X															
(b) Passenger Interference													X	G	X															
(b) Smoking Ban Violations													X	G	X															
(d) Intoxication													X	G	X															
(e) Passenger Misconduct													X	G	X															
(f) Security Procedures													X																	
C. Area of Instruction: Flight Attendant Duties and Responsibilities – Emergency																														
1. Subject: Emergency Equipment																														
Tasks:																														
(a) General Emergency Equipment							X	X	X																					
(b) Equipment used in Land and Water Evacuation							X		X																					

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(c) Emergency Medical Equipment							X		X																					
(d) Portable Fire Extinguishers							X		X																					
(e) All Exits Designed for Passenger or Crewmember Egress from the Aircraft							X		X																					
2. Subject: Emergency Situations																														
Tasks:																														
(a) Emergency Assignments and Procedures including Coordination among Crewmembers							X		X																					
(b) Decompression and physiological effects of high altitude							X	X	X																					
(c) Fire inflight or on the surface							X		X																					
(d) Land and Water Evacuation							X		X																					
(e) Illness, Injury or other Abnormal Situations							X		X																					
(f) Turbulence							X		X																					

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(g) Hijacking or Other Unusual Situations							X																							
(h) Aircraft Occurrences, Accidents, and Incidents							X																							
(i) Survival Skills							X		X																					
III. Aircraft Specific Task Requirements																														
A. Area of Instruction: For Each Aircraft Type																														
1. Subject: General Description of the Aircraft Cabin																														
Tasks:																														
(a) Aircraft Characteristics and Description													X		X										X		X			
(b) Cabin Configuration													X		X										X		X			
(c) Passenger Seats													X		X										X		X			
(d) Air Conditioning, Ventilation, and Pressurization Systems													X		X										X		X			
(e) Flight Attendant Jumpseats[1]													X	X	X					X					X	X	X			
(f) Flight Attendant Panels[1]													X	X	X					X					X	X	X			

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
(g) Carry On Baggage Stowage[1]													X	X	X					X					X	X	X			
(h) Communication Systems[1]													X	X	X					X					X	X	X			
(i) Entertainment and Convenience Systems[1]													X	X	X					X					X	X	X			
(j) Flight Deck Configuration[1]													X	X	X					X					X	X	X			
(k) Galleys[1]													X	X	X					X					X	X	X			
(l) Lavatories[1]													X	X	X					X					X	X	X			
(m) Required Signs and Placards													X		X										X		X			
(n) Lighting and Electrical Systems[1]													X	X	X					X					X		X			
(o) Oxygen Equipment and Systems													X		X										X		X			
(p) Notification of Inoperative Equipment													X	G	X										X		X			
(q) Emergency Equipment Location													X		X					X					X		X			
(r) Exits through which a Passenger or Crewmember may Egress the Aircraft													X		X										X		X			
(s) Crewmember Rest Facilities													X		X										X		X			

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
IV. Emergency Training Drill Requirements																														
V. Emergency Training Drills - General																														
A. Subject: Job Performance Drills																														
Tasks:																														
1. Operation of each type of installed hand fire extinguisher								I		X																				
2. Operation of each type of Portable Oxygen Equipment								I		X																				
3. Operation of each type of Fixed Oxygen System in the Cabin								I		X																				
4. Operation of each type of Protective Breathing Equipment								I		X																				
5. Operation of each type of installed life preserver and each type of individual flotation means								I		X																				
6. Operation of each type of Automated External Defibrillator								I		X																				

TABLE 3E
SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY

Task Requirements	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
7. Cardiopulmonary Resuscitation (CPR)								I				X																		
8. Protective Breathing Equipment and Fire Fighting Drill								I				X																		
9 Cabin Preparation and Evacuation Drills (Land and Water Evacuations)								G																						
10. Evacuation Drills								G																						
11. Equipment Mountings Drill								I				X																		
12. Ditching Survival Drill (Dry Training Environment)								G																						
13. Jumpseat Drill[1]								I												I										
B. Subject: One Time Performance Drills																														
Tasks:																														
1. Ditching Survival Drill (Wet Training Environment)								G																						
2. Emergency Evacuation Egress Slide Drill								I																						

	TABLE 3E SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY																											
	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
Task Requirements	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
3. Emergency Evacuation Egress Drill								I																						
C. Subject: Observation Drills																														
Tasks:																														
1. Removal from aircraft or training device and inflation of each type of installed life raft.							X																							
2. Deployment, inflation and detachment from the aircraft of each type of installed slide or slide raft pack							X																							
3. Emergency evacuation including the use of a slide (if applicable)							X																							
4. Non-Floor Level Exits in the Flight Deck Through Which a Crewmember May Egress the Aircraft							X		X										X											
5. Flight Deck Fixed Oxygen System							X												X											
VI. Emergency Training Drills - Aircraft Specific																														

	TABLE 3E SECTION A: BASIC QUALIFICATION CURRICULUM AND TRANSITION TRAINING CATEGORY																											
	New Hire Training						Emergency Training						Initial Training						Aircraft Operating Experience (AOE)						Transition Training					
	Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check		Train		Test		Check	
Task Requirements	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
A. Subject: Exit Device Operation																														
Tasks:																														
1. Floor Level Door Exit Operation (Normal Mode)								I		X																I		X		
2. Floor Level Door Exit Operation (Emergency Mode)								I		X																I		X		
3. Cabin Window Exit and Plug and Hatch Exit Operation								I		X																I		X		
4. Any Additional Emergency Exits Required for Type Certification								I		X																I		X		

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
General Requirements																														
I. Area of Instruction: Flight Attendant Duties and Responsibilities – Normal Operations																														
A. Subject: Preflight	**T**		**T**																											
Tasks:																														
1. General	3		X				R		X				R		X				X		X					X			X	
2. Crewmember Briefing	3		3				R		R				R		X				X	X	X									X
3. Cabin and Galley Security	3		3				R		R				R		X				X											
4. Check of Emergency Equipment	3		3				R		R				R		X				X	X	X					X				X
5. Check of Safety Equipment	3		3				R		R				R		X				X		X									X
6. Galley Check	3		3				R		R				R		X				X		X									X
7. Check of Cabin and Cabin Systems	3		3				R		R				R		X				X		X									X
B. Subject: Pre-Movement on Surface	**T**		**T**																											
Tasks:																														
1. General	3		X				R		X				R		X				X		X									X
2. Passenger Boarding	3		X				R		R				R		X				X		X									X
3. Passengers with Disabilities	3		3				R		R				R		X														X	
4. Galley Security	3		X				R		R				R		X				X		X									X
5. Preparation of Exits	3		X				R		R				R		X				X	X	X					X				X
6. Compliance Check	3		X				R		X				R		X				X		X									X
C. Subject: Ground Movement	**T**		**T**																											
Tasks:																														
1. General	3		X				R		R				R		X				X		X									X
2. Passenger Information	3		X				R		R				R		X				X	X	X					X				X
3. Sterile Flight Deck Procedures	3		3				R		R				R		X				X		X									X

TABLE 3E
SECTION B· RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
4. Compliance Check	3		X				R		X				R		X				X	X	X					X				X
D. Subject: Inflight	**T**		**T**																											
Tasks:																														
1. General	3		3				R		R				R		X				X	X	X					X				
2. Inflight Procedures	3		3				R		R				R		X				X		X					X				
3. Passenger Information	3		3				R		R				R		X				X	X	X									X
4. Passenger Handling Procedures	3		3				R		R				R		X				X		X									X
5. Proper Use of Service Carts and Service Equipment	3		3				R		R				R		X				X		X									X
6. Communication and Coordination Procedures	3		X				R		X				R		X				X		X								X	
7. Pre-Landing	3		3				R		R				R		X				X		X									X
8. Sterile Flight Deck Procedures	3		3				R		R				R		X				X		X								X	
9. Compliance Check	3		X				R		X				R		X				X	X	X									X
E. Subject: Arrival	**T**		**T**																											
Tasks:																														
1. General	3		3				R		R				R		X				X		X								X	
2. Preparation of Exits	3		3				R		R				R		X				X	X	X					X				X
3. Passenger Handling	3		3				R		R				R		X				X		X									X
4. Cabin Security	3		3				R		R				R		X				X		X									X
F. Subject: During Stops	**T**		**T**																											
Tasks:																														
1. General	3		X				R		X				R		X				X		X								X	
2. Aircraft Refueling	3		3				R		R				R		X				X		X								X	

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
G. Subject: Federal Aviation Regulations	**T**		**T**																											
Tasks:																														
1. General	3		X				R		X				R		X				X		X								X	
2. Federal Aviation Regulations Pertinent to Flight Attendant Performance of Assigned Duties	3		X				R		X				R		X				X		X								X	
H. Subject: Certificate Holder's Manual System	**T**		**T**																											
Tasks:																														
1. Flight Attendant Operating Manual	3		3				R		R				R		X				X		X									
2. Scheduling and Station Operations Policies and Procedures	3		3				R		R				R		X				X		X									
I. Subject: Contents of Certificate Holder's Operations Specifications	**T**		**T**																											
Tasks:																														
1. General	3		3				R		R				R		X				X		X									
2. Exit Seating Program and Procedures	3		X				R		X				R		X				X		X									X
3. Carry on Baggage Program and Procedures	3		X				R		X				R		X				X		X									X
4. Minimum Equipment List	3		3				R		R				R		X				X		X									
J. Subject: Crew Resource Management	**T**		**T**																											
Tasks:																														

TABLE 3E
SECTION B RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
1. Authority of Pilot in Command	3		3				R		R				R		X				X		X									
2. Communication Processes and Decisions	3	3					R	R					R	R	X				X		X									
3. Building and Maintenance of a Flight Team	3	3					R	R					R	R					X		X									
4. Workload Management and Situational Awareness	3	3					R	R					R	R					X		X									
5 Communication and Coordination	3	3	X				R	R	X				R	R	X				X		X									
6. Crewmember Briefing	3	3					R	R					R	R					X		X									
7. Communication and Coordination During a Passenger Interference Situation	3	3	X				R	R	X				R	R	X				X		X									
8. Communication and Coordination During an Emergency Situation	3		X				R		X				R		X				X		X									
K. Subject: Theory of Flight	**T**		**T**																											
Tasks:																														
1. Components of Aircraft	3		3				R		R				R		X				X		X									
2. Principles of Flight	3						R		R				R						X		X									
3. Critical Surfaces and Hazards	3		3				R		R				R		X				X		X									
4. Aviation Terminology							R		R				R						X		X									
II. Area of Instruction: Flight Attendant Duties and Responsibilities – Abnormal Situations																														
A. Subject: Handling Passengers	**T**		**T**																											

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
Whose Conduct May Jeopardize Safety																														
Tasks:																														
1. General	3		3				R		R				R		X				X	G	X									
2. Passenger Interference	3		X				R		X				R		X				X	G	X									
3. Smoking Ban Violations	3		3				R		R				R		X				X	G	X									
4. Intoxication	3		3				R		R				R		X				X	G	X									
5. Passenger Misconduct	3		3				R		R				R		X				X	G	X									
6. Security Procedures	3						R						R						X											
III. Area of Instruction: Flight Attendant Duties and Responsibilities – Emergency																														
A. Subject: Emergency Equipment	**T**		**T**																											
Tasks:																														
1. Preflight, Function , Location Operation and Limitations of Emergency Equipment	X		X				X		X				X		X				X		X									
2. Equipment used in Land and Water Evacuation	X		X				X		X				X		X				X		X									
3. Emergency Medical Equipment	X		X				X		X				X		X				X		X									
4. Portable Fire Extinguishers	X		X				X		X				X		X				X		X									
5. All Exits Designed for Passenger or Crewmember Egress from the Aircraft	X		X				X		X				X		X				X		X									

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
Task Requirements And Performance Standards	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
6. Survival Equipment	X		X				X		X				X		X				X		X									
A. Subject: Emergency Situations	**T**		**T**																											
Tasks:																														
1. Emergency Assignments and Procedures including coordination among crewmembers	X		X				X		X				X		X				X		X									
2. Decompression and physiological effects of high altitude	3		X				R		X				R		X				X		X									
3. Fire Inflight and on the Surface	3		X				R		X				R		X				X		X									
4. Land and Water Evacuation	3		X				R		X				R		X				X		X									
5. Illness, Injury or other Abnormal Situations	3		X				R		X				R		X				X		X									
6. Turbulence	3		X				R		X				R		X				X		X									
7. Hijacking or other Unusual Situations	X						X						X						X											
8. Aircraft Occurrences, Accidents and Incidents	X						X						X						X											
9. Survival Skills	3		X				R		X				R		X				X		X									
Aircraft Specific																														
I. Area of Instruction: For Each Aircraft Type																														
A. Subject: General Description of the Aircraft Cabin	**T**		**T**																											
Tasks:																														
1. Aircraft Characteristics and Description																			X		X									

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
2. Cabin Configuration																			X		X									
3. Passenger Seats																			X		X									
4. Air Conditioning, Ventilation and Pressurization Systems																			X		X									
5. Flight Attendant Jumpseats																			X	X	X					X				
6. Flight Attendant Panels																			X	X	X					X				
7. Carry on Baggage Stowage	3		X				R		X				R		X				X	X	X					X				
8. Communication Systems																			X	X	X					X				
9. Entertainment and Convenience Systems																			X	X	X					X				
10. Flight Deck Configuration																			X	X	X					X				
11. Galleys																			X	X	X					X				
12. Lavatories																			X	X	X					X				
13. Required Signs and Placards																			X		X									
14. Lighting and Electrical Systems																			X	X	X					X				
15. Oxygen Equipment and Systems																			X		X									
16. Notification of Inoperative Equipment																			X	G	X									
17. Emergency Equipment Location																			X		X					X				
18. Exits through which a passenger or crewmember may egress the aircraft																			X		X									
19. Crewmember Rest Facilities																			X		X									
Emergency Training Drills																														

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
I. Area of Instruction: General																														
A. Subject: Performance Drills																														
Tasks:																														
1. Operation of each type of installed hand fire extinguisher				X						X						X				I		X								
2. Operation each type of Portable Oxygen Equipment				X						X						X				I		X								
3. Operation of each type of Fixed Oxygen System				X						X						X				I		X								
4. Operation of each type of Protective Breathing Equipment				X						X						X				I		X								
5. Operation of each type of installed life preserver or individual flotation means				X						X						X				I		X								
6. Operation of each type of Automated External Defibrillator				X						X						X				I		X								
7. Cardiopulmonary Resuscitation		I						I						I						I				X						
8. Protective Breathing Equipment and Fire Fighting Drill		I						I						I						I				X						
9. Cabin Preparation and Evacuation Drill (Land and Water Evacuation)		G						G						G						G										
10. Evacuation Drills		G						G						G						G										
11. Bracket Drill		I						I						I						I				X						
12. Ditching Survival Drill (Dry Training Environment)		G						G						G						G										
13. Jumpseat Drill		I						I						I						I						I				

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
A. Subject: One Time Performance Drills																														
Tasks:																														
1. Ditching Survival Drill (Wet Training Environment)																														
2. Emergency Evacuation Slide Egress Drill																														
3. Emergency Evacuation Egress Drill																														
B. Subject: Observation Drills																														
Tasks:																														
1. Removal from airplane or training device and inflation of each type of installed life raft.	X						X						X						X											
2. Deployment, inflation and detachment from the airplane of each type of installed slide raft pack	X						X						X						X											
3. Emergency evacuation including the use of a slide (if applicable)	X						X						X						X											
4. Non-Floor Level exits in the Flight Deck Through Which a Crewmember May egress the Aircraft	X						X						X						X		X				X					
5. Flight Deck Oxygen System	X						X						X						X						X					
II. Area of Instruction: Aircraft Specific Performance Drills																														

TABLE 3E
SECTION B: RECURRENT AND REQUALIFICATION CATEGORIES OF TRAINING

Task Requirements And Performance Standards	Recurrent Training						Requalification Training Phase I						Requalification Training Phase II						Requalification Training Phase III						Phase III Requalification Aircraft Operating Experience (AOE)*					
	Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check		Train		Evaluate		Check	
	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency	Academic	Practice	Academic	Proficiency	Academic	Proficiency
A. Subject: Exit Device Operation																														
Tasks:																														
1. Floor Level Door (Normal Mode)				X						X						X				I		X								
2. Floor Level Door (Emergency Mode)				X						X						X				I		X								
3. Cabin Window Exit Device and Plug and Hatch Exit Device Operation				X						X						X				I		X								
4. Any Additional Exits Required for Type Certification				X						X						X				I		X								

LEGEND.

"1" Elements within this task may be practiced during either ground training or during AOE.
"X" indicates that each flight attendant must complete the task each time a category of training is completed.
"3" indicates that each flight attendant must complete the task at least once during three consecutive recurrent training cycles.
"G" indicates that the training and practice may be completed as an individual or in a group exercise, where the flight attendant participates or observes and provides feedback
"I" indicates that the training practice must be performed as an individual.
"R" indicates that the flight attendant must receive the training or evaluation in that task in accordance with the tasks covered during the recurrent training cycle(s) that were missed.
"T" indicates that recurrent training academic segments must include training and evaluation at the task level
* Flight attendant who is completing Phase III Re-qualification Aircraft Operating Experience must perform the identified items in the chart under the supervision of a check flight attendant while accomplishing the requirements of § 121.1309.

BILLING CODE 4910–13–C

34. Add appendix T to part 121 to read as follows:

Appendix T—Aircraft Dispatcher Qualification Performance Standards

Table of Contents

Introduction

A. What are Qualification Performance Standards (QPS)?
B. What types of materials are contained within this document?
C. Can the reader rely solely on this document for aircraft dispatcher qualification and related training requirements?
D. How can I get answers to questions about the contents of this appendix?
E. Why do we need a QPS for aircraft dispatchers?
F. Where can each type of standard be found in the QPS?
G. Where can definitions and acronyms be found?
H. What references are recommended?
I. What is the continuous analysis process and how is it incorporated in this QPS?
J. How is Dispatch Resource Management (DRM) training incorporated in this QPS?
K. Tables and Flowchart
Table 1, Baseline Programmed Hours for Aircraft Dispatchers: Training Program and Qualification Requirements
Table 2, Minimum Programmed Hours for Aircraft Dispatchers: Training Program and Qualification Requirements
Table 3, Requalification For Aircraft Dispatchers: Training Program and Qualification Requirements
Table 4, Training Category Evaluation Requirements for Aircraft Dispatchers
Table 5, Personnel Authorized To Administer Aircraft Dispatcher Training and Evaluation, and To Conduct Observation Activities Under Subpart CC
Flowchart 1, Flowchart for Initial and Combined Certification and Initial Training Curriculum
Attachment 1. General Knowledge and Skills Requirements—Subjects and Tests—For Initial, Combined Certification and Initial, Recurrent, and Requalification Training Categories (*see* §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; 121.1455; and 121.1471)
Attachment 2. Basic Aircraft and Specific Aircraft Type Training Requirements —Subjects and Tests—For Initial, Combined Certification and Initial, Transition, Recurrent, Requalification, Differences, and Special Training Categories (*see* §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; 121.1455, and 121.1471)
Attachment 3. Generic Training Requirements—Subjects and Tests—For Certification (*see* §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1421; 121.1423; 121.1425; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; and 121.1471)
ttachment 4. Evaluation Requirements and Performance Standards For Initial, Combined Certification and Initial, Transition, Recurrent, Requalification, Differences, and Special Training Categories (*see* §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1421; 121.1423; 121.1425; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; and 121.1471)

BEGIN INFORMATION

Introduction

A. What are Qualification Performance Standards (QPS)?

The QPS defines the FAA standards by providing all of the tasks, areas of training and evaluation, including activities, procedures, and knowledge needed to qualify and certificate aircraft dispatchers for performing in operations under this part. The QPS document for dispatchers is part 121 appendix T: Aircraft Dispatcher Qualification Performance Standards. This QPS will be used by certificate holders operating under part 121, by training center certificate holders when supporting certificate holders and other commercial operators that operate under part 121 and by Flight Standards personnel during approval, evaluation and surveillance of aircraft dispatcher training programs. The QPS incorporates a continuous analysis process which enables the certificate holder to maintain and refine the training process by continually monitoring the effectiveness and efficiency of the training program.

B. What types of materials are contained within this document?

This QPS contains Information and QPS Requirements.

1. Information: Explanations or suggestions, which clarify or support regulatory requirements, found in the Code of Federal Regulations or in this QPS document. Explanations or suggestions are provided as guidance and are not regulatory (not mandatory). This guidance appears under the heading ''BEGIN INFORMATION'' and uses the terms ''should'' or ''may'' to indicate that it is not mandatory.

2. QPS Requirements: Aircraft Dispatcher QPS requirements are regulatory and mandatory. These requirements appear under the heading ''BEGIN QPS REQUIREMENTS'' and use the terms ''must'' and ''may not.''

C. Can the reader rely solely on this document for aircraft dispatcher qualification and related training requirements?

No, do not rely solely on this document for regulatory requirements in these areas. The reader must also use 14 CFR part 121, subpart CC.

D. How can I get answers to questions about the contents of this appendix?

1. You may contact: U.S. Department of Transportation, Federal Aviation Administration Flight Standards Service, Air Transportation Division, AFS–210, 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–8166, Fax: (202) 267–5229.

2. You may find answers to questions on the Flight Standards Internet Web Site at: ''*http://www.faa.gov/about/office_org/headquarters_offices/avs/offices/afs/*.'' On this Web Site you will find Flight Standards Programs, Aviation Safety Inspector Handbooks and Documents, the current Aviation Regulations (14 CFR), Advisory Circulars, and other items of interest. Also linked from this site are additional information sources and other FAA links.

E. Why do we need a QPS for aircraft dispatchers?

1. To provide the certificate holder with a minimum set of standards for developing the following:

(a) Training and certification programs,

(b) Performance standards, and

(c) Evaluation criteria as they relate to the aircraft dispatcher job function.

2. To provide the certificate holder with the requirements for a continuous analysis process.

3. To provide routine and periodic update capability. This capability is needed to respond to accidents, incidents, or rapidly occurring changes to equipment and operations. All changes made to this appendix will be subject to public notice and comment, unless good cause exists to support a finding that notice and comment would be impracticable, unnecessary, or contrary to the public interest.

F. Where can each type of standard be found in the QPS?

1. Attachment 1 has the general knowledge and skills requirements.

2. Attachment 2 has the basic aircraft and specific aircraft type training requirements.

3. Attachment 3 contains generic training requirements for certification. With this attachment, certificate holders would have the option to provide additional training subjects, which

when combined with Attachments 1 and 2, would lead to the issuance of an aircraft dispatcher certificate.

4. Attachment 4 has the required evaluation requirements and performance standards for each task and knowledge area.

G. Where can definitions and acronyms be found?

The definitions relevant to this QPS appear in § 121.1405. Acronyms are as follows:

ACARS Aircraft Communications Addressing and Reporting System
ADPM Aircraft Dispatcher Procedures Manual
AFD Airport Facility Directory
AFM Airplane Flight Manual
AIM Aeronautical Information Manual
AIRMET Airman Meteorological Report
ARTCC Air Route Traffic Control Center
ASD Aircraft Situation Display
ATC Air Traffic Control
ATIS Automated Terminal Information System
CEP Central East Pacific
CRM Crew Resource Management
DPD Dispatch Program Designee
DRM Dispatch Resource Management
EFIS Electronic Flight Indicating Systems
EGPWS Enhanced Ground Proximity Warning System
ETOPS Extended Operations
ETP Equal Time Point
EWINS Enhanced Weather Information System
FCOM Flight Crew Operating Manual
FDC Flight Data Center
FMS Flight Management System
FSS Flight Service Station
GOM General Operating Manual
GPS Global Positioning System
GPWS Ground Proximity Warning System
HF High Frequency
IAP Initial Approach Point
ICAO International Civil Aviation Organization
INS Inertial Navigation System
IOS Instructor's Operating Station
LOFT Line Oriented Flight Training
LORAN Long Range Navigation
MEL Minimum Equipment List
METAR Meteorological Aviation Routine Weather Report
MNPS Minimum Navigation Performance Specification
NATS North Atlantic Track System
NDB Non-directional Radio Beacon
NOPAC North Pacific
PACOTS Pacific Organized Track System
PIC Pilot in Command
PRM Precision Radar Monitor
QPS Qualification Performance Standards
RNAV Area Navigation
RNP Required Navigation Performance
RVR Runway Visual Range
RVSM Reduced Vertical Separation Minimum
SID Standard Instrument Departure
SIGMET Significant Meteorological Report
SFAR Supplemental Federal Aviation Regulation
STAR Standard Terminal Arrival Route
TAF Terminal Aerodrome Forecast

H. What references are recommended?

The following references (as amended) were used to prepare detailed knowledge and skill standards for tasks. They are strongly recommended for providing further details for lesson development.

1. 14 CFR part 1, Definitions and Abbreviations.
2. 14 CFR part 65, Certification: Airmen Other than Flight Crewmembers.
3. 14 CFR part 91, General Operating and Flight Rules.
4. 14 CFR part 119, Certification: Air Carriers and Commercial Operators.
5. 14 CFR part 121, Operating Requirements: Domestic, Flag, and Supplemental Operations.
6. 14 CFR part 139, Certification of Airports.
7. AC 00–6, Aviation Weather.
8. AC 00–45E, Aviation Weather Services.
9. AC 25.1581–1, Airplane Flight Manual.
10. AC 60–22, Aeronautical Decision Making.
11. AC 60–28, English Language Skill Standards.
12. AC 61–27, Instrument Flying Handbook.
13. AC 61–84, Role of Preflight Preparation.
14. AC 120–28, Criteria for Approval of Category III Landing Weather Minima.
15. AC 120–29, Criteria for Approving Category I and Category II Landing Minima for Approach.
16. AC 120–42a, Extended Range Operations (ETOPS).
17. AC 120–55, TCAS II Operational Approval for Air Carriers.
18. AC 120–59, Air Carrier Internal Evaluation Programs.
19. AC 120–71, Standard Operating Procedures for Flight Deck Crewmembers.
20. AC 120–88, Preventing Injuries Caused by Turbulence.
21. AC 121–32, Dispatch Resource Management Training.
22. NTSB 830, Notification and Reporting of Aircraft Accidents or Incidents and Overdue Aircraft, and Preservation of Aircraft Wreckage, Mail, Cargo, and Records.
23. Aeronautical Information Manual (AIM).
24. International Flight Information Manual (IFIM).
25. En route Low and High Altitude Charts.
26. Profile Descent Charts.
27. Standard Instrument Departure (SID).
28. Standard Terminal Arrival Routes (STAR).
29. Airport Facility Directory (AFD) and Instrument Approach Procedure Charts (IAP).
30. National Flight Data Center Notices to Airmen (FDC NOTAM).
31. Integrated Measurement of Crew Resource Management and Technical Flying Skills, DOT/FAA/RD–93/26.
32. Transportation Security Regulations (TSRs).
33. HMR 175, Hazardous Materials Regulations, Carriage by Aircraft.
34. FAA Order 8040.4, Safety Risk Management.
35. Air Transportation Operations Inspector's Handbook, 8400.10.

I. What is the continuous analysis process and how is it incorporated in this QPS? (see §§ 121.1437(a)(10) and 121.1441)

1. The continuous analysis process is a certificate holder internal evaluation and improvement process. The continuous analysis process will enable the certificate holder to maintain and refine the training process by continually monitoring the effectiveness and efficiency of the process. Various assessment tools (testing, checking, inspection, documenting, evaluation, and analysis) will be used to validate the effectiveness of a training program or the need to change a training program.

END INFORMATION

BEGIN QPS REQUIREMENT

2. A continuous analysis process is incorporated in this QPS through integration with the qualification and training program. The certificate holder is responsible for designating responsibility for the process. The certificate holder must ensure appropriate and adequate assessment tools (testing, checking, critique, inspection, observation, documenting, evaluation, and analysis) are utilized to enable the certificate holder to validate the effectiveness of the qualification and training program, or the need to change that program. The certificate holder must describe the attributes of the continuous analysis process in the certificate holder's FAA approved training program.

END QPS REQUIREMENT

BEGIN INFORMATION

3. *Components of a Continuous Analysis Process*

(a) Qualification and training program as approved by the Administrator.

(b) Attributes of the continuous analysis process.

(1) Who is responsible?

(2) Who has authority to change the process?

(3) Description of the process.

(4) Controls. Policy, procedure, training, evaluation.

(5) Documenting and measurement.

(6) Interfaces between Departments. Consistency (policy, procedures, manuals).

(i) Across Departments.

(ii) Across Divisions.

(c) Assessment tools (adequate and appropriate).

(1) Testing.

(2) Checking.

(3) Critique.

(4) Inspection and observation.

(5) Documenting.

(6) Evaluation and analysis.

(d) Modification and adjustment of the qualification and training program.

(e) Approval for modification and adjustment.

J. How is Dispatch Resource Management (DRM) training incorporated in this QPS? (see § 121.1433(b)(7))

1. DRM training is incorporated through the certificate holder's aircraft dispatcher qualification and training program and the daily application of on the job skills.

2. DRM Training and Evaluation requirements for initial, combined certification and initial, recurrent, and requalification training categories are contained in attachments 1, 3, and 4.

END INFORMATION

BEGIN QPS REQUIREMENT

3. *DRM Training and Evaluation.*

(a) Training. DRM training is a component of the initial, combined certification and initial, recurrent, and requalification training categories. drm training must consist of the requirements listed in Attachment 4.

(b) Evaluation. Evaluation of an aircraft dispatcher's practical application of DRM skills must occur as follows:

(1) During the proficiency test (for initial or combined certification and initial training) and during the proficiency check (for recurrent or requalification training).

(2) During the supervised operating experience delivered after initial, combined certification and initial, or requalification training.

END QPS REQUIREMENT

BEGIN INFORMATION

4. *Daily Application of DRM for Job Skills.*

(a) The following are examples of how the daily application of DRM will assist in developing DRM skills:

(1) Briefing during the changeover period between an aircraft dispatcher coming on duty, and the aircraft dispatcher going off duty.

(2) Briefing of the flight crews.

(3) The aircraft dispatcher's ability to manage risk and mitigate potential problems.

(4) Obtaining required operational information.

(5) Performance feedback from operational control personnel on the aircraft dispatcher's decision making process.

(6) The aircraft dispatcher's ability to handle abnormal situations and emergencies.

(7) Interaction with fellow aircraft dispatchers.

(8) Interaction with various departments within the airline.

(b) Joint DRM Training:

(1) Certificate holders are discovering the value of revising DRM training to reach varied employee groups and to combine those groups during training. The objective is to improve the effectiveness and safety of the entire operations team.

(2) Aircraft dispatchers are required to observe flightdeck operations as part of initial, combined certification and initial, recurrent, and requalification training. Some certificate holders include familiarization visits to the aircraft dispatchers' operational control center to provide the flight crewmembers insight into the joint responsibility of the pilot in command and the aircraft dispatcher. These familiarization visits have commonly been part of the special training offered to the first time captains. The FAA encourages the use of aircraft dispatchers in Line Oriented Flight Training (LOFT).

(3) The certificate holder should provide realistic training scenarios for aircraft dispatchers to improve their daily decision making process.

(4) DRM refers to the effective use of all available resources including, human resources, hardware, and information. Human resources include all other groups routinely working with the airline operational control center (or pilot in command) who are involved in decisions that are required to operate a flight safely. DRM is not a single task. DRM is a set of competencies that must be evident in all tasks in this QPS.

(5) DRM training is subject to the continuous analysis process required by § 121.1441 of this part.

(6) The DRM Advisory Circular (AC 121–32 as amended) discusses in greater detail how to integrate DRM into operational control and numerous departments within the certificate holder.

K. Tables and Flowchart

1. The following tables summarize aircraft dispatcher training requirements for certificate holders.

2. Table 1 shows the baseline programmed hours for aircraft dispatcher training programs. The Administrator considers the certificate holder's training program, level of operational complexity, and aircraft dispatcher responsibilities when determining whether to increase the number of baseline programmed hours.

3. Table 2 shows the minimum progammed hours a certificate holder may submit to the administrator for a training program with reduced hours. The Administrator considers the certificate holder's training program, level of operational complexity, and aircraft dispatcher responsibilities when determining whether to approve a reduction in programmed hours.

4. Table 3 shows the requalification training program and qualification requirements. The table shows five phases based on the number of months of lapsed currency. The certificate holder may requalify a previously qualified dispatcher for up to 36 months. In accordance with § 121.1419, the training and evaluation must be initiated and successfully completed prior to the end of the specific lapsed period. Initial training is required when an aircraft dispatcher has been out of currency for 36 months or more.

5. Table 4 shows the tasks in which each aircraft dispatcher must be trained and evaluated. In Table 4 an ''X'' means that the aircraft dispatcher must complete the task satisfactorily. An ''N/A'' means that the task is not applicable.

6. Table 5 shows the ''Personnel Authorized To Administer Aircraft Dispatcher Training and Evaluation and To Conduct Observation Activities Under Subpart CC.''

7. Flowchart 1 is included to illustrate the curriculum path, evaluations, and timeline for initial and combined certification and initial training programs.

END INFORMATION

BEGIN QPS REQUIREMENT

TABLE 1—BASELINE PROGRAMMED HOURS FOR AIRCRAFT DISPATCHERS: TRAINING PROGRAM AND QUALIFICATION REQUIREMENTS

[See § 121.1435]

Activity	Training categories			
	Initial for certificated dispatchers	Recurrent	Transition	Combined certification and initial
Generic Training (see attachment 3)	N/A	N/A	N/A	136.
General Knowledge and Skills Segment (see attachment 1).	48	16	N/A	32.
Basic Aircraft (see attachment 2)	32	N/A	N/A	32.
Practical Test	N/A	N/A	N/A	Required.
Specific Training per Aircraft Type (see attachment 2).	8	4	8	8.
General Knowledge for Flag Operations (see attachment 1).	8*	N/A	N/A	8*.
General Knowledge per Flag Area of Operation (see attachment 1).	2*	2*	N/A	2*.
Supervised Operating Experience, Domestic.	8	N/A	N/A	8.
Supervised Operating Experience, per Flag Area of Operation.	8*	N/A	N/A	8*.
Operating Familiarization	Required	Required	N/A	Required.
Proficiency Test	Required	N/A	Required	Required.
Proficiency Check	N/A	Required	N/A	N/A.

* The Administrator may require additional programmed hours contingent on the level of the training program, operational complexity, and responsibilities of the dispatcher.

TABLE 2—MINIMUM PROGRAMMED HOURS FOR AIRCRAFT DISPATCHERS: TRAINING PROGRAM AND QUALIFICATION REQUIREMENTS

[See § 121.1435]

Activity	Training categories			
	Initial for certificated dispatchers	Recurrent	Transition	Combined certification and initial
Generic Training (see attachment 3)	N/A	N/A	N/A	136.
General Knowledge and Skills Segment (see attachment 1).	48	8	N/A	32.
Basic Aircraft (see attachment 2)	24	N/A	N/A	32.
Practical Test	N/A	N/A	N/A	Required.
Specific Training per Aircraft Type (see attachment 2).	4	2	4	4.
General Knowledge for Flag Operations (see attachment 1).	8	N/A	N/A	8.
General Knowledge per Flag Area of Operation (see attachment 1).	2	2	N/A	2.
Supervised Operating Experience, Domestic.	8	N/A	N/A	8.
Supervised Operating Experience, per Flag Area of Operation.	8	N/A	N/A	8.
Operating Familiarization	Required	Required	N/A	Required.
Proficiency Test	Required	N/A	Required	Required.
Proficiency Check	N/A	Required	N/A	N/A.

TABLE 3—REQUALIFICATION PROGRAMMED HOURS FOR AIRCRAFT DISPATCHERS: TRAINING PROGRAM AND QUALIFICATION REQUIREMENTS

[See § 121.1419]

Activity	Months lapse in currency				
	Phase I less than 6 months	Phase II at least 6 months, but less than 12 months	Phase III at least 12 months, but less than 24 months	Phase IV at least 24 months, but less than 36 months	Phase V 36 months or more
Missed Recurrent Modules (see attachments 1 and 2).	Required	Required	Required	Required	N/A.

TABLE 3—REQUALIFICATION PROGRAMMED HOURS FOR AIRCRAFT DISPATCHERS: TRAINING PROGRAM AND QUALIFICATION REQUIREMENTS—Continued

[See § 121.1419]

Activity	Months lapse in currency				
	Phase I less than 6 months	Phase II at least 6 months, but less than 12 months	Phase III at least 12 months, but less than 24 months	Phase IV at least 24 months, but less than 36 months	Phase V 36 months or more
General Knowledge and Skills Segment (see attachment 1).	0	2	4	8	Initial.
Specific Training per Aircraft Type (see attachment 2).	0	1	2	2	Initial.
General Knowledge per Flag Area of Operation (see attachment 1).	0	2	2	2	Initial.
Supervised Operating Experience, Domestic.	0	4	8	8	Initial.
Supervised Operating Experience, per Flag Area of Operation.	0	2	2	2	Initial.
Operating Familiarization.	Required if not completed in previous 12 months.	Required if not completed in previous 12 months.	Required	Required	Required.
Proficiency Tests or Checks (see Table 4 and attachment 4).	Proficiency Check Required if not completed in previous 12 months.	Proficiency Check Required if not completed in previous 12 months.	Proficiency Check Required.	Proficiency Check Required.	Proficiency Test Required.

TABLE 4—TRAINING CATEGORY EVALUATION REQUIREMENTS FOR AIRCRAFT DISPATCHERS

[See Attachment 4]

Area of evaluation tasks	Proficiency test			Proficiency check
	Initial	Transition	Combined certification and initial*	Recurrent and requalified
I. Area of Evaluation: General				
A. Equipment Knowledge	X	X	X	X
B. Aircraft Performance and Limitations Knowledge	X	X	X	X
C. Operating Requirements	X	N/A	X	X
D. National Weather System	X	N/A	X	X
E. National NOTAM System	X	N/A	X	X
II. Area of Evaluation: Duty Period Orientation				
A. Operations Orientation	X	N/A	X	X
B. Dispatcher Shift Turnover	X	N/A	X	X
C. Shift Self Briefing	X	N/A	X	X
D. Certificate Holder Manuals, Procedures, and Operating Information	X	X	X	X
III. Area of Evaluation: Planning and Executing a Dispatch Release				
A. Obtain Required Information	X	N/A	X	X
B. Flight Planning	X	X	X	X
C. Create and Issue Dispatch Release	X	N/A	X	X
D. Briefing Flight Crews	X	N/A	X	X
IV. Area of Evaluation: Flight Monitoring				
A. Updating and Gathering Information	X	N/A	X	X
B. Operational Control Decision-Making	X	N/A	X	X
C. Amend Dispatch Release	X	N/A	X	X
V. Area of Evaluation: Situation Management				
A. Dispatch and Aircraft Abnormality or Emergency	X	X	X	X
B. Collection and Dissemination of Information on Overdue or Missing Aircraft	X	N/A	X	X
VI. Area of Evaluation: Dispatch Resource Management				
A. Demonstrate and apply DRM concepts	X	N/A	X	X

*In addition to the Proficiency Test, a Practical Test is required as prescribed in Attachment 3.

TABLE 5—PERSONNEL AUTHORIZED TO ADMINISTER AIRCRAFT DISPATCHER TRAINING AND EVALUATION, AND TO CONDUCT OBSERVATION ACTIVITIES UNDER SUBPART CC

[See §§ 121.1421 and 121.1439]

Aircraft dispatcher training, evaluation, and observation activities under subpart CC	Employer and position							
	Other than employees of the part 119 certificate holder		The part 119 certificate holder					FAA
	Certificated dispatcher instructor	Non-certificated dispatcher instructor	Certificated dispatcher instructor	Non-certificated dispatcher instructor	Certificated dispatcher	Check dispatcher	Dispatch program designee	Aviation safety inspector operations
Training And Evaluation								
Generic Training, General Knowledge and Skills, and Basic Aircraft	[a] X	[a] X	X	[a] X	.....	X	X	.....
DRM, Certificate Holder Computer Systems, Computer Flight Planning, Contingency Operations, Practical Dispatch Applications	.....	.....	X	.....	.....	X	X	.....
Specific Aircraft Type	[a] X	[a] X	X	[a] X	.....	X	X	.....
Flag and Flag Area of Operations	[a] X	.....	X	.....	.....	X	X	.....
Supervised Operating Experience	.....	.....	[b] X	.....	[b] X	X	X	.....
Proficiency Test (Initial, Transition)	.....	.....	.....	.....	.....	X	X	X
Proficiency Check (Recurrent, Requalification)	.....	.....	.....	.....	.....	X	X	X
Practical Test for Certificate	.....	.....	.....	.....	.....	.....	X	X
Proficiency Test (Combined Certification and Initial)	.....	.....	.....	.....	.....	.....	X	X
Observation Activities								
Observation of Dispatch Program Designee (DPD)	.....	.....	.....	.....	.....	.....	.....	X

[a] Must be acceptable to the Administrator.
[b] May be conducted by a check dispatcher or a person who meets the experience requirements of § 121.1417.

END QPS REQUIREMENT

BEGIN INFORMATION

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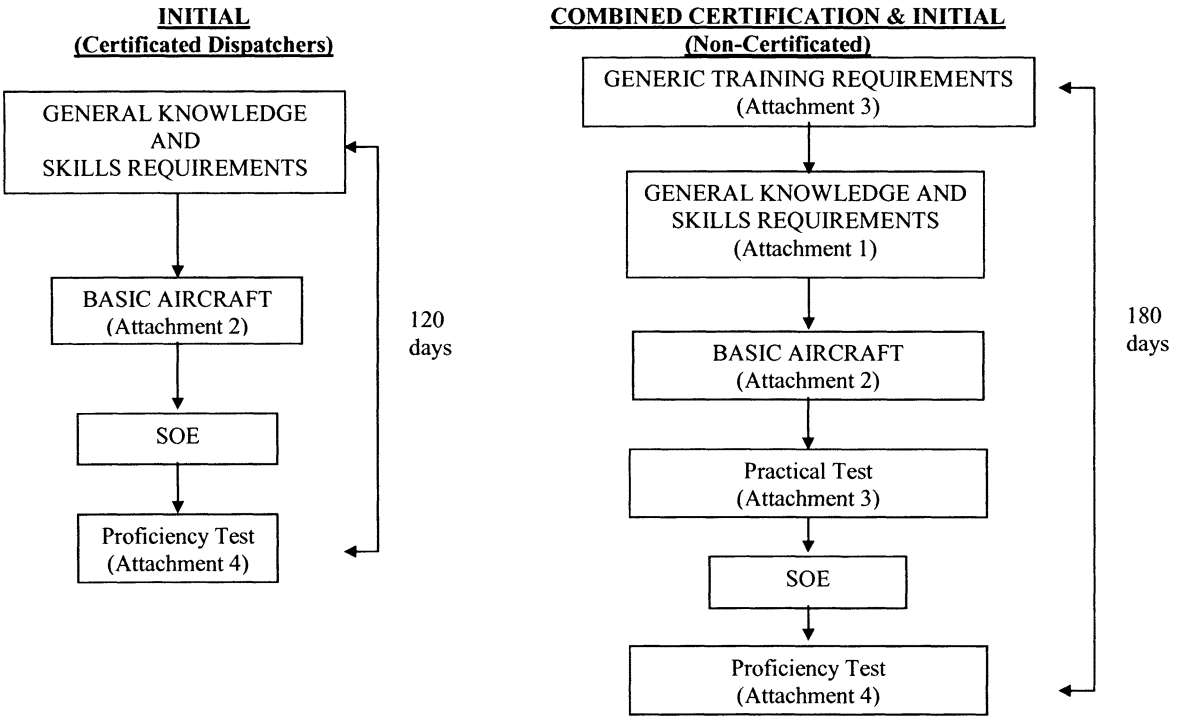
Flowchart 1, FLOWCHART FOR INITIAL AND COMBINED CERTIFICATION AND INITIAL TRAINING CURRICULUM (§ 121.1413(d))



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END INFORMATION

Attachment 1 of Appendix T to Part 121

General Knowledge and Skills Requirements—Subjects and Tests—for Initial, Combined Certification and Initial, Recurrent, and Requalification Training Categories

BEGIN INFORMATION

A. General Knowledge and Skills Segment for Initial, Combined Certification and Initial, Recurrent, and Requalification. (See §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; 121.1455; and 121.1471)

1. The general knowledge and skills segment introduces the student to the certificate holder, its policies, and operations. The general knowledge and skills segment also includes other pertinent information that prepares the student for specific ground and skills training, including how to use the certificate holder's operating manuals for exercising operational control.

2. The general knowledge and skills segment includes required subjects. In addition, some of the subjects have examples. These examples are for clarification only and are not all inclusive.

3. For recurrent and requalification see the discussion under general knowledge and skills segment for recurrent and requalification in paragraph B of this attachment.

END INFORMATION

BEGIN QPS REQUIREMENT

4. The FAA Aircraft Dispatcher Knowledge Test is a requirement for certification and the practical test. The certificate holder's testing under this attachment is not a substitute for the FAA Aircraft Dispatcher Knowledge Test.

5. Training is required for all subjects listed in each area of instruction that pertain to the certificate holder's operations specifications for persons in initial, combined certification and initial, recurrent, and requalification training. Training is also required for subjects not listed in each area of instruction, but that pertain to a certificate holder's operation. The aircraft dispatcher must understand the subjects required for the areas of instruction listed in Attachment 1 of this appendix.

6. The certificate holder must administer a knowledge test for the subjects in each area of instruction. The knowledge test must be written or computer based. The FAA must approve the form and content in each area of instruction. An individual must satisfactorily complete the knowledge test. To satisfactorily complete a knowledge test, a score of 80% or better in each area of instruction is required and a qualified person must correct the test to 100%. Correction of missed questions must include a discussion of which answer is correct, and why the answer selected is incorrect. Retraining is required in each area of instruction when a score of 80% or better is not achieved. Retraining is followed by reevaluation of the student in each retrained area of instruction. The form and content of the reevaluation must also be approved by the FAA. The knowledge tests for each training category must meet the following requirements:

(a) For initial and combined certification and initial, a knowledge test must be comprised of the minimum number of questions required for the subjects within each area of instruction.

(b) For recurrent training, a knowledge test must be comprised of at least 20 questions selected from the applicable areas of instruction.

(c) For requalification training that requires missed recurrent training modules, each recurrent knowledge test must be comprised of at least 20

questions per missed recurrent training module, selected from the applicable areas of instruction. For each activity not completed as part of recurrent training (as required by Table 3 of this appendix), a test comprised of subjects selected from the applicable areas of instruction must have at least 5 questions per required activity.

7. The FAA may allow distance learning for subjects in each area of instruction unless otherwise indicated. However, the FAA will not approve cumulative distance learning hours that equal more than 50% of the total required programmed hours as listed in Tables 1, 2 or 3 of this appendix.

8. General Knowledge required—Areas of Instruction—With Subjects:

(a) *Area of Instruction:* Introduction and Orientation. (5 questions required)

Subjects:

(1) Course contents, schedules, and materials.

(2) Key personnel.

(3) Record keeping requirements.

(4) Drug testing and alcohol testing.

(5) Identification badges.

(6) Certificate holder publications.

(7) Schedule.

(8) Dispatcher's duties and responsibilities.

(9) Joint dispatcher and pilot in command responsibilities.

(b) *Area of Instruction:* Applicable Federal Regulations. (10 questions required)

Subjects:

(1) 14 CFR part 1.

(2) 14 CFR part 91.

(3) 14 CFR part 119.

(4) 14 CFR part 121.

(5) 14 CFR part 139.

(6) 49 CFR part 175 (HMR).

(7) 49 CFR part 830 (NTSB).

(8) Special Federal Aviation Regulations (SFARs).

(9) 49 CFR Chapter 12 (TSR).

(c) *Area of Instruction:* Manual overview. (10 questions required)

Subjects:

(1) The certificate holder's operations specifications.

(2) Manuals containing the following:

(i) Procedures established by FAA authorized exemptions to certain Federal Aviation Regulations (if applicable).

(ii) Procedures established by FAA authorized deviations to certain Federal Aviation Regulations (if applicable).

(iii) Minimum Equipment List (MEL).

(iv) Configuration Deviation List (CDL).

(v) Dispatch Deviation Guide (DDG) procedures.

(vi) Maintenance flight logs procedures.

(vii) Procedures for maintenance, test, training, and ferry flights.

(viii) Deicing and anti-icing procedures.

(ix) The process for gathering safety related information such as NOTAMs and weather.

(x) The certificate holder's approved training program.

(xi) Certificate holder security procedures and directives.

(xii) Certificate holder communications and procedures.

(xiii) Emergency procedures.

(xiv) Procedures for determining whether hazardous materials are on board an aircraft and notification procedures in an emergency.

(xv) Dispatch procedures.

(xvi) Weight and balance procedures.

(xvii) Contents of the Airplane Flight Manual.

(xviii) Certificate holder operations (e.g., GOM, FOM).

(xix) Station operations procedures.

(xx) Crew operating procedures.

(d) *Area of Instruction:* Meteorology. (15 questions required).

Subjects:

(1) Upper air meteorology.

(2) METAR.

(3) TAF.

(4) SIGMET–AIRMET.

(5) Area forecast.

(6) Winds aloft (high and low altitude).

(7) Surface meteorology.

(8) Thunderstorms.

(9) Tornadoes.

(10) Tropical weather (if applicable).

(i) Typhoons.

(ii) Tropical storms.

(iii) Hurricanes.

(11) Atmospheric hazards to aviation:

(i) Low level windshear.

(ii) Microburst.

(iii) Mountain waves (if applicable).

(iv) Turbulence (all types).

(v) Icing.

(vi) Reduced visibility (e.g., fog, ice fog, smog).

(vii) Volcanic ash.

(12) FAA approved weather service providers and approved sources.

(13) Interpretation and use of weather charts.

(14) Enhanced Weather Information System (EWINS), (if applicable).

(e) *Area of Instruction:* Approach plates and charts. (5 questions required).

Subjects:

(1) SIDS and DP.

(2) STARS.

(f) *Area of Instruction:* Navigation Aids and Publications. (10 questions required).

Subjects:

(1) ILS/Localizer.

(2) ILS PRM (if applicable).

(3) VOR and VOR/DME.

(4) VOR Classification.

(5) NDB.

(6) RNAV (e.g., GPS, Inertial).

(7) Class I, Class II, or Performance Based Navigation (as applicable).

(8) Terminal and en route charts and publications.

(9) Inoperative navigation aids.

(10) RADAR.

(g) *Area of Instruction:* Airport characteristics. (5 questions required).

Subjects:

(1) Airports (emphasizing special or unique characteristics).

(2) Runway configurations (e.g., parallel runways, orientation).

(3) Runway surfaces (e.g., grooved, porous friction, runway weight bearing capacity).

(4) Obstacles.

(5) Slope.

(6) Elevation.

(7) Terrain features.

(8) Methods of receiving information about airport operations and conditions.

(9) Airport lighting and marking.

(h) *Area of Instruction:* Air Traffic Control. (15 questions required).

Subjects:

(1) Air Traffic Control communication and coordination.

(2) Instrument approach procedures.

(3) Terminal departure procedures.

(4) Terminal arrival procedures.

(5) En route procedures (e.g., strategic and tactical planning tools such as Coded Departure Routes (CDR), National Route Program (NRP), Severe Weather Avoidance Procedures (SWAP)).

(6) Flow Control, ARTCC, approach, departure, tower, ground, FSS.

(7) National Airspace System.

(8) High Altitude Redesign (HAR).

(9) Airspace (Class A–G).

(10) Controlled and uncontrolled airspace and airports.

(11) Approved instrument approach procedures (operations specifications).

(12) Information required on ATC Flight Plans (e.g., RNP, RVSM).

(13) Collaborative Decision Making (CDM) (as applicable).

(14) Certificate holder policy on reroutes and deviations and impact on operational control.

(i) *Area of Instruction:* NOTAMS (as applicable) (10 questions required).

Subjects:

(1) Local (L).

(2) Distant (D).

(3) FDC.

(4) Chart NOTAMs.

(5) Chart supplements.

(6) FIR boundary NOTAMs.

(7) Oceanic NOTAMs.

(8) ATC NOTAMs.

(9) Military NOTAMs.

(10) TFRs and prohibited airspace.

(11) Airport Facility Directory (AFD).

(12) Certificate holder.

(13) Field conditions.
(14) SFARs.
(15) Method for gathering and disseminating NOTAMs.
(16) Other NOTAM sources.
(j) *Area of Instruction:* Crewmember requirement, if applicable per certificate holder procedures. (5 questions required).
Subjects:
(1) Duty time requirements.
(2) Qualification.
(i) Aircraft.
(ii) Airports.
(iii) Areas.
(iv) Takeoff and landing minimums.
(k) *Area of Instruction:* Dispatch Resource Management (DRM) Training.
Distance learning not allowed. (5 questions required).
Subjects:
(1) Briefings.
(2) Assertiveness.
(3) Inquiry.
(4) Conflict resolution.
(5) Interdepartmental coordination process.
(6) Interpersonal relationships.
(7) Situational awareness.
(8) Preparation, planning, and vigilance.
(9) Time management (prioritizing).
(10) Tactical and strategic use of resources.
(11) Stress management.
(12) Decisionmaking process.
(13) Multi-tasking.
(14) Risk management.
(15) Leadership.
(16) Communication.
(l) *Area of Instruction:* Ground de-ice and anti-ice program (5 questions required).
Subjects:
(1) Types, purpose, characteristics, and effectiveness of de-ice and anti-ice fluids.
(2) De-ice and anti-ice handling and performance implications.
(3) Aircraft surface contamination and critical area identification.
(4) Use of holdover times.
(5) Aircraft de-ice and anti-ice procedures and checks to detect contaminated surfaces.
(m) *Area of Instruction:* Computer System, as applicable. Distance learning not allowed. (10 questions required).
Subjects:
(1) Weather.
(2) Flight planning.
(3) Dispatch release.
(4) Irregular operations.
(5) Takeoff, en route, and landing gross weight calculations.
(6) Weight and balance.
(7) Flight monitoring, times, and schedule.
(8) Airborne and ground based aircraft situation displays (e.g., ASD).
(9) NOTAMs.
(10) Computer applications and technology required to perform aircraft dispatcher duties.
(n) *Area of Instruction:* Contingency operations for maintaining operational control in the event of single or multiple system failures (e.g., power, communication). Distance learning not allowed. (5 questions required).
(o) *Area of Instruction:* Other required training. The hours for other required training are in addition to approved programmed hours of instruction stated in Table 1 of this appendix.
Subjects:
(1) Awareness training for hazardous materials (part 121, subpart Z).
(2) Drug testing program and alcohol misuse prevention program (part 121 appendices I and J).
(3) Security training (49 CFR part 1544).
9. Training for a specific type of operation, Domestic or Flag.
(a) *Area of Instruction:* Domestic operations: (15 questions required).
Subjects:
(1) Definition of a domestic operation and what constitutes a domestic operation.
(2) The certificate holder's approved operations specifications related to Domestic operations. Examples:
(i) Special use airspace (e.g., Domestic RVSM).
(ii) Fuel reserves for domestic operations.
(iii) Operations specification A 12 (Operations to certain foreign airports).
(iv) Exemptions or deviations (if applicable).
(v) Operations specification C 70 (Authorized airports).
(3) En route operations over routes and diversions, if applicable, that may expose passengers and crew to extreme environmental conditions. Examples:
(i) Western U.S. terrain clearance and driftdown.
(ii) Ozone and hazardous weather.
(4) Unique domestic instrument approach and departure procedures. Examples:
(i) Missed approach procedures.
(ii) Unique local procedures.
(iii) Special instrument approach and departure procedures.
(iv) Specific SFAR requirements (if applicable).
(v) Engine out departure procedures.
(5) Required Navigation Performance (RNP) or Performance Based Navigation.
(6) Domestic communications system; air to ground, radio relay.
(7) Procedures for determining alternate airport requirements. Examples:
(i) Alternate airport selection.
(ii) Changes to alternates.
(8) Crewmember requirement, if applicable per certificate holder procedures.
(i) Duty time requirement.
(ii) Qualification.
(A) Aircraft.
(B) Airports.
(C) Areas.
(D) Takeoff and landing minimums.
(9) Dispatch release and its validity time for an intermediate airport.
(10) Other issues surrounding operational control of domestic operations. Examples:
(i) Holding fuel requirements.
(ii) Dispatching into congested airspace.
(iii) Reanalysis of airborne flights.
(iv) Uncontrolled airspace authorizations, en route and terminal.
(b) *Area of Instruction:* General knowledge for Flag Operations: (10 questions required).
Subjects:
(1) Definition of a flag operation and what constitutes a flag operation.
(2) Flag regulations.
(3) Class II navigation (e.g., Inertial, GPS).
(4) Equal Time Point (ETP), if applicable.
(5) Extended overwater.
(6) Fuel requirements.
(7) The practical application of the term ''Re-dispatch'' and information required to be exchanged between the aircraft dispatcher and the Pilot in Command, if applicable.
(8) International weather. Accessing international weather information (unique problems associated with obtaining international weather information).
(9) ICAO NOTAMS, as applicable.
(i) Chart NOTAMS.
(ii) Chart supplements.
(iii) The certificate holder's procedures for obtaining NOTAM information.
(iv) Track messages.
(v) International ATC environments. Examples:
(A) Uncontrolled airspace.
(B) Airspace restrictions and procedures.
(C) Language barriers.
(vi) Operations over high terrain. Example: Driftdown considerations (terrain clearance, oxygen, and alternate requirements).
(vii) Procedures for determining alternate airport requirements. Examples:
(A) Alternate airport selection.
(B) Changes to alternates.
(viii) Crewmember requirement, if applicable per certificate holder procedures.

(A) Duty time requirements.
(B) Qualification.
(1) Aircraft.
(2) Airports.
(3) Areas.
(4) Takeoff and landing minimums.
(ix) Compliance with foreign regulations and requirements that may be more restrictive than U.S. regulations and requirements.
(x) Dispatch release and its validity time for an intermediate airport.
(c) Area of Instruction: General Knowledge per Flag Area of Operation. The following subjects must be used to build the training for each flag area of operation. For training programs that include multiple flag areas of operation, duplicate subjects (e.g., ETOPS, Flag Regulations) need only be trained once. (10 questions required).

END QPS REQUIREMENT

BEGIN INFORMATION

(1) Rules, regulations, operations specifications, procedures, environmental issues, cultural issues, and other factors influence the certificate holder's operations in different parts of the world. Flag Area of Operation means a specific geographical area that may require compliance with unique policies, procedures, regulations, and requirements. Because of these varying operational complexities, the required training is divided into 12 Flag Areas of Operation.

END INFORMATION

BEGIN QPS REQUIREMENT

(2) Each Flag Area of Operation must contain the minimum number of programmed hours as outlined in Tables 1, 2, or 3, as applicable.
(3) *Flag Areas of Operation*:
(i) Africa. Includes: Continental Africa, Cape Verde, Madagascar, Mauritius, Reunion, Seychelles.
(ii) Asia-Eastern. Includes: Mainland China, Mongolia, Siberia.
(iii) Commonwealth of Independent States. Includes: Armenia, Azerbaijan, Belarus, Georgia, Kazakhstan, Kyrgyzstan, Moldova, Russian Federation, Tajikistan, Turkmenistan, Ukraine, Uzbekistan.
(iv) Europe-Central. Includes: Austria, Belgium, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Ireland, Italy, Latvia, Luxembourg, Madeira Islands, Malta, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, United Kingdom.
(v) Europe-Eastern. Includes: Albania, Boznia-Herzegovinia, Bulgaria, Czech Republic, Hungary, Macedonia, Poland, Romania, Slovakia, Slovenia, Yugoslavia.
(vi) Latin America. Includes: Mexico, Central America, Caribbean Islands and Cuba.
(vii) Middle East-South Asia. Includes: Afghanistan, Bahrain, Bangladesh, Bhutan, Chagos Archipelago, Cyprus, India, Iran, Iraq, Israel, Jordan, Maldives, Myanmar, Nepal, Oman, Pakistan, Qatar, Saudi Arabia, Sri Lanka, Syria, Thailand, Turkey, Indian Ocean.
(viii) North America. Includes: Alaska, Bermuda, Canada, Contiguous United States.
(ix) Atlantic Basin. Includes: Special Contingency Routes, MNPS, Greenland, Iceland, South Atlantic Ocean.
(x) Pacific Basin. Includes: Australia, New Zealand, New Guinea, Aleutian Islands, Hawaiian Islands, Japan, Korea, Southeast Asia, Indonesia, Malaysia, Philippines, Hong Kong, Taiwan, Pacific Islands.
(xi) Polar Routes, Area of Magnetic Unreliability, and any applicable alternates.
(xii) South America. Includes: All Continental Countries.
(4) The certificate holder's approved operations specifications related to flag operations.
(5) Long range navigation and associated special requirements. Examples:
(i) Number of Long Range Navigation Systems (LRNS) required for a specific airspace.
(ii) Contingency procedures.
(6) Long range communication and associated special requirements. Examples:
(i) Number of Long Range Communication Systems (LRCS) required for a specific airspace.
(ii) Types required for specific airspace (e.g., VHF, HF, Satellite, data link).
(iii) Contingency procedures.
(7) Extended Operations (ETOPS), as applicable. Examples of variables that must be considered:
(i) Fuel.
(ii) Weather.
(iii) Alternate airport requirements.
(iv) Adequate or suitable airports.
(v) Required equipment.
(vi) Maintenance status.
(vii) Entry and exit points.
(8) En route operations over routes and diversions, as applicable that may expose passengers and crew to extreme environmental conditions. Examples:
(i) Greenland.
(ii) Himalayas.
(iii) Polar.
(iv) Russian airspace.
(9) Special use airspace (e.g., Reduced Vertical Separation Minimums (RVSM)).
(10) Required Navigation Performance (RNP) or Performance Based Navigation.
(11) Unique international instrument approach and departure procedures. Examples:
(i) Limited navigational aids.
(ii) Limited ATC facilities.
(iii) Missed approach procedures.
(iv) Unique local procedures.
(v) Special instrument approach procedures.
(vi) Specific SFAR requirements, as applicable.
(vii) Engine out departure procedures.
(12) Approved airports and landing rights.
(13) Over-fly permission.
(14) Unique characteristics and special conditions in international airspace and at international airports. Examples:
(i) Performance limitations.
(ii) Mountainous terrain.
(iii) Navigation aids.
(15) Issues unique to flag area of operations into which the certificate holder operates. Examples:
(i) Air traffic control.
(ii) Organized tracks.
(iii) Polar operations.
(iv) Uncontrolled airspace.

END QPS REQUIREMENTS

BEGIN INFORMATION

B. General Knowledge and Skills Segment for Recurrent and Requalification. (See §§ 121.1419; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1455; and 121.1471).

The general knowledge and skills segment is designed to maintain the currency of each aircraft dispatcher. It ensures the necessary operational and procedural knowledge required for the dispatcher to effectively exercise operational control.

END INFORMATION

BEGIN QPS REQUIREMENT

1. Training is required for dispatchers in recurrent or requalification training programs for a certificate holder. Training must address operational and procedural review of topics deemed necessary by the certificate holder and approved by the Administrator. Curricula must contain (but are not limited to) selected portions of the following areas of instruction. The test that is required for recurrent training must contain 20 questions. For requalification training, the number of

questions required for testing is based on the number of missed training modules. *See* paragraph A.6.(c) of this attachment for specific requirements for requalification training.

2. General Knowledge required.

Areas of Instruction:

Subjects:

(a) Operations Specifications.

(b) General Operating Manual.

(c) Air Traffic Control and Instrument Approach Procedures.

(d) Reduced Vertical Separation Minimum (RVSM).

(e) Certificate holder communications systems and procedures.

(f) Meteorology.

(g) NOTAMS.

(h) Maintenance procedures.

(i) Emergency procedures.

(j) Joint dispatcher and pilot in command responsibilities.

(k) Characteristics of appropriate airports.

(l) Prevailing weather phenomena.

(m) Approach plates and charts.

(n) Navigational aids and publications.

(o) Certificate holder computer systems (distance learning not allowed).

(p) Computer flight planning (distance learning not allowed).

(q) Dispatch Resource Management (DRM) (distance learning not allowed).

(r) Ground de-ice and anti-ice procedures and policies (must be covered each year).

(s) Flag Areas of Operation—Selected subjects from paragraphs A.9.(b) and (c) of this attachment.

3. *Area of Instruction:* Other required training.

The hours for other required training are in addition to approved programmed hours of instruction stated in Table 1 of this appendix.

Subjects:

(a) Awareness training for hazardous materials (part 121, subpart Z).

(b) Drug testing program and alcohol misuse prevention program (part 121 appendices I and J).

(c) Security training (49 CFR part 1544).

END QPS REQUIREMENT

Attachment 2 of Appendix T to Part 121

Basic Aircraft and Specific Aircraft Type Training Requirements—Subjects and Tests—for Initial, Combined Certification and Initial, Transition, Recurrent, Requalification, Differences, and Special Training Categories

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BEGIN INFORMATION

A. General. (See §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; 121.1455, and 121.1471)

1. The basic aircraft segment introduces the student to the base aircraft of the operator including aircraft systems and performance. The specific aircraft segment is an overview of aircraft systems and performance that prepares the student for specific application and skills training to include how to use the certificate holder's aircraft manual or manuals for conducting operational control of the airline.

2. The basic aircraft and specific aircraft segment includes required subjects. In addition, some of the required subjects have examples. These examples are for clarification only and are not all inclusive.

END INFORMATION

BEGIN QPS REQUIREMENT

3. The FAA Aircraft Dispatcher Knowledge Test is a requirement for certification and the practical test. The certificate holder's testing under this attachment is not a substitute for the FAA Aircraft Dispatcher Knowledge Test.

4. Training is required for all subjects listed in each area of instruction that pertain to the certificate holder's operations specifications for persons in initial, combined certification and initial, transition, recurrent, requalification, difference, and special training. Training is also required for subjects not listed in each area of instruction, but that pertain to a certificate holder's operation. The aircraft dispatcher must understand the subjects required for the areas of instruction listed in Attachment 2.

5. The certificate holder must administer a knowledge test for the subjects in each area of instruction. The knowledge test must be written or computer based. The FAA must approve the form and content in each area of instruction. An individual must satisfactorily complete the knowledge test. To satisfactorily complete a knowledge test, a score of 80% or better in each area of instruction is required and a qualified person must correct the test to 100%. Correction of missed questions must include a discussion of which answer is correct, and why the answer selected is incorrect. Retraining is required in each area of instruction when a score of 80% or better is not achieved. Retraining is followed by reevaluation of the student in each retrained area of instruction. The form and content of the reevaluation must also be approved by the FAA. The knowledge tests for each training category must be as follows:

(a) For initial and combined certification and initial, a knowledge test comprised of the minimum number of questions required for the subjects within each area of instruction.

(b) For recurrent training, a knowledge test comprised of at least 20 questions selected from the applicable areas of instruction. For certificate holders with more than one aircraft type, aircraft systems for each specific aircraft type may be covered over a 3 year cycle as approved by the Administrator.

(c) For requalification training that requires missed recurrent training modules, each recurrent knowledge test must be comprised of at least 20 questions per missed recurrent training module, selected from the applicable areas of instruction. For each activity required by Table 3 of this appendix, a test comprised of subjects selected from the applicable areas of instruction must have at least 5 questions per required activity.

(d) For differences training at least 5 questions. Training and evaluation is required in specific subject areas specified when differences are required.

6. The FAA may allow distance learning for subjects in each area of instruction unless otherwise indicated. However, the FAA will not approve cumulative distance learning hours that equal more than 50% of the total required programmed hours as listed in Tables 1, 2 or 3 of this appendix.

B. Basic Aircraft Training Requirements for Initial or Combined Certification and Initial. (See §§ 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; 121.1455, and 121.1471)

Areas of Instruction—With Subjects:

1. *Area of Instruction:* Basic Aircraft Systems Theory and Performance. (10 questions required).

Subjects:

(a) Air conditioning.

(b) Pressurization.

(c) Auto flight.

(d) Communications.

(e) Electrical.

(f) Equipment and furnishings.

(g) Fire protection.

(h) Flight controls.

(i) Fuel.

(j) Hydraulics.

(k) Ice and rain protection.

(l) Instrumentation.

(m) Landing gear.
(n) Lights.
(o) Oxygen.
(p) Water and waste.
(q) Auxiliary power.
(r) Doors.
(s) Propellers.
(t) Engines.
(u) Weight and balance theory.
(v) Flight planning overview.
(w) Aircraft performance.

2. *Area of Instruction:* A general description of the aircraft performance characteristics emphasizing the following as applicable: (5 questions required).

Subjects:
(a) Aircraft limitations that may affect the aircraft performance.
(b) Navigation equipment and required navigation performance.
(c) Communication equipment and required communication performance.
(d) Other factors affecting operating and performance characteristics.

3. *Area of Instruction:* MEL and CDL specific applications and appropriate operating manual procedures applicable to dispatch for: (10 questions required).

Subjects:
(a) Air conditioning.
(b) Pressurization.
(c) Auto flight.
(d) Communications.
(e) Electrical.
(f) Equipment and furnishings.
(g) Fire protection.
(h) Flight controls.
(i) Fuel.
(j) Hydraulics.
(k) Ice and rain protection.
(l) Instrumentation.
(m) Landing gear.
(n) Lights.
(o) Oxygen.
(p) Water and waste.
(q) Auxiliary power.
(r) Doors.
(s) Propellers.
(t) Engines.

4 *Area of Instruction:* Additional training in the following subjects must be included (as applicable): (10 questions required).

Subjects:
(a) Instrument approach and communication equipment.
(b) Aircraft specific deicing procedures.
(c) Special considerations and authorizations for international operations.
(d) Reduced separation standards.
(e) Special maintenance procedures.
(f) Flight manual specific emergency procedures and equipment.
(g) Weight and balance considerations.
(h) Basic aircraft performance dispatch requirements and procedures.
(i) Flight planning including route, track and altitude selection, en route performance, flight time analysis, weather considerations, and fuel analysis.
(j) Aircraft specific emergency procedures.
(k) Mission capable considerations (e.g., over-water equipped).

C. Aircraft Type Specific Training Requirements for Initial, Combined Certification and Initial, Transition, Recurrent, and Requalification. (See §§ 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; 121.1455, and 121.1471)

1. Aircraft Type Specific Training Requirements—Areas of Instruction—With

Subjects:
(a) *Area of Instruction:* Systems Overview: (15 questions required).

Subjects:
(1) Air conditioning.
(2) Pressurization.
(3) Auto flight.
(4) Communications.
(5) Electrical.
(6) Equipment and furnishings.
(7) Fire protection.
(8) Flight controls.
(9) Fuel.
(10) Hydraulics.
(11) Ice and rain protection.
(12) Instrumentation.
(13) Landing gear.
(14) Lights.
(15) Oxygen.
(16) Water and waste.
(17) Auxiliary power.
(18) Doors.
(19) Propellers.
(20) Engines.

(b) *Area of Instruction:* Performance. (5 questions required).

Subjects:
(1) Take-off performance.
(2) En route performance.
(3) Landing performance.

(c) *Area of Instruction:* Other. (10 questions required).

Subjects:
(1) Aircraft manuals.
(2) Aircraft limitations.
(3) Weight and balance.
(4) Emergency and abnormal procedures.

2. *Differences training.* (5 questions required)

Each training program must provide differences training if the Administrator finds that, due to differences between aircraft of the same type operated by the certificate holder, additional training is necessary to ensure that each dispatcher is adequately trained to perform the assigned duties. The programmed hours established for differences training are in addition to the previously approved programmed hours for the approved training program. For differences training (§ 121.1471), the hours remain in the differences training category. There are no programmed hours in Tables 1 and 2 of this appendix for differences training.

3. *Special training.*

The programmed hours established for special training are in addition to the previously approved programmed hours for the approved training program. For special training (§ 121.1437(c)), the certificate holder integrates the training into the existing categories in Tables 1 and 2 of this appendix. There are no programmed hours in Tables 1 and 2 for special training.

END QPS REQUIREMENT

Attachment 3 of Appendix T to Part 121

Generic Training Requirements—Subjects and Tests—for Certification

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BEGIN INFORMATION

A. The Generic Training

This attachment lists those subject areas required to train and evaluate persons who are not certificated dispatchers. In addition, some of the required subjects have examples. These examples are for clarification only and are not all inclusive. The areas of instruction in this attachment will help prepare persons to take the aircraft dispatcher practical test.

END INFORMATION

BEGIN QPS REQUIREMENT

B. General (See §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1421; 121.1423; 121.1425; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; and 121.1471)

1. The FAA Aircraft Dispatcher Knowledge Test is a requirement for certification and the practical test. The certificate holder's testing under this attachment is not a substitute for the FAA Aircraft Dispatcher Knowledge Test.

2. Instruction and evaluation is required in all area subjects for combined certification and initial training.

3. The certificate holder must administer a knowledge test for the subjects in each area of instruction. The knowledge test must be written or computer based. The FAA must approve the form and content in each area of instruction. An individual must

satisfactorily complete the knowledge test. To satisfactorily complete a knowledge test, a score of 80% or better in each area of instruction is required and a qualified person must correct the test to 100%. Correction of missed questions must include a discussion of which answer is correct, and why the answer selected is incorrect. Retraining is required in each area of instruction when a score of 80% or better is not achieved. Retraining is followed by reevaluation of the student in each retrained area of instruction. The form and content of the reevaluation must also be approved by the FAA.

4. The FAA may allow distance learning for subjects in each area of instruction unless otherwise indicated. However, the FAA will not approve cumulative distance learning hours that equal more than 50% of the total required programmed hours as listed in Tables 1 and 2 of this appendix.

C. General Training Requirements Areas of Instruction—With Subjects: (See §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1421; 121.1423; 121.1425; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; and 121.1471)

1. *Area of Instruction:* Regulations (10 questions required)

Subjects:

(a) 14 CFR part 65, subparts A and C.

(b) 14 CFR parts 1, 25, 61, 71, 91, 121, 139, and 175.

(c) 49 CFR part 830 (NTSB).

(d) General Operating Manual (GOM).

2. *Area of Instruction:* Meteorology (15 questions required).

Subjects:

(a) *Basic Weather Studies.*

(1) The earth's motion and its effects on weather.

(2) Analysis of the following regional weather types, characteristics, and structures, or combinations thereof:

(i) Maritime.

(ii) Continental.

(iii) Polar.

(iv) Tropical.

(3) Analysis of the following local weather types, characteristics, and structures or combinations thereof:

(i) Coastal.

(ii) Mountainous.

(iii) Island.

(iv) Plains.

(4) The following characteristics of the atmosphere:

(i) Layers.

(ii) Composition.

(iii) Global wind patterns.

(iv) Ozone.

(v) Tropopause.

(5) Pressure:

(i) Units of measure.

(ii) Weather systems characteristics.

(iii) Temperature effects on pressure.

(iv) Altimeters.

(v) Pressure gradient force.

(vi) Pressure pattern flying weather.

(6) Wind:

(i) Major wind systems and coriolis force.

(ii) Jetstreams and their characteristics.

(iii) Local wind and related terms.

(7) States of matter:

(i) Solids, liquid, and gases.

(ii) Causes of change of state.

(8) Clouds:

(i) Composition, formation, and dissipation.

(ii) Types and associated precipitation.

(iii) Use of cloud knowledge in forecasting.

(9) Fog:

(i) Causes, formation, and dissipation.

(ii) Types.

(10) Ice:

(i) Causes, formation, and dissipation.

(ii) Types.

(11) Stability and instability:

(i) Temperature lapse rate, convection.

(ii) Adiabatic processes.

(iii) Lifting processes.

(iv) Divergence.

(v) Convergence.

(12) Turbulence:

(i) Jetstream associated.

(ii) Pressure pattern recognition.

(iii) Low level windshear.

(iv) Mountain waves.

(v) Thunderstorms.

(vi) Clear air turbulence.

(13) Airmasses:

(i) Classification and characteristics.

(ii) Source regions.

(iii) Use of airmass knowledge in forecasting.

(14) Fronts:

(i) Structure and characteristics, both vertical and horizontal.

(ii) Frontal types.

(iii) Frontal weather flying.

(15) Theory of storm systems:

(i) Thunderstorms.

(ii) Tornadoes.

(iii) Hurricanes and typhoons.

(iv) Microbursts.

(v) Causes, formation, and dissipation.

(b) *Weather, analysis, and forecasts.*

(1) Observations:

(i) Surface observations.

(A) Observations made by certified weather observer.

(B) Automated weather observations.

(ii) Terminal forecasts.

(iii) Significant en route reports and forecasts.

(A) Pilot reports.

(B) Area forecasts.

(C) Sigmets, airmets.

(D) Center weather advisories.

(iv) Weather imagery.

(A) Surface analysis.

(B) Weather depiction.

(C) Significant weather prognosis.

(D) Winds and temperature aloft.

(E) Composite moisture stability chart.

(F) Surface weather prognostic chart.

(G) Radar meteorology.

(H) Satellite meteorology.

(I) Other charts as applicable.

(v) Meteorological information data collection systems.

(2) Data collection, analysis, and forecast facilities.

(3) Service outlets providing aviation weather products.

(c) *Weather Related Aircraft Hazards.*

(1) Crosswinds and gusts.

(2) Contaminated runways.

(3) Restrictions to surface visibility.

(4) Turbulence and windshear.

(5) Icing.

(6) Thunderstorms and microburst.

(7) Volcanic ash.

3. *Area of Instruction:* Navigation (10 questions required)

Subjects:

(a) *Study of the Earth.*

(1) Time reference and location (0 Longitude, UTC).

(2) Definitions.

(3) Projections.

(4) Charts.

(b) *Chart Reading, Application, and Use.*

(c) *National Airspace Plan.*

(d) *Navigation Systems.*

(e) *Airborne Navigation Instruments.*

(f) *Instrument Approach Procedures.*

(1) Transition procedures.

(2) Precision approach procedures.

(3) Non-precision approach procedures.

(4) Minimums and the relationship to weather.

(g) *Special Navigation and Operations.*

(1) North Atlantic.

(2) Pacific.

(3) Global differences.

4. *Area of Instruction:* Communications (5 questions required)

Subjects:

(a) *Regulatory requirements.*

(b) *Communication Protocol.*

(c) *Voice and Data Communications.*

(d) *Notice to Airmen (NOTAMS).*

(e) *Aeronautical Publications.*

(f) *Abnormal Procedures.*

5. *Area of Instruction:* Air Traffic Control (10 questions required)

Subjects:

(a) *Responsibilities.*

(b) *Facilities and Equipment.*

(c) *Airspace classification and route structure.*

(d) *Flight Plans.*

(1) Domestic.

(2) International.
(e) *Separation Minimums.*
(f) *Priority Handling.*
(g) *Holding Procedures.*
(h) *Traffic Management.*
6. *Area of Instruction:* Emergency and Abnormal Procedures. (5 questions required)
Subjects:
(a) *Security measures on the ground.*
(b) *Security measures in the air.*
(c) *FAA responsibility and services.*
(d) *Collection and dissemination of information on overdue or missing aircraft.*
(e) *Means of declaring an emergency.*
(f) *Responsibility for declaring an emergency.*
7. *Area of Instruction:* Practical dispatch applications. (distance learning not allowed)
Subjects:
(a) *Human Factors.*
(1) Decision-making:
(i) Situation assessment.
(ii) Generation and evaluation of alternatives.
(A) Tradeoffs and prioritization.
(B) Contingency planning.
(iii) Support tools and technologies.
(2) Human error:
(i) Causes.
(A) Individual and organizational factors.
(B) Technology-induced error.
(ii) Prevention.
(iii) Detection and recovery.
(3) Teamwork:
(i) Communication and information exchange.
(ii) Cooperative and distributed problem-solving.
(iii) Resource management.
(A) Air Traffic Control (ATC) activities and workload.
(B) Flight crew activities and workload.
(C) Maintenance activities and workload.
(D) Operations control staff activities and workload.
(b) *Applied Dispatching.*
(1) Briefing techniques, Dispatcher, Pilot.
(2) Preflight:
(i) Safety.
(ii) Weather analysis.
(A) Satellite imagery.
(B) Upper and lower altitude charts.
(C) Significant en route reports and forecasts.
(D) Surface charts.
(E) Surface observations.
(iii) NOTAMS and airport conditions.
(iv) Crew.
(A) Qualifications.
(B) Limitations.
(v) Flight planning.
(A) Route of flight.
(1) Standard Instrument Departures and Standard Terminal Arrival Routes.
(2) En route charts.
(3) Operational altitude.
(4) Departure and arrival charts.
(B) Minimum departure fuel.
(*1*) Climb.
(*2*) Cruise.
(*3*) Descent.
(vi) Decision to operate the flight.
(vii) ATC flight plan filing.
(viii) Flight documentation.
(A) Flight plan.
(B) [Reserved]
(3) Authorize flight departure with concurrence of pilot in command.
(4) In-flight operational control:
(i) Situational awareness.
(ii) Information exchange.
(iii) Amend original dispatch release as required.
(5) Post-flight:
(i) Arrival verification.
(ii) Weather debrief.
(iii) Flight irregularity reports as required.
8. *Area of Instruction:* Weight and balance subject: (5 questions required)
Subject:
(a) *Theory and application weight and balance.*
(b) [Reserved]
9. *Area of Instruction:* Performance for the type of aircraft. (5 questions required)

END QPS REQUIREMENT

Attachment 4 of Appendix T to Part 121

Evaluation Requirements and Performance Standards for Initial, Combined Certification and Initial, Transition, Recurrent, Requalification, Differences, and Special Training Categories

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BEGIN INFORMATION

A. General

The following list provides a set of tasks and situations by area of evaluation for the aircraft dispatcher. These are the areas and tasks found in the introduction to the QPS in Table 4, Training Category Evaluation Requirements for Aircraft Dispatchers, which establishes the evaluation by task.

END INFORMATION

BEGIN QPS REQUIREMENT

B. Evaluation Requirements. (See §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1421; 121.1423; 121.1425; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; and 121.1471)

1. Evaluation is required for all tasks and situations listed in each duty area that pertain to the certificate holder's operations specifications for persons in initial, combined certification and initial, transition, recurrent, requalification, difference, and special training. Evaluation is also required for tasks and situations that are not listed, but that pertain to a certificate holder's operation. The aircraft dispatcher must understand, and where applicable, satisfactorily complete the tasks required for the areas of evaluation listed in Table 4 of this appendix.
2. The certificate holder must use Table 4 to determine the tasks and situations on which each aircraft dispatcher must be trained and evaluated for each training category. If the certificate holder adds tasks or situations to those listed in Table 4, it must further develop the tasks or situations to include the requirement and frequency for training and evaluation in each specific category of training listed in the table. These changes must be approved by the POI.
3. *Evaluation Requirements for Initial, Combined Certification and Initial, and Transition Training Categories.*
(a) The proficiency test for initial and combined certification and initial is a combination of knowledge evaluation and skills evaluation during which additional training or practice is not allowed.
(b) The proficiency test for transition may be a knowledge evaluation, a skills evaluation, or a combination of knowledge evaluation and skills evaluation, during which additional training or practice is not allowed.
(c) The knowledge evaluation portion of the proficiency test must cover the subjects in each area of evaluation in Table 4 of this appendix. The knowledge evaluation for initial and combined certification and initial must be in the form of written or computer based questions. The knowledge evaluation for transition must be in the form of oral, written, or computer based questions. The knowledge evaluation must contain the minimum number of questions addressing each area of evaluation outlined in this attachment. The FAA must approve the form and content in each area of evaluation. An individual must satisfactorily complete the knowledge evaluation. To

satisfactorily complete a knowledge evaluation, a score of 80% or better in each area of evaluation is required and a qualified person must correct the test to 100%. Correction of missed questions must include a discussion of which answer is correct, and why the answer selected is incorrect. Retraining is required in each area of evaluation when a score of 80% or better is not achieved. Retraining is followed by reevaluation of the student in each retrained area of evaluation. The form and content of the reevaluation must also be approved by the FAA.

(d) The skills evaluation portion of the proficiency test must be administered in either an actual or simulated dispatch work environment and must cover the subjects in each area of instruction as depicted in Table 4. Each area of evaluation must be satisfactorily demonstrated to the Check Dispatcher, Dispatch Program Designee, or FAA Operations Inspector, as applicable. Retraining is required for each task in each area of evaluation that is not satisfactorily completed. Retraining is followed by reevaluation of the student in each retrained area of instruction. The FAA must also approve the form and content of the reevaluation.

4. *Evaluation Requirements for Recurrent and Requalification Training Categories.*

(a) For recurrent training and requalification training, the proficiency check is a combination of knowledge evaluation and skills evaluation of tasks listed in Table 4 and described in this attachment during which additional training or practice is allowed. A portion of the proficiency check must be administered in either an actual or simulated dispatch work environment.

(b) The minimum number of questions addressing each task is listed in each area of evaluation. These questions are only required for knowledge evaluation portion of the proficiency check. The knowledge evaluation portion of the proficiency check must be administered in the form of oral, written, or computer based questions. To satisfactorily complete a proficiency check, a score of 80% in each task area of evaluation is required and a qualified person must correct the test to 100%. Correction of missed questions must include a discussion of which answer is correct, and why the answer selected is incorrect. Retraining is required in each area of evaluation when a score of 80% or better is not achieved. Retraining is followed by reevaluation of the student in each retrained area of evaluation. The form and content of the reevaluation must also be approved by the FAA. The skills evaluation portion of the proficiency check must be satisfactorily demonstrated to the Check Dispatcher, Dispatch Program Designee, or FAA Operations Inspector, as applicable.

5. Dispatch Resource Management (DRM) indicators must be evaluated throughout the entire proficiency test or check.

6. The certificate holder must tailor the procedures in this attachment for each aircraft type and approved operation. The certificate holder must include these procedures in the manual(s) provided to the aircraft dispatcher.

C. Tasks and Situations by Area of Evaluation (See §§ 121.1411; 121.1413; 121.1415; 121.1417; 121.1419; 121.1421; 121.1423; 121.1425; 121.1431; 121.1433; 121.1435; 121.1437; 121.1439; 121.1441; 121.1451; 121.1453; and 121.1471)

1. Area of Evaluation: General

(a) *Task: Equipment Knowledge.* (10 questions required).

The dispatcher must have an understanding and a basic knowledge about the following subjects (systems and components) (as applicable):

(1) Landing gear, including: Extension and retraction systems, brakes, anti-skid, tires, nose-wheel steering, and shock absorbers.

(2) Engine(s), including: Controls and indications, induction system, carburetor and fuel injection, turbo-charging, cooling, fire detection and protection, mounting points, turbine wheels, compressors, de-icing, anti-icing, and other related components.

(3) Propellers, including: Type, controls, feathering and unfeathering, auto feather, negative torque sensing, synchronizing, and synchro-phasing.

(4) Fuel system, including: Capacity, controls; indicators; cross-feeding; transferring; jettison; fuel grade, color and additives; fueling and de-fueling procedures; and allowable fuel substitutions, if applicable.

(5) Oil system, including: Grade and indicators.

(6) Hydraulic system, including: Capacity pumps, pressure, reservoirs, grade, and regulators.

(7) Electrical system, including: Alternators, generators, battery, circuit breakers and protection devices, controls, indicators, and external and auxiliary power sources and ratings.

(8) Environmental systems, including: Heating, cooling, ventilation, oxygen and pressurization, controls, indicators, and regulating devices.

(9) Avionics and communications, including: Autopilot, flight director, and Electronic Flight Indicating Systems (EFIS); Flight Management System(s) (FMS); Long Range Navigation systems; Doppler Radar; Inertial Navigation Systems (INS); Global Positioning System (GPS, DGPS, WGPS); VOR, NDB, ILS, MLS, and RNAV systems and components; indicating devices; transponder; and emergency locator transmitter.

(10) Ice protection (anti-ice and de-ice), including: Pitot-static system, propeller (if appropriate), windshield, wing and tail surfaces.

(11) Flight controls, including: Ailerons, elevator(s), rudder(s), control tabs, balance tabs, stabilizer, flaps, spoilers, leading edge flaps and slats, and trim systems.

(b) *Task: Aircraft Performance and Limitations Knowledge.* (10 questions required)

(1) The dispatcher must understand and be proficient in the use of (as appropriate to the aircraft) performance charts, tables, graphs, or other data relating to the certificate holder's approved system for the following:

(i) Accelerate—stop distance.

(ii) Accelerate—go distance.

(iii) Balanced field.

(iv) Takeoff performance, all engines and with engine(s) inoperative, as appropriate.

(v) Climb performance including segmented climb performance; with all engines operating; with one or more engine(s) inoperative, and with other engine malfunctions as may be appropriate.

(vi) Service ceiling, all engines, with engines(s) inoperative, including Drift Down and Terrain Clearance, if appropriate.

(vii) Cruise performance.

(viii) Fuel consumption, range, and endurance.

(ix) Descent performance.

(xi) Go-around from rejected landings.

(xii) The effects of meteorological conditions upon performance characteristics with correct application of these factors to a specific chart, table, graph or other performance data.

(xiii) How to determine longitudinal and lateral center-of-gravity location for a specific load condition including how to add, remove, or shift weight to meet longitudinal (forward and aft), and lateral balance limits for takeoff, cruise, and landing.

(2) The aircraft dispatcher must know all of the limitations appropriate to each aircraft type and the kind of operation the dispatcher dispatches with respect to:

(i) Systems and components.

(ii) Performance.

(iii) MEL issues and how they may be different for a flag operation or a domestic operation.

(c) *Task: Operating Requirements* (10 questions required).

The aircraft dispatcher must understand the certificate holder's operating requirements as provided in:

(1) Operations Specifications.

(2) General Operating Manual.

(3) 14 CFR part 1.

(4) 14 CFR part 91.

(5) 14 CFR part 119.

(6) 14 CFR part 121.

(7) 14 CFR part 139.

(8) 49 CFR part 175 (HMR).

(9) 49 CFR part 830 (NTSB).

(10) Special Federal Aviation Regulations (SFARs).

(11) 49 CFR Chapter 12 (TSR).

(12) ATC System.

(13) Airport Facility Directory.

(d) *Task: National Weather System*. (5 questions required).

The aircraft dispatcher must know the National weather system (international weather systems, if applicable) and be able to use the system to assess weather conditions at departure, intermediate, en route, destination, and alternate airports.

(e) *Task: National NOTAM System*. (5 questions required).

The aircraft dispatcher must know the National NOTAM system (international NOTAM systems, if applicable) and be able to determine the impact of these NOTAMs on en route flight planning and at departure, intermediate, en route, destination, and alternate airports.

2. Area of Evaluation: Duty Period Orientation

(a) *Task: Operations Orientation*. (5 questions required).

The dispatcher must know how to use available information to create an operations orientation that covers, as applicable:

(1) The location of all flights for which the dispatcher is responsible.

(2) Planned flights and any special flights for the duty period.

(3) Knowledge of issues, such as anticipated ATC problems and delays.

(4) NOTAMS, weather, and field conditions for regular and alternate airports.

(5) Navigation facilities and any irregularities that may affect the safety of flight.

(b) *Task: Dispatcher Shift Turnover*. (5 questions required).

The dispatcher must:

(1) Determine that his or her duty schedule complies with part 121 dispatcher duty regulations and certificate holder operating procedures.

(2) Become thoroughly briefed at the beginning of duty period by the dispatcher who is turning over operational control.

(3) Develop situational awareness and prioritize his or her workload.

(4) Provide thorough briefing at the end of the duty period to the relieving dispatcher.

(c) *Task: Shift Self Briefing*. (5 questions required)

The aircraft dispatcher must use available information to anticipate and respond to events that may occur during the duty period, including:

(1) The general weather patterns.

(2) Weather information system status.

(3) EWINS status (if applicable).

(4) Radar imagery.

(5) Fuel status of current and planned flights.

(6) MEL status of current and planned flights.

(7) General airport conditions.

(d) *Task: Certificate Holder Manuals, Procedures, and Operating Information*. (10 questions required)

The aircraft dispatcher must understand and verify the currency of the operational procedures contained in the following:

(1) Certificate holder manual containing Flight Crew Operating Manual (FCOM) information.

(2) Airplane Flight Manual (AFM).

(3) Manual containing certificate holder operations procedures.

(4) Manual containing the Aircraft Dispatcher Procedures Manual (ADPM).

(5) Aeronautical Information Manual (AIM).

(6) Certificate holder's operations specifications.

(7) Maintenance restrictions such as airworthiness directives.

(8) MEL.

(9) CDL.

3. Area of Evaluation: Planning and Executing a Dispatch Release

(a) *Task: Obtain, Evaluate, and Disseminate Required Information*. (10 questions required)

The aircraft dispatcher must do the following, as applicable:

(1) Obtain, evaluate, and disseminate to the flight crew all pertinent weather information in the aircraft dispatcher's area of responsibility as follows:

(i) Weather reports and forecasts.

(ii) Pilot and radar reports.

(iii) Surface analysis reports.

(iv) Radar summary charts.

(v) Significant weather prognostics.

(vi) Winds and temperature aloft.

(vii) Freezing level charts.

(viii) Turbulence reports and forecasts.

(ix) Icing reports and forecasts.

(x) Stability charts.

(xi) Severe weather outlook charts.

(xii) Constant pressure charts.

(xiii) Constant pressure prognostics.

(xiv) Tables and conversion graphs.

(xv) SIGMETS, convective SIGMETS, convective outlooks, weather warnings, and AIRMETS.

(xvi) ATIS report.

(xvii) Satellite imagery.

(xviii) NOTAMs.

(xix) Field condition reports.

(2) Obtain, evaluate, and disseminate to the flight crew other information in the aircraft dispatcher's area of responsibility, such as the following:

(i) Aircraft status.

(A) Maintenance and MEL.

(B) Loading and fuel.

(C) Performance data.

(ii) ATC problems such as departure or arrival delays, flow control and en route or altitude problems.

(iii) ATC tower closures, curfews, or other information, such as noise abatement requirements at or near the arrival period.

(iv) Fuel and ground handling issues.

(v) Highlight restrictive MEL and CDL items.

(vi) Irregular operations plan of action (e.g., diversion).

(3) Obtain, review, and disseminate to the flight crew the following:

(i) The suitability of runways, including whether closed runways or runways with displaced thresholds are accounted for in the performance computations.

(ii) All NOTAMs.

(iii) Information about field conditions (contact the station if the information is not readily available) at airports to determine the validity of the information and the impact on operations.

(iv) The fueling restrictions and any station equipment problems (contact the station if the information is not readily available) for the airports to determine the impact on planned operations.

(4) Review the aircraft dispatcher ''read file'' for updated operational information.

(5) Review AIM.

(i) Navaids.

(ii) Airports and air navigation and lighting.

(iii) Airspace.

(iv) Air traffic control procedures including clearances.

(v) Airport operations.

(vi) Departure, en route, and arrival procedures.

(6) Review the Flight Crew Qualification for route to be flown

(i) Special airports.

(ii) Special use airspace.

(iii) High minimum captains and flight crew minimums.

(7) Review the aircraft status.
(i) Maintenance and MEL.
(ii) Loading and fuel.
(iii) Performance data.
(iv) Special areas of operation requirements.
(b) *Task: Flight Planning*. (15 questions required)
The aircraft dispatcher must do the following, as applicable:
(1) Select an alternate airport.
(i) Use a flight movement forecast (FMF) under an approved EWINS program.
(ii) Determine whether an alternate airport is required for the destination airport in accordance with 14 CFR part 121, any existing exemptions, deviations, operations specification requirements, and procedures, for the certificate holder.
(iii) If weather conditions at the departure airport are below landing minimums in the certificate holder's operation specifications for that airport, specify a departure alternate in accordance with 14 CFR part 121, and the approved certificate holder procedures.
(iv) Ensure that each alternate airport selected (whether for departure or destination airports) meets the requirements of 14 CFR part 121, and the approved certificate holder procedures.
(v) Consider and plan for an unscheduled stop.
(vi) Determine the operational suitability of the planned alternate by determining the following:
(A) Field conditions (e.g., wet runways, runway friction reports, braking action reports).
(B) The MEL and CDL status of the aircraft and any potential weather related condition or restriction.
(C) Crosswind and tailwind components.
(D) Weather reporting service is available.
(E) Approach chart does not prohibit its use as an alternate.
(F) The appropriate navigational facilities are monitored and operational.
(G) The airport has an instrument approach procedure authorized for use by the certificate holder.
(H) Tower closures and alternative procedures.
(2) Determine whether holding is anticipated at both the destination and the appropriate alternate(s) by considering the following:
(i) En route conditions.
(ii) ATC constraints.
(iii) Possible re-routes.
(iv) Marginal weather conditions at the arrival airports.
(v) MEL and CDL considerations.
(3) Determine the MEL and CDL status of the aircraft and its impact on the flight plan.
(4) Plan the flight considering the following:
(i) The ATC preferred routing (e.g., High Altitude Redesign, RVSM, RNP).
(ii) The performance requirements of part 121, subpart I.
(iii) The MEL or CDL status of the aircraft and any potential weather related considerations of resultant restrictions.
(iv) The en route navigational facilities are monitored and operational.
(v) Maintenance, test, training, and ferry flights (as applicable).
(5) Determine the fuel load requirements.
(i) Ensure that the flight is released with sufficient fuel on board to comply with the requirements of 14 CFR and the certificate holder's requirements for computing minimum fuel supply.
(ii) Consider the impact of underfueling or overfueling on the dispatch release.
(iii) Comply with the requirements of any deviations or exemptions used.
(6) Determine aircraft performance requirements. Ensure that the flight is released at a weight and configuration that complies with the requirements of 14 CFR part 121, subpart I and any additional certificate holder requirements.
(c) *Task: Create and Issue Dispatch Release*. (5 questions required)
The aircraft dispatcher must do the following, as applicable:
(1) Create and issue a dispatch release using the certificate holder's approved system for issuing dispatch releases.
(2) Create and issue a dispatch release using the certificate holder's approved back-up system for issuing dispatch releases.
(3) Ensure that the dispatch release meets the regulatory requirements and contains or has attached to it the available weather reports, weather forecasts (or a combination of these) for the destination airport, any intermediate stops, and any alternate airports.
(4) Ensure the dispatch release meets the approved certificate holder requirements.
(d) *Task: Briefing Flight Crews*. (5 questions required)
The aircraft dispatcher must demonstrate the ability to brief the flight crew on the topics listed in paragraph C.3. of this attachment.

4. Area of Evaluation: Flight Monitoring

(a) *Task: Updating and Gathering Information*. (5 questions required)
During the en route portion of the flight, the dispatcher must:
(1) Track changing weather and operating conditions.
(2) Determine the actual time the aircraft departed, progress of flight, and its estimated time of arrival.
(3) Provide the PIC with necessary information for the safe conduct of the flight, such as changing meteorological conditions or irregularities of facilities and services. Provide this information using the certificate holder's approved communication system(s).
(4) Advise the PIC of any changes in the operations environment as follows:
(i) ATC constraints.
(ii) Updated NOTAMs that may affect the flight.
(iii) Change in operations and an alternate plan.
(iv) Field conditions and runway availability.
(b) *Task: Operational Control Decisionmaking*. (5 questions required)
The aircraft dispatcher must do the following, as applicable:
(1) Understand the operational function of and interaction with other departments, such as the following:
(i) Maintenance.
(ii) Crew scheduling.
(iii) Training.
(iv) Customer service.
(v) Airport and station.
(2) Process the operational function of and interaction with these departments into an operational control decision in accordance with approved certificate holder procedures.
(c) *Task: Amend Dispatch Release*. (5 questions required).
The aircraft dispatcher must demonstrate the following:
(1) Determine when an amendment to a dispatch release is required (e.g., mechanical problem, alternate or destination changes).
(2) Amend the dispatch release in accordance with approved certificate holder procedures.
(3) Record that amendment in accordance with approved certificate holder procedures.

5. Area of Evaluation: Situation Management

(a) *Task: Dispatch and Aircraft Abnormality or Emergency*. (10 questions required).
The dispatcher must demonstrate the ability to do the following:
(1) Manage the following abnormal and emergency situations generated from a source other that the flight crew:
(i) A bomb threat is received.
(ii) Inflight medical emergency.
(iii) Engine failure in flight.
(iv) Inflight fire.
(v) Overweight landings.
(vi) Low fuel emergencies.

(vii) Aircraft diversions.
(viii) Hijacking.
(ix) Sabotage threats.
(x) An aircraft has been involved in a major accident.
(xi) An aircraft is overdue or missing.
(xii) Actions or alerts issued by military or other security agencies.
(xiii) Any other operational situation that affects the safety of flight.
(2) Establish communication with the Aircraft through the normal certificate holder air to ground communication system.
(3) Immediately notify the PIC of an emergency situation that arises during flight that requires an immediate decision and action by an aircraft dispatcher and record that decision.
(4) Determine whether the PIC has declared an emergency.
(5) Declare an emergency (if appropriate) in accordance with 14 CFR in the event the aircraft dispatcher cannot communicate with the PIC.
(6) Maintain operational control of the flight experiencing the abnormal or emergency situation.
(7) Notify certificate holder management of the abnormal or emergency situation.
(8) Maintain operational control of all flights in the dispatcher's control.
(9) Contact maintenance for mechanical situations.
(10) Determine the extent of the situation and attempt to classify the type of situation in order to report it properly to the authorities.
(11) Use of the appropriate certificate holder manuals (e.g., QRH, emergency procedures manual).
(b) *Task: Collection and dissemination of information on overdue or missing aircraft.* (5 questions required).
The aircraft dispatcher must:
(1) Know how to send a written report of any deviation (within 10 days of the emergency) through the certificate holder's operations manager to the POI at the certificate holding district office in accordance with 14 CFR.
(2) Know how to notify the nearest National Transportation Safety Board (NTSB) office when an accident or any of the following occur:
(i) Flight control system malfunction or failure.
(ii) Inability of any required flight crewmember to perform normal flight duties as a result of injury or illness.
(iii) Failure of structural components of a turbine engine excluding compressor and turbine blades and vanes.
(iv) In-flight fire.
(v) Aircraft collide in flight.
(vi) Damage to property, other than the aircraft, estimated to exceed $25,000 for repair (including materials and labor) or fair market value in the event of total loss, whichever is less.
(vii) For large multiengine aircraft (more than 12,500 pounds maximum certificated takeoff weight):
(A) In-flight failure of electrical systems which requires the sustained use of an emergency bus powered by a back-up source such as a battery, auxiliary power unit, or air-driven generator to retain flight control or essential instruments;
(B) In-flight failure of hydraulic systems that results in sustained reliance on the sole remaining hydraulic or mechanical system for movement of flight control surfaces;
(C) Sustained loss of the power or thrust produced by two or more engines; and
(D) An evacuation of an aircraft in which an emergency egress system is utilized.
(viii) An aircraft is overdue and is believed to have been involved in an accident.

6. Area of Evaluation: Dispatch Resource Management

(a) *Evaluation.* Evaluation of an aircraft dispatcher's practical application of DRM skills must occur as follows:
(1) After the aircraft dispatcher has completed initial, combined certification and initial, recurrent, and requalification training. This evaluation must be completed during the proficiency test (for initial and combined certification and initial training) and during the proficiency check (for recurrent or requalification training).
(2) During the supervised operating experience delivered after initial, combined certification and initial, and requalification training.
(b) *Task: Demonstrate and apply DRM concepts.* (Evaluation must be in the form of demonstration)
The aircraft dispatcher must know and be able to apply the following DRM competencies:
(1) Briefings.
(2) Assertiveness.
(3) Inquiry.
(4) Conflict resolution.
(5) Interdepartmental coordination process.
(6) Interpersonal relationships.
(7) Situational awareness.
(8) Preparation, planning, and vigilance.
(9) Time management (prioritizing).
(10) Tactical and strategic use of resources.
(11) Stress management.
(12) Decisionmaking process.
(13) Multi-tasking.
(14) Risk management.
(15) Leadership.
(16) Communication.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

35. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

36. Revise § 135.1(a)(4) to read as follows:

§ 135.1 Applicability.

(a) * * *
(4) Each person who applies for initial or provisional approval of an Advanced Qualification Program curriculum, curriculum segment, or portion of a curriculum segment under subpart Y of part 121 of this chapter and each person employed or used by a certificate holder to perform training, qualification, or evaluation functions under an Advanced Qualification Program under subpart Y of part 121 of this chapter.
* * * * *

37. Revise § 135.3(b) and (c) and add paragraph (d) to read as follows:

§ 135.3 Rules applicable to operations under this part.

* * * * *

(b) Each certificate holder that conducts commuter operations under this part with airplanes in which two pilots are required by the type certification rules of this chapter must comply with subpart BB of part 121 of this chapter instead of the requirements of subparts E, G, and H of this part.
(c) The rules in subpart BB of part 121 of this chapter are considered a subpart of part 135 of this chapter for certificate holders identified in paragraph (b) of this section.
(d) If authorized by the Administrator upon application, each certificate holder that conducts operations under this part to which paragraph (b) of this section does not apply, may comply with the applicable sections of subpart BB of part 121 of this chapter instead of the requirements of subparts E, G, and H of this part, except that those authorized certificate holders may choose to comply with the operating experience requirements of § 135.244, instead of the requirements of § 121.1225 of this chapter.

PART 142—TRAINING CENTERS

38. The authority citation for part 142 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

§ 142.1 [Amended]

39. Remove and reserve § 142.1(b)(2).

40. Revise § 142.63(b) to read as follows:

§ 142.63 Privileges.

* * * * *

(b) Approved under subpart Y, Advanced Qualification Program, of part 121 of this chapter, for meeting recency of experience requirements.

Issued in Washington, DC, on December 4, 2008.

John M. Allen,

Acting Director, Flight Standards Service.

[FR Doc. E8–29584 Filed 1–9–09; 8:45 am]

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Federal Register

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January 12, 2009

Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 216

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 080519680–81530–02]

RIN 0648–AW86

Taking and Importing Marine Mammals; U.S. Navy Training in the Hawaii Range Complex

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

ACTION: Final rule.

SUMMARY: NMFS, upon application from the U.S. Navy (Navy), is issuing regulations to govern the unintentional taking of marine mammals incidental to training activities conducted within the Hawaii Range Complex (HRC) for the period of January 2009 through January 2014. The Navy's training activities are considered military readiness activities pursuant to the Marine Mammal Protection Act (MMPA), as amended by the National Defense Authorization Act of 2004 (NDAA). These regulations, which allow for the issuance of ''Letters of Authorization'' (LOAs) for the incidental take of marine mammals during the described activities and specified timeframes, prescribe the permissible methods of taking and other means of affecting the least practicable adverse impact on marine mammal species and their habitat, as well as requirements pertaining to the monitoring and reporting of such taking.

DATES: Effective January 5, 2009 through January 5, 2014.

ADDRESSES: A copy of the Navy's application, which contains a list of the references used in this document, NMFS' Record of Decision (ROD), and other documents cited herein, may be obtained by writing to Michael Payne, Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910–3225 or by telephone via the contact listed here.

FOR FURTHER INFORMATION CONTACT: Jolie Harrison, Office of Protected Resources, NMFS, (301) 713–2289, ext. 166.

SUPPLEMENTARY INFORMATION: Extensive supplementary information was provided in the proposed rule for this activity, which was published in the **Federal Register** on Monday, June 23, 2008 (73 FR 35510). This information will not be reprinted here in its entirety; rather, all sections from the proposed rule will be represented herein and will contain either a summary of the material presented in the proposed rule or a note referencing the page(s) in the proposed rule where the information may be found. Any information that has changed since the proposed rule was published will be addressed herein. Additionally, this final rule contains a section that responds to the comments received during the public comment period.

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (Secretary) to allow, upon request, the incidental, but not intentional taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) during periods of not more than five consecutive years each if certain findings are made and regulations are issued or, if the taking is limited to harassment and of no more than 1 year, the Secretary shall issue a notice of proposed authorization for public review.

Authorization shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such taking are set forth.

NMFS has defined ''negligible impact'' in 50 CFR 216.103 as:

> an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

The NDAA (Pub. L. 108–136) removed the ''small numbers'' and ''specified geographical region'' limitations and amended the definition of ''harassment'' as it applies to a ''military readiness activity'' to read as follows (Section 3(18)(B) of the MMPA):

> (i) Any act that injures or has the significant potential to injure a marine mammal or marine mammal stock in the wild [Level A Harassment]; or
>
> (ii) any act that disturbs or is likely to disturb a marine mammal or marine mammal stock in the wild by causing disruption of natural behavioral patterns, including, but not limited to, migration, surfacing, nursing, breeding, feeding, or sheltering, to a point where such behavioral patterns are abandoned or significantly altered [Level B Harassment].

Summary of Request

On June 25, 2007, NMFS received an application from the Navy requesting authorization for the take of 24 species of marine mammals incidental to upcoming Navy training activities to be conducted within the HRC, which covers 235,000 nm^2 around the Main Hawaiian Islands (*see* map on page 17 of the application), over the course of 5 years. These training activities are classified as military readiness activities. These training activities may incidentally take marine mammals present within the HRC by exposing them to sound from mid-frequency or high frequency active sonar (MFAS/HFAS) or to underwater detonations at levels that NMFS associates with the take of marine mammals. The Navy requested authorization to take individuals of 24 species of marine mammals by Level B Harassment. Further, though they do not anticipate it to occur, the Navy requested authorization to take, by injury or mortality, up to 10 individuals each of 10 species over the course of the 5-year period (bottlenose dolphin, *Kogia spp.,* melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, and Cuvier's, Longman's, and Blainville's beaked whale).

Background of Navy Request

The proposed rule contains a description of the Navy's mission, their responsibilities pursuant to Title 10 of the United States Code, and the specific purpose and need for the activities for which they requested incidental take authorization. The description contained in the proposed rule has not changed (73 FR 35510).

Description of the Specified Activities

The proposed rule contains a complete description of the Navy's specified activities that are covered by these final regulations, and for which the associated incidental take of marine mammals will be authorized in the related LOAs. The proposed rule describes the nature of the training exercises involving both mid- and high-frequency active sonar (MFAS and HFAS) and explosive detonations, as well as the MFAS and HFAS sound sources and explosive types. See 73 FR 35510, page 35512. The narrative description of the action contained in the proposed rule has not changed except for two corrections and one clarification, noted in the paragraph below. Tables 1–3 summarize and quantify the sonar exercise types, sonar sources, and explosive exercise types

used in these training exercises and contain minor corrections (from the proposed rule) that did not affect NMFS' analysis of the proposed action.

The last paragraph of the Mine Neutralization section of the proposed rule contained an error. For the final rule, the sentence beginning "Standard practices for tethered mines * * *" should be replaced with the following sentence: "Standard practice for tethered mines is to tie off the explosive counter charge as closely as possible to the mine case." In the proposed rule, Table 5 (which is Table 3 in this final rule) mistakenly indicated that IEER exercises would only occur in the summer months. In fact, IEER use in the winter months is typically rare and infrequent due to the required mitigation measures, but exercises may be planned for winter and NMFS and the Navy's analyses accounted for this fact. Table 3 includes the correction here. These two modifications are non-substantive and do not affect NMFS' determinations.

Last, Table 1 (in this final rule) indicates that RIMPAC exercises only occur in the summer (when humpback whales are not present) of every other year, which is accurate. Table 2 shows that the Navy plans to conduct the same number of sonar hours in each year. The needed clarification (to ensure no unanticipated humpback whale take occurs) follows: In the years without RIMPAC, the sonar hours conducted will be seasonally and spatially distributed such that no additional exposures of humpback whales to MFAS/HFAS would occur beyond those used to estimate take in the years with a RIMPAC. In a simple example, in a non-RIMPAC year, the Navy could choose to conduct the RIMPAC-sized lump of sonar hours either in the summer when humpbacks are not present, or in the winter but farther out to sea where their activities would not expose humpbacks to MFAS/HFAS, or some combination of those two. This clarification does not affect NMFS' determinations.

Training Operation	Location Where Exercise May Be Conducted	Time of Year Conducted	Number of Training Events per/year	Average Length of Exercise (hrs)
Other ASW (TRACKEX, TORPEX, etc.)	Hawaii OpArea	Any time	32	13.5
RIMPAC	Hawaii OpArea	Summer Only**	1 every other year	1 month (44 individual ASW ops from 2-24 hours long)
USWEX	Hawaii OpArea	Any time	5	3-4 days, including several 16-hr ASW ops
Multi Strike Group	Hawaii OpArea	Any time	1*	5 to 10 days including multiple 12-hr ASW ops

Table 1. Summary of locations, durations, and times of year of ASW exercises.

* If a Multiple Strike Group Exercise were planned for any given year, either other exercises (of a different type) would be cancelled or limited to ensure that the specified number of sonar hours (and, therefore, take of marine mammals) was not exceeded or the Navy would seek separate MMPA authorization.

** as noted, RIMPAC exercises are limited to the summer months, when humpback whales are not in residence (and, therfore, RIMPAC exercises are not expected to result in the take of humpback whales)

In the years without RIMPAC, the sonar hours conducted would be seasonally and spatially distributed such that no additional exposures of humpback whales to MFAS/HFAS would occur beyond those used to estimate take in the years with RIMPAC

Sonar Type	Description of Sonar	Source Depth (m)	Center Freq (kHz)	Source Level (dB)	Spacing (m)*	Vertical Directivitiy	Horizontal Directivity	Units per Hour	Total Amount per Year
MK-48	**Torpedo**	27	> 10	classified	144	Omni	Omni	one torpedo run	313 runs
AN/SQS-53	**Surface Ship**	7	3.5	235	154	Omni	240° Forward	120 pings	1284 hours
AN/SQS-56	**Surface Ship**	7	7.5	225	154	Omni	30° Forward	120 pings	383 hours
AN/SSQ-62	**Sonobuoy**	27	8	201	450	Omni	Omni	8 sonobuoys	2423 buoys
AN/AQS-22	**Helo Dipping**	27	4.1	217	15	Omni	Omni	2 dips	1010 dips
AN/BQQ-10	**Submarine**	91	classified	classified	n/a	Omni	Omni	2 pings	200 hours

Table 2. Parameters used for modeling the six sonar sources and the estimated annual operation. Many of the actual parameters and capabilities of these sonars are classified. Parameters used for modeling were derived to be as representative as possible. When, however, there were a wide range of potential modeling values, a nominal parameter likely to result in the most impact was used so that the model would err towards overestimation.

*Spacing means distance between pings at the nominal speed

Training Operation	Explosive Sources	Locations Where Exercises May be Conducted	Time of Year Conducted	Number of Training Events per/year	Average Length of Exercise (hrs)	Number of Rounds per/year
Mine Neutralization	1 to 20-lb Demolition charge	Puuloa Underwater Range, Lima Landing, Naval Inactive Ship Maintenance Facility, MCBH, MCTAB, Barbers Point Range, Ewa Training Minefield	Any time	68	6	68
A-S MISSILEX	Penguin Maverick	Pacific Missile Range Facility (W-188)	Any time	50	5.5	50
S-S MISSILEX	Harpoon	Pacific Missile Range Facility (W-188)	Any time	12	5	75
BOMBEX	Mk82, Mk83, Mk84, Mk48	Hawaii OpArea	Any time	38	6	38
SINKEX	Multiple sources as described in narrative	Hawaii OpArea	Any time	6	14.5	6
S-S GUNNEX	5 inch round, 76-mm round	Warning Areas W-191, 192, 193, 194, 196, and Mela	Any time	91	3.5	3,822
Naval Surface Fire Support	5 inch round, 76-mm round	Warning Area W-188	Any time	28	8.1	644
IEER	SSQ-110A Sonobuoy	Hawaii OpArea	Any time	4	4 to 8	960

Table 3. Summary of the location, duration, time of year, and nature of the exercises involving underwater detonations

Description of Marine Mammals in the Area of the Specified Activities

There are 27 marine mammal species with possible or confirmed occurrence in the HRC. Seven marine mammal species listed as federally endangered under the Endangered Species Act (ESA) occur in the HRC: The humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal. The most abundant marine mammals appear to be dwarf sperm whales, striped dolphins, and Fraser's dolphins. The most abundant large whales are sperm whales. Table 4 provides the estimated abundance, estimated group size, and estimated probability of detection (based on Barlow 2006) of the marine mammal species that occur in the HRC.

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Common Name	Scientific Name	Status	Occurs	Group Size*	Detection Probability**		Estimated Abundance in Hawaii
					Group 1-20	Group>20	
MYSTICETES (baleen whales)							
Family Balaenidae (right whales)							
North Pacific right whale	*Eubalaena japonica*	E	Rare				unknown
Family Balaenopteridae (rorquals)							
Humpback whale	*Megaptera novaeangliae*	E	Regular	1.7			4,491
Minke whale	*Balaenoptera acutorostrata*		Regular				unknown
Sei whale	*Balaenoptera borealis*	E	Rare	3.4	0.9	0.9	236***
Fin whale	*Balaenoptera physalus*	E	Rare	2.6	0.9	0.9	236***
Blue whale	*Balaenoptera musculus*	E	Rare				unknown
Bryde's whale	*Balaenoptera edeni/brydei*		Regular	1.5	0.9	0.9	469
ODONTOCETES (toothed whales)							
Family Physeteridae (sperm whale)							
Sperm whale	*Physeter macrocephalus*	E	Regular	7.3	0.87	0.87	6,919
Family Kogiidae (pygmy sperm whales)							
Pygmy sperm whale	*Kogia breviceps*		Regular	1	0.35	0.35	7,138
Dwarf sperm whale	*Kogia sima*		Regular	2.3	0.35	0.35	17,519
Family Ziphiidae (beaked whales)							
Cuvier's beaked whale	*Ziphius cavirostris*		Regular	2	0.23	0.23	15,242
Blainville's beaked whale	*Mesoplodon densirostris*		Regular	2.3	0.45	0.45	2,872
Longman's beaked whale	*Indopacetus pacificus*		Regular	17.8	0.76	0.96	1,007
Family Delphinidae (dolphins)							
Rough-toothed dolphin	*Steno bredanensis*		Regular	14.8	0.76	1	8,709
Bottlenose dolphin	*Tursiops truncatus*		Regular	9	0.76	1	3,215
Pantropical spotted dolphin	*Stenella attenuata*		Regular	60	0.76	1	8,978
Spinner dolphin	*Stenella longirostris*		Regular	31.7	0.76	1	3,351
Striped dolphin	*Stenella coeruleoalba*		Regular	37.3	0.76	1	13,143
Risso's dolphin	*Grampus griseus*		Regular	15.4	0.76	1	2,372
Melon-headed whale	*Peponocephala electra*		Regular	89.2	0.76	1	2,950
Fraser's dolphin	*Lagenodelphis hosei*		Rare	286.3	0.76	1	10,226
Pygmy killer whale	*Feresa attenuata*		Regular	14.4	0.76	1	956
False killer whale	*Pseudorca crassidens*		Regular	10.3	0.76	1	236
Killer whale	*Orcinus orca*		Regular	6.5	0.9	0.9	349
Short-finned pilot whale	*Globicephala macrorhynchus*		Regular	22.5	0.76	1	8,870
Total Number of Delphinids in Hawaiian Waters (from Barlow 2006)							63,354
Total Number of Beaked Whales in Hawaiian Waters (from Barlow 2006)							19,492
PINNIPEDS (seals, sea lions, walruses)							
Family Phocidae (true seals)							
Hawaiian monk seal	*Monachus schauinslandi*	E	Regular				1252****
Northern elephant seal	*Mirounga angustirostris*		Rare				

Table 4. Species of marine mammals known to occur in the HRC (E means endangered under the ESA).

Source: U.S. Department of the Navy, 2005a; Barlow, 2003; Mobley, 2004; Barlow, 2006; Carretta et al., 2006

*Mean group sizes are the geometric mean of best estimates from multiple observers and have not been corrected for bias.

**Estimated from Barlow 2003

***For analysis purposes (and in the absence of specific data), abundance and density for fin and sei whales were estimated to be the same as for false killer whales, which have similarly small numbers in the area.

****Estimated abundance in the Main Hawaiian Islands is 77 animals

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The Navy has compiled information on the abundance, behavior, status and distribution, and vocalizations of marine mammal species in the Hawaiian waters from peer reviewed literature, the Navy Marine Resource Assessment, NMFS Stock Assessment Reports, and marine mammal surveys using acoustics or visual observations from aircraft or ships. This information may be viewed in the Navy's LOA application and/or the Navy's FEIS for the HRC (see **FOR FURTHER INFORMATION**). Additional information is available in NMFS Stock Assessment Reports, which may be viewed at: *http://www.nmfs.noaa.gov/pr/sars/species.htm.* As indicated in the proposed rule, based on their rare occurrence in the HRC, the Navy and NMFS do not anticipate any effects to Blue whales, North Pacific right whales, or Northern elephant seals and, therefore, they are not addressed further in this document.

Because the consideration of areas where marine mammals are known to selectively breed or calve are important to both the negligible impact finding necessary for the issuance of an MMPA

authorization and the need for NMFS to put forth the means of affecting the least practicable adverse impact paying particular attention to rookeries, mating grounds, and other areas of similar significance, the proposed rule contains a description of important reproductive areas, with a special focus on humpback whales (73 FR 35510, page 35519). That section includes a figure that generally illustrates humpback whale survey data collected between 1993 and 2003 and indicates areas of high and low density. The description contained in the proposed rule has not changed.

A Brief Background on Sound

The proposed rule contains a section that provides a brief background on the principles of sound that are frequently referred to in this rulemaking (73 FR 35510, pages 35521–35522). This section also includes a discussion of the functional hearing ranges of the different groups of marine mammals (by frequency) as well as a discussion of the two main sound metrics used in NMFS analysis (sound pressure level (SPL) and sound energy level (SEL)). The information contained in the proposed rule has not changed.

Potential Effects of Specified Activities on Marine Mammals

With respect to the MMPA, NMFS' effects assessment serves four primary purposes: (1) To prescribe the permissible methods of taking (*i.e.*, Level B Harassment (behavioral harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of affecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the HRC, so this determination is inapplicable for the HRC); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Potential Effects of Specified Activities on Marine Mammals Section of the proposed rule NMFS included a qualitative discussion of the different ways that MFAS/HFAS and underwater explosive detonations may potentially affect marine mammals (some of which NMFS would not classify as harassment); 73 FR 35510, pages 35522–35534. Marine mammals may experience direct physiological effects (such as threshold shift), acoustic masking, impaired communications, stress responses, and behavioral disturbance. This section also included a discussion of some of the suggested explanations for the association between the use of MFAS and marine mammal strandings, such as behaviorally-mediated bubble growth, that have been observed a limited number of times in certain circumstances (the specific events are also described); 73 FR 35510, pages 35529–35534. The information contained in Potential Effects of Specified Activities on Marine Mammals Section from the proposed rule has not changed, except for one correction noted below.

The proposed rule contained an error in the Potential Effects of Specified Activities on Marine Mammals Section (73 FR 35510, page 35534). The statement ''A surface duct may be present * * *'' should be replaced with the following statement: ''Surface ducts are present approximately 53 percent of the time.'' Note that the Navy's model for estimating effects on marine mammals incorporates the likelihood of strong surface ducts in the HRC (pers. comm. J. Hibbard to J. Harrison, 2007) and the exposure estimates it produces reflect this.

Later, in the Estimated Take of Marine Mammals Section, NMFS relates the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives discussed here to the MMPA regulatory definitions of Level A and Level B Harassment, and mortality, and quantifies those effects.

Mitigation

In order to issue an incidental take authorization (ITA) under section 101(a)(5)(A) of the MMPA, NMFS must prescribe regulations setting forth the ''permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military readiness activities and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. The HRC training activities described in the proposed rule are considered military readiness activities.

NMFS reviewed the Navy's proposed HRC activities and the proposed HRC mitigation measures (which the Navy refers to as Protective Measures) presented in the Navy's application to determine whether the activities and mitigation measures were capable of achieving the least practicable adverse effect on marine mammals. NMFS determined that further discussion was necessary regarding: (1) Humpback whales congregating in the winter in the shallow areas of the HRC in high densities to calve and breed; and (2) the potential relationship between the operation of MFAS/HFAS and marine mammal strandings.

Any mitigation measure prescribed by NMFS should be known to accomplish, have a reasonable likelihood of accomplishing (based on current science), or contribute to the accomplishment of one or more of the general goals listed below:

(a) Avoidance or minimization of injury or death of marine mammals wherever possible (goals b, c, and d may contribute to this goal).

(b) A reduction in the numbers of marine mammals (total number or number at biologically important time or location) exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(c) A reduction in the number of times (total number or number at biologically important time or location) individuals would be exposed to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing harassment takes only).

(d) A reduction in the intensity of exposures (either total number or number at biologically important time or location) to received levels of MFAS/HFAS, underwater detonations, or other activities expected to result in the take of marine mammals (this goal may contribute to a, above, or to reducing the severity of harassment takes only).

(e) A reduction in adverse effects to marine mammal habitat, paying special attention to the food base, activities that block or limit passage to or from biologically important areas, permanent destruction of habitat, or temporary destruction/disturbance of habitat during a biologically important time.

(f) For monitoring directly related to mitigation—an increase in the probability of detecting marine mammals, thus allowing for more effective implementation of the mitigation (shut-down zone, etc.).

NMFS worked with the Navy to identify additional practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. NMFS and the Navy developed two additional mitigation measures that address the concerns mentioned above, including a humpback whale cautionary area and a Stranding Response Plan.

The Navy's proposed mitigation measures, as well as the humpback whale cautionary area and the Stranding Response Plan, both of which are required under these regulations, were described in detail in the proposed rule (73 FR 35510, pages 35535–35541). The Navy's measures address personnel training, lookout and watchstander responsibilities, and operating procedures for training activities using both MFAS/HFAS and explosive detonations. No changes have been made to the mitigation measures described in the proposed rule, with one correction and one addition, addressed in the next paragraph. The final HRC Stranding Response Plan, which includes a shutdown protocol, a stranding investigation plan, and a requirement for Navy and NMFS to implement an MOA that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances, may be viewed at: *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*. Additionally, the mitigation measures are included in full in the codified text of the regulations.

The proposed rule contained a measure in which the Navy indicated that ''prior to conducting the exercise, remotely sensed sea surface temperature maps would be reviewed. SINKEX and air to surface missile (ASM) Training activities would not be conducted within areas where strong temperature discontinuities are present, thereby indicating the existence of oceanographic fronts'' (73 FR 35510, page 35537). The Navy included this measure in the LOA application in error. The removal of the measure does not change NMFS' analysis and therefore the measure is not included in the final rule. Additionally, the following measure has been added to the regulations: Night vision goggles shall be available to all ships and air crews for use as appropriate.

NMFS has determined that the Navy's proposed mitigation measures (from the LOA application), along with the Humpback Whale Cautionary Area and the Stranding Response Plan (and when the Adaptive Management (see Adaptive Management below) component is taken into consideration) are adequate means of effecting the least practicable adverse impacts on marine mammal species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, while also considering personnel safety, practicality of implementation, and impact on the effectiveness of the military readiness activity. The justification for this conclusion is discussed in the Mitigation Conclusion section of the proposed rule (73 FR 35510, pages 35540–35541). The Mitigation Conclusion Section of the proposed rule has not changed.

Research and Conservation Measures for Marine Mammals

The Navy provides a significant amount of funding and support for marine research. The Navy provided $26 million in Fiscal Year 2008 and plans for $22 million in Fiscal Year 2009 to universities, research institutions, federal laboratories, private companies, and independent researchers around the world to study marine mammals. Over the past five years the Navy has funded over $100 million in marine mammal research. The U.S. Navy sponsors seventy percent of all U.S. research concerning the effects of human-generated sound on marine mammals and 50 percent of such research conducted worldwide. Major topics of Navy-supported research include the following:

- Better understanding of marine species distribution and important habitat areas,
- Developing methods to detect and monitor marine species before and during training,
- Understanding the effects of sound on marine mammals, sea turtles, fish, and birds, and
- Developing tools to model and estimate potential effects of sound.

The Navy's Office of Naval Research currently coordinates six programs that examine the marine environment and are devoted solely to studying the effects of noise and/or the implementation of technology tools that will assist the Navy in studying and tracking marine mammals. The six programs are as follows:

- Environmental Consequences of Underwater Sound,
- Non-Auditory Biological Effects of Sound on Marine Mammals,
- Effects of Sound on the Marine Environment,
- Sensors and Models for Marine Environmental Monitoring,
- Effects of Sound on Hearing of Marine Animals, and
- Passive Acoustic Detection, Classification, and Tracking of Marine Mammals.

The Navy has also developed the technical reports referenced within this document and the HRC EIS, such as the Marine Resource Assessments. Furthermore, research cruises by NMFS and by academic institutions have received funding from the U.S. Navy.

The Navy has sponsored several workshops to evaluate the current state of knowledge and potential for future acoustic monitoring of marine mammals. The workshops brought together acoustic experts and marine biologists from the Navy and other research organizations to present data and information on current acoustic monitoring research efforts and to evaluate the potential for incorporating similar technology and methods on instrumented ranges. However, acoustic detection, identification, localization, and tracking of individual animals still requires a significant amount of research effort to be considered a reliable method for marine mammal monitoring. The Navy supports research efforts on acoustic monitoring and will continue to investigate the feasibility of passive acoustics as a potential mitigation and monitoring tool.

Overall, the Navy will continue to fund ongoing marine mammal research, and is planning to coordinate long term monitoring/studies of marine mammals on various established ranges and operating areas. The Navy will continue to research and contribute to university/external research to improve the state of the science regarding marine species biology and acoustic effects. These efforts include mitigation and monitoring programs; data sharing with NMFS and via the literature for research and development efforts; and future research as described previously.

Long-Term Prospective Study

Apart from this final rule, NMFS, with input and assistance from the Navy and several other agencies and entities, will perform a longitudinal observational study of marine mammal strandings to systematically observe and record the types of pathologies and

diseases and investigate the relationship with potential causal factors (*e.g.*, sonar, seismic, weather). The proposed rule contained an outline of the proposed study (73 FR 35510, pages 35541–35542). No changes have been made to the longitudinal study as described in the proposed rule.

Monitoring

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. The MMPA implementing regulations at 50 CFR 216.104 (a)(13) indicate that requests for LOAs must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present.

Monitoring measures prescribed by NMFS should accomplish one or more of the following general goals:

(a) An increase in the probability of detecting marine mammals, both within the safety zone (thus allowing for more effective implementation of the mitigation) and in general to generate more data to contribute to the effects analyses.

(b) An increase in our understanding of how many marine mammals are likely to be exposed to levels of MFAS/HFAS (or explosives or other stimuli) that we associate with specific adverse effects, such as behavioral harassment, TTS, or PTS.

(c) An increase in our understanding of how marine mammals respond (behaviorally or physiologically) to MFAS/HFAS (at specific received levels), explosives, or other stimuli expected to result in take and how anticipated adverse effects on individuals (in different ways and to varying degrees) may impact the population, species, or stock (specifically through effects on annual rates of recruitment or survival)

(d) An increased knowledge of the affected species.

(e) An increase in our understanding of the effectiveness of certain mitigation and monitoring measures.

(f) A better understanding and record of the manner in which the authorized entity complies with the incidental take authorization.

Proposed Monitoring Plan for the HRC

As NMFS indicated in the proposed rule, the Navy has (with input from NMFS) fleshed out the details of and made improvements to the HRC Monitoring Plan. Additionally, NMFS and the Navy have incorporated a recommendation from the public, which recommended the Navy hold a workshop to discuss the Navy's Monitoring Plan (see Monitoring Workshop section). The final HRC Monitoring Plan, which is summarized below, may be viewed at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications.*

The draft Monitoring Plan for the HRC has been designed as a collection of focused ''studies'' (described fully in the HRC Monitoring Plan) to gather data that will allow the Navy to address the following questions:

(a) Are marine mammals exposed to mid-frequency active sonar (MFAS), especially at levels associated with adverse effects (*i.e.*, based on NMFS' criteria for behavioral harassment, TTS, or PTS)? If so, at what levels are they exposed?

(b) If marine mammals are exposed to MFAS in the HRC, do they redistribute geographically within the HRC as a result of continued exposure? If so, how long does the redistribution last?

(c) If marine mammals are exposed to MFAS, what are their behavioral responses to various levels?

(d) What are the behavioral responses of marine mammals that are exposed to explosives at specific levels?

(e) Is the Navy's suite of mitigation measures for MFAS and explosives (e.g., PMAP, major exercise measures agreed to by the Navy through permitting) effective at avoiding TTS, injury, and mortality of marine mammals?

Data gathered in these studies will be collected by qualified, professional marine mammal biologists that are experts in their field. They will use a combination of the following methods to collect data:

- Visual Surveys—Vessel, Aerial and Shore-based.
- Passive Acoustic Monitoring (PAM).
- Marine Mammal observers (MMOs) on Navy Vessels.
- Marine Mammal Tagging.

In the five proposed study designs (all of which cover multiple years), the above methods will be used separately or in combination to monitor marine mammals in different combinations before, during, and after training activities utilizing MFAS/HFAS or explosive detonations. Table 5 contains a summary of the Monitoring effort that is planned for each study in each year (effort may vary slightly between years or study type, but overall effort will remain constant). The HRC Monitoring Plan is designed to collect data on all marine mammals and sea turtles encountered during monitoring studies. However, priority will be given to ESA-listed species and taxa in which MFAS exposure and strandings have been linked under certain circumstances. Because of the important reproductive area and the fact that humpback whales are present in very high densities in certain areas of the HRC, the Navy plans to dedicate a designated subset of their monitoring effort specifically to these high-density areas.

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STUDY 1,3, 4 (exposures and behavioral responses)	FY09	FY10	FY11	FY12*	FY13*
Aerial surveys	ASW events – 40 hours Explosives: 3 nearshore events	ASW events - 40 hours of active sonar Explosives: 3 nearshore events plus 1-2 SINKEX	ASW events - 40 hours of active sonar Explosives: 3 nearshore events	ASW events - 40 hours of active sonar Explosives: 3 nearshore events plus 1-2 SINKEX	ASW events - 40 hours of active sonar Explosives: 3 nearshore events
Marine Mammal Observers	ASW events – 40 hours	ASW events - 80 hours	ASW events - 80 hours	ASW events - 80 hours	ASW events - 80 hours
Tagging	Order tags, secure permit	ASW events – goal of 15 individuals	ASW events – goal of 25 individuals	ASW events – goal of 30 individuals	ASW events – goal of 30 individuals
Vessel surveys (study 3 & 4 only)	ASW events - 40 hours Explosives- 2 nearshore events	ASW events - 80 hours Explosives- 3 nearshore events	ASW events - 80 hours Explosives- 3 nearshore events	ASW events - 80 hours Explosives- 3 nearshore events	ASW events - 80 hours Explosives- 3 nearshore events
Shore based surveys (study 4 only)	Explosives -nearshore events, as they occur, with "high ground" for monitoring	Explosives -nearshore events, as they occur, with "high ground" for monitoring	Explosives -nearshore events, as they occur, with "high ground" for monitoring	Explosives -nearshore events, as they occur, with "high ground" for monitoring	Explosives -nearshore events, as they occur, with "high ground" for monitoring
STUDY 2 (geographic redistribution)	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Aerial surveys before and after training events	ASW events – 40 hours	ASW events – 40 hours	ASW events – 40 hours	ASW events – 40 hours	ASW events – 40 hours
Passive Acoustics	Order devices and determine best location	Install 10 autonomous devices in the HRC & begin recording	Install five more devices (if needed), continue recording & begin analysis	Continue recording and analyzing data from 10-15 devices	Continue recording and analyzing data from 10-15 devices
Study 5 (mitigation effectiveness)	**FY09**	**FY10**	**FY11**	**FY12**	**FY13**
Marine mammal observers and lookout comparison	ASW events – 40 hours Explosives – 40 hrs	ASW events – 60 hours Explosives – 40 hrs	ASW events – 100 hours Explosives – 40 hrs	ASW events – 100 hours Explosives – 40 hrs	ASW events – 100 hours Explosives – 40 hrs
Aerial surveys	ASW – 40 hours	ASW events – 40 hours	ASW events – 40 hours	ASW events – 40 hours	ASW events – 40 hours

Table 5. Planned Monitoring Effort as Outlined in HRC Monitoring Plan

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Monitoring Workshop

During the public comment period on the proposed rule for the HRC, NMFS received a comment which, in consultation with the Navy, we have chosen to incorporate into the final rule (in a modified form). One commenter recommended that a workshop or panel be convened to solicit input on the monitoring plan from researchers, experts, and other interested parties. The HRC proposed rule included an adaptive management component and both NMFS and the Navy believe that a workshop would provide a means for Navy and NMFS to consider input from participants in determining whether or how to modify monitoring techniques to more effectively accomplish the goals of monitoring set forth earlier in the document. NMFS and the Navy believe that this workshop concept is valuable in relation to all of the Range Complexes and major training exercise LOAs that NMFS is working on with the Navy at this time, and consequently this single Monitoring Workshop will be included as a component of all of the LOAs that NMFS will be processing for the Navy in the next year or so.

The Navy, with guidance and support from NMFS, will convene a Monitoring Workshop, including marine mammal and acoustic experts as well as other interested parties, in 2011. The Monitoring Workshop participants will review the monitoring results from the previous two years of monitoring pursuant to the HRC rule as well as monitoring results from other Navy rules issued after HRC (*e.g.*, the Atlantic

Fleet Active Sonar Training, Southern California Range Complex, and other rules). The Monitoring Workshop participants would provide their individual recommendations to the Navy and NMFS on the monitoring plan(s) after also considering the current science (including Navy R&D developments) and working within the framework of available resources and feasibility of implementation. NMFS and the Navy would then analyze the input from the Monitoring Workshop participants and determine the best way forward from a national perspective. Subsequent to the Monitoring Workshop, modifications would be applied to monitoring plans as appropriate.

Integrated Comprehensive Monitoring Plan

In addition to the Monitoring Plan for the HRC, the Navy will complete an Integrated Comprehensive Monitoring Program (ICMP) Plan by the end of 2009. The ICMP will provide the overarching coordination that will support compilation of data from range-specific monitoring plans (*e.g.*, HRC Range Complex plan) as well as Navy funded research and development (R&D) studies. The ICMP will coordinate the monitoring programs progress towards meeting its goals and develop a data management plan. The ICMP will be evaluated annually to provide a matrix for progress and goals for the following year, and will make recommendations on adaptive management for refinement and analysis of the monitoring methods.

The primary objectives of the ICMP are to:

- Monitor and assess the effects of Navy activities on protected species;
- Ensure that data collected at multiple locations is collected in a manner that allows comparison between and among different geographic locations;
- Assess the efficacy and practicality of the monitoring and mitigation techniques;
- Add to the overall knowledge-base of marine species and the effects of Navy activities on marine species.

The ICMP will be used both as: (1) A planning tool to focus Navy monitoring priorities (pursuant to ESA/MMPA requirements) across Navy Range Complexes and Exercises; and (2) an adaptive management tool, through the consolidation and analysis of the Navy's monitoring and watchstander data, as well as new information from other Navy programs (*e.g.*, R&D), and other appropriate newly published information.

In combination with the 2011 Monitoring Workshop and the adaptive management component of the HRC rule and the other planned Navy rules (*e.g.* AFAST and SOCAL), the ICMP could potentially provide a framework for restructuring the monitoring plans and allocating monitoring effort based on the value of particular specific monitoring proposals (in terms of the degree to which results would likely contribute to stated monitoring goals, as well as the likely technical success of the monitoring based on a review of past monitoring results) that have been developed through the ICMP framework, instead of allocating based on maintaining an equal (or commensurate to effects) distribution of monitoring effort across Range complexes. For example, if careful prioritization and planning through the ICMP (which would include a review of both past monitoring results and current scientific developments) were to show that a large, intense monitoring effort in Hawaii would likely provide extensive, robust and much-needed data that could be used to understand the effects of sonar throughout different geographical areas, it may be appropriate to have other Range Complexes dedicate money, resources, or staff to the specific monitoring proposal identified as ''high priority'' by the Navy and NMFS, in lieu of focusing on smaller, lower priority projects divided throughout their home Range Complexes.

The ICMP will identify:

- A means by which NMFS and the Navy would jointly consider prior years' monitoring results and advancing science to determine if modifications are needed in mitigation or monitoring measures to better effect the goals laid out in the Mitigation and Monitoring sections of the HRC rule.
- Guidelines for prioritizing monitoring projects.
- If, as a result of the workshop and similar to the example described in the paragraph above, the Navy and NMFS decide it is appropriate to restructure the monitoring plans for multiple ranges such that they are no longer evenly allocated (by Range Complex), but rather focused on priority monitoring projects that are not necessarily tied to the geographic area addressed in the rule, the ICMP will be modified to include a very clear and unclassified recordkeeping system that will allow NMFS and the public to see how each Range Complex/project is contributing to all of the ongoing monitoring (resources, effort, money, etc.).

Past Monitoring in the HRC

The proposed rule contained a detailed review of the previous marine mammal monitoring conducted in the HRC, which was conducted in compliance with the terms and conditions of multiple biological opinions issued for MFAS training activities (73 FR 35510, pages 35544–35548). No changes have been made to the discussion contained in the proposed rule.

Adaptive Management

The final regulations governing the take of marine mammals incidental to Navy training exercises in the HRC will contain an adaptive management component. Our understanding of the effects of MFAS/HFAS and explosives on marine mammals is still in its relative infancy, and yet the science in this field continues to improve. These circumstances make the inclusion of an adaptive management component both valuable and necessary within the context of 5-year regulations for activities that have been associated with marine mammal mortality in certain circumstances and locations (though not the HRC). The use of adaptive management will give NMFS the ability to consider new data from different sources to determine (in coordination with the Navy) on an annual basis if mitigation or monitoring measures should be modified or added (or deleted) if new data suggests that such modifications are appropriate (or are not appropriate) for subsequent annual LOAs.

Following are some of the possible sources of applicable data:

- Results from the Navy's monitoring from the previous year (either from the HRC or other locations).
- Findings of the Workshop that the Navy will convene in 2011 to analyze monitoring results to date, review current science, and recommend modifications, as appropriate to the monitoring protocols to increase monitoring effectiveness.
- Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP, which is discussed elsewhere in this document).
- Results from specific stranding investigations (either from the HRC or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).
- Results from the Long Term Prospective Study described below.
- Results from general marine mammal and sound research (funded by

the Navy (described below) or otherwise).

Mitigation measures could be modified or added (or deleted) if new data suggest that such modifications would have (or do not have) a reasonable likelihood of accomplishing the goals of mitigation laid out in this final rule and if the measures are practicable. NMFS would also coordinate with the Navy to modify or add to (or delete) the existing monitoring requirements if the new data suggest that the addition of (or deletion of) a particular measure would more effectively accomplish the goals of monitoring laid out in this final rule. The reporting requirements associated with this rule are designed to provide NMFS with monitoring data from the previous year to allow NMFS to consider the data and issue annual LOAs. NMFS and the Navy will meet annually to discuss the monitoring reports, Navy R&D developments, and current science and whether mitigation or monitoring modifications are appropriate.

Reporting

In order to issue an ITA for an activity, section 101(a)(5)(A) of the MMPA states that NMFS must set forth ''requirements pertaining to the monitoring and reporting of such taking''. Effective reporting is critical to ensure compliance with the terms and conditions of an LOA, and to provide NMFS and the Navy with data of the highest quality based on the required monitoring.

As NMFS noted in its proposed rule, additional detail has been added to the reporting requirements since they were outlined in the proposed rule. The updated reporting requirements are all included below. A subset of the information provided in the monitoring reports may be classified and not releasable to the public.

NMFS will work with the Navy to develop tables that allow for efficient submission of the information required below.

General Notification of Injured or Dead Marine Mammals

Navy personnel will ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as operational security allows) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy will provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Stranding Response Plan contains more specific reporting requirements for specific circumstances.

Annual HRC Monitoring Plan Report

The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the HRC Monitoring Plan, described above. Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will also be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the HRC Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in the MFAS/HFAS major Training Exercises section of the Annual HRC Exercise Report referenced below.

The HRC Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

Annual HRC Exercise Report

The Navy will submit an Annual HRC Exercise Report on October 1 of every year (covering data gathered through August 1 (or completion of RIMPAC if later than Aug 1)). This report shall contain the subsections and information indicated below.

MFAS/HFAS Major Training Exercises

This section shall contain the following information for Major Training Exercises (MTEs, which include RIMPAC, USWEX, and Multi Strike Group) conducted in the HRC:

(a) Exercise Information (for each MTE):

(i) Exercise designator.

(ii) Date that exercise began and ended.

(iii) Location.

(iv) Number and types of active sources used in the exercise.

(v) Number and types of passive acoustic sources used in exercise.

(vi) Number and types of vessels, aircraft, etc., participating in exercise.

(vii) Total hours of observation by watchstanders.

(viii) Total hours of all active sonar source operation.

(ix) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(x) Wave height (high, low, and average during exercise).

(b) Individual marine mammal sighting info (for each sighting in each MTE).

(i) Location of sighting.

(ii) Species (if not possible—indication of whale/dolphin/pinniped).

(iii) Number of individuals.

(iv) Calves observed (y/n).

(v) Initial Detection Sensor.

(vi) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, *i.e.*, FFG, DDG, or CG)

(vii) Length of time observers maintained visual contact with marine mammal(s).

(viii) Wave height (in feet).

(ix) Visibility.

(x) Sonar source in use (y/n).

(xi) Indication of whether animal is <200yd, 200–500yd, 500–1000yd, 1000–2000yd, or >2000yd from sonar source in (x) above.

(xiii) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.

(xiv) If source in use (x) is hullmounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel)

(xv) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.)

(c) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

ASW Summary

This section shall include the following information as summarized from both MTEs and non-major training exercises (unit-level exercises, such as TRACKEXs):

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.))

(ii) Total hours (from December 15 through April 15) of hullmounted active sonar operation occurring in the dense humpback areas generally shown on the Mobley map (73 FR 35510, page 35520)

plus a 5-km buffer, but not including the Pacific Missile Range Facility. NMFS and the Navy will work together to develop the exact boundaries of this area.

(iii) Total estimated annual hours of hull-mounted active sonar operation conducted in Humpback Whale Cautionary area between December 15 and April 15.

(iv) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than RIMPAC, USWEX, or Multi-Strike Group Exercises) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the HRC. The Navy shall include (in the HRC annual report) a brief annual progress update on the status of the development of an effective and unclassified method to report this information until an agreed-upon (with NMFS) method has been developed and implemented.

SINKEXs

This section shall include the following information for each SINKEX completed that year:

(a) Exercise info:

(i) Location.

(ii) Date and time exercise began and ended.

(iii) Total hours of observation by watchstanders before, during, and after exercise.

(iv) Total number and types of rounds expended/explosives detonated.

(v) Number and types of passive acoustic sources used in exercise.

(vi) Total hours of passive acoustic search time.

(vii) Number and types of vessels, aircraft, etc., participating in exercise.

(viii) Wave height in feet (high, low and average during exercise).

(ix) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(b) Individual marine mammal observation (by Navy lookouts) info.

(i) Location of sighting.

(ii) Species (if not possible—indication of whale/dolphin/pinniped).

(iii) Number of individuals.

(iv) Calves observed (y/n).

(v) Initial detection sensor.

(vi) Length of time observers maintained visual contact with marine mammal.

(vii) Wave height.

(viii) Visibility.

(ix) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(x) Distance of marine mammal from actual detonations—or target spot if not yet detonated)—use four categories to define distance: (1) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (91 m for SINKEX in HRC); (2) the required exclusion zone (1 nm for SINKEX in HRC); (3) the required observation distance (if different than the exclusion zone (2 nm for SINKEX in HRC); and (4) greater than the required observed distance. For example, in this case, the observer would indicate if < 91 m, from 91 m—1 nm, from 1 nm—2 nm, and > 2 nm.

(xi) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.

(xii) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(xiii) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

Improved Extended Echo-Ranging System (IEER) Summary

This section shall include an annual summary of the following IEER information:

(i) Total number of IEER events conducted in the HRC.

(ii) Total expended/detonated rounds (buoys).

(iii) Total number of self-scuttled IEER rounds.

Explosives Summary

The Navy is in the process of improving the methods used to track explosive use to provide increased granularity. To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercise (of those identified as part of the ''specified activity'' in this final rule) conducted in the HRC.

(iii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

Sonar Exercise Notification

The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any major exercise (RIMPAC, USWEX, or Multi Strike Group) indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise (*i.e.*, RIMPAC, USWEX, or Multi Strike Group).

HRC 5-yr Comprehensive Report

The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual HRC Exercise Reports and HRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

Comprehensive National ASW Report

By June, 2014, the Navy shall submit a draft National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders and pursuant to the implementation of the Monitoring Plans the HRC, the Atlantic Fleet Active Sonar Training, the Southern California (SOCAL) Range Complex, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.

The Navy shall respond to NMFS comments and requests for additional information or clarification on the HRC Comprehensive Report, the Comprehensive National ASW report, the Annual HRC Exercise Report, or the Annual HRC Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

Comments and Responses

On June 23, 2008 (73 FR 35510), NMFS published a proposed rule in

response to the Navy's request to take marine mammals incidental to military readiness training exercises in the HRC and requested comments, information and suggestions concerning the request. During the 30-day public comment period, NMFS received 8 comments from private citizens, comments from the Marine Mammal Commission (MMC) and the Office of Hawaiian Affairs, and several sets of comments from non-governmental organizations, including, the Natural Resources Defense Council (NRDC) (which commented on behalf of The Humane Society of the United States, the International Fund for Animal Welfare, Cetacean Society International, Ocean Mammal Institute, the International Ocean Noise Coalition, Seaflow, and the Ocean Futures Society and its founder Jean-Michel Cousteau), the Cascadia Research Collective (CRC), Ziphius EcoServices, and Smultea Environmental Sciences, LLC. The comments are summarized and sorted into general topic areas and are addressed below. Full copies of the comment letters may be accessed at *http://www.regulations.gov.*

Monitoring and Reporting

Comment 1: One commenter stated that ''It is advisable to hold a multi-day workshop to discuss controversial issues related to the problem.'' The commenter further indicated that the workshop should include representatives from the Navy, NMFS, relevant marine mammal researchers, NGOs (*e.g.*, NRDC), and invited experts on certain topics of interest. The goal of the workshop should be to move towards consensus on a way forward for the monitoring plan.

Response: NMFS believes that a workshop consisting of the Navy, NMFS, researchers, invited experts, and other interested parties, in combination with an adaptive management plan that allows for modification to the monitoring plan, would provide a means for the Navy to potentially make changes to the Monitoring Plan that would more effectively accomplish some of the goals of monitoring set forth earlier in the Monitoring section. NMFS and the Navy have coordinated on this point and the Navy will convene a workshop in 2011. The workshop and how it will interact with the adaptive management component are discussed in the Monitoring Workshop section of this final rule. The Monitoring Workshop participants will be asked to submit individual recommendations to the Navy and NMFS, and both agencies will work together to determine whether modifications to the HRC monitoring are necessary based on the recommendations. As necessary, NMFS would incorporate any changes into future LOAs and future rules. However, we disagree with the commenter's suggestion that the workshop participants seek to achieve consensus on a way forward for the monitoring plan. NMFS has statutory responsibility to prescribe regulations pertaining to monitoring and reporting, and will, in coordination with the Navy, develop the most effective and appropriate monitoring and reporting protocols for future authorizations.

Comment 2: Two commenters made several recommendations regarding the formatting and understandability of the monitoring plan.

Response: NMFS incorporated these recommendations where appropriate. For example, a map of the area that the ICMP covers was added to the plan, a list of the animals in the HRC was added, and bulleted lists will replace long paragraphs in some places. However, we did not incorporate the commenters recommendations in all cases, for example, the commenter recommended that a lot of the analysis contained in the proposed rule be included in the Monitoring plan, such as a summary of Southall *et al.,* 2007, or the regulatory definitions of Level A and Level B harassment, which NMFS believes would needlessly lengthen and complicate the Plan and generally be duplicative.

Comment 3: Two commenters asked for more detail, and associated references, in several areas of the methods sections.

Response: NMFS has provided additional detail (including citations) concerning the survey methods used in the monitoring plan in the final rule.

Comment 4: One commenter stated: ''The Navy improperly assumes that they have no impact on the marine mammals. It is clear that the draft plan begins with the assumption that the Navy has no impact on marine mammals, or that the current mitigation is adequate to eliminate impacts. This is not supported by facts, and it invalidates the entire purpose of the plan. The Navy must acknowledge that sonar testing may indeed impact marine mammals and provide references, and must be willing to work as an active partner in a plan to investigate the extent and severity of such impacts, and how to reduce them to insignificant levels. Otherwise, this entire exercise is just 'window dressing' and will be a major waste of taxpayer dollars.''

Response: NMFS disagrees with this commenter's assertion. It is possible that the commenter mistook the fact that the Navy phrased some of their goals as null hypotheses (''If marine mammals and sea turtles are exposed to MFAS, what are their behavioral responses? Are they different at various levels?'') to mean that they think there are no effects. The Navy's LOA application and EIS clearly discuss the potential adverse effects that marine mammals may experience when exposed to MFAS. The Navy has worked and will continue to work as an active partner to investigate the extent and severity of the impacts and how to reduce them (see Navy Research section of this final rule).

Comment 5: A few commenters asked why the Navy did not consider additional survey methods, or modifications to the existing methods, beyond those currently included in the plan, such as: Specified focal follows of one animal before, during, and after sonar; photo-identification of marine mammals to look at residency patterns; having a helicopter on board, on call to opportunistically observe marine mammals around sonar transmissions; or doing biopsy sampling to assess stress hormones.

Response: There are a lot of different methods available with which to monitor marine mammals and the Navy considered a wide range of methods in the development of their plan. NMFS considered all of the public comments (including the recommended additional survey methods) received during this rulemaking. Some of the methods suggested by the public, such as the photo-identification method, would likely be feasible and provide useful information, while other methods, such as having a helicopter on standby, would be difficult both financially and operationally. Nevertheless, the Navy must work within the framework of the available resources and the operational constraints associated with doing work in the vicinity of a complex military exercise. NMFS provided input during the development of the plan and believes that results from the required monitoring will provide valuable information regarding the effects of MFAS on marine mammals. Additionally, by including the Monitoring Plan as a requirement of the LOA, NMFS is compliant with the MMPA requirement to prescribe regulations setting forth the requirements pertaining to the monitoring and reporting of taking. That being said, the Navy and NMFS understand the importance of marine mammal monitoring to determine the effects of MFAS, which is why the Navy agreed to conduct the Workshop referred to in Comment 1 during which the workshop participants will review

and assess the monitoring results (from this Monitoring Plan and others from other Range complexes and areas) and make informed recommendations for how to move forward with the best Monitoring strategy.

Comment 6: The Marine Mammal Commission was supportive of the use of Adaptive Management, but wanted a more detailed implementation plan.

Response: NMFS has included additional detail regarding how adaptive management will be implemented. Please see the Adaptive Management, Monitoring Workshop, and Integrated Comprehensive Monitoring Plan sections of the final rule.

Comment 7: Multiple commenters questioned whether the Marine Mammal Observers identified in the Monitoring Plan are independent scientists or Navy employees? Some commenters questioned the objectivity of Navy scientists.

Response: Independent scientists will be conducting the vast majority of the observations pursuant to the Monitoring Plan. Navy scientists will be involved in a small portion of the field work and some of the post-monitoring analysis. The Navy is responsible for both the funding and implementation of a substantial amount of marine mammal and acoustic research and NMFS has no concerns regarding the objectivity of the reported results from either these research projects or the monitoring required pursuant to the MMPA authorization.

Comment 8: During aerial surveys, information on headings/orientation of animals should be collected as these data can later be examined to assess movement/response of animals relative to locations and received sound levels of MFAS and underwater detonations.

Response: As NMFS noted in the proposed rule, additional detail has been added to the Reporting Requirements section of the final rule. A requirement that Navy lookouts report the relative directions of both the marine mammals and the sonar source has been included. NMFS also included a requirement that the MMOs collecting data for the Monitoring Plan collect, at a minimum, the same data outlined in the Reporting Requirements section for the Navy lookouts.

Comment 9: One commenter was concerned that the Navy would not begin collecting data until mid-late 2009 when the ICMP was finalized.

Response: The ICMP is an overarching framework for all of the Navy's Range-specific MMPA Monitoring Plans and does not include a field-work component (rather it addresses prioritization, standardization, and summarization of actual data-gathering). The Navy actually began doing some of the data collection in 2007 outside of the commitments made through the HRC EIS process, and they will begin collecting field data pursuant to the HRC-specific Monitoring Plan shortly after the authorized exercises begin in early 2009.

Comment 10: Two commenters questioned whether the Navy had considered whether a statistically sound sample size had been developed to answer the questions that the monitoring is trying to answer. One commenter stated: ''To determine the sample sizes required to assess impacts and the validity of this monitoring effort, the statistical power should be estimated, with a range of potential effect sizes, and taking into account information available from previous monitoring efforts with vessel or aerial platforms, to predict sighting rates given the amount of effort planned. Planning on, for example, 40 hours of aerial surveys associated with a particular exercise, is likely to provide such small sample sizes of sightings that the power to assess redistribution of animals may be close to zero.''

Response: The Navy will contract a team of marine mammal experts to determine monitoring plan implementation, sample size and analysis parameters. The data from Hawaii will be pooled (as appropriate) with data collected from other range complexes to maximize data collection each year. No conclusions will be made without statistically valid sample size. Furthermore, the study designed to assess the redistribution of animals not only uses aerial surveys, but aerial surveys in conjunction with a passive acoustic component to include an array of ten to fifteen autonomous acoustic recording buoys, such as a High-frequency Acoustic Recording Package (HARP), which will be deployed for months at a time. Using both of these methods together, the Navy is more likely to detect a change in the distribution of marine mammals.

Comment 11: One commenter asserts that the deployment of five satellite tags on individuals prior to an exercise is not likely to be sufficient to assess reactions or redistribution during the exercise.

Response: The Navy has revised the HRC Monitoring Plan such that the goal is to tag 15 animals in FY 2010, 25 animals in FY 2011, and 30 animals in both FY 2012 and 2013.

Comment 12: One commenter stated: ''A large proportion of marine mammals are missed in aerial surveys; this needs to be taken into account when assessing the efficacy of using aerial surveys for monitoring potential behavioral impacts. The fact that observers on-board naval vessels sighted no marine mammals during USWEX 06–04 and 07–02 illustrates either that marine mammals are strongly reacting to sounds produced by these vessels at distances far greater than the observers are able to monitor (and are thus not being detected), or that the on-board observer program for mitigating impacts is extremely ineffective, contrary to the statement that 'data from watchstanders is generally useful to indicate the presence or absence of marine mammals within the safety zones' (pg. 35547).''

Response: The Navy has considered the strengths and weaknesses of the different marine mammal survey methods in the development of the Monitoring Plan. In order to monitor potential behavioral effects, the Navy's HRC Monitoring Plan outlines a study design that includes aerial monitoring, vessel monitoring, passive acoustic monitoring, and marine mammal tagging. NMFS disagrees with the assertion that a lack of marine mammal sightings during two exercises means that marine mammals must be strongly reacting at great distances—rather, it could mean that animals are avoiding the sound at a distance beyond which the watchstanders can see (which would not necessarily be classified as a strong reaction), and separately, it could be a reflection of the low marine mammal density in offshore Hawaii (also—we note that in some cases lookouts were only required to report the marine mammals that were detected within 2000 m—so other animals may have been detected at greater distances, but not reported. That issue has been corrected in the current reporting requirements, which require lookouts to report all sightings). The mitigation powerdown and shutdown zones are relatively close to the ship (1000, 500, and 200 yd) and there is no indication that lookouts are missing animals that are visibly detectable within these distances—Navy After Action Reports show anywhere from 0 to 26 marine mammal sightings in Hawaii for one exercise, and up to 133 sightings during an exercise in California, and report many sonar shutdowns (often when animals are much farther from the source than the distance at which shutdowns are required). Nonetheless, the Navy's Monitoring Plan includes a study designed to compare the detection rate of Navy lookouts (who are responsible for detecting marine mammals for mitigation

implementation) to scientifically trained marine mammal observers.

Comment 13: One commenter noted: ''The location of the Navy's training exercises are highly variable, with the exception of the Navy's ranges (PMRF, etc.)'' This commenter further asked if these ranges are being studied and whether there are fewer marine mammals in frequently used ranges than one might expect.

Response: The PMRF does not have one of prototype systems being tested at both the SOAR (Southern California Range Complex) and AUTEC (Bahamas) ranges. This prototype system being tested at SOAR and AUTEC currently has a limited ability to detect and localize a few numbers of two species of beaked whales of marine mammals in real time. At PMRF, data collected from range hydrophones have observed over 100,000 acoustic detections per hour and, on some, over 6 million acoustic detections in one day. This acoustic data may suggest more marine mammals present than expected (based on current stock assessment numbers). The range at PMRF is not currently being utilized for the analysis of marine mammal behavior during training exercises. The HRC Monitoring Plan does not contain a specific monitoring component for PMRF. It is difficult to make inferences regarding the reasons for marine mammal use (i.e., the number of animals) in any particular area with focused anthropogenic activities if observations were not made prior to the focused human activities. However, for the East Coast Undersea Warfare Training Range Complex (USWTR), the Navy has developed and implemented a monitoring plan that is surveying for marine mammals years in advance of the construction of the Range (which consists primarily of a large array of hydrophones) so that the abundance and distribution of marine mammals can be compared before and after the construction and operation of the Range.

Mitigation

Comment 14: One commenter asserts that NMFS' analysis ignores or improperly discounts an array of options that have been considered and imposed by other active sonar users, including avoidance of coastal waters, high-value habitat, and complex topography; the employment of a safety zone more protective than the 1000-yard power-down and 200-yard shutdown accepted by NMFS; general passive acoustic monitoring for whales; special rules for surface ducting and low-visibility conditions; monitoring and shutdown procedures for sea turtles and large schools of fish; and many others. The commenter further provides a detailed list of 30 additional measures that should be considered. Other commenters made additional recommendations of mitigation measures that should be considered.

Response: NMFS considered a wide range of mitigation options in our analysis, including those listed by the commenters. In order to issue an incidental take authorization (ITA) under Section 101(a)(5)(A) of the MMPA, NMFS must set forth the ''permissible methods of taking pursuant to such activity, and other means of affecting the least practicable adverse impact on such species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.'' The National Defense Authorization Act (NDAA) of 2004 amended the MMPA as it relates to military-readiness activities (which these Navy activities are) and the incidental take authorization process such that ''least practicable adverse impact'' shall include consideration of personnel safety, practicality of implementation, and impact on the effectiveness of the ''military readiness activity''. NMFS worked with the Navy to identify practicable and effective mitigation measures, which included a careful balancing of the likely benefit of any particular measure to the marine mammals with the likely effect of that measure on personnel safety, practicality of implementation, and impact on the ''military-readiness activity''. NMFS developed an Environmental Assessment (EA) specifically to help analyze the available mitigation measures in regard to potential benefits for marine mammals (*see* goals of mitigation in the Mitigation section of this proposed rule) and practicability for the Navy. That EA, which considered all of the measures recommended by these public comments, is currently available on the NMFS Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*).

Comment 15: One commenter stated: ''The Navy should conduct long-term research on the distribution, abundance, and population structuring of protected species in the HRC. They should also conduct research and development of technologies to reduce the impacts of active acoustic sources on marine mammals.''

Response: The MMPA does not require that individuals who have received an incidental take authorization conduct research. However, the Navy has voluntarily developed and funded a number of research plans that are designed to address the issues raised by the commenter (*see* Research section).

Comment 16: One commenter asked whether the Navy intends to forewarn marine mammals by using small explosions or noise so that marine mammals would not be exposed to hazardous detonations.

Response: No. However, there are range clearance procedures to minimize the likelihood that animals would be exposed to hazardous levels of sound or pressure (*see* Mitigation section).

Comment 17: The marine species awareness training (MSAT) should be updated more often. So little is known about effects of sonar and underwater noise, and ongoing research constantly changes assumptions. NMFS, not the Navy, should decide when updates are ''appropriate.''

Response: The Navy solicited input from NMFS on the MSAT training, initially, and NMFS will continue to make recommendations regarding the MSAT training, as appropriate. However, a large portion of the information contained in the training is of a general nature that does not necessarily require frequent updates.

Comment 18: One commenter asked about the duration of a lookout's shift and was concerned that lookouts may fatigue quickly.

Response: Navy lookouts are critical to both training and operational success, as well as personnel safety. The Navy takes the potential fatigue of the lookout into consideration when scheduling them. A typical lookout shift is 4 hours, with the lookout rotating into a different location every 1 hour. NMFS does not believe that fatigue would set in within this relatively short time and typically recommends no longer than a 4-hour shift for marine mammal observers.

Comment 19: NRDC recommends prescription of specific mitigation requirements for individual categories (or sub-categories) of testing and training activities, in order to maximize mitigation given varying sets of operational needs. Also, the Navy should require that other nations abide by U.S. mitigation measures when training in the HRC, except where their own measures are more stringent.

Response: The Navy's standard protective measures include measures that are specific to certain categories of activities. For example, different exclusion zones are utilized for hull-mounted sonar and dipping sonar, and different range clearance procedures are used for SINKEXs and IEER exercises. Pursuant to the Navy's 2000 Policy for Environmental Compliance at Sea, when foreign navies participate in

exercises with the U.S. Navy, the U.S. Navy provides them with the mitigation requirements (under the MMPA and ESA) and strongly encourages foreign navies to implement the mitigation requirements.

Comment 20: The Marine Mammal Commission recommends that, if the National Marine Fisheries Service issues a final rule to authorize the taking of small numbers of marine mammals incidental to the proposed military training operations, the Navy be required to:

- Explain all analytical procedures and provide all data used to estimate take levels in sufficient detail that reviewers can understand, reconstruct, and verify the estimated risks;
- Calibrate and verify the performance of the proposed visual and passive acoustic monitoring programs before operations begin so that all interested parties can evaluate the effectiveness of the mitigation measures;
- Retain the power-down or shutdown period of 30 minutes for most marine mammals, expand it to 60 minutes for deep-diving species, and provide follow-up data on the effectiveness and costs associated with this mitigation measure;
- Suspend activities if a beaked whale or other marine mammal is killed or seriously injured and the death or injury appears to be associated with that activity, and resume the activity only after a review by the Service of the circumstances of the death or injury and the Navy's plans for avoiding additional incidents; and
- Provide a release date for the comprehensive report of monitoring and watchstander data from operations in the HRC, the Southern California Range Complex, and Atlantic Fleet Active Sonar Training activities.

Response: Following are the responses to the MMCs bulleted recommendations:

- NMFS believes that Appendix J of the Navy's HRC EIS (which is referenced in the rule) adequately explains the analytical procedures and provides the data used to estimate take levels in sufficient detail that the reviewers can understand and verify the estimated risks. However, reviewers would not be able to reconstruct the process exactly because inherent to the overall exposure model is the CASS/GRAB submodel, the specific details of which cannot be included in the EIS because the model is a Navy owned, restricted distribution model available only to U.S. Government Agencies and their contractors. This high fidelity acoustic propagation model (CASS/GRAB) used for marine mammal effects analysis is the same model used for the operational use of tactical sonar, and it is included in the Navy's Oceanographic and Atmospheric Master Library (OAML), which has a rigorous acceptance process for all databases, models and algorithms prior to being accepted into OAML.
- Navy lookouts are specifically trained to detect anomalies in the water around the ship and both the safety of Navy personnel and success in the training exercise depend on the lookout being able to detect objects (or marine mammals) effectively around the ship. NMFS has reviewed the Navy's After Action Reports from previous exercises and they show that lookouts are detecting marine mammals, and implementing sonar shutdowns as required when they do. That said, the HRC Monitoring Plan contains a study in which Navy lookouts will be on watch simultaneously with non-Navy marine mammal observers and their detection rates will be compared. The Navy's HRC Monitoring Plan contains a segment that will compare the detection capabilities of Navy watchstanders to non-Navy marine mammal observers. The passive acoustic systems used to assist with marine mammal detection are the same systems used in the tactical training, and their performance must be regularly calibrated and verified in order to be effectively used in the training exercises. Additionally, the regulations and subsequent authorization would require the Navy to provide ''an evaluation (based on data gathered during all of the major training exercises) of the effectiveness of mitigation measures designed to avoid exposing marine mammals to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation included in the authorization.'' Last, the rule contains an adaptive management component that specifies that NMFS and the Navy will meet on an annual basis to evaluate the Navy Reports (on both Navy lookout observations as well as Monitoring Plan reporting) and other new information (such as Navy R & D developments or new science) to ascertain whether mitigation or monitoring modifications are appropriate.
- NMFS does retain the power-down or shutdown period of 30 minutes for most marine mammals, but does not concur with the MMC that we should expand the delay (until sonar can be restarted after a shutdown due to a marine mammal sighting) to 60 minutes for deep-diving species for the following reasons:
- Just because an animal can dive for longer than 30 minutes does not mean that they always do, so the 60 minute delay would only potentially add value in instances when animals had remained under water for more than 30 minutes.
- Navy vessels typically move at 10–12 knots (5–6 m/sec) when operating sonar and potentially much faster when not. Fish *et. al.* (2006) measured speeds of 7 species of odontocetes and found that they ranged from 1.4–7.30 m/sec. Essentially, if a vessel was moving at the typical sonar speed, or faster, an animal would need to be swimming near max speed for an hour to stay within the safety zone of a vessel. This further narrows the circumstances in which the 60-minute delay would add value.
- Additionally, the animal would need to have stayed in the immediate vicinity of the sound source for an hour. Considering the maximum area that both the vessel and the animal could cover in an hour, it is improbable that this would randomly occur. Moreover, considering that many animals have been shown to avoid both acoustic sources and ships without acoustic sources, it is improbable that a deep-diving cetacean (as opposed to a dolphin that might bow ride) would choose to remain in the immediate vicinity of the source. NMFS believes that it is unlikely that a single cetacean would remain in the safety zone of a Navy sound source for more than 30 minutes.
- Last, in many cases, the lookouts are not able to differentiate species to the degree that would be necessary to implement this measure. Plus, Navy operators have indicated that increasing the number of mitigation decisions that need to be made based on biological information is more difficult for the lookouts (because it is not their area of expertise). In this case NMFS does not believe that it will add to the protection of marine mammals in the vast majority of cases, and therefore we have not required it.
- NMFS is requiring the Navy to abide by a Stranding Response Plan (viewable at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*) that clearly lays out the steps the Navy would take in the event of a stranding and summarizes how NMFS plans to handle the investigation in a timely manner. In the event of a live stranding, there is a 14-nm area around the animals in which the Navy will not operate sonar—to ensure that the distressed animals are not put at further risk. In the event of a stranding involving dead animals—NMFS' investigation will ideally include an

aerial survey to ensure that additional animals are not stranded in the vicinity. However, if the stranded animals are dead, the Navy will not be required to shut down. It is not possible to immediately determine whether sonar contributed to a marine mammal stranding and investigations into the cause of death of stranded marine mammals take months or more to complete, and are often inconclusive. It would be impracticable to delay the Navy's training activities for an indeterminate amount of time when we have no idea if their action contributed to the stranding. That said, NMFS and the Navy are committed to fully investigating strandings that occur coincident with major Navy training exercises and to using any information gathered in the implementation of adaptive management.

Comment 21: The Navy should apply mitigation prescribed by the Hawaii Office of Planning and other state regulators, by the courts, by other navies or research centers, or by the U.S. Navy in the past or in other contexts. In addition, the Navy should engage in timely and regular reporting to NOAA, state coastal management authorities, and the public to describe and verify use of mitigation measures during testing and training activities.

Response: NMFS (with input from the Navy) has considered recommendations that have been received from the sources the commenter cites above. As mentioned in the response to Comment 14, NMFS developed an Environmental Assessment (EA), which is available at *http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications,* specifically to help analyze the available mitigation measures in regard to potential benefits for marine mammals (see goals of mitigation in the Mitigation section of this proposed rule) and practicability for the Navy. The Navy will be required to submit annual reports and these reports will be made available to the public upon the Notice to the public (in the **Federal Register**) of the issuance of subsequent LOAs. The reports will include a description of the mitigation measures implemented during major exercises and will also include an evaluation of the effectiveness of any mitigation measure implemented.

Acoustic Threshold for Behavioral Harassment

Comment 22: The NRDC submitted a comprehensive critique of the risk function (authored by Dr. David Bain), which NMFS has posted on our Web site (*http://www.nmfs.noaa.gov/pr/permits/incidental.htm#applications*). NRDC summarized some general limitations of the risk function and included a fairly detailed critique of the specific structure of and parameters chosen for use in the model. Following are some of the general topics addressed in the letter:

- Factors that Dr. Bain thinks should be addressed by the model, such as social interactions and multiple sources.
- Critique of the datasets that NMFS used to populate the risk function (described Level B Harasssment—Risk Function section of the proposed rule): (1) Controlled Laboratory Experiments with Odontocetes (SSC Dataset); (2) Mysticete Field Study (Nowacek *et. al.,* 2004), and (3) Odontocet Field Data (Haro Strait—USS Shoup).
- Consideration of some datasets that were considered by NMFS, but not used in the risk function.
- A critique of the parameters (A, B, and K) used in the risk function.
- A sensitivity analysis of the parameters (*i.e.*, takes were modeled while applying variable values for the A, B, and K values).

Dr. Bain included a summary of his concerns and an abbreviated version is included below. Additionally (and not included in the summary), Dr. Bain suggested that the effect of multiple sources may be both different and greater than the effects of fewer sources and provided supporting examples.

Dr. Bain's Summary follows (comments that were in Dr. Bains summary, but have been addressed elsewhere in this Comment Response section, are not included below):

- In summary, development of a function that recognizes individual variation is a step in the right direction.
- The selected equation is likely to produce underestimates of takes due to asymmetries in the number of individuals affected if parameters are either underestimated or overestimated due to uncertainty. Thus it will be important to use the risk function in a precautionary manner.
- The sensitivity analysis reveals the importance of using as many datasets as possible. First, for historical reasons, there has been an emphasis on high energy noise sources and the species tolerant enough of noise to be observed near them. Exclusion of the rarer datasets demonstrating responses to low levels of noise biases the average parameter values, and hence underestimates effects on sensitive species.
- A similar mistake was made with the right whale data. The level at which 100 percent of individuals responded was used as the value at which 50 percent of individuals responded (B+K). Likewise, the level at which 100 percent of killer whales responded to mid-frequency sonar is less than the value derived for B+K in the HRC SDEIS (Dept. Navy 2008b).
- It is likely that biological B values should be in the range from just detectable above ambient noise to120 dB re 1 μPa. The resulting mathematical B value could be tens of dB lower, not the 120 dB re 1 μPa proposed. For many species, risk may approach 100 percent in the range from 120–135 dB re 1 μPa, putting K in the 15–45 dB range.
- The A values do not seem well supported by the data, and in any case, are likely to be misleading in social species as the risk function is likely to be asymmetrical with a disproportionate number of individuals responding at low noise levels. Rather than one equation fitting all species well, parameters are likely to be species typical.
- As realistic parameter values are lower than those employed in the HRC SDEIS (Dept. Navy 2008b), AFAST DEIS (Dept. Navy 2008a) and related DEIS's, take numbers should be recalculated to reflect the larger numbers of individuals likely to be taken. The difference between the parameter values estimated here and those used in the SDEIS suggests takes were underestimated by two orders of magnitude.

Response: Many of the limitations outlined in Dr. Bains document were raised by other commenters and are addressed elsewhere in this Comment and Response Section and will not be raised and addressed again here. Below, NMFS responds to the specific points summarized above.

- *The effects of multiple sources:* Mathematically, the Navy's exposure model has already accounted for takes of animals exposed to multiple sources in the number of estimated takes. NMFS concurs with the commenter, however, in noting that the severity of responses of the small subset of animals that are actually exposed to multiple sources simultaneously could potentially be greater than animals exposed to a single source due to the fact that received level, both SPL and SEL, would be slightly higher and because contextually it could be perceived as more threatening to an animal to receive multiple stimuli coming from potentially multiple directions at once (for example, marine mammals have been shown to respond more severely to sources coming directly towards them, vs. obliquely (Wartzok, 2004)). However, it is also worth noting that according to information provided by the Navy, surface vessels do not typically operate closer than 10–20

miles from another surface vessel (and greater distance is ideal), and other sonar sources, such as dipping sonar and sonobuoys, are almost always used 20 or more miles away from the surface vessel. This means that if the two most powerful sources were operating at the closest distance they are likely to (10 miles), in the worst case scenario, animals that would have been exposed to 150 dB SPL or less (taken from table 16 of the proposed rule) may be exposed to slightly higher levels or to similar levels or less coming from multiple directions.

• *Underestimates of takes due to asymmetries in the number of individuals affected when parameters are underestimated and overestimated due to uncertainty:* The commenter's point is acknowledged. When a sensitivity analysis is conducted and parameters are varied (both higher and lower values used)—the degree of difference in take estimates is much greater when the parameter is adjusted in one direction than in the other, which suggests that the way that this generalized model incorporates uncertainty may not be conservative. However, in all cases when the adjustment of the parameter in a certain direction results in a disproportionately (as compared to an adjustment in the other direction) large increase in the number of takes, it is because the model is now estimating that a larger percentage of animals will be taken at greater distances from the source. This risk function is based completely on the received level of sound. As discussed in the proposed rule, there are other contextual variables that are very important to the way that an animal responds to a sound, such as nearness of the source, relative movement (approaching or retreating), or the animals familiarity with the source. Southall *et al.* (2007) indicates that the presence of high-frequency components and a lack of reverberation (which are indicative of nearness) may be more relevant acoustic cues of spatial relationship than simply exposure level alone. In the HRC, an animal exposed to between 120 and 130 dB may be more than 65 nm from the sonar source. NMFS is not aware of any data that describe the response of any marine mammals to sounds at that distance, much less data that indicate that an animal responded in a way we would classify as harassment at that distance. Because of this, NMFS does not believe it is currently possible or appropriate to modify the model to further address uncertainty if doing so results in the model predicting that much larger numbers of animals will be taken at great distances from the source when we have no data to suggest that that would occur.

• *Using many datasets:* NMFS has explained both in the rule, and then again elsewhere in these comments, why we chose the three datasets we did to define the risk function. As Dr. Bain points out, there are datasets that report marine mammal responses to lower levels of received sound. However, because of the structure of the curve NMFS is using and what it predicts (Level B Harassment), we need datasets that show a response that we have determined qualifies as harassment (in addition to needing a source that is adequately representative of MFAS and reliable specific received level information), which many of the lower level examples do not.

• *50-percent* vs. *100-percent response:* Dr. Bain asserts that two of the three datasets (Nowacek *et. al.,* 2004 and Haro Strait—USS SHOUP) that NMFS uses to derive the 50-percent response probability in the risk function actually report a 100-percent response at the indicated received levels. For the Haro Strait dataset, a range of estimated received levels at the closest approach to the J Pod were estimated. Given that neither the number of individual exposures or responses were available, the mean of this range was used as a surrogate for the 50-percent response probability in the development of the risk function. For the Nowacek data, NMFS used 139.2 dB, which is the mean of the received levels at which 5 of 6 animals showed a significant response to the signal. However, viewed another way, of 6 animals, one animal did not respond to the signal and the other five responded at received levels of 133 dB, 135 dB, 137 dB, 143 dB, and 148 dB, which means that 3 of the 6 animals (50 percent) showed a significant response at 139.2 dB or less.

• *120 dB basement value:* When the broad array of data reported from exposures across taxa and to varied sources are reviewed, NMFS believes that 120 dB is an appropriate B value for a curve designed to predict responses that rise to the level of an MMPA harassment (not just any response). The available data do not support the commenter's assertion that risk may approach 100 percent in the range from 120–135 dB for many species. For example, the Southall *et al.* (2007) summary of behavioral response data clearly shows, in almost every table (for all sound types), reports of events in which animals showed no observable response, or low-level responses NMFS would not likely consider harassment, in the 120 to 135-dB range. For the species (the harbor porpoise) for which the data do support that assertion, which the Southall *et al.* (2007) paper considers ''particularly sensitive'', NMFS has implemented the use of a species-specific step function threshold of 120 dB SPL.

• *The A value:* Please see the second bullet of this response for the first part of the answer. NMFS concurs with the commenter that species-specific parameters would likely be ideal, however there are not currently enough applicable data to support separate curves for each species. We note, though, that even with species-specific parameters, the context of the exposure will still likely result in a substantive variability of behavioral responses to the same received level by the same species.

• *Recalculation:* For the reasons described in the bullets above in this response, NMFS disagrees with the commenter's assertion that the parameters used in the proposed rule and the EIS are unrealistic and that they result in take estimates that are too small by two orders of magnitude. We do not believe that a recalculation is necessary.

The science in the field of marine mammals and underwater sound is evolving relatively rapidly. NMFS is in the process of revisiting our acoustic criteria with the goal of developing a framework (Acoustic Guidelines) that allows for the regular and defensible incorporation of new data into our acoustic criteria. We acknowledge that this model has limitations, however, they are primarily based on the lack of applicable quantitative data. We believe that the best available science has been used in the development of the criteria used in this and other concurrent Navy rules and that this behavioral harassment threshold far more accurately represents the number of marine mammals that will be taken than the criteria used in the RIMPAC 2006 authorization. We appreciate the input from the public and intend to consider it further as we move forward and develop the Acoustic Guidelines.

Comment 23: One commenter expressed the concern that NMFS blindly relies on TTS studies conducted on 7 captive animals of two species (to the exclusion of copious data on animals in the wild) as a primary source of data for the behavioral harassment threshold. The commenter further asserts that these studies (on highly trained animals that do not represent a normal range of variation within their own species, as they have been housed in a noisy bay for most of their lives)

have major deficiencies, which NMFS ignores by using the data.

Response: As mentioned in Comment 22, the SSC Dataset (Controlled Laboratory Experiments with Odontocetes) is not the primary source of data for the behavioral harassment threshold, it is one of three datasets (other two datasets are from wild species exposed to noise in the field) treated equally in the determination of the K value (equates to midpoint) of the behavioral risk function. NMFS recognizes that certain limitations may exist when one develops and applies a risk function to animals in the field based on captive animal behavioral data. However, we note that for the SSC Dataset: (1) Researchers had superior control over and ability to quantify noise exposure conditions; (2) behavioral patterns of exposed marine mammals were readily observable and definable; and, (3) fatiguing noise consisted of tonal noise exposures with frequencies contained in the tactical mid-frequency sonar bandwidth. NMFS does not ignore the deficiencies of these data, rather we weighed them against the value of the data and compared the dataset to the other available datasets and decided that the SSC dataset was one of the three appropriate datasets to use in the development of the risk function.

Comment 24: NMFS fails to include data from the July 2004 Hanalei Bay event, in which 150–200 melon-headed whales were embayed for more than 24 hours during the Navy's Rim of the Pacific exercise. According to the Navy's analysis, predicted mean received levels (from mid-frequency sonar) inside and at the mouth of Hanalei Bay ranged from 137.9 dB to 149.2 dB. NMFS' failure to incorporate these numbers into its methodology as another data set is not justifiable.

Response: NMFS' investigation of the Hanalei event concluded that there was insufficient evidence to determine causality. There are a number of uncertainties about sonar exposure and other potential contributing factors and assumptions inherent to a reconstruction of events in which sonar was the causative agent that simply preclude this determination. Because of this, NMFS did not use the numbers (137.9–149.2 dB) in our methodology. Additionally, even if NMFS had concluded that MFAS were the causative agent, insufficient evidence exists regarding the received level when the animals responded (there is no information regarding where they were when they would have first heard the sound).

Comment 25: One commenter stated ''NMFS excludes a substantial body of research on wild animals (and some research on other experimental animals as well, within a behavioral experimental protocol). Perhaps most glaringly, while the related DEIS prepared for the Navy's Atlantic Fleet Active Sonar Training activities appears to acknowledge the strong sensitivity of harbor porpoises by setting an absolute take threshold of 120 dB (SPL)—a sensitivity that, as NMFS has noted, is reflected in numerous wild and captive animal studies—the agencies improperly fail to include any of these studies in their data set. The result is clear bias, for even if one assumes (for argument's sake) that the SPAWAR data has value, NMFS has included a relatively insensitive species in setting its general standard for marine mammals while excluding a relatively sensitive one.''

Response: As explained in the Level B Harassment (Risk Function) section of the proposed rule the risk function is based primarily on three datasets (SSC dataset, Nowacek *et al.* (2004), and Haro Strait—USS SHOUP) in which marine mammals exposed to mid-frequency sound sources were reported to respond in a manner that NMFS would classify as Level B Harassment. NMFS considered the ''substantial body of research'' that the commenter refers to but was unable to find other datasets that were suitable in terms of all of the following: The equivalency of the sound source to MFAS, a reported behavioral response that NMFS would definitively consider Level B Harassment, and a received level reported with high confidence. The SSC dataset is only one of three used and, in fact, the other 2 datasets (which are from wild animals—killer whales and North Atlantic right whales) both report behavioral responses at substantively lower levels (*i.e.*, the ''relatively insensitive'' species is not driving the values in the function).

Separately, combined wild and captive data support the conclusion that harbor porpoises (high-frequency hearing specialists) are quite sensitive to a variety of anthropogenic sounds at very low exposures (Southall *et al.,* 2007). Southall *et al.* (which refer to harbor porpoises as particularly sensitive species) report that all recorded exposures exceeding 140 dB SPL induced profound and sustained avoidance behavior in wild harbor porpoises. Unlike for the mid-frequency and low-frequency species, there are also no reported instances where harbor porpoises were exposed to higher levels and did *not* have a high response score. For these reasons, harbor porpoises are considered especially sensitive and NMFS determined that it is appropriate to apply a more conservative threshold.

Comment 26: The risk function must take into account the social ecology of some marine mammal species. For species that travel in tight-knit groups, an effect on certain individuals can adversely influence the behavior of the whole. Should those individuals fall on the more sensitive end of the spectrum, the entire group or pod can suffer significant harm at levels below what the Navy would use as the mean. In developing its ''K'' parameter, NMFS must take account of such potential indirect effects.

Response: The risk function is intended to define the received level of MFAS at which exposed marine mammals will experience behavioral harassment. The issue the commenter raises is related to the Navy's exposure model—not the risk function. However, because of a lack of related data there is no way to numerically address this issue in the model. Although the point the commenter raises is valid, one could also assert that if certain animals in a tight knit group were less sensitive it would have the opposite effect on the group. Additionally, the modeling is based on uniform marine mammal density (distributed evenly over the entire area of potential effect), which does not consider the fact that marine mammals appearing in pods will be easier to detect and, therefore, the Navy will be more likely to implement mitigation measures that avoid exposing the animals to the higher levels received within 1000m of the source.

Comment 27: NMFS' threshold is applied in such a way as to preclude any assessment of long-term behavioral impacts on marine mammals. It does not account, to any degree, for the problem of repetition: the way that apparently insignificant impacts, such as subtle changes in dive times or vocalization patterns, can become significant if experienced repeatedly or over time.

Response: NMFS threshold does not preclude any assessment of long-term behavioral impacts on marine mammals. The threshold is a quantitative tool that NMFS uses to estimate individual behavioral harassment events. Quantitative data relating to long-term behavioral impacts are limited, and therefore NMFS' assessment of long-term behavioral impacts is qualitative in nature (*see* Diel Cycle section in Negligible Impact Analysis section). NMFS analysis discusses the potential significance of impacts that continue more than 24 hours and/or are repeated on subsequent days and, though it does

not quantify those impacts, further indicates that these types of impacts are not likely to occur because of the nature of the Navy's training activities and the large area over which they are conducted.

Comment 28: One commenter noted that the threshold used in the Proposed Rule differs from the one used by the Navy to estimate marine mammal take during previous exercises (i.e., instead of using an energy level (EL) standard of 173 dB re 1 microPa^2•s, NMFS applies a pressure (SPL)-based dose-response function that begins at 120 dB re 1 microPa and reaches its mean at 165 dB re 1 μPa). The commenter was concerned that under 173 dB (EL) threshold, the RIMPAC 2006 event was expected to result in slightly less than 33,000 behavioral takes of marine mammals—while under the risk function, RIMPAC events conducted with the same number of hours of sonar use would supposedly cause fewer than 6,000 takes. The commenter requests that NMFS provide a take estimate using the 173 dB (EL) standard.

Response: NMFS develops and implements thresholds based on the best available science, not on how changing the threshold will affect the number of estimated takes. As described in the proposed rule, the decision to use a risk continuum approach instead of a step function was based on the fact that behavioral responses are very individual and context-specific and a risk function allows for this variation to be considered in the take estimate, versus a step function, which assumes that every animal will be harassed at the same received level in every situation. Although both SPL and SEL are valuable metrics for predicting the behavioral responses of marine mammals to sound, SPL is currently the best metric with which to assess the available behavioral response data because it is the metric that has most often been measured or estimated during behavioral disturbance studies (Southall *et al.,* 2007). Additionally, SEL is more difficult to estimate in the field than SPL. Regarding the decrease in the number of estimated takes for current RIMPAC exercises as compared to RIMPAC 2006, NMFS notes the following items, other than the new threshold, that have contributed to the reduction in the take estimate:

- The RIMPAC 2006 take estimate was calculated for 532 hours of sonar, while the current RIMPAC estimate is based on 399 hours of sonar.
- In 2006, the Navy model did not subtract out the land mass area when multiplying the ensonified area by the animal density to determine the estimated marine mammal exposures. Currently, the Navy has implemented a post-modeling calculation that allows them to account for that.
- For the 2006 RIMPAC, all of the surface vessel sonar hours were modeled as using the 53C hull-mounted sonar source, though both 53C and 56C sources are used in Hawaii. The 56C hull-mounted sonar source is typically operated at 10 dB SPL lower source level than the 53C sonar source (225 vs. 235 dB), which means that the horizontal ensonified area around the source is at least 10 times smaller—which translates to substantially fewer animals exposed to received sound levels associated with MMPA takes. In modeling impacts for this rulemaking, the Navy more accurately modeled both 53C and 56C sonar sources in the exposure analysis, which contributes to the more realistic lower take estimate.
- Currently, the Navy applies marine mammal depth profiles to the take estimate that allows for consideration of where in the water column marine mammals are likely to be in relation to the propagated sound. Alternatively, in 2006, marine mammals were only distributed 2-dimensionally, which meant that an exposed animal was always counted as having been exposed to whatever the highest level of sound in the entire vertical water column was.

NMFS will continue to evaluate new science and thresholds will likely evolve gradually in response to applicable data. Requiring the Navy to calculate take estimates based on an outdated threshold would cost the Navy unnecessary resources and would not result in any added value to the effects analysis or the protection of marine mammals.

Comment 29: ''NMFS appears to have misused data garnered from the Haro Strait incident—one of only three data sets it considers—by including only those levels of sound received by the 'J' pod of killer whales when the USS Shoup was at its closest approach. These numbers represent the maximum level at which the pod was harassed; in fact, the whales were reported to have broken off their foraging and to have engaged in significant avoidance behavior at far greater distances from the ship, where received levels would have been orders of magnitude lower. We must insist that NMFS provide the public with the Navy's propagation analysis for the Haro Strait event, which it used in preparing its 2005 Assessment of the incident.''

Response: NMFS used the levels of sound received by the ''J'' pod when the USS Shoup was at its closest approach because a review of the videotapes and other materials by NMFS detailing the behavior of the animals in relation to the location of the Navy vessels showed that it was after the closest approach of the vessel that the whales were observed responding in a manner that NMFS would classify as ''harassed''. Though animals were observed potentially responding to the source at greater distances, NMFS scientists believed that the responses observed at greater distances were notably less severe and would not rise to the level of an MMPA harassment. Though the received levels observed in relation to the lesser responses could be used in some types of analytical tools, the risk continuum specifically requires that we use received sound levels that are representative of when an MMPA harassment occurred. The Navy's report may be viewed at: *http://www.acousticecology.org/docs/SHOUPNavyReport0204.pdf.*

Acoustic Threshold for TTS

Comment 30: NRDC argues that a 190 dB re 1 μPa^2-s TTS threshold would have ''fit the applicable data'' better than the 195–dB threshold (*i.e.*, the data better support a 190–dB TTS threshold) NMFS and the Navy have established for MFAS and would have had the advantage of being marginally more conservative given the enormous uncertainties surrounding the effects of mid-frequency sonar on marine mammals.

Response: The most recent and best available scientific information, *i.e.*, Southall *et al.* (2007), support the application of the 195–dB SEL TTS-onset threshold for cetaceans and non-pulse sounds (such as MFAS). Published TTS data are limited to bottlenose dolphin and beluga (six publications); however, in order to be precautionary, where data exist for both species, the authors use the more conservative result (usually for beluga) to represent TTS-onset for all mid-frequency cetaceans. NMFS scientists and the authors of Southall *et al.* (2007) believe that the existing data support a 195–dB threshold.

Acoustic Threshold for Injury

Comment 31: One commenter stated that: ''The take estimates do not reflect other non-auditory physiological impacts, as from stress and from chronic exposure''.

Response: The commenter is correct, the Navy's estimated take numbers do not reflect non-auditory physiological impacts because the quantitative data necessary to address those factors in the exposure model do not exist. However, NMFS acknowledges that a subset of the

animals that are taken by Harassment will also likely experience non-auditory physiological effects and these effects are addressed in the proposed rule (*see* Stress Responses section).

Comment 32: The Navy's exclusive reliance on energy flux density as its unit of analysis does not take other potentially relevant acoustic characteristics into account. Reflecting this uncertainty, the Navy should establish a dual threshold for marine mammal injury.

Response: NMFS currently uses the injury threshold recommended by Southall *et al.* (2007) for MFAS. Specifically, NMFS uses the 215-dB SEL sound exposure level threshold (the commenter refers to it as energy flux density level). Southall *et al.* (2007) presents a dual threshold for injury, which also includes a 230–dB peak pressure level threshold. NMFS discussed this issue with the Navy early in the MMPA process and determined that the 215-dB SEL injury threshold was the more conservative of the two thresholds (*i.e.*, the 230-dB peak pressure threshold occurs much closer to the source than the 215-dB SEL threshold) and therefore it was not necessary to consider the 230-dB peak pressure threshold further. For example, an animal will be within the 215-dB SEL threshold and counted as a take before it is exposed to the 230-dB threshold. NMFS concurs with Southall *et al.* (2007), which asserts that for an exposed individual, whichever criterion is exceeded first, the more precautionary of the two measures should be used as the operative injury criterion.

Comment 33: One commenter suggested that the Navy has not explained how they determine when or how injuries or harassment of marine mammals have occurred during the specified activities.

Response: It is difficult to detect when animals experience behavioral harassment. Though it would likely be easier to detect if an animal were injured as a result of the Navy's activities, it is still difficult because of the fact that marine mammals spend a lot of time underwater (where they cannot be visually observed) and because of the large areas that Navy training activities cover (*i.e.*, they do not stay in one area for a long time). The Navy has a robust Monitoring Plan that utilizes vessel monitoring, aerial monitoring, passive acoustic monitoring, and tagging and is intended to detect and report marine mammal responses to MFAS exposure. However, in order to quantify the takes that are likely to occur as a result of particular training exercises, the Navy must make estimates based on the propagation of sound from their sources, the density of marine mammals in the area, and the acoustic thresholds, which predict at what received level of sound an animal will be harassed and were developed by NMFS using the best available science.

Comment 34: One commenter asserts that most whales injured or killed by sonar will not be found, or they will sink and die rather than beach themselves on shore. Further, the commenter states, the proposed tests and war games will likely injure and harass many more marine mammals than the number of takings requested by the Navy.

Response: For the reasons set forth in this rulemaking, NMFS does not believe that the Navy's training will result in more take than is authorized in these final regulations. The Navy has been conducting MFAS/HFAS training exercises in the HRC for over 40 years. Though monitoring specifically to determine the effects of sonar on marine mammals was not being conducted prior to 2006 and the symptoms indicative of potential acoustic trauma were not as well recognized prior to the mid-nineties, people have been collecting stranding data in Hawaii for 25 years. Though not all dead or injured animals are expected to end up on the shore (some may be preyed upon or float out to sea), one might expect that if marine mammals were being harmed by sonar with any regularity or in large numbers, more evidence would have been detected over the 40-yr period. An average of 24 stranding events per year are documented in Hawaii. However, as described in the rule, NMFS and the Navy have definitively determined that the use of MFAS was a contributing factor in 5 stranding events worldwide, none of which took place in Hawaii.

Comment 35: One commenter stated: ''[M]arine mammals are stressed by many other factors, the most critical being global warming, which is both increasing the temperature of the oceans and acidifying them, with observed changes in food supplies and timing of migrations. Allowing use of active sonar may be the last straw for some of these species. It is important to protect marine mammals until it is known that populations can sustain limited and completely quantified incidental harassment and death. Since that is not known at present, NOAA should not allow the Navy to proceed with active sonar testing as requested.''

Response: NMFS acknowledges that global warming is a threat to some species of marine mammals. For the reasons described in this rulemaking, NMFS believes that the Navy's model, combined with NMFS' designated thresholds, is able to adequately quantify the number of marine mammals that will likely be ''taken'' by the Navy's proposed activity. Further, based on the analysis contained in this rule, NMFS was able to conclude that the total taking of marine mammals over the 5-yr period incidental to the Navy's training activities would have a negligible impact on the affected species or stock (*i.e.*, would not have adverse effects on the annual rates of survival or recruitment in the affected populations or stocks). Therefore, NMFS has issued these regulations and plans to issue Letters of Authorization for this activity. Of note—pursuant to the MMPA, NMFS does not ''allow'' or disallow the Navy to proceed with their activities; rather, NMFS either authorizes or does not authorize the take of marine mammals incidental to the specified activities that are analyzed.

Comment 36: One commenter asserts that NMFS disregards data gained from actual whale mortalities. The commenter cites to peer-reviewed literature that indicates that sound levels at the most likely locations of beaked whales beached in the Bahamas strandings run far lower than the Navy's threshold for injury here: approximately 150–160 dB re 1 μPa for 50–150 seconds, over the course of the transit. A further modeling effort, undertaken in part by the Office of Naval Research, the commenter states, suggests that the mean exposure level of beaked whales, given their likely distribution in the Bahamas' Providence Channels and averaging results from various assumptions, may have been lower than 140 dB re 1 μPa. Last the commenter suggests that when duration is factored in, evidence would support a maximum energy level (''EL'') threshold for serious injury on the order of 182 dB re 1 $\mu Pa^2 \cdot s$, at least for beaked whales.

Response: No one knows where the beaked whales were when they were first exposed to MFAS in the Bahamas or the duration of exposure for individuals (in regards to maximum EL) and, therefore, we cannot accurately estimate the received level that triggered the response that ultimately led to the stranding. Therefore, NMFS is unable to quantitatively utilize any data from this event in the mathematical model utilized to estimate the number of animals that will be ''taken'' incidental to the Navy's proposed action. However, NMFS does not disregard the data; the proposed rule includes a qualitative discussion of the Bahamas stranding and four other strandings that NMFS and the Navy concur that the operation

of MFAS likely contributed to. These data illustrate a ''worst case scenario'' of the range of potential effects from sonar and the analysis of these strandings supports the Navy's request for authorization to take 10 individuals of several species by mortality over the 5-yr period.

Comment 37: One commenter states: ''NMFS fails to take proper account of published research on bubble growth in marine mammals, which separately indicates the potential for injury and death at lower [received sound] levels. According to the best available scientific evidence, gas bubble growth is the causal mechanism most consistent with the observed injuries. NMFS' argument to the contrary simply misrepresents the available literature.''

Response: The proposed rule contained a detailed discussion of the many hypotheses involving both acoustically-mediated and behaviorally-mediated bubble growth. NMFS concluded that there is not sufficient evidence to definitively say that any of these hypotheses accurately describe the exact mechanism that leads from sonar exposure to a stranding. Despite the many theories involving bubble formation (both as a direct cause of injury and an indirect cause of stranding), Southall *et al.* (2007) summarizes that scientific agreement or complete lack of information exists regarding the following important points: (1) Received acoustical exposure conditions for animals involved in stranding events; (2) pathological interpretation of observed lesions in stranded marine mammals; (3) acoustic exposure conditions required to induce such physical trauma directly; (4) whether noise exposure may cause behavioral reactions (such as atypical diving behavior) that secondarily cause bubble formation and tissue damage; and (5) the extent the post mortem artifacts introduced by decomposition before sampling, handling, freezing, or necropsy procedures affect interpretation of observed lesions.

Comment 38: One commenter states: ''[C]oncerning direct physiological effects, only a few studies provide empirical information on the levels at which noise-induced loss in hearing sensitivity occurs in nonhuman animals. Given the lack of data, and importance of hearing in the ocean, shouldn't we follow the precautionary principle for underwater noise?''

Response: The TTS thresholds are based on published data gathered from beluga whales, bottlenose dolphins, California sea lions, harbor seals, and elephant seals via several different studies. The PTS threshold (for estimating PTS onset, which is considered to occur in conditions causing 40 dB of TTS, based on research on several terrestrial mammal species) is derived by combining measured or estimated TTS onset levels in marine mammals and the estimated ''growth'' of TTS in certain terrestrial mammals exposed to increasing noise levels (Southall *et al.,* 2007). Precautionary choices were made at several decision points in the development of these thresholds and Southall *et al.* (2007) indicate that the approach is to ''acknowledge scientific uncertainty and to err on the side of overestimating the possibility of PTS (*i.e.*, on the side of underestimating the exposure required to cause PTS onset).'' For example, 40 dB of TTS is considered the onset of PTS; however, this is likely somewhat precautionary because, based on previous studies of terrestrial mammals, there is often complete recovery from TTS of this magnitude or greater (*i.e.*, PTS is not induced).

Effects Analysis

Comment 39: ''Why is impaired communication considered for these rules, but not in the Navy EIS?''

Response: The Navy's conceptual framework, the figure in the Navy's EIS in which they outline the potential effects on marine mammals from exposure to sonar, includes a box indicating behavioral changes to vocalizations. Further, the HRC EIS contains a detailed section on masking, which is closely associated with any communication impairment that might result from MFAS exposure (NMFS included a brief discussion of communication impairment in the same section as masking). Both NMFS and the Navy believe that both masking and communication impairment are relatively unlikely to occur as a result of MFAS exposure because of the pulse length and duty cycle of the MFAS signal.

Comment 40: One commenter asked why the MMPA rules find greater stress responses than the Navy EIS.

Response: Both the proposed rule and the EIS discuss stress responses as related to marine mammal exposure to MFAS. Because of the lack of quantitative data, neither document attempts to quantify the number of animals that will likely experience a stress response or the specific degree of distress these animals may experience—*i.e.*, the rule does not ''find greater stress responses'' than the EIS.

Comment 41: One commenter noted that the proposed rule said: ''Little is known about the breeding and calving behaviors of many of the marine mammals that occur in the HRC.'' Then he questioned how such precise predictions of harm can be made.

Response: What is not indicated above is that, though little is known about the breeding and calving behaviors of many of the marine mammals that occur in the HRC, what is known is that these behaviors are most likely occurring in areas outside of the HRC (mysticetes other than humpback whales) or that there are not likely specific focused areas of reproductive importance in the HRC. Therefore, we do not expect focused effects of sonar to occur in an important reproductive area. When this is combined with the fact that we do not expect injury of marine mammals to occur (because of the mitigation measures), we do predict a lack of harm.

Comment 42: One commenter noted the LOA application requirement to provide the anticipated impact of the activity upon the species or stock. The commenter indicated that there is not enough data to answer the question adequately and that they are skeptical of Navy data as it ''has been shown to be unreliable.'' Further, the commenter ''generally feels that it is unwise to rely on an applicant's data set and urge that independent analysis be done.'' Last, they assert that ''Because there is a paucity of Navy data regarding their own estimates for takes, it is reasonable for NMFS to take a conservative and precautionary view towards issuing permits regarding the extremely broad, long-term, and harmful actions proposed.''

Response: The commenter does not provide any information to support his assertion that the Navy data ''has been shown to be unreliable''. NMFS relies upon the data that the Navy (or any applicant) provides in our analysis, but also conducts an independent review of the data and incorporates additional data into our analysis as appropriate. Next, NMFS is not sure what the commenter meant when he stated: ''Because there is a paucity of Navy data regarding their own estimates for takes.'' NMFS strives to always make decisions based on the best scientific data. In circumstances of scientific uncertainty and potentially high risk when a decision is necessary, NMFS errs on the side of being more conservative, whenever that conclusion is supported by the agency's record.

Comment 43: One commenter stated: ''[T]here is a disconnect that exists between the modeling adopted by NMFS in estimating species take and the scope of the authorization that NMFS has issued. NMFS' rule would permit the Navy to operate anywhere

around the range without any substantive restriction. If NMFS' analysis is dependent on certain assumptions about the Navy's training—including, for example, the siting of exercises—it must incorporate those assumptions as limitations on the training that the Navy is authorized to perform. Otherwise, there can be no assurance that takes will remain within even the limits that NMFS has proposed.''

Response: As it relates to humpback whales only, NMFS analysis is dependent on certain assumptions about the Navy's training (the assumption that a relatively small portion of the overall Navy training will occur within the areas that are known to contain high densities of humpback whales in the winter months (referred to as the Mobley Area because of a map he compiled)). Because of the need for operational flexibility, the Navy cannot commit to limiting their sonar use over the entire Mobley Area (though they will implement the humpback whale cautionary area measure specifically in the Maui Basin). However, the following facts support the idea that hours of sonar training will be relatively low in the Mobley Area and that effects on humpback whales will be relatively less severe:

- SPORTS data from 2007 indicates that the Navy operated sonar for a total of approximately 30 hours in the Mobley Area.
- Though SPORTS was not operative prior to 2007, the Navy indicated that sonar use in the Mobley Area prior to 2007 was similarly limited.
- The Navy generally asserts that the majority of the exercises are in waters 2,000–4,000 km deep. This means that the exercises are 2–15 km (1–8 nm), or farther, out from the densest areas of humpbacks, which would suggest, based on propagation information provided by the Navy, that the majority of behavioral takes of humpbacks would occur at received levels less than 150–160 dB. This further suggests that the overall potential severity of the effects is likely less than one would anticipate if humpbacks were not selectively using the shallower, inshore areas and the Navy were not conducting the majority of their exercises in deeper areas.

That being said, however, NMFS concurs with the commenter that NMFS needs to ensure that the Navy's effects remain within the bounds of those anticipated by and analyzed within the rule. For this reason, NMFS has added a reporting requirement that requires the Navy to annually report the number of hours of sonar operation within the Mobley Area. The rule also includes an adaptive management component, which means that NMFS and the Navy have the flexibility to modify mitigation or monitoring measures if appropriate.

Comment 44: One commenter asserts that the Navy's exposure model fails to consider the following important points:

- Possible synergistic effects of using multiple sources in the same exercise, or the combined effects of multiple exercises.
- Indirect effects, such as the potential for mother-calf separation, that can result from short-term disturbance.
- In assuming animals are evenly distributed—the magnifying effects of social structure, whereby impacts on a single animal within a pod, herd, or other unit may affect the entire group.
- In assuming that every whale encountered during subsequent exercises is essentially a new whale—the cumulative impacts on the breeding, feeding, and other activities of species and stocks.

Response: The commenter is correct, the Navy's model does not consider the points listed above because the quantitative data necessary to include those concepts in a mathematical model do not currently exist. However, NMFS and the Navy have qualitatively addressed those concerns in their effects analyses in the rule and in the Navy's EIS.

Comment 45: One commenter noted that the numbers of modeled hours in the Navy's EIS and NMFS' Proposed Rule are lower than those set forth in the DEIS (by half), due, apparently, to the Navy's application of its new Sonar Positional Reporting System (SPORTS). The commenter further notes that the discrepancy in use hours between the DEIS and EIS raises some question about SPORTS' reliability. The commenter recommends that NMFS require the Navy to compare SPORTS data with logs retained by the Pacific Fleet, over a sample period, to confirm that SPORTS reporting does indeed capture all mid-frequency sonar use in the Hawaii Range Complex, and then publicly report the total number of sonar use hours occurring on the HRC on no less than an annual basis, to ensure that levels remain below the levels established here.

Response: SPORTS is the single method that the Navy has available to them to accurately keep track of hours of sonar operation. Prior to the implementation of this system, the Navy estimated the hours of sonar operation based on other operational factors, such as the length of the whole exercise. Their estimates were conservative, which is why the numbers went down when they began using the SPORTS. NMFS is requiring (*see* Reporting Requirements section) the Navy to report the number of hours of sonar operation on an annual basis, however, the Navy will decide how best to provide that information, which at this point in time includes the use of SPORTS.

Comment 46: One commenter stated: ''NMFS does not properly account for reasonably foreseeable reverberation effects (as in the Haro Strait incident), giving no indication that its modeling sufficiently represents areas in which the risk of reverberation is greatest.''

Response: The model does indirectly incorporate surface-ducting (surface reverberation), as conditions in the model are based on nominal conditions calculated from a generalized digitalized monthly average. Though the model does not consider reverberations, these effects are generally at received levels many orders of magnitude below those of direct exposures (as demonstrated in the Haro Strait analysis associated with bottom reverberation) and thus contribute essentially nothing to the cumulative SEL exposure and would not result in the exposure of an animal to a higher SPL than the direct exposure, which is already considered by the model.

Comment 47: How will oceanographic conditions (*e.g.*, water temperature profiles, water depth, salinity, etc.) be factored into the modeling of received sound levels of MFAS and underwater detonations? Which oceanographic data sources will be used?

Response: The Take Calculation section of the proposed rule generally discusses how these and other variables are factored into the take estimates and references Appendix J of the Navy's FEIS for HRC, which contains the details of the model and how these variables are incorporated. Due to the importance that propagation loss plays in ASW, the Navy has invested heavily over the last four to five decades in measuring and modeling environmental parameters. The result of this effort is the following collection of global databases of environmental parameters that are accepted as standards for all Navy modeling efforts:

- Water depth—Digital Bathymetry Data Base Variable Resolution (DBDBV),
- Sound speed—Generalized Dynamic Environmental Model (GDEM),
- Bottom loss—Low-Frequency Bottom Loss (LFBL), Sediment Thickness Database, and High-Frequency Bottom Loss (HFBL), and
- Wind speed—U.S. Navy Marine Climatic Atlas of the World.

Comment 48: One commenter cites concerns that the Navy's take estimates

(for monk seals specifically) are substantively lower in the FEIS than the DEIS. Further comments indicate some confusion regarding whether any monk seals are expected to be injured by the predicted exposures to MFAS or explosives.

Response: Though this comment is outside the purview of the MMPA, NMFS directs the commenter to the Navy's Supplement to the DEIS, which clearly explains that the implementation of the new system for keeping track of sonar hours (SPORTS) resulted in fewer estimated hours of sonar operation, which in turn results in lower take estimates. Separately, to clarify—based on the model, no monk seals will be exposed to any injurious levels of sound or pressure. Additionally, though a few seals were modeled as being exposed to levels that could result in TTS, NMFS believes that these exposures are not likely to occur when the mitigation is taken into consideration (see Negligible Impact Analysis).

Comment 49: One commenter stated: ''NMFS has not considered the best available evidence of population structuring in Hawaiian marine mammals: Notably, NMFS does not account (in its abundance estimates) for evidence of considerable site fidelity by Cuvier's and Blainville's beaked whales, which is suggestive of residency and additional population structuring. NMFS significantly overestimates the size of these populations and thus significantly underestimates the proportion that would be taken and the effects that its repeated activities would have.''

Response: NMFS' analysis includes qualitative consideration of the evidence of site fidelity by Cuvier's and Blainville's beaked whales (see Resident Populations/Additional Management Units section in the proposed rule). NMFS considers the abundance estimates of designated marine mammal stocks and these beaked whale groups have not been designated as separate stocks by NMFS. As discussed in the indicated section, if the nature of the Navy's training exercises was such that they were disproportionately conducting sonar in a certain fairly large area that largely overlapped with a particular demographically isolated population, stock, or resident population, additional analysis might be needed to determine what additional impacts might occur. However, due to the Navy's need to train in a variety of bathymetric conditions and in the vicinity of a variety of other resources throughout the Main Hawaiian Islands, the location of the Navy's training exercises are highly variable, and no focused impacts are anticipated in the vicinity of these groups.

Comment 50: One commenter asked why the rule finds a stronger correlation between sonar and marine mammal strandings than the Navy EIS and why the rule finds more serious effects than the Navy EIS?

Response: Both the EIS and the proposed rule discuss the association between the 5 specific marine mammal strandings and the use of MFAS and both the rule and the EIS discuss a wide range of potential physiological and behavioral effects on marine mammals from MFAS, ranging from avoidance to PTS to bubble formation that could cause tissue damage. The rule utilizes the same estimated take numbers that the EIS does. NMFS disagrees with the assumptions underlying the commenter's question and, therefore, cannot answer the question.

General Opposition

Comment 51: The NRDC urged NMFS to withdraw its proposed rule on the Hawaii Range Complex and to revise the document prior to its recirculation for public comment. They suggested NMFS revisit its profoundly flawed analysis of environmental impacts and prescribe mitigation measures that truly result in the least practicable adverse impact on marine species.

Response: NMFS has addressed specific comments related to the effects analysis here and the mitigation measures in the Mitigation Environmental Assessment. We do not believe that the analysis is flawed and we believe that the prescribed measures will result in the least practicable adverse impacts on the affected species or stock. Therefore, NMFS does not intend to withdraw its rule on the HRC.

Comment 52: A few commenters expressed general opposition to Navy activities and NMFS' issuance of an MMPA authorization.

Response: NMFS appreciates the commenter's concern for the marine mammals that live in the area of the proposed activities. However, the MMPA directs NMFS to issue an incidental take authorization if certain findings can be made. NMFS has determined that the Navy training activities in the HRC will have a negligible impact on the affected species or stock and, therefore, we plan to issue the requested MMPA authorization.

MMPA

Comment 53: One commenter stated: ''Currently, the Hawaiian monk seal population has reached a critical point where recovery of the species is questionable, which should be considered grounds for the termination of sonars in and around areas where the Hawaiian monk seal is known to be present.''

Response: As with other species, the Navy is required to powerdown if a monk seal is detected within 1000 yds of the sonar source (and powerdown further if the seal is detected within 500 yd and shutdown if the seal is detected within 200 yds). Monk seals generally forage at depths of less than 100 m (109 yd), but occasionally dive to depths of over 500 m (546 yd). The majority of ASW training in the HRC, however, takes place in waters 4 to 8 times deeper than even this known (500-m (546-yd)) maximum and it is very rare for ASW training to take place in waters as shallow as 100 m (109 yd) in depth. So, generally, monk seals are less likely to be in the vicinity of ASW activities, and we believe that watchstanders are likely to spot the seals before they could close within the distance necessary to sustain TTS, which would be less than 100 m (109 yd).

Comment 54: One commenter expressed general opposition to the marine mammal take that NMFS had proposed to authorize and presented several reasons why MFAS was not necessary. The same commenter discussed the purpose of the MMPA and suggested that the Navy had not earned the right to take any marine mammals.

Response: Under section 101(a)(5)(A) of the MMPA, NMFS must make the decision of whether or not to issue an authorization based on the applicant's proposed action that the applicant submits—the MMPA does not contain a mechanism for NMFS to question the need for the action that the applicant has proposed (unless the action is illegal). Similarly, any U.S. citizen (including the Navy) can request and receive an MMPA authorization as long as all of the necessary findings can be made, it is not necessary that the Navy or any other entity ''earn the right''.

Comment 55: ''Any organism that frequents the HRC is protected by state law even when outside the three mile state boundary. Many of the species affected by active sonars are affected by this legislation. Therefore if any of these animals are thought to be caused harm, this would fall under state jurisdiction thus requiring state involvement in the decision making process. We call on NMFS to involve the state in the decision making process.''

Response: It is unclear what statute the commenter is referring to. In any case, however, NMFS may only authorize the take of marine mammals incidental to a specified activity. NMFS ensures that the proposed activities are

consistent with or in compliance with the applicable federal statutes before issuing an authorization.

Other

Comment 56: OHA advocates for a narrow view by NMFS of the number of take permits to be issued for the proposed actions and a determination that the proposed and even ongoing activities in the HRC do adversely affect Hawaiian Monk seals and other marine mammals.

Response: NMFS determined that the training activities proposed to be conducted in the HRC and the issuance of an MMPA authorization may affect listed marine mammals such as the Hawaiian monk seal. Consequently, the Navy and NMFS (the branch that issues an MMPA authorization) consulted with NMFS under section 7 of the ESA. In a Biological Opinions (BiOp), NMFS concluded that the Navy's training activities in the HRC and NMFS' issuance of these regulations and the 2009 LOA are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat. NMFS also determined that the Navy's training activities and NMFS issuance of the LOA were likely to adversely affect the affected marine mammal stocks and species and issued an incidental take statement. The ITS issued for the LOA will contain implementing terms and conditions to minimize the effects on ESA-listed species of the marine mammal take authorized through the 2009 LOA.

Comment 57: One commenter was concerned that State commerce could be jeopardized as the sonar could negatively impact the humpback whale populations and other marine species, which draw over 900,000 visitors to the state. The commenter questioned whether these effects had been adequately addressed.

Response: NMFS recommends that the commenter review the Navy's EIS to obtain information about the potential socio-economic impacts resulting from the Navy's use of sonar in the HRC.

Comment 58: ''Fish are affected by sonars, airguns and other underwater noises. With possible physical damage, decreased catch size and altered behaviors resulting from HRC activities, the Magnuson Stevens Fishery Act may question the validity of these exercises.''

Response: NMFS reviewed the Navy's Essential Fish Habitat and Coral Reef Assessment for the HRC and concurred with the Navy that it is unlikely that the proposed project would have adverse impacts to EFH provided the proposed mitigation measures were implemented (see Essential Fish habitat Determination section).

Comment 59: A few members of the public submitted comments on the Navy's EIS that they did not clearly tie to the proposed rule.

Response: The purpose of this comment period was for the public to provide comments on the proposed rule. Responses were not provided to comments on the EIS if their bearing on the MMPA authorization was not clear.

Comment 60: How will all the sunken objects—hulks, sonobuoys, explosive devices, etc.—affect marine life? They will attract plant growth and animals that feed on the plants, changing the ecosystem. And what toxins will they release into the ocean?

Response: The Navy's HRC FEIS analyzed how sunken objects, such as sonobuoys and expended explosive devices, would affect marine life. The Navy found that the likelihood of a marine mammal or fish encountering and having an adverse interaction with expended materials was remote. Also, the Navy found that the potential ingestion of toxins, such as the small amount of propellant or stimulant remaining in the spent boosters or on pieces of missile debris, by marine mammals or fish species would be remote because of (1) atmospheric dispersion, (2) the diluting and neutralizing effects of seawater, and (3) the relatively small area that could potentially be affected.

Comment 61: The NRDC notes that NMFS is preparing an environmental assessment on the environmental effects of various mitigation measures, and suggests that if NMFS intends to rely on this document for its Final Rule, or if this document constitutes significant new information, NMFS must postpone finalizing the rule and open up its assessment to public comment.

Response: NMFS is not required to provide advance notice and opportunity for comment on the draft Environmental Assessment. This document does not constitute significant new information, rather it is a summary of the universe of mitigation measures (many of them recommended in public comments) that NMFS considered when developing the MMPA authorization with a discussion of their potential benefits to marine mammals and their practicability of implementation. Much of the information, especially as it relates to practicability of implementation, was included in the Navy's EIS. Finally, NMFS and the Navy have provided the public with a substantial amount of environmental information related to the HRC activities (*e.g.*, during the Navy's EIS process and NMFS' MMPA process).

Comment 62: One commenter was concerned about the effects of the Navy's training in the Papahānaumokuākea Marine National Monument, which contains the largest coral reef area in Hawaii, one of the largest and most important assemblages of tropical seabirds in the world, greater than 98 percent of the world's Laysan and black-footed albatrosses nests, the majority of the population of the Hawaiian monk seal, and over 90 percent of the Hawaiian green sea turtle nests there. The Navy proposes to increase the impacts to this remarkable area and the effects could be dramatic.

Response: Most of this comment does not pertain to NMFS' authority pursuant to the MMPA. However, NMFS notes that only a very small part of the Papahānaumokuākea Marine National Monument overlaps with the HRC, and it is in a remote portion of the HRC. Therefore, NMFS anticipates relatively few hours of sonar operation to occur in that area. Additionally, the effects of this action are temporary and acoustic in nature, and NMFS does not expect them to result in harm to the protected natural and cultural resources of these areas. The Northwestern Hawaiian Islands Marine National Monument proclamation contains the following language ''The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard) that are consistent with applicable laws.''

Comment 63: Several commenters included potentially technical comments that NMFS could not interpret from the context in which they were presented, such as: ''Sonar hours should not be averaged, because longer exposure leads to more disruption of feeding, caring for young, mating, resting, and other activities necessary to animals' long-term well-being'' or ''OHA also asks that NMFS consider the NMFS defined refresh rate of 24 hours, which represents the amount of time in which individual marine mammals can be harassed no more than once when considering authorizing their take permits for this proposed action.''

Response: NMFS is not responding to these comments because the meaning of the comment is not clear.

Estimated Take of Marine Mammals

As mentioned previously, with respect to the MMPA, NMFS' effects assessments serve three primary purposes: (1) To put forth the permissible methods of taking (*i.e.*, Level B Harassment (behavioral

harassment), Level A Harassment (injury), or mortality, including an identification of the number and types of take that could occur by Level A or B harassment or mortality) and to prescribe other means of effecting the least practicable adverse impact on such species or stock and its habitat (*i.e.*, mitigation); (2) to determine whether the specified activity will have a negligible impact on the affected species or stocks of marine mammals (based on the likelihood that the activity will adversely affect the species or stock through effects on annual rates of recruitment or survival); (3) to determine whether the specified activity will have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (however, there are no subsistence communities that would be affected in the HRC, so this determination is inapplicable for the HRC); and (4) to prescribe requirements pertaining to monitoring and reporting.

In the Estimated Take of Marine Mammals section of the proposed rule, NMFS related the potential effects to marine mammals from MFAS/HFAS and underwater detonation of explosives (discussed in the Potential Effects of Specified Activities on Marine Mammals Section) to the MMPA regulatory definitions of Level A and Level B Harassment and quantified (estimated) the effects on marine mammals that could result from the specific training activities that the Navy intends to conduct. The subsections of this analysis are discussed individually below.

Definition of Harassment

The Definition of Harassment section of the proposed rule contained the definitions of Level A and Level B Harassments, and a discussion of which of the previously discussed potential effects of MFAS/HFAS or explosive detonations fall into the categories of Level A Harassment (permanent threshold shift (PTS), acoustically mediated bubble growth, behaviorally mediated bubble growth, and physical disruption of tissues resulting from explosive shock wave) or Level B Harassment (temporary threshold shift (TTS), acoustic masking and communication impairment, and behavioral disturbance rising to the level of harassment); 73 FR 35510, pages 35549–35550. No changes have been made to the discussion contained in this section of the proposed rule.

Acoustic Take Criteria

In the Acoustic Take Criteria section of the proposed rule, NMFS described the development and application of the acoustic criteria for both MFAS/HFAS and explosive detonations (73 FR 35510, pages 35550–35555). No changes have been made to the discussion contained in this section of the proposed rule. NMFS has also summarized the acoustic criteria below.

For MFAS/HFAS, NMFS uses acoustic criteria for PTS, TTS, and behavioral harassment.

NMFS' TTS criteria (which indicate the received level at which onset TTS (>6 dB) is induced) for MFAS/HFAS are as follows:

- Cetaceans—195 dB re 1 $\mu Pa^2 - s$ (based on mid-frequency cetaceans—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007)).
- Pinnipeds (monk seals)—204 dB re 1 $\mu Pa^2 - s$ (based on data from elephant seals, which are the most closely related to the monk seal).

NMFS uses the following acoustic criteria for injury (Level A Harassment):

- Cetaceans—215 dB re 1 $\mu Pa^2 - s$ (based on mid-frequency cetaceans)—no published data exist on auditory effects of noise in low or high frequency cetaceans (Southall *et al.* (2007))
- Pinnipeds (monk seals)—224 dB re 1 $\mu Pa^2 - s$ (based on data from elephant seals, which are the most closely related to the monk seal).

For the behavioral harassment criteria, NMFS uses acoustic risk functions developed by NMFS and the Navy to estimate the probability of behavioral responses to MFAS/HFAS (interpreted as the percentage of the exposed population) that NMFS would classify as harassment for the purposes of the MMPA given exposure to specific received levels of MFAS (73 FR 35510, page 35554).

Table 13 in the proposed rule summarizes the acoustic criteria for explosive detonations (73 FR 35510, page 35555).

Take Calculations

Estimating the take that will result from the proposed activities entails the following four steps: Propagation model estimates animals exposed to sources at different levels; further modeling determines number of exposures to levels indicated in criteria above (*i.e.*, number of takes); post-modeling corrections refine estimates to make them more accurate; mitigation is taken into consideration in post-modeling analysis. More information regarding the models used, the assumptions used in the models, and the process of estimating take is available in Appendix J of the Navy's FEIS for the HRC.

(1) In order to quantify the types of take described in previous sections that are predicted to result from the Navy's specified activities, the Navy first uses a sound propagation model that predicts the number of animals that will be exposed to a range of levels of pressure and energy (of the metrics used in the criteria) from MFAS/HFAS and explosive detonations based on several important pieces of information, including:

- Characteristics of the sound sources
- Sonar source characteristics include: Source level (with horizontal and vertical directivity corrections), source depth, center frequency, source directivity (horizontal/vertical beam width and horizontal/vertical steer direction), and ping spacing.
- Explosive source characteristics include: The weight of an explosive, the type of explosive, the detonation depth, number of successive explosions.
- Transmission loss (in 20 representative environmental provinces across 8 sonar modeling areas) based on: Water depth; sound speed variability throughout the water column (presume surface duct is present in HRC); bottom geo-acoustic properties (bathymetry); and wind speed.
- The density of each marine mammal species in the HRC (*see* Table 14), horizontally distributed uniformly and vertically distributed according to dive profiles based on field data.

(2) Next, the criteria discussed in the previous section are applied to the estimated exposures to predict the number of exposures that exceed the criteria, *i.e.*, the number of takes by Level B Harassment, Level A Harassment, and mortality.

(3) During the development of the EIS for the HRC, NMFS and the Navy determined that the output of the model could be made more realistic by applying post-modeling corrections to account for the following:

- Acoustic footprints for sonar sources must account for land masses (by subtracting them out).
- Acoustic footprints for sonar sources should not be added independently, rather, the degree to which the footprints from multiple ships participating in the same exercise would typically overlap needs to be taken into consideration.
- Acoustic modeling should account for the maximum number of individuals of a species that could potentially be exposed to sonar within the course of 1 day or a discreet continuous sonar event if less than 24 hours.

(4) Mitigation measures are taken into consideration. For example, in some cases the raw modeled numbers of

exposures to levels predicted to result in Level A Harassment from exposure to sonar might indicate that 1 fin whale would be exposed to levels of sonar anticipated to result in PTS. However, a fin whale would need to be within approximately 10 m of the source vessel in order to be exposed to sound pressure levels that would result in PTS. Because of the mitigation measures (watchstanders and shutdown zone), size of fin whales, and nature of fin whale behavior, it is highly unlikely that a fin whale would be exposed to those levels, and therefore, NMFS would not expect fin whales to experience injury as a result of sonar use. Table 6 contains the Navy's take estimates as well as the number of takes that these regulations and the associated LOAs will authorize. The table contains a few minor corrections that did not affect NMFS analysis.

(5) The Navy's specified activities have been described based on best estimates of the number of MFAS/HFAS hours that the Navy will conduct. The exact number of hours may vary from year to year, but will not exceed the 5-year total indicated in Table 3 (by multiplying the yearly estimate by 5) by more than 10-percent. NMFS estimates that a 10-percent increase in sonar hours would result in approximately a 10-percent increase in the number of takes, and we have considered this possibility in our analysis.

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Species	Total Estimated Exposures to Indicated Levels of Energy/Pressure from Explosive Detonations				Total Estimated Exposures to Indicated Levels of Sound from MFAS/HFAS			Annual Take Authorized by these Regulations		
	Level B Harassment		Level A Harassment	Mortality	Level B Harassment		Level A Harassment			
	177 dB re 1 μPa^2-s	23 psi or 182 dB re 1 μPa^2-s	13 psi-ms / 205 dB re 1 μPa^2-s	31 psi-ms	Risk Function	195 dB re 1 μPa^2-s	215 dB re 1 μPa^2-s			
	Behavioral Harassment	TTS (mitigation considered)	Slight Lung / TM Injury	Onset Massive Lung Injury	Behavioral Harassment	TTS (mitigation considered)	PTS	Level B Harassment	Level A Harassment	Mortality
Bryde's whale	0	0	0	0	64	0	0	64	0	
Fin whale	0	0	0	0	46	0	0	46		
Sei whale	0	0	0	0	46	0	0	46		
Minke whale	0	0	0	0	64	0	0	64		
Humpback whale	5	12 (4)***	1 (0)	0	9,677	199 (0)*	0	9894		
Sperm whale	9	5 (4)***	0	0	758	9 (0)*	0	781		
Dwarf sperm whale	13	13	0	0	2,061	35	0	2122	10 over 5 years	
Pygmy sperm whale	4	5	0	0	842	14	0	865	10 over 5 years	
Cuvier's beaked whale	16	8	0	0	1,121	5	0	1150	10 over 5 years	
Longman's beaked whale	0	0	0	0	104	1	0	105	10 over 5 years	
Blainville's beaked whale	2	2	0	0	347	6	0	357	10 over 5 years	
Unidentified beaked whale	0	0	0	0	36	0	0	36		
Bottlenose dolphin	0	1 (0)***	0	0	716	17 (9)*	0	734	10 over 5 years	
False killer whale	0	0	0	0	46	0	0	46		
Killer whale	0	0	0	0	46	0	0	46		
Pygmy killer whale	0	0	0	0	192	4 (0)*	0	196	10 over 5 years	
Short-finned pilot whale	2	5 (1)***	0	0	1,751	40 (0)*	0	1798	10 over 5 years	
Risso's dolphin	0	1 (0)***	0	0	486	10 (5)**	0	497		
Melon-headed whale	0	1 (0)***	0	0	583	13 (0)*	0	597	10 over 5 years	
Rough-toothed dolphin	2	4 (2)***	0	0	1,053	18 (9)**	0	1077		
Fraser's dolphin	6	6 (3)***	0	0	1,216	19 (10)**	0	1247		
Pantropical spotted dolphin	0	5 (0)***	1 (0)	0	2,144	49 (25)**	0	2199	10 over 5 years	
Spinner dolphin	2	2 (1)***	0	0	410	7 (4)**	0	421		
Striped dolphin	2	7 (2)***	1 (0)	0	3,126	73 (37)**	0	3209	10 over 5 years	
Monk seal	0	3 (0)***	0	0	104	3 (0)*	0	110		
Total	62	80 (45)	0	0	27,039	522 (160)	0	27707		

Table 6. Estimated exposures of marine mammals to indicated acoustic thresholds, and authorized take. Parenthetical numbers indicate estimated number when mitigation is taken into consideration.

*Due to the animal size, average group size, or behavior of these species, watchstanders will very likely detect these animals and cease MFAS/HFAS operations before they are within the distance of the source that would put them at risk of TTS (120 m)

**Individuals of these species travel in group sizes that will allow for detection and shutdown prior to TTS exposure, however, they may also bow-ride and MFAS/HFAS sonar may operate if vessel attempted to change course but the animals stayed with the vessel, therefore, some TTS could occur

***As mentioned above, these animals are likely to be seen by watchstanders, and mitigation implemented, however the exclusion zone for the two largest explosive charges is not large enough to avoid all TTS, so estimated TTS takes potentially associated with those charges remain

NOTE: if calculated TTS takes are assumed not to occur because of mitigation, they are still included as a Level B behavioral harassment

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Mortality

Evidence from five beaked whale strandings, all of which have taken place outside the HRC, and have occurred over approximately a decade, suggests that the exposure of beaked whales to mid-frequency sonar in the presence of certain conditions (*e.g.*, multiple units using tactical sonar, steep bathymetry, constricted channels, strong surface ducts, etc.) may result in strandings, potentially leading to mortality. Although these physical

factors believed to contribute to the likelihood of beaked whale strandings are not present in the Hawaiian Islands in the aggregate, scientific uncertainty exists regarding what other factors, or combination of factors, may contribute to beaked whale strandings. Accordingly, to allow for scientific uncertainty regarding contributing causes of beaked whale strandings and the exact behavioral or physiological mechanisms that can lead to the ultimate physical effects (stranding and/or death), the Navy has requested authorization for take, by serious injury or mortality, of 10 individuals of each of the following species over the course of the five-year rule: bottlenose dolphin, *Kogia* spp., melon-headed whale, pantropical spotted dolphin, pygmy killer whale, short-finned pilot whale, striped dolphin, Cuvier's, Longman's, and Blainville's beaked whales. Although the Navy has requested take by serious injury or mortality, neither agency expects that marine mammal strandings or mortality would result from the operation of mid-frequency sonar during Navy exercises within the HRC.

Effects on Marine Mammal Habitat

NMFS' proposed rule for the HRC included a detailed section that addressed the effects of the Navy's training activities on Marine Mammal Habitat (73 FR 35510, pages 35559–35560). The analysis concluded that the Navy's training activities would have minimal effects on fish, essential fish habitat, or marine mammal habitat provided the Navy's mitigation measures were implemented. No changes have been made to the discussion contained in this section of the proposed rule.

Analysis and Negligible Impact Determination

Pursuant to NMFS' regulations implementing the MMPA, an applicant is required to estimate the number of animals that will be ''taken'' by the specified activities (*i.e.*, takes by harassment only, or takes by harassment, injury, and/or death). This estimate informs the analysis that NMFS must perform to determine whether the activity will have a ''negligible impact'' on the species or stock. Level B (behavioral) harassment occurs at the level of the individual(s) and does not assume any resulting population-level consequences, though there are known avenues through which behavioral disturbance of individuals can result in population-level effects (for example: Pink-footed geese (*Anser brachyrhynchus*) in undisturbed habitat gained body mass and had about a 46-percent reproductive success compared with geese in disturbed habitat (being consistently scared off the fields on which they were foraging) which did not gain mass and has a 17-percent reproductive success). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.*, population-level effects). An estimate of the number of Level B harassment takes, alone, is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through behavioral harassment, NMFS must consider other factors, such as the likely nature of any responses (their intensity, duration, etc.), the context of any responses (critical reproductive time or location, migration, etc.), or any of the other variables mentioned in the first paragraph (if known), as well as the number and nature of estimated Level A takes, the number of estimated mortalities, and effects on habitat. Generally speaking, and especially with other factors being equal, the Navy and NMFS anticipate more severe effects from takes resulting from exposure to higher received levels (though this is in no way a strictly linear relationship throughout species, individuals, or circumstances) and less severe effects from takes resulting from exposure to lower received levels.

In the Analysis and Negligible Impact Determination section of the proposed rule, NMFS addressed the issues identified in the preceding paragraph in combination with additional detailed analysis regarding the severity of the anticipated effects, and including species (or group)-specific discussions, to determine that Navy training exercises utilizing MFAS/HFAS and underwater detonations will have a negligible impact on the marine mammal species and stocks present in the HRC. No changes have been made to the discussion contained in this section of the proposed rule.

Subsistence Harvest of Marine Mammals

NMFS has determined that the issuance of these regulations and subsequent LOAs for Navy training exercises in the HRC would not have an unmitigable adverse impact on the availability of the affected species or stocks for taking for subsistence uses, since there are no such uses in the specified area.

Endangered Species Act (ESA)

There are seven marine mammal species and five sea turtle species listed as threatened or endangered under the ESA with confirmed or possible occurrence in the study area: Humpback whale, North Pacific right whale, sei whale, fin whale, blue whale, sperm whale, and Hawaiian monk seal, loggerhead sea turtle, the green sea turtle, hawksbill sea turtle, leatherback sea turtle, and olive ridley sea turtle. Pursuant to section 7 of the ESA, the Navy has consulted with NMFS on this action. NMFS has also consulted internally on the issuance of regulations under section 101(a)(5)(A) of the MMPA for this activity. In a Biological Opinion (BiOp), NMFS concluded that the Navy's training activities in the HRC and NMFS' issuance of these regulations are not likely to jeopardize the continued existence of threatened or endangered species or destroy or adversely modify any designated critical habitat.

NMFS (the Endangered Species Division) will also issue BiOps and associated incidental take statements (ITSs) to NMFS (the Permits, Conservation, and Recreation Division) to exempt the take (under the ESA) that NMFS authorizes in the LOAs under the MMPA. Because of the difference between the statutes, it is possible that ESA analysis of the applicant's action could produce a take estimate that is different than the takes requested by the applicant (and analyzed for authorization by NMFS under the MMPA process), despite the fact that the same proposed action (*i.e.*, number of sonar hours and explosive detonations) was being analyzed under each statute. When this occurs, NMFS staff coordinate to ensure that that the most conservative (lowest) number of takes are authorized. For the Navy's proposed training in the HRC, coordination with the Endangered Species Division indicates that they will likely allow for a lower level of take of ESA-listed marine mammals than were requested by the applicant (because their analysis indicates that fewer will be taken than estimated by the applicant). Therefore, the number of authorized takes in NMFS' LOA(s) will reflect the lower take numbers from the ESA consultation, though the specified activities (*i.e.*, number of sonar hours, etc.) will remain the same. Alternately, these regulations indicate the maximum number of takes that may be authorized under the MMPA.

The ITS(s) issued for each LOA will contain implementing terms and conditions to minimize the effect of the

marine mammal take authorized through the 2009 LOA (and subsequent LOAs in 2010, 2011, 2012, and 2013). With respect to listed marine mammals, the terms and conditions of the ITSs will be incorporated into the LOAs.

NEPA

NMFS participated as a cooperating agency on the Navy's Final Environmental Impact Statement (FEIS) for the Hawaii Range Complex, which was published on May 9, 2008. NMFS subsequently adopted the Navy's EIS for the purpose of complying with the MMPA. Additionally, NMFS prepared an Environmental Assessment (EA) that tiered off the Navy's FEIS. The EA analyzed the environmental effects of several different mitigation alternatives for the issuance of the HRC rule and subsequent LOAs. A finding of no significant impact was issued for the Mitigation EA on December 30, 2008.

Determination

Based on the analysis contained herein, and in the proposed rule (and other related documents), of the likely effects of the specified activity on marine mammals and their habitat and dependent upon the implementation of the mitigation measures, NMFS finds that the total taking from Navy training exercises utilizing MFAS/HFAS and underwater explosives in the HRC over the 5 year period will have a negligible impact on the affected species or stocks and will not result in an unmitigable adverse impact on the availability of marine mammal species or stocks for taking for subsistence uses because no subsistence uses exist in the HRC. NMFS has issued regulations for these exercises that prescribe the means of effecting the least practicable adverse impact on marine mammals and their habitat and set forth requirements pertaining to the monitoring and reporting of that taking.

Classification

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

Pursuant to the procedures established to implement section 6 of Executive Order 12866, the Office of Management and Budget has determined that this final rule is significant.

Pursuant to the Regulatory Flexibility Act, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this final rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The Regulatory Flexibility Act requires Federal agencies to prepare an analysis of a rule's impact on small entities whenever the agency is required to publish a notice of proposed rulemaking. However, a Federal agency may certify, pursuant to 5 U.S.C. section 605(b), that the action will not have a significant economic impact on a substantial number of small entities. The Navy is the entity that will be affected by this rulemaking, not a small governmental jurisdiction, small organization or small business, as defined by the Regulatory Flexibility Act. Any requirements imposed by a Letter of Authorization issued pursuant to these regulations, and any monitoring or reporting requirements imposed by these regulations, will be applicable only to the Navy. Because this action, if adopted, would directly affect the Navy and not a small entity, NMFS concludes the action would not result in a significant economic impact on a substantial number of small entities.

The Assistant Administrator for Fisheries has determined that there is good cause under the Administrative Procedure Act (5 U.S.C. 553(d)(3)) to waive the 30-day delay in effective date of the measures contained in the final rule. Since January 23, 2007, the Navy has been conducting military readiness activities employing mid-frequency active sonar (MFAS) pursuant to a 2-year MMPA National Defense Exemption (NDE). The NDE serves as a bridge to long-term compliance with the MMPA while the Navy prepared its Environmental Impact Statement and pursued the necessary MMPA incidental take authorization for the HRC. The NDE will expire on January 23, 2009, by which time it is imperative that the regulations and the measures identified in a subsequent LOA become effective. Any delay of these measures would result in either: (1) A suspension of ongoing or planned naval exercises, which would disrupt vital sequential training and certification processes essential to national security; or (2) the Navy's non-compliance with the MMPA (should the Navy conduct exercises without an LOA), thereby resulting in the potential for unauthorized takes of marine mammals upon expiration of the NDE. National security interests and the need for MMPA compliance after January 23, 2009, dictate that these measures go into effect immediately. The Navy is the entity subject to the regulations and has informed NMFS that it is imperative that these measures be effective on or before January 23, 2009. Finally, as recognized by the President and the United States Supreme Court, the training proposed to be conducted in the HRC is in the paramount interest of the United States. Any delay in the implementation of these measures would raise serious national security implications. Therefore, these measures will become effective upon filing.

List of Subjects in 50 CFR Part 216

Exports, Fish, Imports, Incidental take, Indians, Labeling, Marine mammals, Navy, Penalties, Reporting and recordkeeping requirements, Seafood, Sonar, Transportation.

Dated: January 2, 2009.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

■ For reasons set forth in the preamble, 50 CFR Part 216 is amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

■ 1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

■ 2. Subpart P is added to part 216 to read as follows:

Subpart P—Taking Marine Mammals Incidental to U.S. Navy Training in the Hawaii Range Complex (HRC)

Sec.

216.170 Specified activity and specified geographical region.
216.171 Effective dates and definitions.
216.172 Permissible methods of taking.
216.173 Prohibitions.
216.174 Mitigation.
216.175 Requirements for monitoring and reporting.
216.176 Applications for Letters of Authorization.
216.177 Letters of Authorization.
216.178 Renewal of Letters of Authorization.
216.179 Modifications to Letters of Authorization.

Subpart P—Taking Marine Mammals Incidental to U.S. Navy Training in the Hawaii Range Complex (HRC)

§ 216.170 Specified activity and specified geographical region.

(a) Regulations in this subpart apply only to the U.S. Navy for the taking of marine mammals that occurs in the area outlined in paragraph (b) of this section and that occurs incidental to the activities described in paragraph (c) of this section.

(b) The taking of marine mammals by the Navy is only authorized if it occurs

within the Hawaii Operational Area, which extends from 16 to 43° N. lat. and from 150 to 179° degrees W. long.

(c) The taking of marine mammals by the Navy is only authorized if it occurs incidental to the following activities within the designated amounts of use:

(1) The use of the following mid-frequency active sonar (MFAS) and high frequency active sonar (HFAS) sources for U.S. Navy anti-submarine warfare (ASW) training in the amounts indicated below (+/ − 10 percent):

(i) AN/SQS–53 (hull-mounted sonar)—up to 6420 hours over the course of 5 years (an average of 1284 hours per year)

(ii) AN/SQS–56 (hull-mounted sonar)—up to 1915 hours over the course of 5 years (an average of 383 hours per year)

(iii) AN/AQS–22 (helicopter dipping sonar)—up to 5050 dips over the course of 5 years (an average of 1010 dips per year)

(iv) SSQ–62 (sonobuoys)—up to 12115 sonobuoys over the course of 5 years (an average of 2423 sonobuoys per year)

(v) MK–48 (torpedoes)—up to 1565 torpedoes over the course of 5 years (an average of 313 torpedoes per year)

(vi) AN/BQQ–10 (submarine mounted sonar)—up to 1000 hours over the course of 5 years (an average of 200 per year)

(2) The detonation of the underwater explosives indicated in paragraph (c)(2)(i) of this section conducted as part of the training exercises indicated in paragraph (c)(2)(ii) of this section:

(i) Underwater Explosives:

(A) 5″ Naval Gunfire (9.5 lbs).

(B) 76 mm rounds (1.6 lbs).

(C) Maverick (78.5 lbs).

(D) Harpoon (448 lbs).

(E) MK–82 (238 lbs).

(F) MK–83 (574 lbs).

(G) MK–84 (945 lbs).

(H) MK–48 (851 lbs).

(I) Demolition Charges (20 lbs).

(J) EER/IEER (5 lbs).

(ii) Training Events:

(A) Mine Neutralization—up to 340 exercises over the course of 5 years (an average of 68 per year).

(B) Air-to-Surface MISSILEX—up to 250 exercises over the course of 5 years (an average of 50 per year).

(C) Surface-to-Surface MISSILEX—up to 60 exercises over the course of 5 years (an average of 12 per year).

(D) BOMBEX—up to 195 exercises over the course of 5 years (an average of 38 per year).

(E) SINKEX—up to 30 exercises over the course of 5 years (an average of 6 per year).

(F) Surface-to-Surface GUNEX—up to 455 exercises over the course of 5 years (an average of 91 per year).

(G) Naval Surface Fire Support—up to 140 exercises over the course of 5 years (an average of 28 per year).

§ 216.171 Effective dates and definitions.

(a) Regulations are effective January 5, 2009 through January 5, 2014.

(b) The following definitions are utilized in these regulations:

(1) *Uncommon Stranding Event (USE)*—A stranding event that takes place during a major training exercise and involves any one of the following:

(i) Two or more individuals of any cetacean species (not including mother/calf pairs, unless of species of concern listed in next bullet) found dead or live on shore within a two day period and occurring on same shore lines or facing shorelines of different islands.

(ii) A single individual or mother/calf pair of any of the following marine mammals of concern: Beaked whale of any species, *Kogia* sp., Risso's dolphin, melon-headed whale, pilot whales, humpback whales, sperm whales, blue whales, fin whales, sei whales, or monk seal.

(iii) A group of 2 or more cetaceans of any species exhibiting indicators of distress.

(2) *Shutdown* (this definition specifically applies only to the word as used in § 216.174(a)(1)(xxviii)(A)(*1*) and (*2*))—The cessation of MFAS operation or detonation of explosives within 14 nm of any live, in the water animal involved in a USE.

§ 216.172 Permissible methods of taking.

(a) Under Letters of Authorization issued pursuant to §§ 216.106 and 216.177, the Holder of the Letter of Authorization may incidentally, but not intentionally, take marine mammals within the area described in § 216.170(b), provided the activity is in compliance with all terms, conditions, and requirements of these regulations and the appropriate Letter of Authorization.

(b) The activities identified in § 216.170(c) must be conducted in a manner that minimizes, to the greatest extent practicable, any adverse impacts on marine mammals and their habitat.

(c) The incidental take of marine mammals under the activities identified in § 216.170(c) is limited to the following species, by the indicated method of take and the indicated number of times:

(1) Level B Harassment (+/ − 10 percent of the number of takes indicated below):

(i) Mysticetes:

(A) Humpback whale (*Megaptera novaeangliae*)—49470 (an average of 9894 annually).

(B) Minke whale (*Balaenoptera acutorostrata*)—320 (an average of 64 annually).

(C) Sei whale (*Balaenoptera borealis*)—230 (an average of 46 annually).

(D) Fin whale (*Balaenoptera physalus*)—230 (an average of 46 annually).

(E) Bryde's whale (*Balaenoptera edeni*)—320 (an average of 64 annually).

(ii) Odontocetes:

(A) Sperm whales (*Physeter macrocephalus*)—3905 (an average of 781 annually).

(B) Pygmy sperm whales (*Kogia breviceps*)—4325 (an average of 865 annually).

(C) Dwarf sperm whale (*Kogia sima*)—10610 (an average of 2122 annually).

(D) Cuvier's beaked whale (*Ziphius cavirostris*)—5750 (an average of 1150 annually).

(E) Blainville's beaked whale (*Mesoplodon densirostris*)—1785 (an average of 357 annually).

(F) Longman's beaked whale (*Indopacetus pacificus*)—525 (an average of 105 annually).

(G) Rough-toothed dolphin (*Steno bredanensis*)—5385 (an average of 1077 annually).

(H) Bottlenose dolphin (*Tursiops truncatus*)—3670 (an average of 734 annually).

(I) Pan-tropical dolphins (*Stenella attenuata*)—10995 (an average of 2199 annually).

(J) Spinner dolphins (*Stenella longirostris*)—2105 (an average of 421 annually).

(K) Striped dolphins (*Stenella coeruleoalba*)—16045 (an average of 3209 annually).

(L) Risso's dolphin (*Grampus griseus*)—2485 (an average of 497 annually).

(M) Melon-headed whale (*Peponocephala electra*)—2985 (an average of 597 annually).

(N) Fraser's dolphin (*Lagenodelphis hosei*)—6235 (an average of 1247 annually).

(O) Pygmy killer whale (*Feresa attenuata*)—980 (an average of 196 annually).

(P) False killer whale (*Pseudorca crassidens*)—230 (an average of 46 annually).

(Q) Killer whale (*Orcinus orca*)—230 (an average of 46 annually).

(R) Short-finned pilot whale (*Globicephala macrorynchus*)—8990 (an average of 1798 annually).

(iii) Pinnipeds: Hawaiian monk seal (*Monachus schauinslandi*)—550 (an average of 110 annually).

(2) Level A Harassment and/or mortality of no more than 10 individuals total of each of the species listed below over the course of the 5-year regulations: Bottlenose dolphin (*Tursiops truncatus*), Pygmy and Dwarf sperm whales (*Kogia breviceps* and *sima*), Melon-headed whale (*Peponocephala electra*), Pantropical spotted dolphin (*Stenella attenuata*), Pygmy killer whale (*Feresa attenuata*), Short-finned pilot whale (*Globicephala macrorynchus*), Striped dolphin (*Stenella coeruleoalba*), and Cuvier's beaked whale (*Ziphius cavirostris*), Blainville's beaked whale, (*Mesoplodon densirostris*), Longman's beaked whale (*Indopacetus pacificus*).

§ 216.173 Prohibitions.

Notwithstanding takings contemplated in § 216.172 and authorized by a Letter of Authorization issued under §§ 216.106 and 216.177, no person in connection with the activities described in § 216.170 may:

(a) Take any marine mammal not specified in § 216.172(c);

(b) Take any marine mammal specified in § 216.172(c) other than by incidental take as specified in § 216.172(c)(1) and (2);

(c) Take a marine mammal specified in § 216.172(c) if such taking results in more than a negligible impact on the species or stocks of such marine mammal; or

(d) Violate, or fail to comply with, the terms, conditions, and requirements of these regulations or a Letter of Authorization issued under §§ 216.106 and 216.177.

§ 216.174 Mitigation.

(a) When conducting training activities identified in § 216.170(c), the mitigation measures contained in the Letter of Authorization issued under §§ 216.106 of this chapter and 216.177 must be implemented. These mitigation measures include, but are not limited to:

(1) *Mitigation Measures for ASW training:* (i) All lookouts onboard platforms involved in ASW training events shall review the NMFS-approved Marine Species Awareness Training (MSAT) material prior to use of mid-frequency active sonar.

(ii) All Commanding Officers, Executive Officers, and officers standing watch on the Bridge shall have reviewed the MSAT material prior to a training event employing the use of mid-frequency active sonar.

(iii) Navy lookouts shall undertake extensive training in order to qualify as a watchstander in accordance with the Lookout Training Handbook (NAVEDTRA, 12968–D).

(iv) Lookout training shall include on-the-job instruction under the supervision of a qualified, experienced watchstander. Following successful completion of this supervised training period, Lookouts shall complete the Personal Qualification Standard program, certifying that they have demonstrated the necessary skills (such as detection and reporting of partially submerged objects).

(v) Lookouts shall be trained in the most effective means to ensure quick and effective communication within the command structure in order to facilitate implementation of mitigation measures if marine species are spotted.

(vi) On the bridge of surface ships, there shall be at least three people on watch whose duties include observing the water surface around the vessel.

(vii) All surface ships participating in ASW exercises shall, in addition to the three personnel on watch noted previously, have at all times during the exercise at least two additional personnel on watch as lookouts.

(viii) Personnel on lookout and officers on watch on the bridge shall have at least one set of binoculars available for each person to aid in the detection of marine mammals.

(ix) On surface vessels equipped with mid-frequency active sonar, pedestal mounted ''Big Eye'' (20x110) binoculars shall be present and in good working order.

(x) Personnel on lookout shall employ visual search procedures employing a scanning methodology in accordance with the Lookout Training Handbook (NAVEDTRA 12968–D).

(xi) After sunset and prior to sunrise, lookouts shall employ Night Lookouts Techniques in accordance with the Lookout Training Handbook.

(xii) Personnel on lookout shall be responsible for reporting all objects or anomalies sighted in the water (regardless of the distance from the vessel) to the Officer of the Deck.

(xiii) CPF shall distribute the final mitigation measures contained in the LOA and BO to the Fleet.

(xiv) Commanding Officers shall make use of marine species detection cues and information to limit interaction with marine species to the maximum extent possible consistent with safety of the ship.

(xv) All personnel engaged in passive acoustic sonar operation (including aircraft, surface ships, or submarines) shall monitor for marine mammal vocalizations and report the detection of any marine mammal to the appropriate watch station for dissemination and appropriate action.

(xvi) During mid-frequency active sonar training activities, personnel shall utilize all available sensor and optical systems (such as Night Vision Goggles) to aid in the detection of marine mammals.

(xvii) Navy aircraft participating in exercises at sea shall conduct and maintain, when operationally feasible and safe, surveillance for marine mammals as long as it does not violate safety constraints or interfere with the accomplishment of primary operational duties.

(xviii) Aircraft with deployed sonobuoys shall use only the passive capability of sonobuoys when marine mammals are detected within 200 yards (182 m) of the sonobuoy.

(xix) Marine mammal detections shall be reported immediately to assigned Aircraft Control Unit for further dissemination to ships in the vicinity of the marine species as appropriate where it is reasonable to conclude that the course of the ship will likely result in a closing of the distance to the detected marine mammal.

(xx) Safety Zones—When marine mammals are detected by any means (aircraft, shipboard lookout, or acoustically) the Navy shall ensure that MFAS transmission levels are limited to at least 6 dB below normal operating levels if any detected marine mammals are within 1000 yards (914 m) of the sonar dome (the bow).

(A) Ships and submarines shall continue to limit maximum MFAS transmission levels by this 6-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards (1828 m) beyond the location of the last detection.

(B) The Navy shall ensure that MFAS transmissions will be limited to at least 10 dB below the equipment's normal operating level if any detected animals are within 500 yards (457 m) of the sonar dome. Ships and submarines shall continue to limit maximum ping levels by this 10-dB factor until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2000 yards (1828 m) beyond the location of the last detection.

(C) The Navy shall ensure that MFAS transmissions are ceased if any detected marine mammals are within 200 yards of the sonar dome. MFAS transmissions will not resume until the marine mammal has been seen to leave the area, has not been detected for 30 minutes, or the vessel has transited more than 2,000 yards beyond the location of the last detection.

(D) Special conditions applicable for dolphins and porpoises only: If, after conducting an initial maneuver to avoid close quarters with dolphins or porpoises, the Officer of the Deck concludes that dolphins or porpoises are deliberately closing to ride the vessel's bow wave, no further mitigation actions are necessary while the dolphins or porpoises continue to exhibit bow wave riding behavior.

(E) If the need for power-down should arise as detailed in ''Safety Zones'' in paragraph (a)(1)(xx) of this section, Navy shall follow the requirements as though they were operating at 235 dB—the normal operating level (i.e., the first power-down will be to 229 dB, regardless of at what level above 235 dB sonar was being operated).

(xxi) Prior to start up or restart of active sonar, operators shall check that the Safety Zone radius around the sound source is clear of marine mammals.

(xxii) Sonar levels (generally)—Navy shall operate sonar at the lowest practicable level, not to exceed 235 dB, except as required to meet tactical training objectives.

(xxiii) Helicopters shall observe/survey the vicinity of an ASW Exercise for 10 minutes before the first deployment of active (dipping) sonar in the water.

(xxiv) Helicopters shall not dip their sonar within 200 yards (183 m) of a marine mammal and shall cease pinging if a marine mammal closes within 200 yards (183 m) after pinging has begun.

(xxv) Submarine sonar operators shall review detection indicators of close-aboard marine mammals prior to the commencement of ASW training activities involving active mid-frequency sonar.

(xxvi) Night vision goggles shall be available to all ships and air crews, for use as appropriate.

(xxvii) Humpback Whale Cautionary Area: An area extending 5km (2.7 nm) from a line drawn from Kaunakakai on the island of Molokai to Kaena Point on the Island of Lanai; and an area extending 5 km (2.7 nm) from a line drawn from Kaunolu on the Island of Lanai to the most Northeastern point on the Island of Kahoolawe; and within a line drawn from Kanapou Bay on the Island of Kahoolawe to Kanahena Point on the Island of Maui and a line drawn from Cape Halawa on the Island of Molokai to Lipo Point on the Island of Maui, excluding the existing submarine operating area.

(A) Should national security needs require MFAS training and testing in the cautionary area between 15 December and 15 April, it must be personally authorized by the Commander, U.S. Pacific Fleet based on his determination that training and testing in that specific area is required for national security purposes. This authorization shall be documented by the CPF in advance of transiting and training in the cautionary area, and the determination shall be based on the unique characteristics of the area from a military readiness perspective, taking into account the importance of the area for humpback whales and the need to minimize adverse impacts on humpback whales from MFAS whenever practicable. Further, Commander, U.S. Pacific Fleet will provide specific direction on required mitigation measures prior to operational units transiting to and training in the cautionary area.

(B) The Navy shall provide advance notification to NMFS of any such activities (listed in paragraph (a)(1)(xxvii)(A)of this section).

(C) The Navy shall include in its periodic reports for compliance with the MMPA whether or not activities occurred in the Humpback Whale Cautionary Area and any observed effects on humpback whales due to the conduct of these activities.

(xxviii) The Navy shall abide by the letter of the ''Stranding Response Plan for Major Navy Training Exercises in the HRC'' to include the following measures:

(A) Shutdown Procedures—When an Uncommon Stranding Event (USE—defined in § 216.171(b)) occurs during a Major Training Exercise (MTE, including RIMPAC, USWEX, or Multi-Strike Group Exercise) in the HRC, the Navy shall implement the procedures described below.

(*1*) The Navy shall implement a Shutdown (as defined § 216.171(b)) when advised by a NMFS Office of Protected Resources Headquarters Senior Official designated in the HRC Stranding Communication Protocol that a USE involving live animals has been identified and that at least one live animal is located in the water. NMFS and Navy will maintain a dialogue, as needed, regarding the identification of the USE and the potential need to implement shutdown procedures.

(*2*) Any shutdown in a given area shall remain in effect in that area until NMFS advises the Navy that the subject(s) of the USE at that area die or are euthanized, or that all live animals involved in the USE at that area have left the area (either of their own volition or herded).

(*3*) If the Navy finds an injured or dead animal floating at sea during an MTE, the Navy shall notify NMFS immediately or as soon as operational security considerations allow. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) including carcass condition if the animal(s) is/are dead), location, time of first discovery, observed behavior (if alive), and photo or video (if available). Based on the information provided, NMFS will determine if, and advise the Navy whether a modified shutdown is appropriate on a case-by-case basis.

(*4*) In the event, following a USE, that qualified individuals are attempting to herd animals back out to the open ocean and animals are not willing to leave, or animals are seen repeatedly heading for the open ocean but turning back to shore, NMFS and the Navy shall coordinate (including an investigation of other potential anthropogenic stressors in the area) to determine if the proximity of MFAS training activities or explosive detonations, though farther than 14 nm from the distressed animal(s), is likely contributing to the animals' refusal to return to the open water. If so, NMFS and the Navy will further coordinate to determine what measures are necessary to improve the probability that the animals will return to open water and implement those measures as appropriate.

(B) Within 72 hours of NMFS notifying the Navy of the presence of a USE, the Navy shall provide available information to NMFS (per the HRC Communication Protocol) regarding the location, number and types of acoustic/explosive sources, direction and speed of units using MFAS, and marine mammal sightings information associated with training activities occurring within 80 nm (148 km) and 72 hours prior to the USE event. Information not initially available regarding the 80 nm (148 km), 72 hour period prior to the event will be provided as soon as it becomes available. The Navy will provide NMFS investigative teams with additional relevant unclassified information as requested, if available.

(C) Memorandum of Agreement (MOA)—The Navy and NMFS shall develop a MOA, or other mechanism consistent with federal fiscal law requirements (and all other applicable laws), that will establish a framework whereby the Navy can (and provide the Navy examples of how they can best) assist NMFS with stranding investigations in certain circumstances.

(xxix) While in transit, naval vessels shall be alert at all times, use extreme caution, and proceed at a ''safe speed'' so that the vessel can take proper and effective action to avoid a collision with any marine animal and can be stopped

within a distance appropriate to the prevailing circumstances and conditions.

(xxx) When marine mammals have been sighted in the area, Navy vessels shall increase vigilance and take reasonable and practicable actions to avoid collisions and activities that might result in close interaction of naval assets and marine mammals. Actions may include changing speed and/or direction and are dictated by environmental and other conditions (e.g., safety, weather).

(2) *Mitigation for IEER*—The following are protective measures for use with Extended Echo Ranging/Improved Extended Echo Ranging (EER/IEER) given an explosive source generates the acoustic wave used in this sonobuoy.

(i) Crews shall conduct aerial visual reconnaissance of the drop area prior to laying their intended sonobuoy pattern. This search should be conducted below 500 yards (457 m) at a slow speed, if operationally feasible and weather conditions permit. In dual aircraft training activities, crews are allowed to conduct coordinated area clearances.

(ii) Crews shall conduct a minimum of 30 minutes of visual and acoustic monitoring of the search area prior to commanding the first post detonation. This 30-minute observation period may include pattern deployment time.

(iii) For any part of the briefed pattern where a post (source/receiver sonobuoy pair) will be deployed within 1,000 yards (914 m) of observed marine mammal activity, the Navy shall deploy the receiver ONLY and monitor while conducting a visual search. When marine mammals are no longer detected within 1,000 yards (914 m) of the intended post position, co-locate the explosive source sonobuoy (AN/SSQ–110A) (source) with the receiver.

(iv) When able, crews will conduct continuous visual and aural monitoring of marine mammal activity. This is to include monitoring of own-aircraft sensors from first sensor placement to checking off station and out of communication range of these sensors.

(v) *Aural Detection:* If the presence of marine mammals is detected aurally, then that shall cue the aircrew to increase the diligence of their visual surveillance. Subsequently, if no marine mammals are visually detected, then the crew may continue multi-static active search.

(vi) *Visual Detection:*

(A) If marine mammals are visually detected within 1,000 yards (914 m) of the explosive source sonobuoy (AN/SSQ–110A) intended for use, then that payload shall not be detonated. Aircrews may utilize this post once the marine mammals have not been re-sighted for 30 minutes, or are observed to have moved outside the 1,000 yards (914 m) safety buffer.

(B) Aircrews may shift their multi-static active search to another post, where marine mammals are outside the 1,000 yards (914 m) safety buffer.

(vii) Aircrews shall make every attempt to manually detonate the unexploded charges at each post in the pattern prior to departing the operations area by using the ''Payload 1 Release'' command followed by the ''Payload 2 Release'' command. Aircrews shall refrain from using the ''Scuttle'' command when two payloads remain at a given post. Aircrews will ensure that a 1,000 yard (914 m) safety buffer, visually clear of marine mammals, is maintained around each post as is done during active search operations.

(viii) Aircrews shall only leave posts with unexploded charges in the event of a sonobuoy malfunction, an aircraft system malfunction, or when an aircraft must immediately depart the area due to issues such as fuel constraints, inclement weather, and in-flight emergencies. In these cases, the sonobuoy will self-scuttle using the secondary or tertiary method.

(ix) The navy shall ensure all payloads are accounted for. Explosive source sonobuoys (AN/SSQ–110A) that cannot be scuttled shall be reported as unexploded ordnance via voice communications while airborne, then upon landing via naval message.

(x) Marine mammal monitoring shall continue until out of own-aircraft sensor range.

(3) *Mitigation for Demolitions (DEMOs) and Mine Countermeasure (MCM) Training (Up to 20 lb).*

(i) *Exclusion Zones*—Explosive charges shall not be detonated if a marine mammal is detected within 700 yards (640 m) of the detonation site.

(ii) *Pre-Exercise Surveys*—For MCM training activities, the Navy shall conduct a pre-exercise survey within 30 minutes prior to the commencement of the scheduled explosive event. The survey may be conducted from the surface, by divers, and/or from the air. If a marine mammal is detected within the survey area, the exercise shall be suspended until the animal voluntarily leaves the area.

(iii) *Post-Exercise Surveys*—Surveys within the same radius shall also be conducted within 30 minutes after the completion of the explosive event.

(iv) *Reporting*—Any evidence of a marine mammal that may have been injured or killed by the action shall be reported immediately to NMFS.

(v) *Mine Laying Training*—Though mine laying training operations involve aerial drops of inert training shapes on floating targets, measures 1, 2, and 3 for Demolitions and Mine countermeasures will apply to mine laying training. To the maximum extent feasible, the Navy shall retrieve inert mine shapes dropped during Mine Laying Training.

(4) *Mitigation for SINKEX, GUNEX, MISSILEX, and BOMBEX.* (i) All weapons firing shall be conducted during the period 1 hour after official sunrise to 30 minutes before official sunset.

(ii) Extensive range clearance operations shall be conducted in the hours prior to commencement of the exercise.

(iii) An exclusion zone with a radius of 1.0 nm (1.85 km) shall be established around each target. An additional buffer of 0.5 nm (0.93 km) shall be added to account for errors, target drift, and animal movements. Additionally, a safety zone, which extends out an additional 0.5 nm (0.93 km), shall be surveyed. Together, the zones extend out 2 nm (3.7 km) from the target.

(iv) A series of surveillance over-flights shall be conducted within the exclusion and the safety zones, prior to and during the exercise, when feasible. Survey protocol would be as follows:

(A) Overflights within the exclusion zone shall be conducted in a manner that optimizes the surface area of the water observed. This may be accomplished through the use of the Navy's Search and Rescue (SAR) Tactical Aid (TACAID).

(B) All visual surveillance activities shall be conducted by Navy personnel trained in visual surveillance. At least one member of the mitigation team shall have completed the Navy's marine mammal training program for lookouts.

(C) In addition to the overflights, the exclusion zone shall be monitored by passive acoustic means, when assets are available. This passive acoustic monitoring shall be maintained throughout the exercise. Potential assets include sonobuoys, which can be utilized to detect any vocalizing marine mammals in the vicinity of the exercise. The sonobuoys shall be re-seeded as necessary throughout the exercise. Additionally, passive sonar onboard submarines may be utilized to detect any vocalizing marine mammals in the area. The Officer Conducting the Exercise (OCE) shall be informed of any aural detection of marine mammals and would include this information in the determination of when it is safe to commence the exercise.

(D) On each day of the exercise, aerial surveillance of the exclusion and safety

zones shall commence two hours prior to the first firing.

(E) The results of all visual, aerial, and acoustic searches shall be reported immediately to the OCE. No weapons launches or firing would commence until the OCE declares the safety and exclusion zones free of marine mammals.

(F) If a marine mammal observed within the exclusion zone is diving, firing shall be delayed until the animal is re-sighted outside the exclusion zone, or 30 minutes has elapsed.

(G) During breaks in the exercise of 30 minutes or more, the exclusion zone shall again be surveyed for any marine mammals. If marine mammals are sighted within the exclusion zone, the OCE would be notified, and the procedure described in paragraph (a)(4)(iv)(F) of this section would be followed.

(H) Upon sinking of the vessel, a final surveillance of the exclusion zone shall be monitored for two hours, or until sunset, to verify that no marine mammals were harmed.

(v) Aerial surveillance would be conducted using helicopters or other aircraft based on necessity and availability. These aircraft shall be capable of (and shall, to the extent practicable) flying at the slow safe speeds necessary to enable viewing of marine mammals with unobstructed, or minimally obstructed, downward and outward visibility. The Navy may cancel the exclusion and safety zone surveys in the event that a mechanical problem, emergency search and rescue, or other similar and unexpected event preempts the use of one of the aircraft onsite for the exercise.

(vi) Where practicable, the Navy shall conduct the exercise in sea states that are ideal for marine mammal sighting, *i.e.,* Beaufort Sea State 3 or less. In the event of a Beaufort Sea State of 4 or above, the Navy shall utilize additional aircraft (conducting tight search patterns), if available, to increase survey efforts within the zones.

(vii) The exercise shall not be conducted unless the exclusion zone can be adequately monitored visually.

(viii) In the unlikely event that any marine mammals are observed to be harmed in the area, a detailed description of the animal shall be documented, the location noted, and if possible, photos taken. This information would be provided to NMFS.

(b) [Reserved]

§ 216.175 Requirements for monitoring and reporting.

(a) As outlined in the HRC Stranding Communication Plan, the Holder of the Authorization must notify NMFS immediately (or as soon as clearance procedures allow) if the specified activity identified in § 216.170(c) is thought to have resulted in the mortality or injury of any marine mammals, or in any take of marine mammals not identified in § 216.172(c).

(b) The Holder of the Letter of Authorization must conduct all monitoring and required reporting under the Letter of Authorization, including abiding by the HRC Monitoring Plan.

(c) The Navy shall complete an Integrated Comprehensive Monitoring Plan (ICMP) in 2009. This planning and adaptive management tool shall include:

(1) A method for prioritizing monitoring projects that clearly describes the characteristics of a proposal that factor into its priority.

(2) A method for annually reviewing, with NMFS, monitoring results, Navy R&D, and current science to use for potential modification of mitigation or monitoring methods.

(3) A detailed description of the Monitoring Workshop to be convened in 2011 and how and when Navy/NMFS will subsequently utilize the findings of the Monitoring Workshop to potentially modify subsequent monitoring and mitigation.

(4) An adaptive management plan.

(5) A method for standardizing data collection across Range Complexes.

(d) General Notification of Injured or Dead Marine Mammals—Navy personnel shall ensure that NMFS (regional stranding coordinator) is notified immediately (or as soon as clearance procedures allow) if an injured or dead marine mammal is found during or shortly after, and in the vicinity of, any Navy training exercise utilizing MFAS, HFAS, or underwater explosive detonations. The Navy shall provide NMFS with species or description of the animal(s), the condition of the animal(s) (including carcass condition if the animal is dead), location, time of first discovery, observed behaviors (if alive), and photo or video (if available). The Navy shall consult the Stranding Response Plan to obtain more specific reporting requirements for specific circumstances.

(e) Annual HRC Monitoring Plan Report—The Navy shall submit a report annually on October 1 describing the implementation and results (through August 1 of the same year) of the HRC Monitoring Plan, described in § 216.175(b). Data collection methods will be standardized across range complexes to allow for comparison in different geographic locations. Although additional information will be gathered, the marine mammal observers (MMOs) collecting marine mammal data pursuant to the HRC Monitoring Plan shall, at a minimum, provide the same marine mammal observation data required in § 216.175(f)(1).

The HRC Monitoring Plan Report may be provided to NMFS within a larger report that includes the required Monitoring Plan Reports from multiple Range Complexes.

(f) Annual HRC Exercise Report—The Navy shall submit an Annual HRC Exercise Report on October 1 of every year (covering data gathered through August 1 (or completion of RIMPAC if later than Aug 1) of the same year). This report shall contain information identified in subsections 216.175(f)(1)—(f)(5).

(1) MFAS/HFAS Major Training Exercises—This section shall contain the following information for Major Training Exercises (MTEs, which include RIMPAC, USWEX, and Multi Strike Group) conducted in the HRC:

(i) Exercise Information (for each MTE):

(A) Exercise designator.

(B) Date that exercise began and ended.

(C) Location.

(D) Number and types of active sources used in the exercise.

(E) Number and types of passive acoustic sources used in exercise.

(F) Number and types of vessels, aircraft, etc., participating in exercise.

(G) Total hours of observation by watchstanders.

(H) Total hours of all active sonar source operation.

(I) Total hours of each active sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(J) Wave height (high, low, and average during exercise).

(ii) Individual marine mammal sighting info (for each sighting in each MTE).

(A) Location of sighting.

(B) Species (if not possible—indication of whale/dolphin/pinniped).

(C) Number of individuals.

(D) Calves observed (y/n).

(E) Initial Detection Sensor.

(F) Indication of specific type of platform observation made from (including, for example, what type of surface vessel, i.e., FFG, DDG, or CG).

(G) Length of time observers maintained visual contact with marine mammal.

(H) Wave height (in feet).

(I) Visibility.

(J) Sonar source in use (y/n).

(K) Indication of whether animal is <200yd, 200–500yd, 500–1000yd, 1000–

2000yd, or >2000yd from sonar source in paragraph (f)(1)(ii)(J) of this section.

(L) Mitigation Implementation—Whether operation of sonar sensor was delayed, or sonar was powered or shut down, and how long the delay was.

(M) If source in use (see paragraph (f)(1)(ii)(J) of this section) is hullmounted, true bearing of animal from ship, true direction of ship's travel, and estimation of animal's motion relative to ship (opening, closing, parallel).

(N) Observed behavior—Watchstanders shall report, in plain language and without trying to categorize in any way, the observed behavior of the animals (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming, etc.).

(iii) An evaluation (based on data gathered during all of the MTEs) of the effectiveness of mitigation measures designed to avoid exposing to mid-frequency sonar. This evaluation shall identify the specific observations that support any conclusions the Navy reaches about the effectiveness of the mitigation.

(2) ASW Summary—This section shall include the following information as summarized from both MTEs and non-major training exercises (i.e., unit-level exercises, such as TRACKEXs):

(i) Total annual hours of each type of sonar source (along with explanation of how hours are calculated for sources typically quantified in alternate way (buoys, torpedoes, etc.)).

(ii) Total hours (from December 15 through April 15) of hullmounted active sonar operation occurring in the dense humpback areas plus a 5-km buffer, but not including the Pacific Missile Range Facility. The Navy shall work with NMFS to develop the exact boundaries of this area.

(iii) Total estimated annual hours of hull-mounted active sonar operation conducted in Humpback Whale Cautionary area between December 15 and April 15.

(iv) Cumulative Impact Report—To the extent practicable, the Navy, in coordination with NMFS, shall develop and implement a method of annually reporting non-major (i.e., other than RIMPAC, USWEX, or Multi-Strike Group Exercises) training exercises utilizing hull-mounted sonar. The report shall present an annual (and seasonal, where practicable) depiction of non-major training exercises geographically across the HRC. The Navy shall include (in the HRC annual report) a brief annual progress update on the status of development until an agreed-upon (with NMFS) method has been developed and implemented.

(3) SINKEXs—This section shall include the following information for each SINKEX completed that year:

(i) Exercise information (gathered for each SINKEX):

(A) Location.

(B) Date and time exercise began and ended.

(C) Total hours of observation by watchstanders before, during, and after exercise.

(D) Total number and types of rounds expended/explosives detonated.

(E) Number and types of passive acoustic sources used in exercise.

(F) Total hours of passive acoustic search time.

(G) Number and types of vessels, aircraft, etc., participating in exercise.

(H) Wave height in feet (high, low and average during exercise).

(I) Narrative description of sensors and platforms utilized for marine mammal detection and timeline illustrating how marine mammal detection was conducted.

(ii) *Individual marine mammal observation (by Navy lookouts) information (gathered for each marine mammal sighting):*

(A) Location of sighting.

(B) Species (if not possible, indicate whale, dolphin or pinniped).

(C) Number of individuals.

(D) Whether calves were observed.

(E) Initial detection sensor.

(F) Length of time observers maintained visual contact with marine mammal.

(G) Wave height.

(H) Visibility.

(I) Whether sighting was before, during, or after detonations/exercise, and how many minutes before or after.

(J) Distance of marine mammal from actual detonations (or target spot if not yet detonated)—use four categories to define distance:

(*1*) The modeled injury threshold radius for the largest explosive used in that exercise type in that OPAREA (91 m for SINKEX in HRC);

(*2*) The required exclusion zone (1 nm for SINKEX in HRC);

(*3*) The required observation distance (if different than the exclusion zone (2 nm for SINKEX in HRC); and

(*4*) Greater than the required observed distance. For example, in this case, the observer would indicate if < 91 m, from 91 m—1 nm, from 1 nm—2 nm, and > 2 nm.

(K) Observed behavior—Watchstanders will report, in plain language and without trying to categorize in any way, the observed behavior of the animal(s) (such as animal closing to bow ride, paralleling course/speed, floating on surface and not swimming etc.), including speed and direction.

(L) Resulting mitigation implementation—Indicate whether explosive detonations were delayed, ceased, modified, or not modified due to marine mammal presence and for how long.

(M) If observation occurs while explosives are detonating in the water, indicate munition type in use at time of marine mammal detection.

(4) IEER Summary—This section shall include an annual summary of the following IEER information:

(i) Total number of IEER events conducted in the HRC.

(ii) Total expended/detonated rounds (buoys).

(iii) Total number of self-scuttled IEER rounds.

(5) Explosives Summary—To the extent practicable, the Navy will provide the information described below for all of their explosive exercises. Until the Navy is able to report in full the information below, they will provide an annual update on the Navy's explosive tracking methods, including improvements from the previous year.

(i) Total annual number of each type of explosive exercises (of those identified as part of the ''specified activity'' in this final rule) conducted in the HRC.

(ii) Total annual expended/detonated rounds (missiles, bombs, etc.) for each explosive type.

(g) Sonar Exercise Notification—The Navy shall submit to the NMFS Office of Protected Resources (specific contact information to be provided in LOA) either an electronic (preferably) or verbal report within fifteen calendar days after the completion of any major exercise. (RIMPAC, USWEX, or Multi Strike Group) indicating:

(1) Location of the exercise.

(2) Beginning and end dates of the exercise.

(3) Type of exercise (*e.g.*, RIMPAC, USWEX, or Multi Strike Group).

(h) HRC 5-yr Comprehensive Report—The Navy shall submit to NMFS a draft report that analyzes and summarizes all of the multi-year marine mammal information gathered during ASW and explosive exercises for which annual reports are required (Annual HRC Exercise Reports and HRC Monitoring Plan Reports). This report will be submitted at the end of the fourth year of the rule (November 2012), covering activities that have occurred through June 1, 2012.

(i) *Comprehensive National ASW Report*—By June 2014, the Navy shall submit a draft Comprehensive National Report that analyzes, compares, and summarizes the active sonar data gathered (through January 1, 2014) from the watchstanders in accordance with the Monitoring Plans for the HRC, the Atlantic Fleet Active Sonar Training, the Southern California (SOCAL) Range Complex, the Marianas Range Complex, the Northwest Training Range, the Gulf of Alaska, and the East Coast Undersea Warfare Training Range.

(j) The Navy shall respond to NMFS comments and requests for additional information or clarification on the HRC Comprehensive Report, the draft National ASW report, the Annual HRC Exercise Report, or the Annual HRC Monitoring Plan Report (or the multi-Range Complex Annual Monitoring Plan Report, if that is how the Navy chooses to submit the information) if submitted within 3 months of receipt. These reports will be considered final after the Navy has addressed NMFS' comments or provided the requested information, or three months after the submittal of the draft if NMFS does not comment by then.

(k) In 2011, the Navy shall convene a Monitoring Workshop in which the Monitoring Workshop participants will be asked to review the Navy's Monitoring Plans and monitoring results and make individual recommendations (to the Navy and NMFS) of ways of improving the Monitoring Plans. The recommendations shall be reviewed by the Navy, in consultation with NMFS, and modifications to the Monitoring Plan shall be made, as appropriate.

§ 216.176 Applications for Letters of Authorization.

To incidentally take marine mammals pursuant to the regulations in this subpart, the U.S. citizen (as defined by § 216.103 of this chapter) conducting the activity identified in § 216.170(c) (the U.S. Navy) must apply for and obtain either an initial Letter of Authorization in accordance with § 216.177 or a renewal under § 216.178.

§ 216.177 Letters of Authorization.

(a) A Letter of Authorization, unless suspended or revoked, will be valid for a period of time not to exceed the period of validity of this subpart, but must be renewed annually subject to annual renewal conditions in § 216.178.

(b) Each Letter of Authorization will set forth:

(1) Permissible methods of incidental taking;

(2) Means of effecting the least practicable adverse impact on the species, its habitat, and on the availability of the species for subsistence uses (*i.e.*, mitigation); and

(3) Requirements for mitigation, monitoring and reporting.

(c) Issuance and renewal of the Letter of Authorization will be based on a determination that the total number of marine mammals taken by the activity as a whole will have no more than a negligible impact on the affected species or stock of marine mammal(s).

§ 216.178 Renewal of Letters of Authorization.

(a) A Letter of Authorization issued under §§ 216.106 and 216.177 for the activity identified in § 216.170(c) will be renewed annually upon:

(1) Notification to NMFS that the activity described in the application submitted under § 216.176 will be undertaken and that there will not be a substantial modification to the described work, mitigation or monitoring undertaken during the upcoming 12 months;

(2) Timely receipt (by the dates indicated in these regulations) of the monitoring reports required under § 216.175(c) through (j); and

(3) A determination by the NMFS that the mitigation, monitoring and reporting measures required under § 216.174 and the Letter of Authorization issued under §§ 216.106 and 216.177, were undertaken and will be undertaken during the upcoming annual period of validity of a renewed Letter of Authorization.

(b) If a request for a renewal of a Letter of Authorization issued under this § 216.106 and § 216.178 indicates that a substantial modification, as determined by NMFS, to the described work, mitigation or monitoring undertaken during the upcoming season will occur, the NMFS will provide the public a period of 30 days for review and comment on the request. Review and comment on renewals of Letters of Authorization are restricted to:

(1) New cited information and data indicating that the determinations made in this document are in need of reconsideration, and

(2) Proposed changes to the mitigation and monitoring requirements contained in these regulations or in the current Letter of Authorization.

(c) A notice of issuance or denial of a renewal of a Letter of Authorization will be published in the **Federal Register**.

(d) NMFS, in response to new information and in consultation with the Navy, may modify the mitigation or monitoring measures in subsequent LOAs if doing so creates a reasonable likelihood of more effectively accomplishing the goals of mitigation and monitoring. Below are some of the possible sources of new data that could contribute to the decision to modify the mitigation or monitoring measures:

(1) Results from the Navy's monitoring from the previous year (either from the HRC or other locations).

(2) Findings of the Monitoring Workshop that the Navy will convene in 2011 (§ 216.175(q)).

(3) Compiled results of Navy funded research and development (R&D) studies (presented pursuant to the ICMP (§ 216.175(d)).

(4) Results from specific stranding investigations (either from the HRC Study Area or other locations, and involving coincident MFAS/HFAS or explosives training or not involving coincident use).

(5) Results from the Long Term Prospective Study. (6) Results from general marine mammal and sound research (funded by the Navy (or otherwise).

§ 216.179 Modifications to Letters of Authorization.

(a) Except as provided in paragraph (b) of this section, no substantive modification (including withdrawal or suspension) to the Letter of Authorization by NMFS, issued pursuant to §§ 216.106 and 216.177 and subject to the provisions of this subpart shall be made until after notification and an opportunity for public comment has been provided. For purposes of this paragraph, a renewal of a Letter of Authorization under § 216.178, without modification (except for the period of validity), is not considered a substantive modification.

(b) If the Assistant Administrator determines that an emergency exists that poses a significant risk to the well-being of the species or stocks of marine mammals specified in § 216.172(c), a Letter of Authorization issued pursuant to §§ 216.106 and 216.177 may be substantively modified without prior notification and an opportunity for public comment. Notification will be published in the **Federal Register** within 30 days subsequent to the action.

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Part IV

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

Medicare Program; Medicare Advantage and Prescription Drug Benefit Programs: Negotiated Pricing and Remaining Revisions; Final Rule; Medicare Program; Prescription Drug Benefit Program: Payments to Sponsors of Retiree Prescription Drug Plans; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 422 and 423

[CMS–4131–FC;–RIN 0938–AP24]

Medicare Program; Medicare Advantage and Prescription Drug Benefit Programs: Negotiated Pricing and Remaining Revisions

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule with comment period.

SUMMARY: This rule contains final regulations governing the Medicare Advantage (MA) program (Part C) and prescription drug benefit program (Part D), and interim final regulations governing certain aspects of the Retiree Drug Subsidy (RDS) Program, and reflecting new statutory definitions relating to Special Needs Plans under Part C. The final regulations revising the Part C and Part D regulations include provisions regarding medical savings account (MSA) plans, cost-sharing for dual eligible enrollees in the MA program, the prescription drug payment and novation processes in the Part D program, and the enrollment and appeals processes for both programs. This final rule with comment period also responds to public comments on the May 16, 2008 proposed rule and takes into account statutory revisions contained in the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA).

DATES: *Effective Date:* These regulations are effective on March 13, 2009.

Applicability Date: The revisions to the definition of ''negotiated prices'' in § 423.100, with the exception of the revision to include a reference to ''other network dispensing provider,'' which is applicable on March 13, 2009, are applicable for contract year 2010. The revisions to the definitions of ''administrative costs,'' ''allowable risk corridor costs,'' and ''gross covered prescription drug costs'' in § 423.308 are also applicable for contract year 2010.

Comment Period: We will consider comments on the provisions concerning the new statutory definitions relating to special needs plans (see section II.A.1 of the preamble to this final rule with comment period) and those concerning negotiated prices and retained rebates under the Retiree Drug Subsidy (RDS) program (see section II.B.5.e. of the preamble to this final rule with comment period), provided that they are received at one of the addresses provided below no later than March 13, 2009.

ADDRESSES: In commenting, please refer to file code CMS–4131–FC. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically.* You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov*. Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail.* You may mail written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–4131–FC, P.O. Box 8013, Baltimore, MD 21244–8013.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail.* You may send written comments to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–4131–FC, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier.* If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses:

a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201;

(Because access to the interior of the Hubert H. Humphrey (HHH) Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–7197 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Change of Ownership: Scott Nelson, 410–786–1038.

Civil Money Penalties: Christine Reinhard, 410–786–2987.

Definitions related to the Part D drug benefit, Subparts F and G: Deondra Moseley, 410–786–4577, or Meghan Elrington, 410–786–8675.

Definitions related to the Part D drug benefit, Subpart R: David Mlawsky, 410–786–6851.

Enrollment: Jeff Maready, 415–744–3523.

Low-Income Cost-Sharing: Christine Hinds, 410–786–4578.

Medicare Medical Savings Account Plans: Anne Manley, 410–786–1096.

Payment: Frank Szeflinski, 303–844–7119.

Reconsiderations: John Scott, 410–786–3636, or Kathryn McCann Smith, 410–786–7623.

Special Needs Plans: LaVern Baty, 410–786–5480.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov. Follow the search instructions* on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background and Legislative History

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established a new ''Part C'' in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) that established the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Medicare Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the original Medicare program or an M+C plan, if one was offered where he or she lived.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), (Pub. L. 106–111), amended the M+C provisions of the BBA. Further amendments were made to the M+C program by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000.

Subsequently, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted on December 8, 2003. This landmark legislation established the Medicare prescription drug benefit program (Part D) and made significant revisions to the provisions in Medicare Part C, governing what was renamed the Medicare Advantage (MA) program (formerly Medicare+Choice). The MMA directed that important aspects of the new Medicare prescription drug benefit program under Part D be similar to and coordinated with regulations for the MA program. The MMA also created a subsidy program involving payments to sponsors of Retiree Prescription Drug Programs, or the Retiree Drug Subsidy (RDS) Program. This program allows subsidy payments to sponsors of qualified retiree prescription drug plans for Part D drug costs for individuals who are eligible for, but not enrolled in, a Medicare Part D plan.

The MMA also specified that implementation of the prescription drug benefit and revised MA program provisions take place by January 1, 2006. Thus, we published final rules for the MA and Part D prescription drug programs in the **Federal Register** on January 28, 2005 (70 FR 4588 through 4741 and 70 FR 4194 through 4585, respectively). (For further discussion of these revisions, see the respective final rules (70 FR 4588 through 4741) and (70 FR 4194 through 4585).)

Since the publication of these rules, we have gained a great deal of experience with all aspects of these programs. Based on this experience, as well as on recommendations from representatives of both the organizations that provide care and the Medicare beneficiaries that they serve, we determined that proposed changes to the existing Part C, Part D, and RDS regulations were warranted. We believed that these changes would help plans understand and comply with our policies for all three programs, and aid MA organizations and Part D and RDS plan sponsors in implementing their health care and prescription drug benefit plans in ways that will better serve the Medicare population.

Thus, on May 16, 2008, we published a proposed rule (73 FR 28556) that would revise certain aspects of both the MA, Part D, and RDS programs. Many of these proposed revisions were designed to clarify existing policies or codify current guidance for these programs. Subsequent to the publication of that proposed rule, the Medicare Improvements for Patients and Providers Act (MIPPA) (Pub. L. 110–275) was enacted on July 15, 2008. MIPPA included a number of provisions that addressed the same requirements that we had addressed in the proposed rule. In some cases, the MIPPA provisions paralleled our proposed requirements and in other instances they complemented or superseded them. Thus, in order to implement both the new MIPPA provisions and those proposed in our May 2008 proposed rule, we have published a series of rules to set forth the appropriate regulatory changes.

In the September 18, 2008 **Federal Register** (73 FR 54208), we published a final rule that finalized certain marketing provisions, effective October 1, 2008, that paralleled provisions in MIPPA. In the same issue of the **Federal Register** (73 FR 54226), we also published a separate interim final rule that addressed the other provisions of MIPPA impacting the MA and Part D programs.

This final rule responds to comments on the May 16, 2008 proposed rule and generally finalizes provisions of that rule that were not addressed in either of the rules published on September 18, 2008. We received over 100 comments on the proposed rule. Commenters included managed care and prescription drug plans and their representatives, provider groups, and Medicare beneficiary advocates. The comments ranged from general support or opposition to the proposed provisions, to very specific questions or comments regarding a proposed change.

Some of these comments have been addressed in the rules discussed above. All comments pertaining to the provisions set forth in this final rule are discussed below. We are providing brief summaries of each proposed provision, a summary of the public comments we received, and our responses to the comments.

II. Analysis of and Response to Public Comments

In the sections that follow, we discuss the changes to the regulations in parts 422 and 423 governing the MA and prescription drug benefit programs that were proposed in our May 16, 2008 rule, and the comments we received on those provisions as well as conforming changes to the regulations to reflect two new statutory definitions affecting the MA program that were enacted in MIPPA. Several of the revisions and clarifications discussed below affect both the MA and prescription drug benefit programs.

A. Changes to Part 422—Medicare Advantage Program

1. Special Needs Plans

The MMA first authorized special needs plans (SNP), a type of MA plan designed to exclusively, or disproportionately, enroll individuals with special needs. The three types of special needs individuals eligible for enrollment identified in the MMA include—(1) Institutionalized individuals (defined in 42 CFR 422.2 as an individual residing or expecting to reside for 90 days or longer in a long term care facility); (2) individuals entitled to medical assistance under a State plan under title XIX; and (3) other individuals with severe or disabling chronic conditions that would benefit from enrollment in a SNP.

The number of SNPs approved as of January 2008, is 787. This figure includes 442 dual eligible SNPs, 256 chronic care SNPs, and 89 institutional SNPs.

a. *Definitions:* Institutional-Equivalent and Severe or Disabling Chronic Condition (§ 422.2)

Section 164 of MIPPA contained two new statutory definitions that relate to eligibility for SNPs. Although these definitions were not included in our May 18 proposed rule, we are discussing these new definitions here in the context of the more general SNP-eligibility provisions, and incorporating these new definitions in interim final regulations as part of this rule.

Although the statute governing SNPs has always referred to individuals eligible to enroll in SNPs based on institutional status or on having a severe or disabling chronic condition, the statute previously did not define these terms. We believe that discussing these new definitions in this rule will both aid the understanding of the new statutory requirements and complement the eligibility requirements from the proposed rule that we are publishing as final regulations in this rule. In addition, because we received public comment on the May 2008 proposed rule closely related to eligibility for institutional-level and chronic care individuals, we believe that in order to fully respond to these comments it is important to discuss all of the provisions relating to chronic care and

institutional care eligibility. Public comments related to institutional and chronic care SNP eligibility are addressed below.

(1) Institutional-Equivalent Individual

Section 164 of MIPPA adds a new paragraph (2) to section 1859(f) of the Act related to eligibility requirements for institutional SNPs. Beginning on January 1, 2010, institutional SNPs that enroll a special needs individual who is living in the community but requires an institutional level of care (LOC) (*i.e.*, an ''institutional-equivalent individual'') must meet two new eligibility requirements.

First, the determination of institutional LOC must be made using a State assessment tool. States have extensive experience in making LOC determinations, as demonstrated by a recently published survey [1] of State LOC assessment, which references several other investigative sources. The study describes varying State instruments and methodologies, and may be an important resource for institutional SNPs that are not already aware of existing State LOC assessment tools. In States and territories that have not designed a specific tool, SNPs must use the same LOC determination methodology employed in the respective State or territory in which the SNP is authorized to enroll eligible beneficiaries.

Second, the SNP must arrange to have the LOC assessment conducted by an entity other than the respective MA organization. We believe this entity must be both impartial and have the requisite professional knowledge to accurately identify institutional LOC criteria.

As a result of MIPPA provisions concerning institutionalized care, we have revised our definitions section in § 422.2 to incorporate the new statutory definition of ''institutional equivalent'' set forth in MIPPA.

(2) Severe or Disabling Chronic Condition

Section 164 of MIPPA also adds a new clause to section 1859(b)(6)(B)(iii) of the Act to clarify the eligibility requirements for chronic condition SNPs. Beginning on January 1, 2010, chronic condition SNPs that enroll a special needs individual who has a severe or disabling chronic condition must determine that the individual has one or more co-morbid and medically complex chronic condition(s) that are substantially disabling or life-threatening, has a high risk of hospitalization or other significant adverse health outcomes, and requires specialized delivery systems across domains of care. We have also updated our definitions in § 422.2 to incorporate this new statutory definition of severe or disabling chronic condition.

We note that the statute also directs the Secretary to convene a panel of clinical advisors to determine which chronic conditions meet this clarified definition. We will issue separate guidance describing the operational process the Secretary will use to comply with this directive.

b. Ensuring Special Needs Plans Serve Primarily Special Needs Individuals (§ 422.4)

The MMA generally authorized SNPs that ''exclusively'' serve individuals with the above-described special needs. However, section 231(d) of MMA provided the Secretary with the ''authority'' to designate MA plans as SNPs if the SNP only ''disproportionately serve[s] special needs individuals,'' while also serving non-special needs enrollees. Section 231(d) of the MMA provides that ''the Secretary *may* provide'' for such plans in regulations implementing the SNP provisions. In the final rule implementing this MMA provision, we exercised this discretion in *§ 422.4(a)(iv)(B), providing that a SNP could be a plan that ''[e]nrolls a greater proportion of special needs individuals than occur nationally in the Medicare population * * *.''*

In the May 16, 2008 proposed rule, we proposed to amend § 422.4(a) to require that MA organizations offering ''disproportionate share'' SNPs ensure that at least 90 percent of new plan membership consist of individuals that fell into the appropriate special needs category for the plan in question, as defined in § 422.2. Thus, no more than 10 percent of a plan's new enrollees could be non-special needs individuals. Based on the comments received on this proposal, and in light of the fact that section 164 of MIPPA eliminates the authority for disproportionate share SNPs effective January 1, 2010, we are revising the regulations to specify that all new SNP enrollees must be special needs individuals. In other words, we are declining to permit disproportionate share SNPs as permitted, at our discretion, under section 231(d) of MMA. As discussed below, we are amending § § 422.2 and 422.4 to reflect these changes.

Comment: All commenters agreed that the current regulation permitting an MA plan to be designated a SNP if it enrolled special needs individuals in a higher proportion than they exist in the Medicare population diminishes the intended focus of special needs plans on providing care and services to special needs individuals. Commenters generally supported our proposal that at least 90 percent of new enrollees consist of individuals with the targeted condition or status. Many commenters, however, argued for a higher threshold. Some commenters suggested establishing a 95 percent threshold, as recommended by the Medicare Payment Advisory Commission (MedPAC). Still others suggested requiring that entire plan membership (100 percent) be in the targeted special needs group, or at least that all new enrollees fall into the targeted category of individuals. These commenters correctly noted that although section 231(d) of MMA allows plans to enroll a certain portion of members from the non-targeted population, there is no requirement that non-special needs individuals be permitted to join an SNP. Many commenters also indicated that having to monitor the proportion of plan membership that fell into the appropriate category would pose an administrative challenge, and was unnecessarily complex.

Response: After considering all comments, and in light of the fact that disproportionate share SNPs will no longer be authorized as of January 1, 2010, we agree with the commenters who urged that SNPs should not be permitted to enroll individuals who do not meet the qualifying targeted conditions (dual eligibility for Medicare and Medicaid, institutional status, or severe or disabling chronic conditions). Thus, taking into consideration the MIPPA changes and the public comments described above, we are revising our proposal to prohibit the enrollment of nonqualifying members into all SNP plans. We believe that this change will emphasize the need for SNPs to focus on providing care and services to their targeted population.

We recognize that this means that a spouse of an individual in a chronic care SNP generally will not be able to join the same plan (unless the spouse has the same condition), which has been presented in the past as a reason to permit some non-special need individuals to enroll in SNPs. Note that a plan may not disenroll a non-special needs individual who has already enrolled in the SNP consistent with the current disproportionate percentage methodology. Such individuals may

[1] Henderickson, L. Kyzr-Sheeley, G. (2008). Determining Medicaid Nursing Home Eligibility: A Survey of State Level Care Assessment. Retrieved July 27, 2008 from *http://www.hcbs.org/moreInfo.php/nb/doc/2216/.*

remain in their plans unless and until they choose to disenroll. Note that they would not be permitted to re-enroll in another SNP unless they had a qualifying condition. We are revising §§ 422.2 and 422.4 to reflect these changes.

Comment: One commenter requested that the 90 percent disproportionate percentage requirement be measured on an aggregate basis for a given calendar year, rather than on a monthly or day-to-day basis.

Response: Since we are eliminating use of any disproportionate percentage methodology in the future, this issue has become moot.

Comment: Several commenters were confused by the wording of the proposed regulations and asked that CMS clarify whether the proposed 90 percent rule applied only to new members, or applied to the overall membership in the plan. Given the current proportions of special needs individuals in many SNPs, they noted that establishing an overall target of 90 percent would effectively require that all new enrollees be members of the appropriate category in any event.

Response: We recognize that the wording of the proposed requirements left some room for confusion as to the precise intent of the provisions in question. Our proposal would only have applied to new enrollees, so regardless of how many current members were special needs individuals, 10 percent of new enrollees could have been non-special needs individuals under our proposal. However, as explained above, the final regulations clearly specify that the 100 percent requirement applies only to new members.

c. Ensuring Eligibility To Elect an MA Plan for Special Needs Individuals (§ 422.52)

We proposed in § 422.52 that MA organizations be required to establish a process approved by CMS to verify that potential SNP enrollees meet the SNP's eligibility requirements. While this issue is addressed, to some degree, in our manual guidance (section 20.11 of Chapter 2 of the Medicare Managed Care Manual), we believe that it is important to set forth in regulations our explicit authority to establish verification requirements. The proposed regulations were also intended to ensure that plans were aware of, and met, their obligations to verify an applicant's eligibility prior to enrolling individuals in a SNP. As discussed below, we are adopting these changes in final regulations as proposed and, as noted above, we are in interim final regulations codifying the related MIPPA eligibility requirements concerning institutional-level and chronic care SNP. We are also making a conforming change to § 422.52(f) by deleting the currently existing paragraph, which refers to SNPs serving disproportionately special needs individuals.

Comment: Commenters did not object to our proposal to establish in regulations that SNPs must use a CMS-approved process to verify SNP eligibility. However, several commenters requested that we revise either the proposed regulations or manual guidance to specify that SNPs have 60 days to verify enrollment for individuals with special needs. Alternatively, the commenters suggested that CMS take into consideration the amount of time for verifying enrollment status when monitoring plan compliance with the SNP provisions. Another commenter recommended that CMS maintain the previous requirements (established in our May 31, 2007 HPMS memo) for time frames and sources for verification of Chronic Care SNP enrollment qualifications. The commenter suggested that the 30-day timeframe now established in the manual is impractical, and they further recommended that sources other than providers be allowed for verification of chronic care SNP enrollees' eligibility for the SNP.

Response: We are strongly committed to ensuring that SNPs carry out proper verification of all eligibility criteria, consistent with the requirements discussed above concerning SNP enrollment requirements. Thus, we are adopting the proposed requirement that SNPs follow a CMS-approved verification process. Note that although we are not setting out specific verification requirements in the regulations, manual current guidance already requires that prompt verification take place (generally either before enrollment or no later than the end of the first month of enrollment). We continue to believe that prompt verification is necessary to prevent large numbers of subsequent, unnecessary disenrollments from SNPs of individuals who never should have been enrolled.

As noted in the May 2008 proposed rule (73 FR 28559), we have given plans a number of options for meeting the verification requirements, including post-enrollment confirmation under certain circumstances (such as when a pre-enrollment qualification assessment tool is used, as opposed to direct contact with a provider). In addition, to assist SNP plans in obtaining timely verification from appropriate medical professional personnel, we have made clear in subregulatory guidance (Chapter 2, Section 20–11, Medicare Advantage Manual) that for the purposes of verification of chronic care SNP eligibility, verification may be obtained through a provider or provider's office. This includes any licensed health care professional in a position to validate and verify the beneficiary's medical history and status, such as nurse practitioners or pharmacists. However, we are concerned that the use of organizational data alone, such as claims or medical records, may not always be sufficient to confirm SNP eligibility. Thus, we intend to continue to evaluate the issue of when and how data may be appropriately used to verify SNP eligibility and we are willing to consider reasonable alternative proposals presented by plans to verify eligibility. Still, given that the underlying intent of chronic care SNPs is to provide care services to a population with a need for carefully managed services, we do not believe it is unreasonable to expect early contact with a suitable health care professional.

Comment: A commenter suggested that CMS include language addressing pre-enrollment qualification assessment tools and post-enrollment confirmation of eligibility procedures as aspects of the SNP eligibility verification process for all SNPs, not just chronic care SNPs.

Response: We do not believe that such changes are warranted or necessary for non-chronic care SNPs, given the other available sources of eligibility verification. As discussed in our recent interim final rule (73 FR 54228), in accordance with the recent MIPPA legislation, dual-eligible SNPs and institutional SNPs must have arrangements with the appropriate entities to verify Medicaid eligibility or institutional status in an ongoing and routine manner.

Comment: A commenter described our suggestion in the preamble of the proposed rule that dual-eligible SNPs be required to enter into an agreement with state agencies as ''impractical.'' The commenter further suggested that CMS establish a process similar to that used under the Part D low-income subsidy status for determining dual eligibility status for Part C dual-eligible SNP plans, or as an alternative establish a best available evidence policy for dual-eligible SNP plans. Thus, rather than the SNP plan being responsible for obtaining Medicaid eligibility information, the commenter requested that CMS furnish the eligibility information to dual-eligible SNP plans.

Response: The establishment of successful partnerships and processes to

share information about dual status with State Medicaid agencies is a key aspect of the SNP's ability to provide specialized services to this population, ensure beneficiary understanding of both programs' benefits, and provide meaningful coordination between the Medicare and Medicaid programs. Furthermore, section 164 of MIPPA requires dual eligible SNPs to have a contract with a State Medicaid Agency effective as of January 1, 2010, to provide benefits (or arrange for benefits to be provided) that an individual is entitled to receive under the Medicaid program.

With respect to the commenter's suggestion that we establish a process similar to our current Part D ''Best Available Evidence'' policy to allow plans to provide evidence of dual-eligibility status, we decline to establish such a process at this time. We believe that beneficiaries and SNPs would be better served by an arrangement with States to exchange eligibility information on a regular basis. Such arrangements could be incorporated into the contracts between SNPs and the appropriate State Medicaid Agency that will now be required as of January 1, 2010.

d. Model of Care (§ 422.101(f))

In order to ensure that SNPs were providing care targeted to such special needs beneficiaries, under our authority in section 1856(b)(1) of the Act to establish standards by regulation, we proposed that SNPs develop a model of care specific to the special needs population they are serving. In order to more clearly establish and clarify delivery of care standards for SNPs and to codify standards which we have included in other CMS guidance and instructions (the 2008 and 2009 Call Letters, ''Special Needs Plan Solicitation'' [2]), we proposed to add new paragraph (f) to § 422.101. This proposed paragraph specified that SNPs have networks with clinical expertise specific to the special needs population of the plan; use performance measures to evaluate models of care; and be able to coordinate and deliver care targeted to the frail/disabled, and those near the end of life based on appropriate protocols. Section 164 of the MIPPA subsequently added care management requirements for all SNPs as directed in section 1859(f)(5) of the Act (42 U.S.C. 1395w–28(f)). The new mandate required dual-eligible, institutional, and chronic condition SNPs to implement an evidence-based model of care having two explicit components. The first component was an appropriate network of providers and specialists to meet the specialized needs of the SNP target population. The second component was a battery of case management services that includes— (1) A comprehensive initial health risk assessment and annual reassessments; (2) an individualized plan of care having goals and measurable outcomes; and (3) an interdisciplinary team to manage care. This law laid a statutory foundation for much of our proposed regulatory standards for the model of care. Therefore, we address the comments we received on our proposals from both a statutory and regulatory basis.

Comment: The overwhelming majority of commenters expressed support for a required SNP model of care. However, many argued that the proposed language was too weak to permit genuine oversight of SNPs or assure adequate protection for vulnerable beneficiaries. They urged us to require a more prescriptive model of care similar to the PACE program or state integrated care waiver demonstration projects. Among their recommendations were that we require that model of care include elements such as: Care coordination through an individualized care plan; at least one network physician with network hospital privileges and one network provider with access to diagnostics and ancillary health services; transition coverage across care settings, providers, and services to ensure continuity of care; a comprehensive risk assessment on which to base the individualized care plan; public reporting of performance data as evidence that remuneration pays for services actually delivered; a complaint/grievance process used in monitoring activities; SNP staff trained on the respective state Medicaid program; and mandatory publishing of the SNP model of care in marketing materials. One of these commenters specifically advocated that pharmacists be an integral member of a SNP provider network, but was countermanded by another commenter that who opposed prescribing the provider network composition. Finally, one commenter suggested that we require all MA organizations, not just SNPs, to serve enrollees that are frail/disabled or near the end of life.

Response: Over the past 2 years, we collected and reviewed models of care from existing SNPs. We also reviewed models of care such as medical home models and chronic care models published in healthcare books, peer-reviewed journals, and advocacy group and industry reports. Based on our extensive review of models of care for vulnerable populations, we agree with the majority of commenters who indicated that a required SNP model of care that contains certain minimal elements is necessary to provide regulatory oversight and effective monitoring of SNPs. MIPPA demonstrated further support that care management required an organizational structure represented by the model of care. Specifically, MIPPA required SNPs to conduct initial and annual comprehensive health risk assessments, develop and implement an individualized plan of care, and implement an interdisciplinary care team for each beneficiary. We believe that combination of MIPPA's statutory elements and our regulatory prescription for the SNP model of care establishes the standardized architecture for effective care management, yet gives plans the flexibility to design the unique services and benefits that enable them to meet the identified needs of their target population. To illustrate this balance between the model of care architecture and its plan-specific components, we present the following examples. All SNPs must have an interdisciplinary team to coordinate the delivery of services and benefits; however, one SNP may choose to contract with an interdisciplinary team to deliver care in community health clinics and another SNP may hire its team to deliver care in the home setting. Under our final regulations, all SNPs must coordinate the delivery of services and benefits through integrated systems of communication among plan personnel, providers, and beneficiaries; however, one SNP may coordinate care through a telephonic connection among all stakeholders and a second SNP may coordinate care through an electronic system using Web-based records and electronic mail accessed exclusively by the plan, network providers, and beneficiaries. All SNPs must coordinate the delivery of specialized benefits and services that meet the needs of their most vulnerable beneficiaries; however, dual-eligible SNPs may need to provide state-identified services while an institutional SNP may need to facilitate hospice care for its beneficiaries near the end of life. These examples demonstrate the variety of ways SNPs currently implement their systems of care. We will continue to study SNP models of care and issue guidance through our Call Letters and informational memoranda to facilitate improvement in the SNP model of care framework.

[2] The solicitation may be found at *http://www.cms.hhs.gov/SpecialNeedsPlans.*

Comment: One commenter noted that our proposed language required the model of care to deliver services to targeted enrollees as well as those who are frail/disabled or near the end of life. The entity clarified that SNPs do not ''deliver'' care, but provide access to care practitioners.

Response: We acknowledge the distinction that most SNPs are not healthcare providers, but are entities that coordinate care through provider networks. We believe that our references to delivering care can reasonably be read as referring to delivering services through such networks.

Comment: Several commenters supported a requirement for the use of evidence-based or nationally recognized clinical protocols in the delivery of care to special needs beneficiaries. One commenter argued that, if we were to prescribe specific disease management protocols for SNPs in the future, we should do so through published regulations that would permit the medical community to comment. A second commenter urged us to clarify ''protocols'' to include process as well as clinical protocols because nationally recognized protocols do not exist for all clinical conditions.

Response: We agree that SNPs must coordinate and deliver care with healthcare professionals that use protocols, whether clinical or administrative in nature, which are evidence-based or, where possible, derived from nationally recognized guidelines. We refer beneficiaries, plans, and providers to the Agency for Healthcare Research and Quality (*http://www.ahrq.gov/*) which provides public access to both an extensive repository of evidence-based protocols through its National Guidelines Clearinghouse, as well as discussions regarding ongoing research on clinical practice. If we propose future regulation related to the use of clinical or administrative protocols, we will elicit appropriate public comments from all stakeholders. Presently, we expect SNPs to have personnel (employed, contracted, or non-contracted) prepared to discuss their implemented protocols at monitoring visits or other oversight activities. Because we have not prescribed the use of specific protocols, the comment that we should do so through rulemaking does not apply.

Comment: A few commenters proposed that we work with recognized standards organizations to develop better ways to monitor SNPs and inform the public about plan performance. However, one commenter cautioned that, in developing SNP-specific measures, we must address the broad range of special care needs and the limitations of available data sources.

Response: We have contracted with the National Committee for Quality Assurance (NCQA) to develop, collect, analyze, and report on SNP-specific performance measures at the plan benefits package (PBP) level. We will continue to work with NCQA and other quality measurement experts such as the Geriatric Measurement Advisory Panel to explore valid and reliable ways to measure and improve SNP performance. As we identify new directions in quality measurement for vulnerable populations, we will elicit public, professional, and beneficiary comment to inform our regulatory and informational guidance to SNPs.

e. Special Needs Plans and Other MA Plans With Dual Eligibles: Responsibility for Cost-Sharing (§ 422.504(g)(1))

In order to protect beneficiaries and ensure that providers do not bill for cost-sharing that is not the beneficiary's responsibility, we proposed to amend § 422.504(g)(1)(i) and (g)(1)(ii) to require that all MA organizations, including SNPs, with enrollees who are eligible for both Medicare and Medicaid specify in their contracts with providers that enrollees would not be held liable for Medicare Parts A and B cost sharing when the State is liable for the cost-sharing. Plans may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under title XIX if the individual were not in such plan. We also proposed therefore, that contracts with providers state that the provider will do this by either accepting the MA plan payment in full (§ 422.504(g)(1)(iii)(A)) or by billing the appropriate State source (for example, Medicaid) (§ 422.504(g)(1)(iii)(B)). Additionally, we proposed that all MA organizations with enrollees eligible for both Medicare and Medicaid must inform providers of the Medicare and Medicaid benefits and rules for enrollees eligible for Medicare and Medicaid (§ 422.504(g)(1)(iii)). Section 165 of MIPPA only required that full benefit dual-eligible individuals and qualified Medicare beneficiaries in SNPs for dual-eligibles not be held liable for Medicare Parts A and B cost-sharing. Our proposal included all MA plans that have dual eligibles enrolled in their plan.

The above proposals have been superseded in part by section 165 of MIPPA, ''Limitation on Out-of-Pocket Costs for Dual Eligibles and Qualified Medicare Beneficiaries Enrolled in a Specialized Medicare Advantage Plan for Special Needs Individuals,'' which establishes that for full benefit-dual-eligible individuals or qualified Medicare beneficiaries enrolled in a special needs plan, an MA organization may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted if the individual were under title XIX and were not enrolled in a special needs plan. The effective date of this provision is January 1, 2010.

After considering comments discussed below, we are finalizing our proposal to impose the requirement that MIPPA imposed in the case of dual-eligible SNPs on duals in all MA plans, and on all dual Medicaid eligibility categories for which a State provides a zero cost-share. Consistent with the MIPPA requirements that apply to dual-eligible SNPs, we are specifying in the regulations that these provisions are effective on January 1, 2010.

Comment: Several commenters supported CMS' effort to protect dual eligible individuals from being charged for cost sharing under Medicare Parts A and B when the state is responsible. However, many requested that CMS either allow MA plans to send a notification to the providers of this change or to allow MA organizations to amend contracts at the end of the contract term, in 2 years, or whenever the contracts are renegotiated. Some commenters requested that CMS establish a process for Medicare Advantage Organizations to work with CMS to develop and disseminate this information. Other commenters stated that CMS should go further by requiring all MA plans to provide to all of their physicians and other providers with specific information about when dual eligibles are not liable for cost-sharing and include the matrix CMS developed on cost-sharing and the dual eligibility types.

Several commenters also stated that CMS should go further by requiring plans to have a designated contact person who is knowledgeable about the Medicaid programs who can answer cost sharing questions for providers and that plans should be required to refund any cost-sharing that has been inappropriately charged to dual eligible individuals. One commenter recommended that CMS require this of dual-eligible SNPs only and not all plans that serve dual eligible individuals.

Response: We do not believe it would sufficiently protect dual-eligible enrollees to simply require notice to providers. We also do not believe that these protections should be delayed for up to 2 years, particularly when MIPPA

imposes them in the case of enrollees in dual eligible SNPs effective January 1, 2010. However, we do not believe that it is necessary to require that SNPs necessarily designate a specific person to address dual-eligible issues. We believe that MA organizations should have flexibility in complying with these requirements. As noted above, we disagree with the commenter who believed that these requirements should only apply to dual SNPs as the MIPPA requirement did, because we believe that all dual eligibles need these protections.

2. MA Medical Savings Accounts (MSA) Transparency (§ 422.103(e))

Consistent with the best practices of health savings accounts (HSAs) and other high-deductible health plans, we proposed in a new § 422.103(e) to require that all medical savings account (MSA) plans provide enrollees with information on the cost and quality of services and provide information to CMS on how they would provide this information to enrollees.[3]

Comment: We received a number of public comments on the proposed cost and quality transparency requirements for Medicare MSA plans. Several commented on the developing and pioneering nature of reporting on cost and quality of health care information. Some comments simply expressed general support for the proposal. One comment from a state government human services department expressed general support for this proposal. One comment from a pharmacy association expressed support for providing consumers with cost and quality information.

Three comments were from health insurance plans with experience with Medicare MSAs, which also expressed support for this proposal, but requested flexibility for plans in development of cost and quality transparency information. One organization argued against separate standards for Internet vs. other forms of communication to allow flexibility in how information is communicated. Another comment from a health plan not currently participating as an Medicare MSA indicated its concern for the burden on health plans of transparency, and thought we intended to require that information be sent to all enrollees.

Two comments from major physician organizations requested that providers and other stakeholders have input into the reporting of cost and quality reporting measures. The physician organizations specifically reference guidelines from the Consumer-Purchaser Disclosure Project's ''Patient Charter for Physician Performance Measurement, Reporting and Tiering Programs.''

A number of consumer groups, including organizations representing the disabled, requested that cost and quality information be linked so that consumers can readily see where they meet, and so that consumers are not steered solely by price considerations. Consumer groups were also interested in information being posted on the out-of-pocket costs for enrollees in MSA plans, as well as on information for enrollees on how accounts operate and on any account fees or interest rates.

Response: Public comments indicate support for the proposal, and also indicate interest in making information useful for enrollees and equitable to health care providers on whom the information is reported. We acknowledge these comments of general support. We also understand comments requesting that stakeholders and consumers be allowed input and their interest in making the information fully useful to consumers.

As indicated in the proposed rule in the discussion of calculation of burden on health plans, we are expecting plans to provide the same level of information on cost and quality of services that they provide to commercial enrollees and to provide whatever information is available. Therefore, we are anticipating that the burden level would not be undue on health plans. We hope that consumers will also provide input because they are the parties intended to use the information, and so we expect that consumer demand will shape the design of reporting standards over time. Therefore, we agree with the comment that plans should have flexibility in design of transparency standards. We are not specifying standards for Internet or for other forms of communication at this time. It also makes sense for physicians and other providers and any interested stakeholders to provide input directly to plans or to CMS.

We do not want to specify further requirements at this time for transparency and want primarily to allow plans to work with enrollees to develop that information. Note that the statutory exemption from quality improvement programs for MSAs at section 1852(e) of the Act was recently eliminated by section 163 of MIPPA. MSA and PFFS plans must participate in quality improvement programs beginning in 2010. This new quality improvement requirement implemented in regulations at § 422.152(a), will work in conjunction with transparency efforts and enable transmission of information directly to enrollees of these health care plans.

B. Changes to Part 423—Medicare Prescription Drug Benefit Program

1. Passive Election for Full Benefit Dual Eligible Individuals Who Are Qualifying Covered Retirees (§ 423.34)

We proposed to revise § 423.34(d) to establish an exception to our normal auto-enrollment procedures for full benefit dual eligible individuals who we know to be enrolled in a qualifying employer group plan. Rather than auto-enrolling these individuals into a PDP (no individuals are auto-enrolled into MA-PD), we proposed that such individuals would be deemed to decline Part D coverage if, following a notice of their options, they do not indicate that they wish to receive it. As discussed below, this final rule adopts the proposed regulatory changes to § 423.34(d) in their entirety.

Comment: All commenters supported the policy where full benefit dual-eligible individuals (eligible for both Medicare and Medicaid), who are also qualifying covered retirees, would not be automatically enrolled in a Medicare Part D plan by CMS. Although commenters expressed no objections to the proposed regulatory changes, several commenters objected to a statement in the preamble to the proposed regulation (73 FR 28562) indicating that if a full benefit dual eligible individual with qualifying retiree coverage decided to enroll in a Part D plan at a later time, that enrollment could be made effective retroactively to the date of the dual eligibility. The commenters asserted that retroactive Part D coverage would inappropriately shift the liability for past drug spending to a Part D plan. Other commenters supported the option of retroactive coverage.

Response: Consistent with our proposal, this final rule establishes that full benefit dual eligible individuals with qualified retiree coverage will not be automatically enrolled in a Medicare Part D plan. (That is, we will not auto-enroll individuals for whom we have approved a group health plan sponsor to receive the Retiree Drug Subsidy (RDS)

[3] HSAs are health insurance plans with a high deductible and a savings account for the under 65 population and are administered by the U.S. Department of the Treasury. Medicare MSAs are a type of medical savings account, also with a high deductible and a savings account, designed for the Medicare population and are administered by the U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services. HSAs and MSAs are governed by different statutes, and while these health insurance products are similar in many ways, there are also important differences between them. For further information on HSAs, go to *http://www.ustreas.gov/offices/public-affairs/hsa/.*

described in 42 CFR Part 423, Subpart R for the period of time the automatic enrollment in Part D would otherwise cover.) Instead, we will send these individuals a notice informing them that they will be deemed to have declined such enrollment unless they take an affirmative action to choose a plan or opt for auto-enrollment. They may choose to enroll in a Medicare Part D plan at any time, as long as they retain that dual status, but we will not automatically enroll them in a Part D plan.

In general, we believe that dual eligible individuals who decide to enroll in a Medicare Part D plan at a later time should do so on a prospective basis, like most other enrollment elections. These individuals have made an election initially to not enroll in a Medicare Part D plan and instead to remain in their current employer plan. Thus, there is no ''coverage gap'' involved, which obviates the usual premise for retroactive Medicare coverage for dual eligibles. We agree with commenters that retroactive coverage under Medicare Part D could lead to an inappropriate shift of beneficiary drug expenditures to the Medicare program. However, as currently occurs under both the MA and Part D programs, we acknowledge that special circumstances may arise which would justify a retroactive enrollment into Medicare Part D. We will issue clarifying guidance on the appropriateness for retroactive coverage and consider those requests on a case-by-case basis.

Comment: Several commenters requested that other individuals who are automatically enrolled into a Medicare Part D plan, such as individuals eligible for one of the Medicare Savings Programs, also be exempted from automatic enrollment when they have qualified retiree coverage.

Response: Other individuals with qualified retiree coverage, such as non-dual eligible individuals who are also eligible for low-income subsidy assistance under the Medicare Savings Programs, are already excluded from automatic enrollment under Medicare Part D.

Comment: Several commenters suggested that the regulations specify that the notice individuals receive advise them to discuss the impact of Medicare Part D coverage with their group health plan administrator or personnel office. They also suggested that we share the model beneficiary notice with beneficiary representatives for their review.

Response: We do not believe it is necessary or appropriate to specify in the regulations the exact content of the notice that will be sent to the affected individuals, such as where individuals should turn to receive information to help them make a decision. However, in the notice that we send to beneficiaries, we will specify that individuals should discuss their drug benefits with the appropriate retiree staff who handle their coverage and benefits. We will be pleased to share the model beneficiary notice in draft with beneficiary representatives to obtain their input and guidance.

Comment: Several commenters requested we revise the regulations to specify that the notice will be provided to the individual or their representatives to the extent that we are aware that the individual has someone acting on his/her behalf. They expressed concern that some of the affected individuals may lack the capacity to understand the notice and the action to be taken.

Response: We are not modifying the regulations to include this suggested change, because we have no way to collect and retain address information for an individual authorized to act on behalf of a beneficiary, or verify that someone asserting such status is in fact so authorized.

Comment: Several commenters requested that CMS extend the process for non-automatic enrollment into Medicare Part D to full benefit dual eligible individuals with non-qualifying retiree coverage in addition to those individuals with qualifying retiree coverage.

Response: Currently, we receive information only for individuals who have qualifying retiree prescription drug coverage, and for whom we have approved a group health sponsor to receive the RDS. The information we receive, among other data, specifies that the individual's retiree drug coverage is at least equal to the actuarial value of the Medicare Part D defined standard prescription drug coverage, and records are maintained for audit purposes (§ 423.884). We do not have similar information for non-qualifying retiree prescription drug coverage, and thus would be unable to extend the non-automatic enrollment process to cover those situations. To accomplish the request would require soliciting information on the other coverage, verifying its authenticity, and entering it into the database which includes creditable coverage information. Should this information become readily available, we would consider this proposal. However, we note that we would not be certain, in the case of other retiree coverage, whether the coverage had a value to beneficiaries at least as good as that they would get if defaulted to a Part D plan. This would also be a factor for us to consider.

Comment: Several commenters requested that CMS establish a special enrollment period for retroactive disenrollment from Medicare Part D plans for any beneficiary who was auto-enrolled in a plan that conflicted with a retiree plan.

Response: Our current Medicare Prescription Drug Plan guidance permits full benefit dual eligible individuals to opt out of Medicare Part D coverage at any time. If the beneficiary makes the request prior to the effective date of auto-enrollment, then the enrollment is cancelled and the individual is considered not enrolled. If the effective date of the auto-enrollment is retroactive, the beneficiary may request a retroactive cancellation as long as the request is made by the 15th of the month after the month in which auto-enrollment occurred. If the request occurs after those dates, then the disenrollment would be effective with the last day of the month in which the request is made. With the retroactive cancellations, we caution individuals or their representatives to be careful to ensure individuals do not have a gap in prescription drug coverage, given that we have no authority to require that employer plans accept re-enrollments from former members of such plans. We also caution that such a disenrollment would not necessarily retroactively restore eligibility under an employer plan if that eligibility is lost as the result of an enrollment in a Part D plan.

2. Part D Late Enrollment Penalty (§ 423.46)

Under section 1860D–13(b) of the Act, a Part D late enrollment penalty (LEP) generally applies when a Medicare beneficiary has a continuous period of 63 days or longer without creditable prescription drug coverage subsequent to the beneficiary's initial enrollment period. This requirement is codified in regulations at § 423.46. Although § 423.46 describes which individuals are subject to a penalty, it does not specify the role of the Part D plan in the LEP determination process. We have subsequently outlined plan responsibilities in our existing guidance (Chapters 4 and 18 § 80.7.1, of the Medicare Prescription Drug Benefit Manual), and in our May 16, 2008 proposed rule we proposed to clarify the general responsibilities of Part D plans in the regulations.

First, we proposed to clarify under § 423.46(b) that Part D plans must obtain information on prior creditable coverage from all enrolled or enrolling

beneficiaries. Under this process, plans must first query CMS systems for previous plan enrollment information, which is a standard part of the beneficiary enrollment process. When there is a qualifying gap in creditable coverage, however, the process for obtaining creditable coverage information must also include plan interaction with the beneficiary. This is due in large part to the limited information available in CMS' systems about forms of creditable coverage other than Part D coverage or coverage through an employer group under the retiree drug subsidy (RDS). Therefore, it is critical that plans obtain historical creditable coverage information from the beneficiary in order to determine the number of uncovered months, if any, and retain any information collected concerning that determination (as specified under proposed § 423.46(d)).

The related requirement that we proposed under § 423.46(b) is that plans must then report creditable coverage information in a manner specified by CMS. Specifically, plans would report the number of uncovered months to CMS, which would then calculate the penalty and report the penalty back to the plan. The plan would then notify the beneficiary of the determination of the LEP amount and of their ability to request a reconsideration of this determination.

We also proposed under § 423.46(c) that, consistent with section 1860(D)–13(b) of the Act, individuals who are determined to have a late enrollment penalty have the opportunity to ask for a reconsideration of this determination. (Note that existing § 423.56(g) briefly references the ability to ''apply to CMS'' when an individual believes that he or she was not adequately informed that his or her prescription drug coverage was not creditable, and we would cross-reference that section here.) We believe that the statute clearly intends that individuals have an opportunity to provide CMS with additional information related to prior prescription drug coverage in support of a request for reconsideration of a late enrollment penalty determination. While the statute expressly provides for this opportunity only with respect to an argument that proper notice was not given concerning whether existing coverage was creditable, we believe that the same rationale could apply to other arguments that the penalty should not apply (for example, an argument that the individual had prior creditable prescription drug coverage that the enrollee believes may not have been considered).

Finally, we proposed to specify that a beneficiary would not have the right to further administrative review of the reconsideration decision of CMS, or the independent review entity acting under CMS' authority. However, we would, have the discretion to reopen, review, and revise such a decision.

Comment: Several commenters support the regulatory changes proposed; several other commenters, however, raised concerns about the role of Medicare Part D plan sponsors in the creditable coverage period determination process associated with the Part D LEP. Two of these commenters stated that having plans obtain and validate the required information could create inconsistencies in acceptable documentation, possible errors in reports to the government, and additional burden to plans. These two respondents suggested that CMS be responsible for the creditable coverage period determination, and one of them stated that the reporting process should be the same as the one for the Medicare Part B premium surcharge. Additionally, one of these commenters also suggested that, at the very least, and until such time as CMS is able to conduct this verification process without plan involvement, CMS should enhance its current Beneficiary Eligibility Query (BEQ) to provide the number of uncovered months rather than covered months. The commenter suggests that plans would then be able to simply transfer this information to the attestation form that must be sent to the beneficiary rather than have to convert it.

Response: The structure of the Medicare Part D program differs significantly from the Supplementary Medical Insurance program (Medicare Part B) in that beneficiaries interact directly with Part D plan sponsors to enroll in Part D coverage. In contrast, the majority of beneficiaries are automatically enrolled in Part B, while the rest apply at the Social Security Administration. Moreover, since we do not have information about all of the possible forms of creditable coverage for individual beneficiaries, this information has to come directly from beneficiaries. Since Part D plans correspond directly with their members at various times (for example, when the enrollment request is submitted and accepted by the plan), they are better able to determine whether the beneficiary is enrolling late and, if so, whether the beneficiary had creditable coverage. Thus, we continue to believe that plans are the appropriate entity to administer the initial stages of the LEP process.

With respect to the commenter's request that we enhance our BEQ to provide the number of uncovered months rather than covered months, we modified its system to include information about prior creditable coverage so that plans could query our data through the BEQ mentioned above. During this modification, we opted to include the date ranges that correspond to the months in which the individual has, or had, Part D coverage or when the retiree drug subsidy (RDS) is being claimed by an employer for that individual. This creditable coverage history that we provide in the BEQ is based on information we can confirm (that is, Part D or RDS coverage). Therefore, when there is a qualifying gap outside of these covered months, we are unable to determine whether an individual had other creditable coverage during the period in question. Since Part D plan sponsors correspond directly with their members when the enrollment request is submitted and accepted by the plan, they are better able to obtain creditable coverage information from the beneficiary about these uncovered months. Therefore, we decline to change the query at this time.

Additionally, we have developed operational procedures and policies that are intended to be as simple and straightforward as possible and impose minimal administrative burden on plans and beneficiaries. Most recently, on April 11, 2008, we released a memorandum, ''Updated Guidance on Creditable Coverage Determinations and the Late Enrollment Penalty'' via our Health Plan Management System (HPMS). This memorandum further clarified and expanded operational and policy guidance in a number of areas based on our experience implementing this policy and in response to questions and concerns raised. One significant change we made was to allow Part D plan sponsors to accept telephonic attestations in place of a missing or incomplete written attestation. We also expanded the existing timeframes that Part D plan sponsors have to report the creditable coverage information to us, thus affording Part D plan sponsors more time to follow up with beneficiaries to obtain the appropriate information.

Comment: Several commenters suggested that we simplify our creditable coverage documentation requirements for beneficiaries who change plans. For example, enrollees should be able to simply state on their enrollment application that they have had drug coverage, and CMS should then be responsible for verifying this information, since CMS should have

records of all the drug plans in which they were enrolled.

Response: We have already limited the scope of the plans' review when there is prior Part D plan or RDS enrollment in order to further simplify documentation requirements for plans and beneficiaries. If the beneficiary has prior Part D or RDS plan coverage, the plan only needs to determine whether the member has any months without creditable coverage since the date that he or she disenrolled from his or her prior Part D or RDS plan. That is, the current plan does not have to repeat the work done by the prior plan, and beneficiaries do not need to attest again to prior coverage when they simply change plans.

Additionally, if the individual, on his/her own initiative, includes creditable coverage information or documentation or both with the enrollment form, the plan must take that information into account when determining whether there has been a gap in coverage. As mentioned previously, we believe plans are in the best position to make creditable coverage determinations and report such determinations to CMS. We will continue to improve the process in response to comments and concerns from plans and beneficiaries.

Comment: One commenter stated that, although information about an individual's LEP is sent to the beneficiary, many beneficiaries do not open or read their mail. The commenter suggested that the beneficiary's LEP status be included in the Plan Finder, so that the beneficiary (and others assisting the beneficiary) could access such information. The commenter suggests that the Plan Finder include an indication as to whether or not an LEP has been assessed; the percentage of the penalty; and where applicable, LEP exempt status due to low income subsidy (LIS) eligibility.

Response: We appreciate the commenter's suggestion for using the Plan Finder as a tool to display information about a beneficiary's late enrollment penalty, and will consider whether this is viable in the future. However, no changes in the Plan Finder are possible in 2008. In the meantime, we have developed a ''Tip Sheet'' for Partners that provides key points for those assisting beneficiaries to use when answering questions from beneficiaries about the penalty. We are also developing another ''Tip Sheet'' that will focus on beneficiaries' role in responding to information received from their Part D plan sponsor, such as the attestation form. We have also simplified the current attestation form and included a new checklist designed to focus beneficiaries' attention on the form and emphasize the urgency of completing the attestation process. We expect these changes will improve beneficiaries' understanding of the importance of providing information about prior creditable coverage to their Part D plan sponsor.

Comment: Several commenters urged that the regulations include waiver of the LEP for individuals receiving the low income subsidy (LIS).

Response: Section 114 of the MIPPA eliminates the penalty for these individuals. Therefore, we have amended our regulations at § 423.46(a) and § 423.780(e) in a separate interim final rule to reflect this change. (*See* the September 15, 2008 interim final rule with comment period (73 FR 54226)). (Note that, under an existing Part D payment demonstration, CMS has not imposed an LEP on LIS beneficiaries.)

Comment: Several commenters urged that individuals have the full array of appeal rights available with respect to a decision subject to the Part D beneficiary appeals process, including ALJ hearings, and should not be limited to the reconsideration level of review. These commenters also believed that the regulation should contain more information about the reconsideration process, such as procedures and required timeframes for requesting a reconsideration, and that the regulation should at least set out a simple procedure whereby a beneficiary can submit evidence at any time to eliminate or reduce a late enrollment penalty. One commenter asked that members be provided LEP reconsideration rights when they are informed of their LEP. Another commenter indicated support for the existing process, with beneficiaries being permitted to seek reconsideration of their LEP.

Response: We have carefully considered this issue and believe that the current independent review process is sufficient and appropriate. Thus, we do not believe we need to offer beneficiaries expanded LEP appeal rights for several reasons.

First, we are offering significantly more due process to enrollees to dispute the imposition of an LEP than the law requires. The Part D beneficiary appeals process does not by its own terms apply to a decision on the applicability of an LEP, but only to decisions on whether drugs are covered, or how much a beneficiary is required to pay for covered drugs. With respect to the imposition of an LEP, the statute only provides individuals with an opportunity to apply to CMS to have their coverage treated as creditable upon establishing to CMS that they were not adequately informed that their prescription drug coverage was not creditable. (*See* section 1860D–13(b)(6)(C) of the Act.) Providing a reconsideration process to resolve other LEP-related matters, such as the question of whether an individual was enrolled in another plan offering creditable prescription drug coverage, is not required by the statute and is an added beneficiary protection under our current process.

Second, Chapter 18, § 80.7.1 of the Medicare Prescription Drug Benefit Manual and CMS' April 11, 2008 memorandum (cited above) provide beneficiaries with numerous added protections that are intended to help reduce the need for beneficiaries to seek reconsideration of their LEP. For example, plans must submit corrections when they receive a late attestation form that indicates the member had creditable coverage for the period in question if the plan has already reported uncovered months to CMS.

As described above, we have improved the attestation process by simplifying the creditable coverage attestation form, adding a new model checklist, and permitting Part D plan sponsors to allow beneficiaries or their representatives to complete the entire attestation process over the telephone. In addition, CMS guidance now affords Part D plan sponsors additional time to attempt to obtain information missing from the creditable coverage attestation form and to report their creditable coverage determinations to CMS.

Finally, as we noted in the proposed rule, we have the discretion to reopen, review and revise an LEP reconsideration decision. Reopenings are discretionary but may be granted, for example, upon presentation of new and material evidence. Given the flexibility afforded plans in making corrections to previously reported uncovered months if an enrollee submits an untimely attestation or other evidence of prior creditable prescription drug coverage, there should be a minimal need to look at decisions again.

Additionally, we disagree with the comment that we should detail all aspects of the reconsideration process in the regulation. We believe it is more practical to establish timeframes and other specific procedural and operational requirements related to LEP reconsiderations in CMS guidance so that necessary revisions can be made to ensure the needs of beneficiaries and plans are met in a timely manner. Updates to Chapters 4 and 18, § 80.7.1 of the Medicare Prescription Drug

Benefit Manual will be incorporated, as needed.

Lastly, we agree with the comment that member reconsideration rights should be provided to a beneficiary who is informed of his or her LEP. Plans now are required to provide both the LEP reconsideration notice and LEP reconsideration request form at the time they notify the enrollee of his/her LEP. *See* Chapters 4 and 18 § 80.7.1 of the Medicare Prescription Drug Benefit Manual for additional information.

Comment: A number of commenters suggested that the regulations confirm that CMS has the ultimate authority to determine whether previous coverage is creditable, thereby obviating the imposition of the late enrollment penalty. One commenter urged CMS to monitor the implementation of the proposed regulations to ensure that plans adequately inform beneficiaries of the importance of providing evidence of creditable coverage and work with beneficiaries to ensure an adequate timeframe to do so.

Response: We have retained the ability to deem coverage creditable in certain situations, and has defined the procedures for documenting such coverage at § 423.56. Therefore, we decline to take additional steps to address this comment in this regulation. With respect to the commenter's request that we ensure that plans adequately inform beneficiaries of the importance of providing evidence of creditable coverage and work with the beneficiaries to ensure they have adequate time to do so, we have already modified our attestation form and process, which addresses concerns such as these. For example, as previously described, our updated guidance allows Part D plan sponsors more time to follow up with beneficiaries when plans do not receive the beneficiaries' attestation or the attestation form is incomplete. This extended timeframe is in addition to the 30 calendar days beneficiaries already have to attest to prior creditable coverage. Also, if a beneficiary attests to having creditable coverage beyond the prescribed timeframe, again, we require Part D plan sponsors to accept the late attestation and make any corrections to the number of uncovered months previously reported to CMS. Lastly, as with other requirements, we will continue to monitor plans' compliance in this area and will follow up with those when problem areas are identified.

3. Subpart C—Benefits and Beneficiary Protections (Definitions)

a. Incurred Costs

In our May 16, 2008 proposed rule, we proposed to amend the definition of ''incurred costs'' to reflect our current policy that certain nominal co-payments assessed by manufacturer Patient Assistance Programs (PAPs) can be applied toward an enrollee's true out-of-pocket costs (TrOOP) balance or total drug spend (the accumulated total prices for covered Part D drugs paid by the plan or by or on behalf of the beneficiary). We allow PAPs to provide assistance for covered Part D drugs to Part D enrollees outside the Part D benefit. This means that payments made by PAPs do not count toward enrollees' TrOOP or total drug spend balances. However, if a PAP requires their enrollees—including those enrolled in a Part D plan—to pay a nominal copayment when they fill a prescription for a covered Part D drug for which the PAP provides assistance, such amounts would count toward TrOOP if the plan is notified of the copayment. As explained in Appendix C of Chapter 14 (Coordination of Benefits) of the Prescription Drug Benefit Manual, these nominal PAP copayment amounts, when paid by or on behalf of a Part D enrollee, are applicable to the enrollee's TrOOP and total drug spend balances, provided the enrollee submits appropriate documentation to their Part D plan.

Based on the numerous comments we received, we are finalizing the proposed definition of incurred costs to indicate that nominal PAP copayments are included in ''incurred costs.'' This revision to the definition of ''incurred costs'' in § 423.100 is consistent with the proposed changes to the definition of ''gross covered prescription drug costs'', which is also being revised to ensure that nominal PAP copayments are included in ''gross covered prescription drug costs'' and allowable reinsurance costs.

Comment: Several commenters expressed strong support for this proposed change to the definition of ''incurred costs,'' saying it would ensure that nominal PAP copayments are included in TrOOP and total drug spend balances. However, many of these commenters also expressed concern about the potential burden for beneficiaries in submitting these claims to their Part D plans. Some commenters asked us to draft a model form for submitting these claims, and asked us to encourage all Part D sponsors to adopt this model form. In addition, we were asked to provide this model form to SHIPs and other organizations that provide aid to LIS beneficiaries. Other commenters recommended that we require or encourage PAPs to provide one standard form to Part D beneficiaries. We were also asked to encourage pharmacies to fill out the required forms for Part D beneficiaries.

Response: We will consider developing a model form which Part D sponsors could provide to their enrollees. We would make this form available to PAPs, pharmacies, SHIPs, and other organizations as appropriate.

Comment: Some commenters asked us to require Part D sponsors to include instructions regarding the process for submitting the appropriate documentation of nominal PAP co-payments in the Evidence of Coverage (EOC) and other member-communications with Part D beneficiaries. One commenter recommended that we set uniform timelines for plans to include instructions for submitting this documentation in the EOC. This commenter also asked us to give sponsors broad authority for setting timeframes for the submission of PAP claims.

Response: Currently Part D sponsors are required to provide information on how to submit a paper claim to have beneficiary copayments that are paid under a PAP outside the Part D benefit accrue toward an enrollee's TrOOP and gross drug spend balances. Part D sponsors have flexibility in setting reasonable timeframes for the submission of such paper claims, keeping in mind CMS deadlines for submission of prescription drug event (PDE) records for purposes of the Part D payment reconciliation process.

Comment: We received one comment asking us to encourage PAPs to develop a means for transmitting the appropriate documentation electronically—in order to reduce the burden for beneficiaries.

Response: Currently, the Health Insurance Portability and Accountability Act (HIPAA) standard for claims submission does not accommodate the e-transmission of this claim information by PAPs or network pharmacies. We would support any industry efforts to streamline the submission of these and other paper claims.

Comment: One commenter asked that we provide a definition of a Patient Assistance Program (PAP) in order to help differentiate a PAP from a manufacturer sponsored pharmacy benefits card program.

Response: We use the term PAP with respect to pharmaceutical manufacturer sponsored patient assistance programs

that provide free products or assistance through in kind product donations to low income patients—particularly those with incomes below 200 percent of the Federal poverty level (FPL)—with no or insufficient prescription drug coverage. Manufacturer PAPs operate outside of the Medicare Part D program.

Comment: One commenter expressed concern that PAPs tend to promote brand drugs which is inconsistent with the efforts of Part D sponsors to promote generics.

Response: We appreciate the commenter's concern but note that we do not have any regulatory authority over PAPs. To the extent that Part D sponsors learn that their enrollees are purchasing brand drugs outside of the Medicare prescription drug benefit through a PAP, the sponsors may undertake efforts to promote any generic equivalents or therapeutically equivalent drugs available on Part D plan formularies.

Comment: We received a few comments regarding the automation of ''true out-of-pocket costs'' (TrOOP) reporting. One commenter asked that we continue to address challenges associated with TrOOP tracking. Another commenter recommended that we work with the National Council for Prescription Drug Programs (NCPDP) to update HIPAA Standards in order to automate TrOOP reporting and help pharmacies better support the Medicare Part D program.

Response: We are currently working with the industry to implement an automated TrOOP balance transfer process to better facilitate the tracking of TrOOP. Additional guidance regarding this effort will be provided at a future date.

Comment: One commenter noted that in the case of LIS enrollees, it is possible that the nominal PAP co-pay will exceed the LIS cost sharing due from the beneficiary. The commenter asked that we clarify that in such cases, Part D sponsors should reflect the cost sharing due as the LIS cost sharing amount and that we require the Part D sponsors to send the LIS beneficiary a check for the difference between the PAP co-payment and LIS cost sharing amount.

Response: We disagree with this recommendation. LIS beneficiaries do not receive the low-income cost sharing subsidy for drugs they obtain through PAPs because these programs operate outside of the Medicare Part D program. Therefore, there is no coordination of benefits between a PAP and Part D sponsors. Sponsors cannot make adjustments through refund or otherwise to nominal co-payments assessed by PAPs to LIS eligible enrollees. The proposed change to the definition of ''incurred costs'' simply allows affected beneficiaries to have their nominal PAP co-payments included in their TrOOP and gross drug spend balances.

b. Negotiated Prices

In order to address questions that have arisen since the Prescription Drug Benefit final rule was issued, we proposed to amend the definition of ''negotiated prices'' (to be effective for Part D contract year 2010) to require that Part D sponsors base beneficiary cost sharing and price reporting to CMS on the price ultimately received by the pharmacy or other dispensing provider, also known as the pass-through price. We received questions regarding whether Part D sponsors of prescription drug plans (PDPs) and Medicare Advantage prescription drug plans (MA–PDs) who utilize the lock-in pricing approach when contracting with a pharmacy benefit manager (PBM) may base beneficiary cost sharing on the price paid to the PBM, also known as the lock-in price. The lock-in pricing approach is a contract method by which the sponsor agrees to pay the PBM a set rate for a particular drug and the PBM negotiates with pharmacies to achieve the best possible price, which may vary from the rate paid to the PBM. Under the lock-in pricing approach, the price paid to the PBM or lock-in price is often greater than the price paid by the PBM to the pharmacy (the pass-through price) due to the inclusion of a ''risk premium'' which the Part D sponsor pays to the PBM to mitigate market risk and shield the Part D sponsor from price variability between pharmacies. This ''risk premium'' is analogous to the cost of drug utilization management, drug price negotiation, and other administrative costs incurred by Part D sponsors. Therefore, the lock-in price includes an administrative fee paid to the PBM by the Part D sponsor.

Beneficiary cost sharing is a function of the negotiated price, either directly as in coinsurance percentages of the negotiated price, or indirectly, as co-payments which are ultimately tied to actuarial equivalence requirements based on negotiated prices. We believe that it is important to ensure that negotiated prices are based upon the actual drug price paid at the point-of-sale and do not include any of the administrative fees paid by Part D sponsors to their intermediary contracting organizations because higher negotiated prices advance beneficiaries through the phases of the Part D benefit more quickly such that a greater number of beneficiaries reach the coverage gap phase of the benefit. In addition, using lock-in prices to determine negotiated prices increases the low-income cost sharing and reinsurance subsidy payments made by the Federal government. The low-income cost sharing subsidy is calculated based on the difference between the maximum cost sharing amounts for LIS beneficiaries as defined by the statute and, if greater, the beneficiary cost sharing charged under the Part D plan. Thus, higher beneficiary cost sharing leads to higher low-income cost sharing subsidy amounts. The reinsurance subsidy, which is calculated as 80 percent of allowable reinsurance costs, is increased as negotiated prices, and therefore, allowable reinsurance costs increase. We believe that continuing to permit Part D sponsors to use lock-in prices as the basis for determining beneficiary cost sharing, and reporting drug costs to CMS could also have the following undesirable results:

- Cost shifting from the government to beneficiaries in the form of higher beneficiary out-of-pocket costs.
- Interference with market competition among Part D sponsors.
- Beneficiary confusion over actual drug prices.
- Difficulties for pharmacies in explaining drug prices to customers and managing cash transfers to Part D sponsors or their intermediary contracting organizations.
- Government risk sharing on amounts that reflect administrative costs, contrary to Congressional intent to exclude risk-sharing on administrative expenses.

Please see the preamble to the May 16, 2008 proposed rule for a more detailed discussion of the potential impact of using lock-in prices to determine negotiated prices and beneficiary cost sharing.

For these reasons, we proposed to revise § 423.100 so that the first part of the definition of ''negotiated prices'' would state that negotiated prices are prices that the Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy, or other network dispensing provider, have negotiated as the amount the network dispensing pharmacy or other network dispensing provider, will receive, in total, for a particular drug. The term ''intermediary contracting organization'' refers to organizations such as PBMs that contract with plan sponsors to perform one or both of the following functions: (1) Pay pharmacies and other dispensers of Part D drugs provided to enrollees in the Part D

sponsor's plan, regardless of whether the intermediary contracting organization negotiates pharmacy contracts on behalf of the plan sponsor or on its own behalf; or (2) negotiate rebates or other price concessions with manufacturers for Part D drugs provided to enrollees in the Part D sponsor's plan, regardless of whether the intermediary contracting organization negotiates on behalf of the plan sponsor or on its own behalf.

Under this proposed definition, Part D sponsors who utilize the lock-in pricing approach when contracting with a PBM would no longer be permitted to base beneficiary cost sharing on the price paid to the PBM (the lock-in price). Thus, our proposed definition would exclude any differential between the price paid to the pharmacy and the price paid to the PBM or other intermediary contracting organization, and instead would treat that differential (or ''risk premium'') as an administrative cost paid to the PBM or intermediary contracting organization rather than as a drug cost under Part D.

We also proposed to revise the definition of ''negotiated prices'' (to be effective upon the effective date of the final rule) to include prices for covered Part D drugs negotiated between the Part D sponsor (or its intermediary contracting organization) and other network dispensing providers. Part D sponsors can contract with providers other than a pharmacy to dispense covered Part D drugs by including them in their network. Therefore, we proposed to amend the definition of negotiated prices to reflect the prices for covered Part D drugs that Part D sponsors (or their intermediary contracting organizations) negotiate with all of their network dispensing providers.

Our proposed changes to the definition of negotiated prices would not interfere with the negotiations between Part D sponsors, pharmacy benefit managers, and pharmacies for covered Part D drugs. Rather, Part D sponsors would be required to use the price ultimately received by the pharmacy (or other dispensing provider) as the basis for calculating beneficiary cost sharing, total drug spend, and cost reporting to CMS. The proposed definition would not require a Part D sponsor to use a particular pricing approach in its contracting agreements with PBMs. Part D sponsors could continue to use either the pass-through or lock-in pricing approach when contracting with a PBM—provided that beneficiary cost sharing, total drug spend, and the drug costs reported to CMS are based on the price ultimately received by the pharmacy, or other dispensing providers. To the extent that Part D sponsors believe that the lock-in pricing approach reduces their total costs, we indicated that we expected that they would continue to use it when contracting with a PBM.

While we did receive some comments in opposition to the proposed changes to the definition of negotiated prices, most of the comments received were in strong support of our proposals. Based on the comments received and the responses provided below, we are finalizing the revisions to the definition of ''negotiated prices'' in § 423.100 as proposed. The change to the definition of ''negotiated prices'' to include prices for covered Part D drugs negotiated between the Part D sponsor (or its intermediary contracting organization) and other network dispensing providers is effective upon the effective date of this final rule. The revision to the definition of ''negotiated prices'' to require Part D sponsors to base beneficiary cost sharing on the price paid to the pharmacy or other dispensing provider will be effective for Contract Year 2010.

Comment: Several commenters agreed with our assertion that the proposed changes to the definition of negotiated prices would increase transparency. One commenter supported the proposed change because it would improve transparency but still allow Part D sponsors to utilize the lock-in pricing approach. Another commenter indicated that the increased transparency would serve as an effective tool for helping to control prescription drug costs. Another commenter indicated that the benefits of transparency and the enhanced ability of beneficiaries to manage their benefit that would result from the proposed changes would outweigh the advantages of lock-in pricing for Part D sponsors. A commenter stated that often plan sponsors are not fully aware of the ''PBM spread.'' This commenter and other commenters recommended that we require PBMs to be compliant and fully transparent with Part D sponsors about pricing structures, rebating, formulary management incentives, marketing, and compliance requirements.

Response: We agree with commenters that the proposed revision to the definition of ''negotiated prices'' would increase transparency by ensuring that the drug prices paid to pharmacies are transparent to beneficiaries and Part D sponsors. We believe that this transparency will help Part D sponsors to better manage their drug costs and negotiate lower drug costs and administrative fees by making them fully aware of the ''PBM spread'' or ''risk premium'' which they are paying to their PBMs. This transparency will also be helpful to beneficiaries as they evaluate and choose among Part D plans. While we understand the final commenter's concern about transparency, we do not have the authority to regulate Part D sponsors' first tier, downstream and related entities to this degree. We contract with Part D sponsors, not with first tier, downstream and related entities, such as a sponsor's PBM, for the provision of the Medicare prescription drug benefit. Therefore, we do not have the direct authority to require PBMs and other intermediary contracting organizations to be fully transparent regarding their pricing structures. However, we strongly encourage Part D sponsors to include provisions in their contracts with first tier, downstream and related entities that ensure compliance with our reporting requirements and enhance transparency. We note that all plan contracts with PBMs must include provisions that allow us to review their financial statements, books, and records.

Comment: Some commenters asserted that the Medicare Part D program currently has transparency in the form of ''price transparency,'' where the prices paid by Part D sponsors are fully known to sponsors and beneficiaries and are also listed on the CMS Medicare Web site. The commenters asserted that the proposed changes to the definition of negotiated prices would instead create ''cost transparency.'' The commenters stated that there are several studies concluding that ''cost transparency'' increases prices because, when aware of one another's costs or discount agreements, competitors no longer offer special or deep discounts that are unnecessary to win the competition.

Response: We disagree. The use of lock-in prices reduces ''price transparency'' for Part D sponsors by combining the administrative fees charged by PBMs with the drug price. The proposed changes to the definition of negotiated prices would increase ''price transparency'' by ensuring that only the actual drug price is used to determine beneficiary cost sharing and report drug costs to CMS. We believe that the competitive nature of the Part D program will continue to provide incentives for Part D sponsors and their contracted PBMs to negotiate with pharmacies and other dispensing providers for lower drug prices. In addition, the revised definition of negotiated prices will provide an additional incentive for Part D sponsors

to negotiate with PBMs for lower administrative fees.

Comment: One commenter stated that under pass-through pricing, Part D sponsors have less transparency regarding their ultimate drug costs because the drug prices are not fixed. The commenter asserted that this makes it difficult for Part D sponsors to predict their drug costs, which could lead to higher risk sharing payments by the Federal government.

Response: We disagree. We do not believe that requiring Part D sponsors to develop their Part D bids and report drug costs to CMS using pass-through prices will make it significantly more difficult for Part D sponsors to predict their drug costs, such that risk sharing will be higher. In addition, Part D sponsors may take several steps to alleviate this concern, including negotiating their drug prices prior to developing their Part D bids and using the lock-in pricing approach when contracting with a PBM.

Comment: Several commenters indicated that the proposed changes to the definition of ''negotiated prices'' would achieve beneficiary cost savings. One commenter indicated that these beneficiary cost savings would ensure improved access to prescription drugs for beneficiaries. In addition, commenters stated that the proposed changes would protect beneficiaries from being prematurely advanced into the coverage gap. However, several commenters stated that elimination of the ''risk premium'' received by PBMs would not decrease out-of-pocket costs for beneficiaries. These commenters stated the ''risk premium'' provides incentives for PBMs to control costs and negotiate deep discounts on prescription drugs that are then passed on by Part D plans to beneficiaries.

Response: We agree with those commenters who believe that the proposed changes would create cost savings for beneficiaries. We believe that lock-in prices are generally higher than the prices paid to pharmacies due to the inclusion of the ''risk premium'' paid to the PBM for shielding the Part D sponsor from price variability. These higher drug prices lead to higher cost sharing for Part D beneficiaries. In addition, beneficiaries are advanced more quickly through the Part D benefit such that a greater number of beneficiaries enter the coverage gap phase where they pay 100 percent of the higher drug price. As a result, we believe that beneficiaries enrolled in Part D plans which currently utilize the lock-in pricing approach generally will experience cost savings under the proposed revision to the definition of ''negotiated prices'' that would require Part D sponsors to base negotiated prices and beneficiary cost sharing on the price paid to the pharmacy, which is generally lower than the lock-in price.

We acknowledge that the ''risk premium'' may provide an incentive for PBMs to negotiate for lower drug prices which would reduce drug costs. Under the revised definition of ''negotiated prices,'' Part D sponsors may continue to pay ''risk premiums'' to PBMs provided that the amount of these risk premiums is appropriately categorized as administrative cost and not drug cost. In addition, Part D sponsors may include other incentives in their contracts with PBMs whereby PBMs would receive higher administrative fees for better managing drug expenditures and reducing overall drug costs. We also note that the increased transparency created under the proposed changes to the definition of negotiated prices would provide Part D sponsors with information regarding administrative fees and the cost of drugs that they can use to negotiate more effectively with PBMs to further reduce the cost of providing the prescription drug benefit.

Comment: One commenter asserted that lock-in pricing is more equitable to beneficiaries than pass-through pricing because it protects beneficiaries who live in less competitive or underserved areas by providing uniform pricing to beneficiaries irrespective of where they live.

Response: While we acknowledge that the uniform pricing provided under the lock-in pricing approach may provide lower cost sharing for some beneficiaries, we believe that using lock-in prices to determine beneficiary cost sharing generally results in higher cost sharing for most beneficiaries. As a result, we believe that requiring plans to determine beneficiary cost sharing based upon the pass-through price paid to the pharmacy or other dispensing provider will reduce out-of-pocket costs for most beneficiaries and slow their advance through the initial coverage phase of the benefit.

Comment: Another commenter agreed with our assertion that Part D premiums may be lower under the lock-in pricing approach. The commenter indicated that these lower premiums result in a more robust benefit that covers more beneficiaries and therefore, results in a healthier population at an overall lower cost to the government.

Response: We agree that lower beneficiary premiums may help to encourage healthier beneficiaries to enroll in Medicare Part D. However, we do not think that it is appropriate to inflate the cost sharing paid by beneficiaries with higher drug utilization in order to reduce premiums for healthier beneficiaries. The goal of the Medicare Prescription Drug Benefit is to make prescription drugs more affordable for all Part D beneficiaries, not just those who are healthier and have lower drug utilization. The proposed revision to the definition of ''negotiated prices'' will lead to higher Part D bids and therefore, higher premiums, for Part D plans which currently utilize the lock-in pricing approach. This increase in Part D bids will increase the direct subsidy payments made by the Federal government as well as the premiums paid by beneficiaries. However, these additional costs to the Federal government would be partially offset by reductions in the low-income cost sharing and reinsurance subsidy payments made by the Federal government. A reduction in low-income cost sharing subsidy payments is expected due to lower beneficiary cost sharing. The reinsurance subsidy, which is calculated as 80 percent of allowable reinsurance costs, is expected to decrease due to lower negotiated prices and therefore, lower allowable reinsurance costs. Moreover, while the beneficiary premiums will increase for plans using the ''lock-in'' pricing methodology, cost sharing would be lower for all beneficiaries enrolled in these plans.

Comment: Some commenters indicated that they agreed with our assertion that the lock-in pricing approach currently creates an uneven playing field for Part D sponsors. They explained that generally beneficiaries tend to weigh premiums more than cost sharing so that plans utilizing the lock-in pricing approach may appear more cost effective to some beneficiaries. However, these commenters stated that, in the end, such plans cost enrollees considerably more than plans using the pass through pricing approach as a result of increased cost sharing.

Response: We agree with the commenter that plans which have lower beneficiary premiums due to the lock-in pricing approach may ultimately be more costly for beneficiaries due to higher beneficiary cost sharing. To ensure that beneficiaries have the resources necessary to assess the premiums and cost sharing of different plan options and make informed plan choices, we will continue our current outreach and education efforts, including the plan comparison information available on the plan finder.

Comment: A few commenters indicated that they would prefer that

CMS retain the current flexibility for Part D sponsors to choose either the pass-through or lock-in pricing approach, and the continued flexibility to reflect lock-in prices as part of drug costs. Commenters indicated that maintaining this flexibility would preserve the competitive nature of the Part D program.

Response: We agree that competition is an important aspect of the Part D program. We believe that this competition will be retained under our proposed approach as Part D sponsors will continue to have the incentive to negotiate for the lowest possible drug prices in order to keep their premiums low and encourage beneficiaries to enroll in their plans. We note that Part D sponsors will continue to have the option to use either pricing approach when contracting with a PBM. However, we believe that the advantages for beneficiaries under the proposed revision to the definition of ''negotiated prices'' outweigh the possible benefits Part D sponsors would receive from continuing to use the lock-in pricing approach.

Comment: One commenter asserted that Part D sponsors are fully aware of the potential that drug costs under the lock-in pricing approach include a risk premium paid to the PBM and understand the value this premium brings in reducing their drug costs.

Response: To the extent that this statement is true, we would expect Part D sponsors to continue providing this risk premium to their contracted PBMs. Even if Part D sponsors are aware that there is a potential for risk premium under the lock-in pricing approach, however, it is unlikely they know the actual amount of the risk premium they are paying if they are not made aware of the price actually paid to the pharmacy. This incomplete information makes it difficult for a Part D sponsor to fully quantify the value of paying this risk premium to a contracted PBM in the first place. The proposed revision to the definition of ''negotiated prices'' would provide Part D sponsors with the increased transparency they need to fully quantify the value of paying the risk premium. We believe that this transparency will provide Part D sponsors with the information needed to more effectively negotiate with PBMs to reduce their risk premiums as well as other administrative fees.

Comment: One commenter indicated that the proposed changes violate the non-interference requirement of the MMA at Section 1860D–11(i)(2), which prohibits CMS interference with negotiations between sponsors and manufacturers or pharmacies and the institution of a price structure for the reimbursement of covered Part D drugs.

Response: Our proposed changes to the definition of negotiated prices do not interfere with the negotiations between Part D sponsors and pharmaceutical manufacturers and pharmacies, nor do they institute a price structure for reimbursement of covered Part D drugs. While Part D sponsors will be required to use the price ultimately received by the pharmacy (or other dispensing provider) as the basis for calculating beneficiary cost sharing and reporting drug costs, Part D sponsors will not be required to use a particular pricing approach in their contractual agreements with PBMs. Part D sponsors may continue to use the pass-through or lock-in pricing approach when contracting with a PBM, provided that beneficiary cost sharing and the drug costs reported to us are based on the price ultimately received by the pharmacy or other dispensing provider.

Comment: We received a few comments indicating that the proposed changes essentially mandate a price structure because it is not feasible to compensate PBMs under the lock-in pricing approach and yet price drugs using pass-through pricing. The commenters assert that this dichotomy would require PBMs to build parallel claims adjudication modules and keep track of a parallel universe of claims.

Response: While we understand that the proposed revisions to the definition of negotiated prices may require some PBMs to implement certain system changes in order to accommodate the requirement to report the price paid to the pharmacy, it is unclear to us why this would not be feasible. Currently, PBMs that offer the lock-in pricing approach have the capacity for dual pricing as they must track both the price they paid to the pharmacy and the lock-in price they received from the Part D sponsor. The proposed changes to the definition of ''negotiated prices'' would simply change which of these two prices is reported to CMS.

Comment: Several commenters indicated that it was not Congress' intent to permit plans to charge higher prices under the lock-in pricing approach as a result of the PBM spread. We received a few comments indicating that the lack of transparency in the spread allows the intermediary to manipulate the spread amount to its advantage which ultimately works against beneficiaries. One commenter recommended that we consider requiring that Part D plans use a fiscal intermediary which will have no personal interest in what the pharmacy is paid.

Response: We agree that a lack of transparency may lead PBMs to charge plans a higher drug price under the lock-in pricing approach in order to generate greater profit for the PBM, and that these higher prices are passed on to beneficiaries and the Medicare program. We believe that the proposed changes to the definition of ''negotiated prices'' would increase transparency for Part D sponsors and enhance their ability to negotiate with PBMs for lower administrative costs by ensuring that they are informed of the actual drug price (the price paid to the pharmacy) and the administrative fees paid to the PBM. Thus, this increase in transparency could affect drug costs. However, we acknowledge that the direct subsidy paid by the Medicare program and the premiums paid by beneficiaries may be somewhat higher under the pass through pricing approach than under the lock-in approach. CMS does not have the authority to require Part D sponsors to use a specific fiscal intermediary or approach when negotiating prices and contracts with pharmacies. Furthermore, in response to the suggestion that we consider requiring Part D plans to use a fiscal intermediary with no personal interest in the amount paid to the pharmacy, we note that it may not be beneficial to the Medicare Part D program to require Part D sponsors to use fiscal intermediaries with no personal interest in the price paid to the pharmacy.

Comment: One commenter indicated that the ''PBM spread'' represents an additional profit for PBMs which will be reduced with greater transparency in pricing. However, we received a few comments which stated that the proposed changes could increase program costs for Medicare Part D by increasing Part D sponsors' administrative costs. One commenter expressed concerns that the proposed changes would require Part D sponsors to re-negotiate their contracts with PBMs. As a result of these negotiations, the commenter stated, PBMs could charge Part D sponsors higher administrative fees, which would lead to higher beneficiary premiums.

Response: While we acknowledge that the administrative fees paid by Part D sponsors to PBMs will be higher as a result of the proposed changes, we believe that when the ''risk premium'' that is currently included in drug prices under the lock-in model is taken into account, overall the administrative fees paid by Part D sponsors will not change significantly. We also believe that the increased transparency would help Part D sponsors negotiate more effectively

with PBMs. In addition, the competitive nature of the Medicare Part D program will continue to provide ample incentives for Part D sponsors to minimize their costs in order to keep their beneficiary premiums low.

Comment: Two commenters indicated that the proposed changes may not reduce costs for the Medicare Part D program, but may in fact increase costs. The commenters explained that the proposed changes would not permit PBMs to utilize all of the tools and incentives needed to provide prescription drug trend management programs, which are benefit management tools designed to keep drug costs down while maintaining and improving beneficiary health outcomes.

Response: It is unclear to us how the proposed changes to the definition of ''negotiated prices'' would prohibit PBMs from providing services to help Part D sponsors manage drug costs. The proposed changes would in no way prohibit Part D sponsors from paying PBMs for these services. To the extent that prescription drug trend management programs provide an important and valued resource for managing and reducing drug costs, CMS would expect Part D sponsors to continue paying administrative fees to PBMs for the provision of such services. The proposed changes to the definition of ''negotiated prices'' would simply ensure that Part D sponsors appropriately report these fees as administrative costs and not as drug costs.

Comment: In the preamble to the proposed rule, we explained that an argument could be made that the lock-in model is discriminatory to the extent it may favor low drug utilizers over high drug utilizers. One commenter asserted that a plan should not be considered discriminatory if it affects certain utilizers more than others. If such plans were considered discriminatory, the commenter argued, any plan type other than defined standard coverage could be considered discriminatory. The commenter stated that Congressional intent was to allow for choice in this regard. Another commenter indicated that differences in plan design and cost sharing cannot be equated with discrimination. There is no discrimination, this commenter stated, against a beneficiary because each beneficiary may make an informed plan choice with all relevant information available.

Response: We continue to believe that certain differences in plan design and cost-sharing can be discriminatory. While it is important to maintain a variety of drug plan choices in Medicare Part D, it is also important for CMS to review plan designs to ensure that they do not inappropriately discourage the enrollment of less healthy beneficiaries or high drug utilizers in certain plans in order to maintain a robust risk pool and preserve the concept of community rating in the Medicare Part D program. It is also of paramount importance for CMS to ensure that there is a level playing field so that true competition can occur that benefits all parties—the taxpayer, beneficiaries, and plans. The actuarial equivalence test for basic Part D coverage is intended to ensure that there is a level playing field between plan types. However, currently two different price bases (pass-through prices and lock-in prices) may be used when determining actuarial equivalence. Furthermore, because Part D plan sponsors that use the lock-in methodology are paying a ''risk premium'' as part of drug costs, they often can negotiate a lower administrative fee with their PBMs. As a result, these plans can submit lower bids in order to receive lower premiums. These lower bids may increase the likelihood that a plan's premium will be below the regional low-income subsidy benchmarks such that the plan will qualify for auto-enrollment and facilitated enrollment of LIS-eligible individuals. As a result, we continue to believe that providing Part D sponsors with the option to develop their Part D bids using either the pass-through approach or the lock-in approach creates an uneven playing field for Part D sponsors who utilize the pass-through pricing approach.

Comment: One commenter indicated that it was unclear why we believed that lock-in pricing would shift costs from the government to beneficiaries in the form of higher beneficiary out-of-pocket costs. The commenter explained that in their observation, the lock-in model has been the dominant pricing model in the commercial market. The ''risk premium'' allows PBMs to carry out a broad spectrum of services which favorably influence overall drug spending trends. The commenter also stated that this pricing model is preferred in the commercial market because it holds PBMs accountable for the drug costs incurred. The commenter indicated that the ''regulated transparency'' resulting from the proposed changes would be less effective in reducing drug costs than vigorous PBM competition. Another commenter indicated that the lock-in pricing approach may generate deeper discounts than the pass-through pricing approach.

Response: The use of lock-in prices to develop Part D bids shifts administrative costs that would be paid primarily by the Federal government as part of the direct subsidy to drug costs paid by beneficiaries through higher cost sharing. The proposed revision to the definition of ''negotiated prices'' would ensure that these administrative costs are not paid by beneficiaries through beneficiary cost sharing. We note that Part D sponsors will continue to have the option to utilize the lock-in pricing approach in their contracts with PBMs, provided that the pass-through price is used to determine beneficiary cost sharing and to report drug costs to CMS. To the extent that the lock-in pricing approach generates deeper discounts or reduces total drug costs, we would expect Part D sponsors to continue using this pricing approach when contracting with PBMs.

Comment: In the preamble to the proposed rule, we requested comments regarding the impact of the proposed changes on pharmacies, particularly small independent pharmacies. We received comments from several pharmacist associations as well as pharmacies. The commenters were generally very supportive of the proposed changes and noted that the proposed changes will not have a negative effect on pharmacies. One commenter indicated that lock-in pricing negatively impacts the ability of pharmacies to serve beneficiaries. Another commenter indicated that the additional transparency created by the proposed changes to the definition of ''negotiated prices'' would likely make competition more difficult for small pharmacies although these pharmacies would not be removed from Part D sponsors' networks due to CMS' pharmacy access standards. Another commenter indicated that small independent pharmacies do not tend to receive higher reimbursement rates and therefore, would not be negatively impacted by the proposed change. The commenter explained that independent pharmacies are often forced to accept whatever price is offered by the PBM. However, because of their size, chain pharmacies are often able to negotiate higher reimbursement rates. One commenter indicated that the proposed change would not have an adverse effect or increased burden on LTC pharmacies. Another commenter expressed concern that the decrease in beneficiary cost sharing resulting from the proposed changes could reduce the operational cash-flow for pharmacies. This commenter recommended developing guidance regarding prompt payment to

pharmacies to help alleviate this concern.

Response: Based on the comments received from pharmacies and pharmacists' associations, which were very supportive of the proposed changes, we have concluded that the proposed changes would not negatively impact pharmacies, including small independent pharmacies. Rather, we believe that the proposed changes will help pharmacies by reducing the administrative burden associated with tracking lock-in prices and addressing beneficiary confusion resulting from discrepancies between the pass-through price charged by the pharmacy and the lock-in price reflected on the beneficiary's EOB. With respect to the comment suggesting that CMS develop guidance regarding prompt payment to pharmacies, we note that section 171 of MIPPA establishes timely claims payment requirements for Part D plans that will become effective for plan years beginning 2010. CMS is currently developing and implementing guidance to ensure prompt payment to pharmacies.

Comment: One commenter expressed concern that Part D sponsors may believe that the proposed revisions to the definition of ''negotiated prices'' will require Part D sponsors to set negotiated prices equal to 340B prices for 340B-participating Part D network pharmacies. The commenter explained that making drugs available to non-340B patients at 340B prices will create significant losses for 340B pharmacies, which must obtain these drugs at prices above 340B levels. Therefore, the commenter asked CMS to clarify that Part D sponsors may not require 340B providers to provide 340B prices to Part D plans under § 423.104(g)(1).

Response: The proposed definition of negotiated prices does not require Part D sponsors to set negotiated prices at 340B prices for 340B-participating Part D network pharmacies. While we understand the commenter's concern that Part D plans may try to require pharmacies to make drugs available to Part D beneficiaries at 340B prices, we note that we generally do not interfere in plan-pharmacy contract negotiations or opine on the reasonableness or relevancy of specific contractual terms. Instead, we use our oversight authority to ensure that Part D sponsors abide by our rules and allow appropriate access to their pharmacy networks. A Part D sponsor offering less than satisfactory or unclear contract terms to a pharmacy would likely find it difficult to retain enough pharmacies to meet our network requirements, and would therefore be unable to renew its Medicare Part D contract. We urge pharmacies to ensure that they understand and agree with all terms of a pharmacy network contract before contracting with a Part D sponsor.

Comment: In the proposed rule, we asked for comments regarding the lack of transparency and the potential for beneficiary confusion as a result of lock-in prices. We received several comments indicating that the proposed changes to the definition of negotiated prices would create greater transparency for beneficiaries. Commenters also expressed concern that lock-in prices may lead to beneficiary confusion. One commenter explained that pharmacies are often unable to customize receipts to reflect the lock-in price. The discrepancy between the lock-in price reflected in the Explanation of Benefits (EOB) and the pharmacy price reflected on the receipt often leads to beneficiary anger and confusion. The commenter asserted that as a result of the additional time spent with beneficiaries to explain the discrepancy, pharmacies' administrative costs have increased. Other commenters stated that lock-in prices do not generate more beneficiary confusion than pass-through prices. These other commenters asserted that pass-through pricing generates greater beneficiary confusion than lock-in pricing by establishing different prices from pharmacy to pharmacy. In addition, these commenters stated that the full retail price is not usually shown on the customer receipt, rather, just the amount due from the beneficiary is shown. As a result, it is rare that the pharmacy receipt would reflect a drug price that conflicts with a lock-in price on the EOB.

Response: We acknowledge that pass-through pricing may result in different prices at different pharmacies, which could create some confusion for Part D beneficiaries. However, it is customary for different pharmacies to charge different drug prices. We believe that the use of lock-in prices may lead to more significant beneficiary confusion due to the discrepancy between the pass-through price charged by the pharmacy and the lock-in price reflected on the beneficiary's EOB. We are aware of a number of cases where beneficiaries have received pharmacy receipts which show prices that differ from the prices indicated on their EOB due to lock-in prices. We also understand the burden this discrepancy places on pharmacies that must try to address beneficiary confusion. We believe implementing the proposed changes to the definition of negotiated prices will help to alleviate this burden.

Comment: One commenter indicated that pharmacies incur significant administrative costs tracking the lock-in price collected from the beneficiary and transferring the additional amounts to the PBM. This burden is exacerbated by the fact that pharmacies are often forced to sell drugs to PBMs at prices below their acquisition cost. Another commenter indicated that the lock-in pricing approach does not require pharmacies to expend more staff resources than the pass-through pricing approach. This commenter explained that pharmacies are required to have accounting processes and the capability to conduct ongoing reconciliations under any pricing approach. Furthermore, the commenter indicated that typically pharmacies are not required to remit payments to PBMs since the amounts owed by the pharmacy are generally offset by the far greater amounts owed to the pharmacy by the PBM.

Response: We agree with the second commenter that pharmacies would not incur additional administrative costs under the lock-in pricing approach from transferring additional amounts to PBMs because generally pharmacies are required to conduct ongoing reconciliations with PBMs and plan sponsors under either pricing approach. However, we believe that pharmacies do incur additional administrative costs from tracking the lock-in price, ensuring that this is the price conveyed to the beneficiary (rather than the price actually paid to the pharmacy by the PBM), and addressing beneficiary confusion regarding the drug price. We believe that the proposed changes to the definition of ''negotiated prices'' would help alleviate some of this administrative burden for pharmacies by ensuring that beneficiary cost sharing is based on the price negotiated with the pharmacy.

Comment: Several commenters recommended that until the proposed changes are made effective in 2010, CMS should require Part D sponsors that utilize the lock-in pricing approach to indicate this policy in their marketing materials in order to create greater transparency for Part D beneficiaries. In addition, they recommended that we require Part D sponsors to inform their enrollees whenever they purchase a drug that is more highly priced because of lock-in prices, and that we require Part D sponsors to advise enrollees of their right to pay a lower cash price during all phases of the benefit.

Response: We agree with the commenters' desire to provide greater transparency for beneficiaries and believe that the changes to the

definition of ''negotiated prices'' to require the reporting of pass through prices effective in 2010 will achieve that result. However, the commenters' recommendations would require Part D sponsors using the lock-in approach to incur significant administrative costs for plan year 2009. Given that these requirements would only be applicable for one year, we do not believe that it would be worthwhile to implement the commenters' recommendations.

Comment: A commenter expressed concern that the proposed changes to the definition of ''negotiated prices'' would make calculating the negotiated price too complicated and therefore requested clarification that the negotiated price does not include post-hoc rebates, price concessions, or other adjustments to prices.

Response: Under the proposed definition of ''negotiated prices'', Part D sponsors would only apply the price concessions that they elect to pass through at the point of sale. We understand the difficulty in applying price concessions that are received after the point of sale purchase to the negotiated price at the point of sale. Part D sponsors would not be required to apply post-hoc rebates or price concessions to the negotiated price at the point of sale. Rather, these post-hoc rebates or price concessions must be reported to CMS outside the drug claim, consistent with our DIR reporting instructions, ''Medicare Part D DIR Reporting Requirements for Payment Reconciliation''.

Comment: Several commenters expressed concern that the proposed definition of negotiated prices would not prevent retail or mail order pharmacies that are wholly-owned by Part D sponsors from charging inflated drug prices under the Part D sponsors' plans. It was recommended that CMS and OIG exercise oversight over related parties to ensure that they are charging prices that are reasonable relative to the underlying drug cost.

Response: We appreciate these concerns and will continue reviewing the prices charged by pharmacies that are wholly-owned by Part D sponsors and other related parties to ensure that their prices are comparable to those offered under other Part D plans, particularly when reviewing Part D bids.

Comment: Several commenters indicated that the proposed definition fails to protect Part D beneficiaries from higher drug prices by not requiring Part D sponsors to pass through rebates and price concessions at the point of sale. They asserted that allowing Part D sponsors not to pass through rebates at the point of sale dilutes the insurance principle of the Part D program by shifting cost to the sickest beneficiaries and not giving these beneficiaries the benefit of the rebates which they generated through their higher volume of drug purchases.

Response: As stated in the January 2005 final rule (70 FR 4244), we interpret the definition of the term negotiated prices in section 1860D–2(d)(1)(B) of the Act as requiring Part D sponsors to pass through some, but not necessarily all, price concessions to Part D beneficiaries at the point of sale. Section 1860D–2(d)(1)(B) of the Act specifically requires that negotiated prices ''shall take into account negotiated price concessions, such as discounts, direct or indirect subsidies, rebates, and direct or indirect remunerations * * *'' A phrase other than ''take into account'' would have been used, had the intent been to include all price concessions in the negotiated prices made available to Part D beneficiaries at the point of sale. The plain language of this provision demonstrates Congress' intent to be permissive—that Part D sponsors are permitted to choose how much of their negotiated price concessions to pass through to Part D beneficiaries at the point of sale. Generally speaking, however, rebates and certain price concessions are determined after the point of sale purchase, making it difficult for Part D sponsors to always apply these amounts to the negotiated price at the point of sale.

Comment: One commenter recommended that we delay the implementation date for this proposed definition until 2011 in order to provide PBMs with sufficient time to adapt their information systems. This delay would especially help sponsors that wish to continue using the lock-in pricing approach. Another commenter supported the proposed effective date because it would provide sufficient time for Part D sponsors and PBMs to make any appropriate adjustments in reimbursement to pharmacies.

Response: We understand that the proposed definition may require PBMs to implement some changes in their information systems. However, we believe the effective date of 2010 will provide sufficient time for PBMs to implement any necessary systems changes.

Comment: One commenter asked whether Part D sponsors would be permitted to apply a negative adjustment to their administrative costs in cases where the lock-in price is lower than the pass-through price, rather than being higher.

Response: Part D sponsors would be permitted to adjust their administrative cost estimates appropriately for the PBM spread when developing their Part D bids. However, we note that it is unlikely that overall lock-in prices will be lower than the pass-through prices.

Comment: One commenter indicated that the proposed changes to the definition of ''negotiated prices'' would increase overall program costs, sponsors' '' administrative costs, Part D bids, and beneficiary premiums. The commenter asserted that these cost increases would defeat the purpose of the Medicare Part D program, which is to keep prescription drugs affordable for Medicare beneficiaries.

Response: The goal of the Medicare Part D program is to serve Medicare beneficiaries and make prescription drugs affordable for them. The proposed changes will generally reduce cost sharing for beneficiaries, particularly those who have high drug utilization and, as a result, are most in need of assistance in purchasing prescription medications. We also believe that the increase in Federal costs due to higher plan bids will be balanced by the reduction in costs for Medicare Part D beneficiaries.

Comment: A commenter indicated that the proposed changes to the definition of ''negotiated prices'' should apply equally to prices negotiated with network retail pharmacies and network mail order pharmacies.

Response: We agree. The proposed definition of negotiated prices does not make a distinction between network retail pharmacies and network mail order pharmacies. Thus, the revised definition of ''negotiated prices'', as implemented, would apply to all network pharmacies and other dispensing providers, including network mail order pharmacies.

Comment: One commenter recommended revising the proposed definition of negotiated prices by adding ''any'' before the term ''other network dispensing provider'' to indicate that the term ''negotiated prices'' includes prices negotiated with all network dispensing providers.

Response: We agree that negotiated prices include prices negotiated with all network dispensing providers. However, we believe that the proposed definition appropriately conveys this policy. Therefore, we do not believe that the change proposed by the commenter is necessary. Thus, we are finalizing the proposed revisions to the definition ''negotiated prices'' without modification.

4. Subpart G—Payments to Part D Plan Sponsors for Qualified Prescription Drug Coverage (Definitions and Terminology, § 423.308)

a. Actually Paid (§ 423.308)

In the proposed rule, we proposed to include language in the definition of ''actually paid'' that would codify and clarify our previous guidance, and provide that direct or indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the Part D sponsor has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes on the entire direct and indirect remuneration to the Part D sponsor. Similarly, we proposed to clarify that this definition of ''actually paid'' would apply regardless of the terms of the contract between the plan sponsor and any intermediary contracting organization.

After reviewing the comments we received regarding this proposal, which are discussed below, we are implementing the clarifications to the definition of ''actually paid'' as proposed with one change.

Comment: A commenter expressed concern that the term ''intermediary contracting organization'' as described in the preamble of the notice of proposed rulemaking is too broad. The commenter stated that the proposed rule seems to suggest that all contractors that provide administrative services to a Part D sponsor could be considered ''intermediary contracting organizations.'' Based on this interpretation of the term, the commenter stated, remuneration received by entities with which Part D sponsors have contracted for audit services, as well as pharmacies that provide administrative services such as utilization management, could be considered to contribute to DIR which must be excluded from a sponsor's allowable costs. The commenter recommended limiting the term ''intermediary contracting organization'' to only those organizations that provide administrative services, negotiate drug prices, *and* also make payments to dispensing entities on behalf of Part D sponsors.

Response: We agree with some of the concerns expressed by the commenter. It is not our intent to use the term ''intermediary contracting organization'' to refer to all organizations with which Part D sponsors may contract for administrative services. The term ''intermediary contracting organization'' encompasses any entity that contracts with a plan sponsor to perform one or both of the following functions: (1) Pay pharmacies and other dispensers of Part D drugs provided to enrollees in the Part D sponsor's plan, regardless of whether the intermediary contracting organization negotiates pharmacy contracts on behalf of the plan sponsor or on its own behalf; or (2) negotiate rebates or other price concessions with manufacturers for Part D drugs provided to enrollees in the Part D sponsor's plan, regardless of whether the intermediary contracting organization negotiates on behalf of the plan sponsor or on its own behalf. We have revised the proposed definition of ''actually paid'' to reflect this clarification. Specifically, we are removing the phrase ''for administrative services'' from the second sentence of the proposed definition of ''actually paid'' such that it now states that ''Direct and indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the Part D plan sponsor has contracted, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the Part D plan sponsor and regardless of the terms of the contract between the plan sponsor and the intermediary contracting organization''.

Comment: We received several comments in support of the proposed changes to the definition of ''actually paid.'' One commenter agreed that rebates retained by PBMs and price concessions received from manufacturers should be treated as part of the true drug cost. Another commenter expressed support for this change as a logical follow-on to our guidance in the April 2006 Call Letter on rebates retained by PBMs. Another commenter stated that the proposed clarification would reduce the overall cost of the Medicare prescription drug benefit and facilitate future efforts to reduce or eliminate the coverage gap from the Part D benefit design.

Response: We appreciate the support received for this clarification. This clarification will help to ensure that all of each sponsor's administrative costs are excluded from allowable reinsurance costs and allowable risk corridor costs as required by sections 1860D–15(b)(3) and 1860D–15(e)(1) of the Act. In addition, this clarification will preserve the competitive nature of the Part D program by ensuring a level playing field for Part D sponsors regardless of their contractual arrangements with PBMs.

Comment: A commenter requested that we delay the effective date of the proposed change until the 2010 contract year to provide Part D sponsors with sufficient time to identify any contractors, other than PBMs, that are covered by the new language in the rule and to allow them to revise their contracts accordingly.

Response: The proposed change to the definition of ''actually paid'' reflects current Part D policy regarding the reporting of rebates retained by PBMs. Therefore, we do not believe that a delay in the effective date of this clarification is warranted.

Comment: One commenter requested clarification regarding whether bona fide service fees are considered direct and indirect remuneration.

Response: All rebates, grants, settlement amounts, or other price concessions received directly or indirectly from pharmaceutical manufacturers (with the exception of bona fide service fees) are considered price concessions that serve to reduce the drug costs incurred by the Part D sponsor and, therefore, must be reported to CMS as direct and indirect remuneration (DIR). Bona fide service fees are fees paid by a manufacturer to an entity, such as a Part D sponsor or the subcontractor of a Part D sponsor, that represent fair market value for a bona fide, itemized service actually performed on behalf of the manufacturer that the manufacturer would perform (or contract for) in the absence of the service arrangement and that are not passed on, in whole or in part, to a client or customer, whether or not the entity takes title to the drug. As a result, bona fide service fees do not reduce the drug costs incurred by the Part D sponsor and therefore, are not considered DIR.

Comment: A commenter recommended changing the definition of ''actually paid'' to reflect the fact that PBMs are actually a source of remuneration.

Response: We disagree with this recommendation. While Part D sponsors may in fact receive remuneration from a PBM, we do not think that it is necessary to revise the definition of ''actually paid'' to reflect this. The definition of ''actually paid'' already indicates that Part D sponsors may receive remuneration from any source.

Comment: One commenter stated that it is widely believed that PBMs collect more in rebates than they report. The commenter stated that PBM-retained rebates may provide incentives for less cost-effective drugs to be placed on preferred formulary lists. This works against both beneficiaries and plan sponsors by increasing their drug costs.

Response: We agree with the commenter that the additional transparency created by the proposed changes to the definition of ''actually paid'' would allow Part D sponsors to better identify the most cost effective drugs for inclusion on preferred formulary lists. By providing Part D sponsors with additional cost information, the additional transparency will help Part D sponsors in their negotiations with manufacturers and PBMs.

Comment: A commenter asked that we limit the proposed definition of ''actually paid'' so that it would only apply to basic Part D coverage and not to enhanced alternative benefits.

Response: We disagree with this request. The definition of ''actually paid'' must be applied uniformly across the Part D benefit to ensure the accurate and consistent reporting of drug costs for Medicare Part D.

Comment: A commenter asked for clarification regarding the appropriate classification of rebates retained by a PBM.

Response: Rebates received from a manufacturer, whether directly or indirectly through a PBM, are price concessions that reduce the drug costs incurred by the Part D sponsor and therefore, are considered direct and indirect remuneration (DIR). To the extent that rebates are retained by a PBM, the dollar amount retained by the PBM represents an administrative fee which the Part D sponsor has paid to the PBM. Thus, the Part D sponsor essentially uses the remuneration from the manufacturer that the PBM retains to pay a portion of the Part D plan's administrative costs. As a result, when developing Part D bids, Part D sponsors should report this amount as an administrative cost.

Comment: A commenter stated that manufacturer rebates negotiated and earned by a PBM are not earned or received by the plan sponsor. The commenter stated that the proposed definition of ''actually paid'' is too narrow in that it defines ''price concessions'' to include amounts, such as PBM-retained rebates, that the plan neither receives nor is entitled to receive, and therefore, cannot properly be viewed as reducing the amount the plan ''actually paid'' for drug costs. Thus, the commenter stated, the proposed changes are inconsistent with the statute and are beyond the scope of authority granted by Congress. The commenter concluded that Congress did not authorize CMS to force a Part D plan to account for rebates earned by a third-party intermediary.

Response: We do not agree. While sponsors may not directly receive such remuneration from the manufacturer, sponsors do receive the amount indirectly through reduced administrative costs. Congress requires CMS to exclude all rebates from allowable costs, including those rebates that are received indirectly. *See* sections 1860D–15(b)(2) and 1860D–15(e)(1) of the Act. Similarly, we are also required to exclude administrative costs from allowable costs. *See* sections 1860D–15(b)(3) and 1860D–15(e)(1) of the Act. Thus, in order to calculate accurately the costs ''actually paid'' by a plan, the costs incurred by a plan must be adjusted to reflect any rebates retained by an intermediary in exchange for reduced administrative costs.

b. Administrative Costs (§ 423.308)

In the May 16, 2008 proposed rule, we proposed adding a definition for the term ''administrative costs'' in order to clarify what costs we consider ''administrative'' as well as to provide additional transparency to Part D plan pricing. We proposed to define ''administrative costs'' as the Part D sponsor's costs other than those costs incurred to purchase or reimburse the purchase of Part D drugs under the Part D plan. Any costs incurred by Part D plans on drug claims that differ from the price charged by a dispensing entity for covered Part D drugs would be included in the definition of ''administrative costs.'' We received several comments on this proposed definition. However, most of the comments received (including those opposed to the proposed definition) and our responses to them are discussed in the Negotiated Prices section of this final rule, as the policies are closely related. Comments that are related solely to the proposed definition of ''administrative costs'' are summarized below along with our responses. While we did receive some comments in opposition to the proposed definition (see below), several of the comments received were in support of the proposed definition. For the reasons discussed in the preamble to the proposed rule and in our responses to comments, we continue to believe that in order to ensure a level playing field for all Part D plan sponsors, the administrative costs reported by Part D plan must include any risk premium that is paid to an intermediary contracting organization. Therefore, we are implementing the new definition of ''administrative costs'' as proposed, to be effective for Part D contract year 2010.

Comment: We received several comments in support of adding the proposed definition for the term ''administrative costs''. One commenter agreed with our assertion that the proposed definition would create transparency and reduce beneficiary cost sharing. Another commenter expressed support for including the difference between the lock-in price and the price paid to the pharmacy in administrative costs, provided that CMS allowed Part D sponsors to continue using the lock-in pricing approach when contracting with a PBM.

Response: We agree that the proposed definition of ''administrative costs'' would increase transparency and reduce beneficiary cost sharing by requiring Part D plan sponsors to report the difference between the lock-in price paid to the PBM and the price paid to the dispensing pharmacy as an ''administrative cost.'' Thus, beneficiary cost sharing and reinsurance and risk sharing payments by the Federal government under the Medicare Part D program will be computed based solely upon actual drug costs. As we stated in the discussion of ''Negotiated Prices'' above and in the proposed rule, Part D sponsors may continue to use the lock-in pricing approach when contracting with a PBM provided that the price paid to the pharmacy or other dispensing provider is used to develop the Part D bid, determine beneficiary cost sharing, and report drug costs to CMS. We appreciate the support received for this clarification.

Comment: One commenter expressed concern that certain aspects of the proposed definition of ''administrative costs'' are ambiguous and overly broad. Specifically, the commenter asked that we define the term ''drug costs'' in the regulations and clarify whether dispensing fees would constitute ''administrative costs'' under the proposed definition. The commenter also requested clarification regarding whether there are any other categories of Part D costs, other than ''drug costs'' and ''administrative costs''.

Response: ''Drug costs'' consist of the ingredient cost, dispensing fee, and sales tax paid to a pharmacy or other dispensing provider for a prescription drug. We do not believe that it is necessary to include a definition for the term ''drug costs'' in the regulation at this time, as the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' already provide sufficient context for this term. Since dispensing fees are already considered drug costs under these definitions, such amounts are not considered ''administrative costs''. Any cost incurred by a Part D sponsor under the Medicare Part D program which does not represent ''gross covered prescription drug cost'' incurred by the sponsor to purchase or reimburse the purchase of Part D drugs is considered an ''administrative cost''. Therefore, there is currently no additional category of Part D costs.

Comment: One commenter expressed concern that the proposed definition could lead Part D sponsors to reduce their administrative costs and Medication Therapy Management (MTM). The commenter stated that the proposed definition would shift the ''PBM spread'' (the difference between the lock-in price and the price received by the pharmacy) from drug cost to administrative cost. This change would potentially increase the Part D bids for sponsors who utilize the lock-in pricing approach. The commenter stated that Part D sponsors may elect to reduce their MTM services in order to keep their Part D premiums competitive. The commenter asked that we remind Part D sponsors of MTM program requirements.

Response: We appreciate the concerns expressed by the commenter. The proposed definition may increase Part D bids for sponsors who utilize the lock-in pricing approach by shifting the ''PBM spread'' from drug cost to administrative cost. However, these potential increases may be offset partially by reductions in Part D sponsors' costs due to sponsors negotiating lower drug prices and administrative costs as a result of increased transparency. Furthermore, the proposed change is necessary in order to ensure that these administrative costs are not included in sponsors' allowable reinsurance and risk corridor costs as required by sections 1860D–15(b)(3) and 1860D–15(e)(1) of the Act. We note that the proposed definition does not change the MTM program requirements in any way. Part D sponsors must continue to comply with the MTM program requirements.

Comment: A commenter indicated that the proposed definition of ''administrative costs'' inappropriately includes the PBM spread as an administrative cost. The commenter asserted that the cost to purchase drugs (versus paying for a service) is a drug cost, regardless of from whom the drug is purchased. Generally, the commenter stated, the profit retained by the seller is not considered an administrative cost but rather a part of the drug cost. The commenter explained that regardless of whether PBMs actually take title to prescription drugs, they incur many of the risks of ownership of these drugs. Their role in the supply chain cannot be considered merely ''administrative'' in nature. The commenter indicated that the profit retained by the PBM should be considered a drug cost, just as the profit retained by pharmacies and wholesalers is considered a part of the Part D sponsor's drug cost.

Response: We disagree. The PBM spread represents an amount paid by Part D sponsors to PBMs as a service fee for negotiating prices on behalf of the Part D sponsor or providing other administrative services, and thus represents an administrative cost and not a drug cost paid to a seller.

c. Gross Covered Prescription Drug Costs and Allowable Risk Corridor Costs (§ 423.308)

We proposed revising the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' to establish that the amount received by the dispensing pharmacy or other dispensing provider (whether directly or through an intermediate contracting organization) and not the amount paid by the Part D sponsor to the PBM, is the basis for determining the drug costs that must be reported to CMS. This change will ensure that all administrative costs incurred by Part D sponsors, including the ''risk premium'' paid to PBMs to mitigate market risk around the cost of drugs, are excluded from the drug costs used to determine reinsurance and risk sharing payments. In addition, we proposed revising the definition of ''gross covered prescription drug costs'' to clarify that when a beneficiary is responsible for 100 percent of the cost for a covered Part D drug (as in any applicable deductible or coverage gap of a basic plan), and the beneficiary obtains that covered Part D drug at a network pharmacy for a price below the plan's negotiated price, the beneficiary's out-of-pocket costs that are considered ''incurred costs'' for covered Part D drugs count toward both TrOOP and total drug spend.

We received several comments in support of the proposed changes to the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs.'' In addition, we received some comments which opposed the proposed changes. Most of the comments received also included comments on our related proposal regarding the definition of ''negotiated prices'', and, as a result, these comments and our responses to them are discussed in the Negotiated Prices section of this final rule. Comments that relate solely to the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' are summarized below along with our responses. Based on our review of all of the comments received on this issue, we are implementing the changes to the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' as they appeared in the May 2008 proposed rule to be effective for Part D contract year 2010.

Comment: We received several comments in support of the proposed changes to the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs.'' These commenters indicated that the revised definitions along with the revised definition of ''negotiated prices'' would increase transparency and decrease beneficiary cost sharing.

Response: We appreciate the comments received in support of the proposed changes. We agree that the proposed changes to the definitions of ''gross covered prescription drug costs'' and ''allowable risk corridor costs'' would increase transparency by ensuring that CMS and Part D sponsors are aware of actual Part D drug costs. In addition, Part D sponsors would be made aware of the administrative fees which they pay to their PBMs as part of the ''risk premium''.

Comment: Two commenters recommended that CMS take additional actions to improve transparency and ensure that the appropriate drug costs are reported to CMS. Specifically, one commenter suggested that CMS require Part D sponsors to identify hidden fees which are taken back from pharmacies by PBMs during check cycle payments, such as transaction fees and pharmacy network fees. Another commenter expressed continued concern that the proposed changes may require Part D sponsors that utilize the lock-in pricing approach to depend on information traditionally held exclusively by PBMs. This commenter urged CMS to work with Part D sponsors to ensure compliance from PBMs. One commenter recommended that CMS sample

pharmacy payments and compare them to the prices reported by PBMs on the PDE records to ensure that PBMs are accurately reporting the pass-through price paid to the pharmacy and not the lock-in price.

Response: We will consider what further changes may be necessary to address concerns regarding transparency in the Medicare Prescription Drug Benefit. In addition, we will continue to provide information regarding the appropriate amounts to include in the reporting of drug costs and direct and indirect remuneration (DIR) in subregulatory guidance, such as the Medicare Part D DIR Reporting Requirements for Payment Reconciliation, and the Prescription Drug Event Data Training Participant's Guide. We currently conduct audits of plans' PDE data to ensure that drug costs are accurately reported to us. In the future, these audits will help us to identify discrepancies between the amount paid to the pharmacy and the drug costs reported on the PDE records. We will determine the appropriate corrective actions or penalties for Part D sponsors in cases where inaccurate or incorrect data have been provided. As indicated in the proposed rule, however, we contract with Part D sponsors, not with sponsors' first tier, downstream and related entity(ies), for the provision of the Medicare prescription drug benefit. Under § 423.505(i)(4)(ii), a Part D sponsor is required to include in its contract with downstream contractors and related entities a provision that either revokes the delegation of a Part D reporting responsibility or specifies other remedies if either CMS or the Part D sponsor determines that the downstream contractor or related entity has not performed satisfactorily. CMS may seek revocation of a delegation of the reporting responsibility or any other remedy provided for in the contract between the Part D sponsor and the PBM for non-compliance with delegated reporting responsibilities.

Nevertheless, the Part D sponsor has ultimate responsibility for compliance with the terms of its contract with us, including reporting accurate Part D data. While we will continue to work with Part D sponsors to ensure that the data submitted to us is accurate, we reiterate that Part D sponsors that choose to contract with a PBM or any other third party administrator must take steps necessary to ensure that the data submitted to us on their behalf is accurate and timely.

In the May 16, 2008 proposed rule (73 FR 28571), we also noted that § 423.308 includes a definition of the term ''target amount.'' Due to a technical formatting error, this definition appears to be the second paragraph of the definition of ''gross covered prescription drug costs.'' To clarify that the definition of ''target amount'' is not a component of the definition of ''gross covered prescription drug costs'', but is a separate definition of a different term, we proposed to revise the current discussion of ''target amount'' and to provide an amendatory instruction to add the definition in § 423.308. We also proposed to make technical edits to this definition to ensure that the structure of the definition is similar to that of other definitions in this section. We proposed no substantive changes to the definition.

We received no comments on the proposed technical edits to the definition of ''target amount.'' Therefore, we are finalizing the technical edits to this definition as proposed.

5. Subpart R: Payments to Sponsors of Retiree Prescription Drug Programs (Definitions, § 423.882)

We proposed to make the following additions and revisions to regulations at § 423.882 governing the retiree drug subsidy (RDS) program in order to be consistent with the corresponding existing and proposed Part D definitions under § 423.100 and § 423.308. The proposed definitions under § 423.882 included codification of some of our existing guidance for the RDS program.

a. Actually Paid

We proposed to add this definition to the RDS regulations in order to mirror the proposed revised Part D definition under § 423.308, with the exception of technical changes and clarifications to reflect its application to the RDS program. Specifically, we proposed to define actually paid to mean that the costs must be actually incurred by the qualified retiree prescription drug plan (and/or the qualifying covered retiree) and must be net of any direct or indirect remuneration from any source (including manufacturers, pharmacies, qualifying covered retirees, or any other person) that would serve to decrease the costs incurred under the qualified retiree prescription drug plan. Similarly, we also proposed including language in this definition that would provide that direct or indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the sponsor of the qualified retiree prescription drug plan has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the sponsor of the qualified retiree prescription drug plan. Similarly, we clarified that this definition of actually paid applies regardless of the terms of the contract between the sponsor of the qualified retiree prescription drug plan and any intermediary contracting organization.

b. Administrative Costs

We proposed to add this definition to the RDS regulations in order to mirror the proposed revised Part D definition under § 423.308, with the exception of minimal changes to reflect the RDS terminology. Specifically, we proposed to define administrative costs to mean costs incurred by a qualified retiree prescription drug plan that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs and that differ from the amount paid by or on behalf of the plan to a pharmacy or other entity that is the final dispenser of the drug. Similarly, we proposed to include language in this definition that any profit or loss retained by the intermediary contracting organization (through discounts, rebates, or other direct or indirect price concessions) when negotiating prices with dispensing entities is considered an administrative cost.

c. Allowable Retiree Costs

We proposed to make changes to the existing RDS definition of allowable retiree costs to mirror the relevant portions of the existing Part D definition of ''allowable reinsurance costs'' under § 423.308. Specifically, we proposed to revise the definition of allowable retiree costs under § 423.882 by clarifying that allowable retiree costs are the subset of gross covered retiree plan-related prescription drug costs actually paid by the qualified retiree prescription drug plan or by or on behalf of a qualifying covered retiree.

d. Gross Covered Retiree Plan-Related Prescription Drug Costs

We proposed to revise the existing definition of ''gross covered retiree plan-related prescription drug costs'' (or ''gross retiree costs'') to mirror the proposed Part D definition of ''gross covered prescription drug costs'' under § 423.308, with the exception of minimal changes to reflect the RDS terminology. Specifically, we proposed

to revise our RDS program definition of gross retiree costs to clarify that these costs equate to the sum of the negotiated prices (as defined in the definition) actually paid by the qualified retiree prescription drug plan (and/or qualifying covered retirees) and received by the dispensing pharmacy (or other dispensing entity), or received by other entities pursuant to the plan's coordination of benefits (COB) activities. As with our existing definition of gross retiree costs, our proposed definition excluded administrative costs from gross retiree costs.

e. Negotiated Prices

We proposed to add this definition to the RDS regulations in order to mirror the Part D definition of negotiated prices under § 423.100, with the exception of minimal changes to reflect RDS terminology. Specifically, we proposed to define negotiated prices for Part D drugs as the prices that the qualified retiree prescription drug plan (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount such network entity will receive, in total, for a particular drug, net of discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remuneration that the qualified retiree prescription drug plan has elected to pass through to qualifying covered retirees at the point of sale. Similarly, we proposed that negotiated prices include any dispensing fees.

Under the foregoing proposed definitions, payments made to RDS plan sponsors of qualified retiree prescription drug plans (or ''RDS sponsors'') would be reported based upon ''pass-through'' prices and not the ''lock-in'' prices that the RDS plan sponsor pays to a PBM or other intermediary contracting organization.

Comment: Two commenters supported the requirement to report negotiated (that is, pass-through) prices for purposes of the RDS program (''negotiated price policy''). Two other commenters objected to extending this negotiated price policy to the RDS program. One of these latter commenters contended that mandating that costs be reported only based on pass-through pricing could cause RDS sponsors to leave the RDS program and place their retirees in the Medicare Part D program. The other commenter objecting to applying the negotiated price policy to the RDS program predicted that doing so would likely result in employers and unions dropping retiree health coverage of drugs altogether. One of these commenters noted that large employers constitute a majority of RDS sponsors, and that they are sophisticated purchasers with a great amount of leverage, and are in the best negotiating position to decide which pricing structure is most appropriate for them. The other commenter reported that such large employers have been using the lock-in approach for many years. Both of these commenters also believed that many employers seek to keep health benefits the same for active employees and retirees, and that requiring reporting based on pass-through prices only would effectively be imposing this one model on active employee plans as well.

Response: As stated in the preamble to the proposed rule (73 FR 28571), the rule requiring reporting based on pass-through costs was proposed for RDS sponsors for many of the same policy considerations that underlie our revisions to the Part D definitions of ''negotiated prices,'' ''administrative costs'', ''allowable risk corridor costs'', and ''gross prescription drug costs''. Specifically, the RDS payment is calculated based on allowable retiree costs, which in turn are a subset of gross retiree costs. The statute requires us to exclude administrative costs from the calculation of gross covered retiree plan-related prescription drug costs. Subsidizing the portion of the lock-in price that as a practical matter amounts to an administrative cost paid to the PBM or intermediary contracting organization would therefore arguably be inconsistent with the statutory requirement to exclude administrative costs from the calculation of gross covered retiree plan-related prescription drug costs.

However, we share the commenters' concern about the possible impact of applying the Part D negotiated price policy to the RDS program, particularly about the possibility that this could cause employers currently participating in the RDS program to either move their retirees to Part D, or drop coverage altogether. In response to these and other concerns expressed by commenters discussed below, we are considering the question of whether we have the statutory discretion to adopt a different policy for the RDS program than the policy we are finalizing in this final rule for the Part D program, and are hereby re-opening the comment period with respect to our proposal to apply this Part D negotiated price policy to the RDS program. Specifically, we are inviting comments on the question of whether we have discretion under the statute to retain the current policy for the RDS program (that is, reporting of lock-in or pass-through prices) while adopting the new negotiated price policy being finalized in this final rule for the Part D program. We discuss three possible legal theories below that, if one or more are found to be valid, would provide us with discretion to maintain the status quo under the RDS program, while making the changes made in this final rule to the Part D program. We accordingly are deferring a final decision on our proposal to apply the new Part D policy to the RDS program pending the outcome of our consideration of comments we receive on our legal authority.

We specifically invite comment from the public on the following three legal theories under which it might be argued that we have discretion to adopt a different policy for RDS than for Part D with respect to the way drug costs are reported:

(1) Legal Theory 1: Interpretation of ''Actually Paid''

The first legal theory on which we invite public comment is the argument that we could interpret ''actually paid,'' as used in the RDS statutory definition of ''allowable retiree costs'' at section 1860D–22(a)(3)(C)(i) of the Act, to exclude any difference between the lock-in and pass-through amount, so that either the lock-in or the pass-through amount can be reported. The RDS subsidy payment is paid based on ''the portion of the retiree's gross covered retiree plan-related prescription drug costs'' that exceeds a specified cost threshold amount and does not exceed a specified cost limit amount for a given year. The actual payment is ''an amount equal to 28 percent of the allowable retiree costs * * * attributable to such gross covered prescription drug costs.'' section 1860D–22(a)(3)(A) of the Act.

The statute defines ''gross covered retiree plan-related prescription drug costs'' as ''the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of part D drugs. * * *'' *Id.* at subsection (a)(3)(C)(ii). The statute defines the term ''allowable retiree costs'' to mean ''with respect to gross covered prescription drug costs under a qualified retiree prescription drug plan by a plan sponsor, the part of such costs that are actually paid (net of discounts, chargebacks, and average percentage rebates) by the sponsor. * * *'' *Id.* at subsection (a)(3)(C)(i). While section 1860D–22 of the Act does not itself define the term ''gross covered prescription drug costs,'' this term is defined in section 1860D–15 of the Act, however, which describes subsidy payments to Part D plan sponsors. For

purposes of that section, ''gross covered prescription drug costs'' are defined as ''the costs incurred under the plan, not including administrative costs, but including costs directly related to the dispensing of covered part D drugs. * * *'' section 1860D–15(b)(3) of the Act.

Under the legal theory upon which we are inviting comment, it would be argued that when an RDS plan sponsor makes a payment to an entity (such as a PBM) that includes amounts for Part D drug ingredient and dispensing costs and amounts to manage the sponsor's drug benefit plan, the amount of that payment is the ''costs that are actually paid * * * by the sponsor'' for purposes of calculating the subsidy. Under this argument, we would not need to look behind the payment to the PBM to determine how the cost of drugs was determined under the arrangement; rather, it would be sufficient for CMS to calculate the subsidy payment based upon the RDS plan sponsor's payment to the PBM, excluding discounts, chargebacks and average percentage rebates. Under this approach, RDS plan sponsors would be able to use either the ''lock-in'' or ''pass-through'' price for reporting drug costs for purposes of subsidy payments.

A potential problem with this theory is that it arguably reads out of the statute the phrase ''for the portion of the retiree's gross covered retiree plan-related prescription drug costs.'' As noted, the definition of ''gross covered retiree plan-related prescription drug costs'' makes clear that such costs do not include administrative costs, and the ''lock-in'' price may well effectively include administrative costs, since any difference between that amount and the negotiated amount could be retained to cover administrative expenses.

(2) Legal Theory 2: Prohibition on Interference With Benefit Design of Retiree Drug Coverage

The second legal theory on which we invite public comment is the argument that the RDS statute prohibits CMS from interfering in the benefit design of retiree drug coverage, and that, as suggested by a commenter below, requiring use of the ''pass-through'' methodology to report drug costs would interfere with the benefit design of qualified retiree prescription drug plans.

Section 1860D–22(a)(6) of the Act provides a rule of construction for interpreting the RDS section of the statute. Subparagraph (D) of that section provides that ''[n]othing in this section shall be construed as * * * preventing employers to provide for flexibility in benefit design * * * so long as the actuarial equivalence requirement * * * is met.'' It has been suggested by a commenter (see comment below) that a CMS mandate that an RDS plan sponsor report drug costs using the ''pass-through'' methodology interferes with the ability of employers ''to provide for flexibility in benefit design'' of an RDS plan. Under this argument, requiring reporting of the ''pass-through'' price would be administratively burdensome, create an incentive for employers to redesign their RDS plans and their contractual arrangements with PBMs, and perhaps encourage employers to opt out of the RDS Program entirely.

This argument rests on the assumption that—(1) Contractual arrangements between an RDS plan sponsor and a PBM are ''benefit design[s]''; and (2) requiring an RDS plan sponsor to report the ''pass-through'' price for purposes of the subsidy would ''prevent'' employers from providing flexibility in those benefit designs. Again, there is a potential problem with this legal theory. Arguably, section 1860D–22(a)(6)(D) of the Act is most reasonably interpreted to prohibit CMS from mandating a certain benefit package in retiree drug plans, and not to prohibit CMS from mandating requirements that relate only to reporting costs to CMS. The context of the rule of construction in paragraph (6) suggests that Congress was concerned only that CMS not restrict the ability of RDS-covered individuals to enroll in part D; of having their part D premiums paid by an RDS plan sponsor; or from receiving coverage that is more generous than part D. All of these things relate to the benefit design of a retiree drug plan itself, and not to the relationships between an RDS plan sponsor and a contracting partner. Further, even if such contractual relationships could be construed as ''benefit design[s],'' by requiring RDS plan sponsors to report the ''pass-through'' price for drug costs, we arguably would not be preventing RDS plan sponsors from adopting any particular contractual relationship with intermediaries. RDS plan sponsors would still be able to use either the ''lock-in'' or ''pass-through'' arrangement with PBMs, however, they would be required to report the ''pass-through'' price for purposes of subsidy payments.

(3) Legal Theory 3: Change in Interpretation of Waiver Authority

The third legal theory on which we are inviting public comment would involve a change in our interpretation of waiver authority in section 1860D–22(b) of the Act, and the use of that authority to modify requirements for RDS plan sponsors. If we were to adopt this theory, we would need to do so through notice and comment rulemaking, as it would change the interpretation of section 1860D–22(b) of the Act that is set forth in current regulations.

The waiver authority in section 1860D–22(b) of the Act appears in a section of the Act that is otherwise devoted entirely to provisions that apply to the RDS program. In this context, section 1860D–22(b) of the Act provides that employer group waiver provisions in section 1857(i) of the Act (Medicare Part C) ''shall apply with respect to *prescription drug plans* in relation to employment based retiree health coverage in a manner similar to the manner in which they apply to an MA- plan in relation to employers. * * *'' (Emphasis added.) It is noteworthy that this subsection uses the term ''prescription drug plans'' rather than ''qualified retiree prescription drug plans,'' since section 1860D–41(a)(8) of the Act defines ''prescription drug plan'' as a plan offered ''under a policy contract or plan that has been approved under section 1860D–11(e)'' and ''by a PDP sponsor pursuant to, and in accordance with, a contract between the Secretary and the sponsor under section 1860D–12(b).'' This clearly describes a Part D plan, not an RDS plan, that is, a qualified retiree prescription drug plan (QRPDP).

Under ordinary principles of statutory construction, when a term is defined in statute, that definition applies when the same statute employs that term. However, given the fact that this waiver authority appears in a section otherwise devoted to the RDS program, and that the term ''qualified retiree prescription drug plan'' includes the three words, ''prescription drug plan,'' an argument might be made as a matter of statutory construction that in this case the term ''prescription drug plan'' was intended to encompass both a Part D ''prescription drug plan'' and a qualified retiree ''prescription drug plan'' (that is, this waiver authority extends both to PDPs and QRPDPs), as long as the plan is offered ''in relation to employment-based retiree health coverage'' in either case.

As noted above, however, we have already interpreted the waiver authority in section 1860D–22(b) of the Act as applying only to Part D prescription drug plans. The employer group waiver authority in section 1860D–22(b) of the Act is set forth in regulation in § 423.458 of Subpart J, which governs PDPs and MA–PDs, rather than subpart R, which governs QRPDPs under the

RDS program. The final rule preamble discussion of Subpart J states that, for purposes of the discussion that follows in Subpart J, the term ''employer sponsored group prescription drug plan'' means ''a prescription drug plan under a contract between a PDP sponsor or MA organization offering an MA–PD plan and employers, labor organizations, or the trustees of funds established by one or more employers or labor organizations (or combination thereof) to furnish prescription drug benefits under employment based retiree health coverage.'' (See the January 28, 2005 final rule (70 FR 4320)). In other words, the preamble expressly states in its discussion of ''terminology'' that when we use the term ''employer sponsored group prescription drug plan,'' it is referring to a PDP or MA–PD, and not to a QRPDP under the RDS program.

In the discussion of the regulatory provision implementing the waiver authority in section 1860D–22(b) of the Act specifically, the preamble expressly states that ''[s]ection 1860D–22(b) of the Act extends the waiver authority that is provided for MA organizations related to Part C under section 1857(i) of the Act * * * *to prescription drug plans.*'' (Emphasis added.) (See the January 28, 2005 final rule (70 FR 4323).) The next sentence states that ''[t]his waiver authority is intended to provide employment-based retiree health coverage an opportunity to furnish prescription drug benefits to its participants or beneficiaries *through Part D* in the most efficient and effective manner possible.'' *Id.* (emphasis added). Part D and the RDS program are mutually exclusive. An employer may either offer drug coverage through Part D, or receive an RDS payment for coverage it offers independent of Part D, but may not do both in the case of the same Medicare beneficiaries. We also discuss in the preamble only a ''process'' for ''authorizing waivers for *employer sponsored prescription drug plans.*'' *Id.* (emphasis added). As noted above, this term was defined in the preamble as limited to a PDP or MA–PD.

Finally, § 423.454, defines an ''Employer-sponsored group prescription drug plan'' as a plan ''approved by CMS as a prescription drug plan'' (a PDP). Section 423.458(c) specifically provides only for waiving provisions that hinder the design or offering of, or enrollment in, an ''employer-sponsored group prescription drug plan.'' Thus, we believe that the current regulations unambiguously construe the authority in section 1860D–22(b) of the Act as applying only to PDPs and MA–PDs, and not to QRPDPs participating in the RDS program. As a result, if after considering public comments we wished to adopt the interpretation of section 1860D–22(b) of the Act discussed above, we would need to do so through notice and comment rulemaking. In order to preserve our option of implementing this third legal theory, today's **Federal Register** also contains a separate notice of proposed rulemaking seeking public comment as to whether we should adopt the change in our interpretation of section 1860D–22(b) set forth above.

Comment: In objecting to the proposed requirement that RDS sponsors report drug prices by using the pass-through method, one commenter stated: ''As a threshold matter, we do not believe that the administration and operation of drug programs offered in the commercial market are subject to CMS' purview.'' The commenter believes that among the objectives of the RDS program is to allow RDS sponsors flexibility and the ability to maintain their current plan designs (provided the plan is actuarially equivalent to standard Medicare Part D coverage).

Response: We agree with the commenter that among the objectives of the RDS program is to allow RDS sponsors flexibility and the ability to maintain their current plan designs, and share the commenter's concern that requiring reporting on a ''pass-through'' basis could result in sponsors believing that they have to change existing arrangements or possibly leaving the RDS program. As discussed above, for this reason we are exploring the issue of whether we have statutory authority to allow RDS sponsors to continue to report either on a lock-in or pass-through basis, and are specifically inviting comment on whether the rule of construction in section 1860D–22(a)(6)(D) of the Act could be interpreted to allow us to not mandate the Part D negotiated price policy for the RDS program, under the theory that doing so would inhibit employer flexibility in violation of section 1860D–22(a)(6)(D) of the Act, as suggested by the commenter.

Comment: One commenter suggested that RDS sponsors should have at least 1 year lead time for implementation of any changes to the RDS program, while another commenter suggested that CMS grandfather any pre-existing contractual relationships that utilize the ''lock-in'' pricing method until they are renegotiated after the rule becomes effective. Another commenter urged that the ''pass through'' reporting provisions of the proposed rule, as they apply to the RDS Program, not apply to plan years that begin before January 1, 2011. ''This will allow plans [presumably insurers] * * * to become familiar with and renegotiate their commercial business insurance contracts with PBMs so that they can submit the required data.'' This commenter stated that ''Plans and their respective employers will need time to make the necessary revisions to these business relationships.''

Response: We acknowledge that entities such as RDS sponsors and insurers may need to change the terms of their contracts with PBMs to accommodate the pass-through reporting requirement. As discussed, we are deferring finalizing the Part D negotiated price policy for RDS, so no such changes will have to be made in the short term.

Comment: A commenter supported all the proposed revisions to the RDS provisions of the regulations, including the provisions on reporting rebates retained by a PBM or other intermediary contracting organization.

Response: While we appreciate the commenter's support for our proposal, as noted above, we share concerns expressed by other commenters about the possible implications of applying the Part D policies in question to the RDS program, and are considering whether we have the statutory discretion to adopt a different approach for the RDS program than that adopted in this final rule for the Part D program.

Comment: A commenter objected to the definition of ''actually paid'' in the proposed regulations. Specifically, the commenter objected to the fact that the definition states that this amount is net of any direct or indirect remuneration obtained by an intermediary contracting organization with which the RDS sponsor has contracted for administrative services, regardless of whether the intermediary contracting organization retains all or a portion of the direct or indirect remuneration or passes it along to the RDS sponsor, and regardless of the terms of the contract between the RDS sponsor and the intermediary contracting organization. The commenter stated that the requirement for the RDS sponsor to report retained direct or indirect remuneration should not apply in instances where the intermediary contracting organization negotiates such remuneration (or price concessions) on its own behalf, and not on behalf of the RDS sponsor. In such cases, the commenter states, the RDS sponsor has no rights in, or to, the price concessions, and only has a right to any price concessions the intermediary contracting organization agrees to

provide the RDS sponsor in its contract with the sponsor. The commenter states that ''CMS assumes that the rebates and other price concessions received by an intermediary organization reduce the plan's drug costs''. (Emphasis in original.)

Response: We believe that the policy on retained rebates and the policy on negotiated price are linked, and that the same approach should be applied in both cases. In both cases, the policy does not recognize the structure of the arrangements made between the parties, and requires that costs be reported as if a different arrangement were in place. In both cases, amounts available to a third party (in the difference between the negotiated price and lock-in price in one case, and the difference between the total rebate and the amount passed on in the other) are treated as administrative costs when there are arguments that the amounts are different in nature and CMS should not require that they be treated as administrative fees. Also in both cases, there is a question as to whether CMS has the discretion under the statute to adopt one rule for Part D and another for the RDS program.

We believe that the three legal theories discussed above in connection with negotiated price could also have applicability to the issue of rebate amounts that are retained and not directly passed on to a sponsor. We therefore invite comment on whether these arguments would provide CMS with the discretion to adopt a different rule for RDS than for Part D with respect to retained rebate amounts, and if so whether we should do so. As in the case of the negotiated price policy, we will defer our adoption of the Part D retained rebate policy in the RDS regulations pending our consideration of these comments. Again, this will require changes to the proposed regulations text that ensure that the regulatory changes that we are finalizing in Part D regarding retained rebates are not applicable to RDS.

Comment: One commenter observed that CMS indicated in the proposed rule that certain provisions clarify existing guidance. To the extent any such provisions in fact clarify existing guidance, and apply retroactively, the commenter asserts that CMS has violated the prior notice and comments requirements of the Administrative Procedure Act.

Response: As noted above, we are reconsidering our proposed rule applying the Part D policy on the treatment of retained rebate amounts to the RDS program. This also extends to our existing guidance. The commenter's concerns are now moot, as we will make any final decision on our approach for RDS through rulemaking after consideration of public comments.

f. Subpart R Changes Adopted in the Final Regulations

As previously mentioned, we are deferring finalizing the proposed requirements that would have required RDS sponsors to report negotiated prices, and to report direct or indirect remuneration retained by a PBM or other intermediary contracting organization, pending the receipt of comments on the legal arguments previously mentioned. However, to otherwise make RDS regulatory definitions more consistent with Part D regulatory definitions and to ensure that the changes in the Part D regulatory provisions regarding negotiated prices and retained rebates do not affect RDS, we are making the following changes to definitions in Subpart R:

- Adding a definition of ''actually paid'' that includes portions of the proposed RDS definition, but excludes the portion that would operate to require the reporting of direct or indirect remuneration retained by a PBM or other intermediary contracting organization.
- Adding a definition of ''administrative costs'' that includes portions of the proposed RDS definition, but that excludes, from the definition, the difference between the amounts paid by the sponsor to an intermediary contracting organization for Part D drugs dispended to qualifying covered retirees, and the amount paid by the intermediary contracting organization to the pharmacy or other entity that is the final dispenser of the Part D drugs.
- Revising the definition of ''allowable retiree costs'' as proposed without modification.
- Revising the definition of ''gross covered retiree plan-related prescription drug costs, or gross retiree costs,'' to include portions of the proposed RDS definition, but to exclude the reference to ''negotiated prices.'' This revised definition includes the term ''intermediary contracting organization,'' which for purposes of the revised definition is intended to encompass any entity that contracts with an RDS sponsor to perform one or both of the following functions: (1) Pays pharmacies and other dispensers of Part D drugs provided to qualifying covered retirees in the sponsor's plan; or (2) negotiates rebates or other price concessions with manufacturers for Part D drugs provided to qualifying covered retirees in the sponsor's plan.

Additionally, we are slightly revising § 423.888(b)(5)(i) so that it references the term ''gross covered plan-related retiree prescription drug costs,'' which is a term defined in Subpart R, rather than ''gross prescription drug costs,'' which is not.

6. Limiting Copayments to a Part D Plan's Negotiated Price (§ 423.104)

In our May 16, 2008 proposed rule, we proposed to revise the requirements related to qualified prescription drug coverage at § 423.104(g) to make clear that Part D sponsors must provide enrollees with access to, or make available at the point-of-sale, their negotiated prices for covered Part D drugs when the covered Part D drugs' cost share is more than the Part D sponsor's negotiated price. The final rule adopts the revisions to § 423.104(g)(1) set forth in our proposed rule.

Comment: A number of commenters supported our clarification that the negotiated price for a covered Part D drug be made available to Part D enrollees when that price is less than a plan's applicable cost-sharing. Most of these commenters emphasized that CMS should monitor negotiated pricing issues and take corrective action against plans that do not assess their enrollees the negotiated price per the revision. One commenter in particular recommended that the policy be clearly explained in the Medicare handbook and all other materials that are distributed to beneficiaries by CMS and Part D plan sponsors related to their Part D coverage.

Several commenters noted concerns with this policy given that pharmacies' reimbursements may be lowered when the negotiated price for a drug is less than a Part D plan's applicable cost-sharing. While these commenters supported beneficiary access to negotiated prices, they believed it was equally important that pharmacies be adequately compensated for the drugs they dispense. They argued that pharmacies may experience net losses if the total revenue received from Part D enrollees is not sufficient to cover the costs of participating in the program—particularly given the average cost of dispensing prescriptions and the fact that the dispensing fee does not vary regardless of the negotiated price. They also asserted that implementing this policy could result in higher costs for plans and beneficiaries in the form of higher premiums, and could ultimately threaten pharmacy participation in some sponsors' networks. Two commenters, therefore, recommended that CMS modify the changes to

§ 423.104(g)(1) and instead clarify that Part D sponsors and their network pharmacies should be able to freely negotiate patient copayment obligations in order to allow for lower overall patient spending.

Response: We believe that a policy under which the plan sponsor charges the beneficiary the lesser of the applicable cost-sharing amount or the negotiated price for a covered Part D drug is most consistent with the intent of section 1860D–2(d)(1) of the Act, which requires Part D sponsors to offer their enrollees access to negotiated prices for covered Part D drugs. Although we have previously given Part D sponsors the option of applying either the applicable copayment (if the sponsor elected to charge a flat co-payment rather than coinsurance as part of its benefit design) or the actual negotiated price of a formulary drug when that amount is lower than the copayment, we have actually found that the majority of Part D sponsors have administered the benefit such that they apply the lesser of the co-payment or the negotiated price to the enrollee at the point of sale. Therefore, we disagree that our revision at § 423.104(g) will result in undermining the utilization effects of tiered cost-sharing benefit structures, increasing Part D program costs, or significant changes in Part D sponsor pharmacy network participation.

We will monitor beneficiary complaints on this issue, and will take appropriate corrective action against sponsors to the extent that we learn they are not limiting cost-sharing to negotiated prices as required under § 423.104(g)(1). In addition, we will assess our current CMS beneficiary materials, including the Medicare & You handbook, and Part D sponsor marketing models to ensure that this information is clearly and accurately conveyed to Part D enrollees.

Comment: A commenter expressed concern about requiring a 340B pharmacy to charge a 340B drug's price as patient cost-sharing when the 340B price is lower than a plan's cost-sharing. This commenter asserted that when patients know that certain brand-name drugs can be obtained for nominal amounts, they are more likely to request normally more expensive brand name drugs in all cases. The commenter asked that CMS clarify the application of this rule to specify that Part D sponsors may not require 340B providers to provide the 340B price to Part D plans under § 423.104(g)(1).

Response: CMS generally does not interfere in plan-pharmacy contract negotiations or opine on the reasonableness or relevancy of specific terms. Instead, we use our oversight authority to ensure that Part D sponsors abide by our rules and allow appropriate access to their pharmacy networks. A Part D sponsor offering less than satisfactory or unclear contract terms to a pharmacy would likely find it difficult to retain enough pharmacies to meet our network requirements, and would therefore be unable to renew its Medicare Part D contract. We urge pharmacies to ensure that they understand all terms of a pharmacy network contract before contracting with a Part D sponsor.

7. Timeline for Providing Written Explanation of Plan Benefits (§ 423.128)

In our May 16, 2008 proposed rule, we proposed to revised § 423.128(e)(6) to require sponsors to provide an explanation of benefits (EOB) no later than the end of the month following the month in which an enrollee uses his or her Part D benefits. We believe that our proposed revision to § 423.128(e)(6), which we are finalizing in this rule, strikes a reasonable balance between Part D sponsor production constraints and the timely provision of claims information to Part D enrollees. Below are public comments we received on our proposal and our responses.

Comment: Many of the comments received on the EOB timeline suggested that plans continue to be required to send the EOB no later than the 15th of the month following the month in which an enrollee uses Part D benefits.

Response: We have reviewed this comment and have concluded that plan sponsors need the additional time in the month following to process claims from the month in which the beneficiary utilized prescription drug services. Therefore, to ensure that plan sponsors are able to furnish accurate information to beneficiaries for drug benefits utilized within a particular month, CMS clarified that the EOB must be sent no later than the end of the month following any month when prescription drug benefits are provided.

8. Low-Income Subsidy Provisions

a. Low-Income Cost-Sharing and Payment Adjustments for Qualified Prescription Drug Coverage (§ 423.329)

In the May 16, 2008 proposed rule, we stated that we currently make prospective payments to Part D plan sponsors of the low-income cost sharing subsidy (LICS) based solely on estimates provided as part of the annual bidding process. When LICS estimates are too high, excessive prospective payments are made that (under our current process) are not recovered until the year end reconciliation. We proposed to add to the end of § 423.329(d)(2)(i) the following qualifying statement: ''or by an alternative method that CMS determines.'' In its report ''Medicare Part D Sponsors: Estimated Reconciliation Amounts for 2006'' released October 2007, the HHS Office of the Inspector General recommended that CMS explore other payment methodologies to recoup excessive LICS payments earlier. This revision would afford CMS additional flexibility to make mid-year LICS payment adjustments or other modifications to the LICS interim payment methodology, as appropriate. After reviewing and responding to comments (below) we will implement this provision. A summary of the comments and responses are provided below.

Comment: Many commenters supported the change, as it will result in more accurate payments during the actual plan year.

Response: We appreciate the commenters support.

Comment: Many commenters wanted more information on the methodology that CMS will use for mid-year LICS payment adjustments and other modifications to the LICS interim payment methodology that might arise due to the proposed change. Commenters asked that CMS involve stakeholders in any changes it makes to the methodology. Commenters believed interim payment reconciliation would be burdensome to plans and CMS. Others offered suggestions for the methodology such as adjusting payments to Part D plan sponsors in the event that the agency determines interim payments are too low.

Response: This change will correct a technical error in the existing regulation. We are making this change in order to establish a parallel between this section and that relating to the reinsurance subsidy described at § 423.329(c)(2). The language of § 423.329(d)(2)(i) regarding interim payments of the LICS subsidies as currently written has proven overly restrictive and has had the unintended effect of requiring us to make payments to Part D plan sponsors that are subsequently determined to have been significantly different from their actual costs. Some overpayments have not been recovered until payment reconciliation is completed, some years later. In some cases there have also been administrative delays in recognizing or reconciling underpayments. We also recognize, however, that as the program matures, actual costs in this area will come closer to the bid amount. We agree

with the commenter that stakeholder input is necessary.

b. Lesser of Policy for Low-Income Subsidy Individuals (§ 423.782)

To ensure low-income subsidy eligible beneficiaries are not harmed when the statutory low-income subsidy cost-sharing amounts are higher than the cost-sharing imposed under their plan's benefit package, we proposed in the May 16, 2008 proposed rule to codify our existing guidance on this situation in regulation. Specifically, we proposed adding a new paragraph (c) to § 423.782 which would clarify that the cost-sharing subsidy under § 423.782(a) and (b) is not available when an individual's out-of-pocket costs, under his or her Part D sponsor's plan benefit package, are less than the amounts described in § 423.782(a) and (b). After considering public comments on our proposal, we are adopting § 423.782(c) without further modification into this final rule.

Comment: A number of commenters supported our proposal that would require a Part D sponsor to charge the ''lesser of'' the low-income subsidy cost sharing amount or the beneficiary's out-of-pocket costs under the plan. However, one commenter wanted CMS to more explicitly provide that beneficiaries entitled to the low-income subsidy be charged the plan's cost-sharing amount when that amount is less than the statutory low-income subsidy cost-sharing amount.

Response: We believe our regulatory language is sufficiently clear and decline to further amend it. The language in section § 423.782(c) stipulates that out-of-pocket costs for a covered Part D drug under a Part D sponsor's plan benefit package be less than the maximum allowable copayment, coinsurance or deductible amounts under 423.782(a) and (b). Out-of-pocket costs include any cost-sharing amounts (copayment, coinsurance or deductible) the beneficiary would incur under the plan's benefit package.

Comment: Several commenters disagreed with our regulatory revision that would require a Part D sponsor to charge the ''lesser of'' low-income subsidy cost sharing or beneficiary's out-of-pocket costs. The commenters argue that altering statutory cost-sharing rules and their application would undermine a sponsor's ability to limit inappropriate utilization and may discourage the use of generics or certain other low-cost medications. In addition, they assert that pharmacies would be forced to accept reimbursement that could be below cost of dispensing the drug.

Response: We disagree with these commenters. The low-income subsidy cost sharing amounts established in regulation at § 423.782 are maximum amounts charged to beneficiaries eligible for the low-income subsidy. They are not minimum amounts that must be charged even if the ordinary plan cost-sharing that would otherwise apply is lower. The intent of the revised regulation is to provide low-income subsidy beneficiaries access to covered Part D drugs consistent with the out-of-pocket costs incurred by members not eligible for the low-income subsidy and enrolled in the same prescription drug plan. To do otherwise would result in a Part D sponsor violating its contractual obligation to provide the benefit package approved by CMS as defined under § 423.100. We also believe that if the Part D sponsor did charge cost-sharing amounts above that provided under its basic (or when applicable, supplemental) prescription drug coverage, this would violate the uniform benefit requirements at § 423.104, which requires the sponsor offering the prescription drug plan to offer that plan to all Part D eligible beneficiaries in the plan's service area.

We also disagree with the commenter that because of this revision, pharmacies will be forced to accept reimbursement below the cost of dispensing the covered Part D prescription medication. This revision to the regulation in no way impedes the pharmacy's ability to negotiate appropriate reimbursement for dispensing prescription medications directly with the Part D sponsors.

Comment: One commenter in particular noted that this proposal would require 340B pharmacies to charge Part D plan sponsors the same drug price as is available under 340B.

Response: We disagree. This rule does not require that 340B pharmacies charge the 340B drug price; this is an issue that should be the subject of negotiations between the pharmacy and the sponsor. However, as stated elsewhere in this preamble, we note that CMS generally does not interfere in plan-pharmacy contract negotiations or opine on the reasonableness or relevancy of specific terms. Rather, we use our oversight authority to ensure that Part D sponsors abide by our rules and allow appropriate access to their pharmacy networks.

Comment: One commenter requested clarification that this rule applies to all phases of Part D drug coverage, including the pre-initial coverage (deductible) phase. The commenter asserts that individuals eligible for the low-income subsidy should not be required to pay low-income subsidy cost sharing when the approved cost sharing during a deductible phase is less.

Response: The commenter's assumption is correct. An LIS individual will not be required to pay the maximum low-income subsidy cost sharing amounts when the cost-sharing under the plan's benefit package during the deductible period (presumably the negotiated price of the Part D covered drug) is less.

c. Using Best Available Evidence To Determine Low-Income Subsidy Eligibility Status (§ § 423.772, 423.800)

The ''best available evidence'' policy derives from the fact that, while section 1860D–14(c)(1)(A) of the Act provides for CMS to inform sponsors of low-income subsidy eligibility, the sponsor's obligation under section 1860D–14(c)(1)(B) of the Act to reduce premiums and cost-sharing for all such individuals is not contingent upon CMS doing so. While we attempt to identify all subsidy eligible individuals to the full extent possible as soon as possible, experience has shown that this does not necessarily result in every such individual being successfully identified as subsidy eligible. We believe, therefore, that the sponsors have an obligation to take reasonable steps to respond to documentation that identifies such individuals as subsidy eligible when they have not yet been identified by us, in order to fulfill their statutory obligation to reduce premiums and cost-sharing for such individuals.

Given the importance of this policy, we proposed in our May 16, 2008 proposed rule to codify the policy derived from section 1860D–14(c) of the Act in § 423.800(b) and (d). Specifically, we proposed including in regulations text the guidance (*Part D Guidance—Low-Income Subsidy (LIS) Status Corrections Based on Best Available Evidence,* dated June 27, 2007), available at *http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/Final%20Sponsor%20Guidance%20on%20BAE%20062707.zip*) that we have issued to Part D sponsors concerning our best available evidence (BAE) policy.

We proposed amending the regulations to require that Part D sponsors use BAE to substantiate a beneficiary's eligibility for a reduction in premiums and/or cost-sharing in the case of individuals who indicate they are eligible for the low-income subsidy. These include full-benefit dual eligible individuals, partial dual eligible individuals (that is, those who are enrolled in a Medicare Savings Program as a Qualified Medicare Beneficiary,

Specified Low-Income Medicare Beneficiary or Qualifying Individual), people who receive Supplemental Security Income (SSI) benefits but not Medicaid, and people who apply for and are determined eligible for a subsidy. Under the BAE policy we proposed to incorporate into the regulations, sponsors are required to accept and use BAE to correct the beneficiary's low-income subsidy data in the sponsor's system and, as applicable, document requests for CMS to correct the beneficiary's low-income subsidy data in our system or for CMS to work with the Social Security Administration (SSA) to correct the data in their systems, where appropriate, when the change has not occurred as a result of routine reporting.

We anticipate that the BAE policy will remain in place for the indefinite future. As a result, we proposed to modify § 423.800 by adding a fourth paragraph, consistent with our current policy, that would require Part D sponsors to use the CMS-developed BAE process to establish the appropriate cost-sharing for low-income beneficiaries whose information in CMS systems is not correct.

We proposed to define BAE at § 423.772 as documentation or information that is directly tied to authoritative sources, confirms that an individual meets the requirements for the low-income subsidy, and is used to support a change in an individual's low-income subsidy status. We did not propose to specify in the regulation the specific documents that would meet these criteria, as there may be documents that meet these criteria in the future that do not currently exist.

Comment: A number of commenters supported our best available evidence policy and our proposal to codify the policy in regulation. In expressing support for the policy, some commenters noted the importance of the BAE policy to low-income, subsidy-eligible individuals and recommended that CMS strictly enforce sponsor compliance.

Response: We appreciate the support expressed for our policy and the proposed provision. We also recognize its importance to the low-income subsidy eligible population and, as a result, will monitor beneficiary complaints on this issue and take appropriate corrective action against sponsors to the extent that we learn they are not compliant with the BAE policy as specified in § 423.800(d).

Comment: Some commenters expressed agreement with the definition of ''best available evidence'' in § 423.772. One commenter suggested we provide as specific information as possible on what is acceptable BAE. Two commenters, noting the difference between community and institutional pharmacy operations, recommended expanding the definition to specify that an attestation by a provider would qualify as documentation from an authoritative source. One commenter urged CMS to revise the definition to add that authoritative sources are those ''approved by CMS.'' Another commenter believed the definition was unnecessarily restrictive and encouraged CMS to permit information from non-authoritative sources whenever possible.

Response: As we have noted previously, we are not specifying in regulation the particular documents or types of information that meet the definitional criteria as there may be additional documents in the future that meet these criteria. However, we do believe that the definition would be clearer by specifying the sources of the documentation that we have determined are authoritative. Therefore, we have revised the definition to indicate that BAE documentation or other information must be tied directly to the State or SSA systems.

Comment: We received a number of comments recommending that we add regulatory language to incorporate guidance that provides for Part D sponsors to assist individuals who claim to be subsidy eligible but cannot provide acceptable evidence of subsidy eligibility.

Response: Since the intent behind the regulation, as stated in the proposed rule, is to codify our BAE policy, we agree with the commenters that the regulation should address the provision of assistance to individuals without documentation. However, under the process we established for the provision of this assistance, Part D sponsors do not directly assist beneficiaries in securing acceptable documentation. Instead, sponsors are to follow CMS-established procedures, referring the request to the CMS Regional Office, and informing the beneficiary of the results of the CMS inquiry. Therefore, we have added a requirement for Part D sponsors to respond to requests for assistance in securing best available evidence from beneficiaries or the beneficiary's pharmacist, advocate representative, family member or other individual acting directly on behalf of the beneficiary in accordance with the process established by CMS. As described in our memo entitled ''Best Available Evidence Policy—UPDATE'' (available at *http://www.cms.hhs.gov/PrescriptionDrugCovContra/Downloads/MemoClarifiedBAEGuidance_08%2004%2008_wROconts.pdf*), by ''respond'' we mean fulfilling a process specified by CMS to refer to CMS an individual beneficiary who claims subsidy eligibility status and specifically requests assistance obtaining required documentation. This process is intended to assist a beneficiary (or other individual on the beneficiary's behalf) when a specific request for assistance is received by the plan, either directly via a call to plan member services, or indirectly via contact by a pharmacist to the plan's pharmacy help desk line seeking to assist the beneficiary (or other individual on the beneficiary's behalf) making this request at the point of sale. This process is not intended to serve as a general alternative to the subsidy eligibility confirmation process and does not permit pharmacy organizations or any other parties to send beneficiary records to the plan for research in the absence of a request for assistance from the beneficiary (or other individual on the beneficiary's behalf) and in lieu of making reasonable efforts to acquire the documentation from or on behalf of the beneficiary. We note that this process should place virtually no additional burden on the Part D sponsors.

Comment: One commenter recommended that CMS establish a mechanism for correcting CMS data for LIS applicants based on an LIS award letter from SSA presented by the beneficiary.

Response: While we had previously expressed an intention to establish a mechanism for manually correcting the CMS data for beneficiaries awarded LIS based on an application for the subsidy, the establishment of a correction mechanism was not addressed in the proposed provision. We believe this is a topic more appropriately addressed in operational guidance. We are currently working with SSA to improve our data reporting processes and will discuss any process improvements, including a correction mechanism, if established, in future operational guidance.

Comment: Two commenters recommended expanding the list of acceptable documentation for best available evidence to include SSA letters showing the beneficiary receives Supplemental Security Income (SSI).

Response: We agree with these commenters. In addition, in listing the documentation that constitutes best available evidence in the preamble to the proposed rule, we neglected to include an award letter to a beneficiary who applied for the low-income subsidy. Therefore, we are including an amended list of evidence sufficient to

make a change to a beneficiary's low-income status. Currently, any one of the following forms of evidence must be accepted:

- A copy of the beneficiary's Medicaid card that includes the beneficiary's name and an eligibility date during a month after June of the previous calendar year.
- A copy of a State document that confirms active Medicaid status during a month after June of the previous calendar year.
- A print-out from the State electronic enrollment file showing Medicaid status during a month after June of the previous calendar year.
- A screen print from the State's Medicaid systems showing Medicaid status during a month after June of the previous calendar year.
- Other documentation provided by the State showing Medicaid status during a month after June of the previous calendar year.
- A letter from SSA showing that the individual receives SSI.
- For individuals who are not deemed eligible, but who apply and are found LIS eligible, a copy of the SSA award letter.

Further, in order to establish that a beneficiary is institutionalized and qualifies for zero cost-sharing any one of the following forms of evidence must be accepted:

- A remittance from the facility showing Medicaid payment for a full calendar month for that individual during a month after June of the previous calendar year.
- A copy of a State document that confirms Medicaid payment on behalf of the individual to the facility for a full calendar month after June of the previous calendar year.
- A screen print from the State's Medicaid systems showing that individual's institutional status based on at least a full calendar month stay for Medicaid payment purposes during a month after June of the previous calendar year.

Comment: One commenter recommended that we clarify that, if a beneficiary has been auto-enrolled by CMS or was charged a low-income subsidy level cost-sharing level prior to being admitted to an institution, it is not necessary for the individual to provide BAE establishing Medicaid eligibility. The commenter also recommended that, under such circumstances, CMS not require BAE to establish the beneficiary's eligibility for an institutional cost-sharing level since this could be determined from the date of admission to the facility.

Response: We confirm BAE is not necessary to establish an institutionalized beneficiary's Medicaid eligibility if that status is currently reflected in the CMS system, for example, as would be the case if the beneficiary had been auto-enrolled in a month after June of the previous year. However, documentation would be required to establish the beneficiary as an institutionalized individual as defined in § 423.772, and therefore qualified for a zero cost-sharing level. We disagree with the commenter that documentation should not be required to substantiate eligibility for the zero cost-sharing.

Comment: Three commenters believed the provision represents an inappropriate transfer to Part D sponsors of responsibility for determining beneficiary low-income subsidy eligibility. These commenters recommended that if sponsors are to have this responsibility, the sponsors should be protected from liability when good faith efforts are made to determine low-income subsidy eligibility. Another commenter recommended that the regulation make it clear that the primary parties in the BAE process are CMS and the beneficiaries and the only role of the Part D sponsor is to update its system with the eligibility information provided by CMS.

Response: We disagree with the commenters. We recognize that section 1860D–14(c)(1) of the Act requires us to establish a process to notify the Part D sponsor when an individual is low-income subsidy eligible. We have established such a process and we continue to work to improve the data reporting processes. However, we also recognize that the process we employ does not necessarily result in every individual being successfully identified. Therefore, we believe that sponsors have an obligation to take reasonable steps to respond to documentation that identifies such individuals when they have not yet been identified by CMS, in order that the sponsors fulfill their statutory obligation under section 1860D–14(c)(1)(B) of the Act to reduce premiums and cost-sharing for low-income subsidy eligible individuals.

Comment: Several commenters recommended that CMS convene a workgroup of Part D sponsors, pharmacists, beneficiary advocates and State Medicaid representatives to refine and improve our BAE policy, including identifying other reliable evidence of Medicaid eligibility and institutional status.

Response: Our BAE policy is important to ensure low-income subsidy eligible individuals have access to covered Part D drugs at a reduced cost-sharing level. Therefore, we will continue to aggressively respond to complaints from beneficiaries and others acting on their behalf alleging sponsor non-compliance with our policy. We will also consider other ways of monitoring our BAE policy to ensure appropriate access for low-income subsidy eligible beneficiaries.

Comment: Another commenter recommended CMS implement educational outreach programs to augment the regulation.

Response: We plan to undertake a number of initiatives to inform interested parties regarding the requirements associated with our BAE policy. For example, we recently created a BAE page on our Web site containing our policy guidance, and, pursuant to our memorandum mentioned above, Part D sponsors must establish a link to this page on their Web sites and make information about the BAE policy readily available for those who contact the plan's call center.

Comment: A few commenters urged CMS to extend the requirement in § 422.52(g) that special needs plans verify an individual's Medicaid eligibility to all Part D sponsors as a means of curtailing the need for BAE.

Response: The requirement in § 422.52(g) is specific to Medicare Advantage plans for special needs individuals and is intended to ensure that the individuals wishing to enroll in a dual eligible special needs plan are eligible for both Medicare and Medicaid. The verification of Medicaid eligibility is a required element of the plan's enrollment process. The extension of this requirement for all Part D sponsors would be inappropriate as sponsors are required to accept BAE only in those situations in which CMS systems do not reflect a beneficiary's correct low-income subsidy eligibility.

Comment: One commenter noted the rule did not address situations in which a beneficiary's Medicaid application is pending and recommended CMS reaffirm our guidance for handling claims and co-payments in these cases.

Response: We recognize that many LTC pharmacies hold receivable balances in Medicaid-pending situations for cost sharing amounts that will be paid by the Part D sponsor once Medicaid eligibility is determined and we require sponsors to use the date of the Medicaid notification to establish a new timely claims filing period to ensure third party payers and other parties have the opportunity to request reimbursement for claims incurred during the retroactive period.

9. Certification of Allowable Costs (§ 423.505)

We proposed to revise § 423.505(k)(5), to clarify that the certification of allowable costs for risk corridor and reinsurance information includes direct and indirect remuneration that serves to decrease the costs incurred by a Part D sponsor for a Part D drug. The submission of accurate and complete data regarding direct and indirect remuneration that reduces a Part D sponsor's costs for Part D drugs under the Medicare prescription drug benefit is necessary to ensure accurate reinsurance and risk corridor payments. We received several comments on this provision, all of which expressed support for this proposed clarification. Therefore we are implementing this clarification, as proposed.

Comment: Several commenters supported our proposed clarification. One commenter agreed with the policy that the Chief Executive Officer or Chief Financial Officer must certify that the data reported for the purposes of determining allowable costs is accurate. However, this commenter expressed concern that CMS would need to establish penalties for violations in order to ensure compliance with this policy.

Response: We agree with the commenter's concern. We are currently conducting audits of the data reported for determining allowable costs in order to evaluate whether the data submitted (and attested to by the CEO or CFO) by Part D sponsors are accurate, complete, and truthful. In cases where inaccurate or incomplete data have been provided, we will determine the appropriate corrective action or penalties for Part D sponsors. In cases where there were misrepresentations or omissions in the information provided to us for determining allowable costs, we may refer such cases to Federal law enforcement for potential Federal civil action or criminal prosecution or both.

10. Change of Ownership Provisions (§ 423.551)

We are amending the change of ownership provisions in § 423.551, by adding paragraph (g) to clarify that PDP sponsors may not sell or transfer individual beneficiaries or groups of beneficiaries enrolled in any of their plan benefit packages (PBPs). This new provision is simply a clarification of an existing restriction on PDP sponsors' ability to sell portions of their Part D lines of business.

We are adding § 423.551(g) to provide necessary clarification on this change of ownership issue. During the first 2 years of the Part D program, several PDP sponsors have requested our approval of transactions involving the sale of beneficiaries. This clarification will minimize the number of sponsors that mistakenly begin negotiations on such sale agreements.

Comment: We received comments in support of this provision from several Medicare beneficiary advocacy organizations. A commenter from a Part D sponsor requesting a clarification that the provision does not prohibit a sponsor from transferring members from one wholly-owned subsidiary to another wholly-owned subsidiary (or from one contract to another contract) when a consolidation is required by CMS-imposed limits on the number of offerings a sponsor may have.

Response: The Part D sponsor's comment is in reference to requests CMS has made to certain PDP sponsors to adjust their bid submissions for an upcoming contract year to ensure that the sponsor is offering only those Part D plans that afford beneficiaries a meaningful choice among the sponsor's plan offerings. We advise that this change in the regulation will have no impact on our policies concerning the cross-walking, auto-enrollment, or reassignment of beneficiaries.

Comment: A Part D sponsor noted that the regulation is not as clear as the preamble in stating CMS' intent that we would recognize the sale of one or more plan benefit packages (PBPs) as a line of business rather than requiring a sponsor to sell all PBPs under a contract. Also, the regulation does not contain the condition that the sale cannot be apart from the rights and obligations related to the PBP.

Response: We agree that we could make clearer, through regulatory language, our intention that beneficiaries may not be transferred to another sponsor's plan pursuant to a novation without the acquiring sponsor assuming the selling sponsor's PBP obligations as well. Accordingly, we are revising the language of this regulatory provision to incorporate this comment.

We acknowledge the commenter's suggestion regarding the qualification of the sale of fewer than all of a sponsor's PBPs under a PDP sponsor contract as constituting an asset sale that we would recognize through the execution of a novation agreement. We believe this comment addresses an issue outside the scope of the regulation, which was intended solely to ensure that sponsors and potential sponsors understand that a sale of a Part D line of business must include the transfer of the seller's PBP obligations to the acquiring sponsor. We indicated in the preamble of the January 28, 2005 final rule (70 FR 4341), that we could not define all possible business arrangements and transactions and that the rules in Subpart N were intended as a framework, with guidance to be provided on a case-by-case basis. We continue that policy here by declining to accept the commenter's suggestion.

D. Changes to the MA and Prescription Drug Benefit Programs

1. Authorization of Automatic or Passive Enrollment Procedures (§ § 422.60 and 423.32)

In our May 16, 2008 proposed rule, we explained that there are some situations in which we have exercised our authority under section 1851(c)(1) of the Act to establish the method for electing to enroll in an MA plan by providing for ''passive'' enrollment procedures, under which an individual is notified that he or she can elect an enrollment into a particular plan by taking no action. We have done this only in cases in which we believed it was clear that enrollment in that plan was in the best interests of the average individual who did not focus on making an affirmative plan choice (generally in situations where the existing plan was being terminated or non-renewed). We proposed to revise the regulations to codify this practice in a new § 422.60(g) and § 423.32(g), in which the regulations would specify that CMS may authorize plans to carry out ''passive'' enrollment procedures in certain situations, including those involving immediate plan terminations, as well as those in which a failure to elect the enrollment in question would result in potential harm to beneficiaries. Comments on this passive enrollment provision are discussed below.

Comment: Although some commenters supported the provision as proposed, most commenters objected to the policy reflected in our proposal. In particular, several commenters opposed aspects of any process that would passively enroll members of a terminating or non-renewing MA plan into another MA plan. They argued that the passive enrollment process violates section 1851(a)(1) of the Act, which provides for beneficiaries to choose to receive their care either under Original Medicare (fee-for-service Medicare) or with a Medicare Advantage plan. These commenters contended that beneficiaries that have chosen an MA plan have chosen that specific plan, and not necessarily the MA program generally. They expressed concerns with what they describe as a wide variation in MA plan quality, network, benefits, cost sharing and other plan

policies. They suggest that a beneficiary who fails to elect a specific MA plan should always be defaulted to Original Medicare. Additionally, the commenters expressed concern that some beneficiaries do not understand the information provided in notices about passive enrollments and therefore, such notices do not serve as an effective protection against possible beneficiary harm and confusion.

The same commenters did agree that beneficiaries in a stand-alone PDP should be passively enrolled into another stand-alone PDP when their current PDP has been terminated or non-renewed, as these individuals would otherwise be left without prescription drug coverage. However, overall, the commenters argued that, in the event that an MA plan offering Part D benefits is terminated or non-renewed, these individuals should be disenrolled from the terminating or non-renewing MA plan, passively enrolled into a stand-alone PDP, and ''defaulted'' into Original Medicare, rather than being re-enrolled into another MA plan that offers Part D coverage.

Response: We disagree that our policy is inconsistent with section 1851(a)(1) of the Act. As noted in the preamble to the proposed rule, section 1851(c)(1) of the Act grants the Secretary the authority to ''establish a process'' for making the ''elections described in [section 1851(a)] are made and changed, including the form and manner in which such elections are made and changed.'' Under normal circumstances, the manner in which elections are made is for the beneficiary affirmatively to elect a plan, and to default a beneficiary to original Medicare if they fail to do so.

In some cases, however, a beneficiary could be substantially harmed by a failure to elect a particular MA plan, and it is clear that a reasonable beneficiary in such circumstances would elect that plan if they made an informed, affirmative choice. For example, a beneficiary with good employer wrap-around coverage may lose his or her wrap-around coverage if the employer plan changes the MA plan that it wraps around, and provides in its rules that an employee or retiree who fails to choose the new plan would lose his or her wrap-around benefits. In such cases, employees receive notice that they may elect the new MA plan under which they would keep their wrap-around benefits by taking no action, and would need to make an affirmative choice to make an election that would result in them losing their employee coverage. Similarly, MA enrollees could be in plans that buy down their Part B premium or provide other key benefits that would remain available only through another, similar, MA plan. As discussed below, we would require appropriate notice in those situations as well.

We view this as an appropriate exercise of our authority to establish the form and manner for electing an MA plan. In all cases in which this method is adopted, enrollees who determine that they do not, in fact, wish to make this election are permitted to decline this enrollment and enroll in an arrangement of their choice.

As explained in the proposed rule, this process also has been applied in situations in which a beneficiary's MA plan of choice has been suddenly terminated, and there is not adequate time to have a normal special election period. We expect these situations to continue to be limited in occurrence and scope.

In these situations, we consider the plan options available to affected beneficiaries, including the type and cost of such coverage, and the provider networks, and how such coverage and networks compare to those in their current plan. In many such cases, if beneficiaries were to be ''defaulted'' to original Medicare, their costs for Medicare Part A and B services could increase dramatically to a level some of them could not afford. These beneficiaries were relying on the lower out-of-pocket costs and additional benefits provided by their MA plan, which they would lose if suddenly placed into Original Medicare. Rather than have such beneficiaries automatically face large, and in some cases possibly bankrupting, out of pocket costs, we have arranged for them to elect a comparable MA plan by taking no action. We have, where warranted, required that plan to cover services provided by their existing providers and pharmacies during a transition period that would allow them to take the time to make an informed choice of plan options.

Organizations are required to notify affected beneficiaries of the ''passive'' enrollment prior to the effective date of the enrollment or as soon as possible after the enrollment effective date if prior notification is not possible under the circumstances. The notices are approved by CMS, explain the beneficiary's right to choose another plan, describe the costs and benefits of the new plan and how to access care under the plan, and discuss any other conditions of enrollment established by CMS (such as the right to continue seeing non-network providers while paying network cost-sharing amounts). We may also require that the organization notify the affected beneficiaries through other means, such as by telephone, where appropriate. In addition, we also ensure that any form of notification includes important contact information for beneficiaries to use to obtain assistance or additional information.

We believe the above process preserves the beneficiary choice provided for under section 1851(a)(1) of the Act, while also preserving the lower cost Part A and Part B benefits upon which MA plan beneficiaries have been relying in the case of those failing to make a choice, just as passively enrolling beneficiaries in a terminating PDP into another comparable PDP protects their Part D coverage. In both cases, the default is to a plan that we believe clearly would be in the average enrollee's best interests. For these reasons, we are finalizing the proposed regulatory provision specifying our passive enrollment authority.

Comment: Most commenters suggested that, when enrolling affected beneficiaries into a stand-alone PDP, CMS use existing Prescription Drug Event (PDE) data to ensure that beneficiaries are enrolled in the least expensive available PDP that covers all of their current medications.

Response: As stated above, when contemplating passive enrollment, we consider all aspects of the various plan options available to affected beneficiaries, including the type and cost of such coverage, the provider networks, and how these items compare to those of the beneficiary's current plan. Given the limited time typically available in those situations where passive enrollment is appropriate, we do not believe we would have sufficient time to incorporate beneficiary-specific PDE data into our analysis, particularly given the significant lag time between actual drug usage and the submission and analysis of such data. We will consider using such data in the future, if the circumstances allow.

Comment: Most of the commenters advised that CMS grant a special enrollment period (SEP) to individuals who are passively enrolled, and that this SEP last 6 months or until the end of the next Annual Election Period (AEP), whichever is later. They also suggested that the SEP allow the beneficiary to choose to have coverage effective retroactively, but no earlier than the first day of the first month after plan termination, in order to minimize disruption of coverage.

Response: We agree that individuals who are passively enrolled should be provided with an SEP, and already provide an SEP to these individuals.

Generally, this SEP begins the month in which the beneficiary is notified of the passive enrollment, and extends for an additional two months. Generally, we believe that such a 3-month SEP is sufficient and we do not believe it is appropriate or necessary to establish a 6-month SEP in the regulation, as suggested by commenters. However, in keeping with our authority under the current regulations, we will retain the flexibility to extend the SEP based on the unique circumstances of each termination or non-renewal. We also decline to amend the regulations to allow affected beneficiaries to choose to have alternative plan coverage elected under an SEP begin retroactively. Our experience has been that retroactive enrollment changes often are not in the best interests of the beneficiary, given the potential adverse consequences of retroactive cost-sharing and premium liability; thus, we believe that permitting unfettered retroactive changes on a blanket basis could prove problematic. Instead, we will continue to allow retroactive enrollment changes on a case-by-case basis.

Comment: A commenter suggested that, where passive enrollment is provided for, CMS launch an aggressive outreach and education campaign and provide special support to community based counseling organizations, such as local State Health Insurance Assistance Programs (SHIPs) and Area Agencies on Aging (AAA). Several commenters also advised that CMS notify local SHIPs in the affected area of the names and address of all enrollees in a terminating plan who will lose coverage and the effective date of the termination of this coverage.

Response: We recognize that such organizations are important partners in our efforts to educate and reach out to affected beneficiaries, and will continue to work closely with our partners when such situations occur. We will continue to work to provide them with information about such situations as soon as possible, in order to ensure beneficiaries have access to the important counseling services provided by these organizations. However, we decline to commit to providing SHIPs with the names and addresses of all impacted individuals, as we believe that these individuals' privacy concerns, and the administrative burden associated with collecting and disseminating such information, outweigh the potential benefits of sharing such information with these organizations.

Comment: A commenter requested that the passive enrollment provisions be expanded to apply to dual eligible individuals who have actively chosen a plan if the plan premium of that plan is no longer below the amount in which CMS provides the full amount of extra help.

Response: The commenter is actually referring to one aspect of our annual ''reassignment'' process, whereby we reassign LIS-eligible individuals if they are in a plan that will no longer have a premium at or below the LIS benchmark. However, our policy is to reassign only individuals who remain in a plan to which they were auto-enrolled, as opposed to individuals who have actively chosen their existing plan. We considered reassigning these individuals (so-called ''choosers'') to another Part D plan, but decided to honor the individual's choice and allow him or her to make a subsequent choice on his/her own. These individuals receive notice in October of every year from their current plan that advises them of any changes in the plan's benefits and costs, and they have until the end of the calendar year to take action to change plans. Additionally, LIS-eligible individuals have an ongoing SEP that enables them to make changes at any time during the year; so, if an LIS-eligible individual is unaware that a premium will be owed and then decides to change plans upon receiving an unexpected bill for a plan premium, he or she is always free to do so. Note that even in this situation, the subsidized copayments would still apply and the premium due would represent only the difference between the LIS subsidy and the actual premium.

Comment: A commenter recommended that CMS distribute the terminated membership equally among all plans available in the area.

Response: When effectuating a passive enrollment, we review information about the available plans in the affected area, including their benefit packages, provider networks, and cost-sharing premium amounts, in an effort to ensure that beneficiaries who are passively enrolled maintain a level of coverage equal to or better than their current coverage, without incurring additional costs. In cases where these considerations are generally equal, our preference generally would be that affected beneficiaries are distributed equally among the remaining plans in the area. However, in other cases, only one plan may be available that meets these criteria. Therefore, we decline to adopt the commenter's suggestion as a general rule, so that we can continue to exercise appropriate discretion to ensure that affected beneficiaries are enrolled in the most appropriate plans.

2. Involuntary Disenrollment for Nonpayment of Premium (§ § 422.74 and 423.44)

We proposed revising the MA and Part D regulations in § 422.74(d)(1) and § 423.44(d)(1) by adding a new paragraph (d)(1)(iv) to each section to prohibit plans from disenrolling individuals for failure to pay premiums if they either have requested the premium withhold option, or if they are already in premium withhold status. Plans may initiate disenrollments for failure to pay premium only after an individual in ''direct bill'' status has been notified of the premium owed and, in the case of MA plans, provided the grace period required under § 422.74(d)(1)(i)(B), as currently outlined in the MA and Part D regulations discussed above. For Part D, the plan must have made reasonable efforts to collect the unpaid amount, as provided in § 423.44(d)(1)(i), before disenrollment may be initiated. Based on the comments received on our proposal, we are revising the language in § 422.74(d)(1)(iv) and § 423.44(d)(1)(iv) to conform with the changes made to § 422.262(g) and § 422.293(e).

Comment: Numerous commenters supported the provisions as an important beneficiary protection. However, several commenters also expressed concerns with the operational issues experienced with the implementation of the premium withhold option, and the subsequent beneficiary confusion that may arise from these issues. Several of these commenters recommend that CMS define a clear process to resolve withhold problems.

Response: We continue to work in collaboration with the Social Security Administration and our contracting partners to refine the premium withhold process in order to ensure a more timely and equitable outcome for all. We continue to work on this process and have resolved most premium pass-through payment delays. To the extent that problems remain unresolved, however, we will consider what other steps we might take when member premiums are being withheld from SSA checks, but they are not being passed through to the appropriate plan.

Comment: Several commenters proposed that any beneficiary who is in direct bill status despite having requested premium withhold be protected from disenrollment for failure to pay premiums for the duration of the plan year.

Response: In some cases, a request for premium withhold is not implemented

properly when requested, and a beneficiary may be in direct bill status when he or she should be in withhold status. We believe that beneficiaries remain financially responsible for the premium amounts due to the plan. If these amounts are not being withheld from their checks, they remain responsible for payment. Members of an MA or Part D plan who are being billed for payment are subject to involuntary disenrollment (if plan uses that option), after being provided due process—including the opportunity to pay premiums within grace period. In operational guidance, we have asked that our contracting plans make good faith efforts to work with beneficiaries who owe back premiums and to allow members to arrange for repayment over time. That process was viewed as protective of both the beneficiary and plan financial interests.

Comment: Many commenters expressed opposition to the prohibition on involuntary disenrollment due to non-payment of premium while premium withhold is in place. One commenter believed that it does not treat all members in the plan equally, requiring members in direct bill status to pay premiums timely, while those who have elected premium withhold are protected even when the plan does not receive payment.

Response: We disagree that beneficiaries are treated unequally. All members are required to pay premiums timely. By choosing the premium withhold option, beneficiaries have demonstrated their commitment to meet their financial obligation to the plan. In either case, the beneficiary assumes the financial responsibility—whether through direct withholding from his/her Social Security benefit check, or by direct billing by the plan and remittance to the plan by the beneficiary.

Comment: A commenter believed that the prohibition on disenrollments adds more administrative burden to the plan and dictates plan financial policies.

Response: We do not believe this requirement places an undue additional burden on plans. We provide plans with critical information on its membership on a routine, ongoing basis. Plans are required to react to this information as part of the plans' contractual obligations. Further, we disagree that this requirement dictates plan financial policies as these requirements to maintain enrollment for an individual who is in premium withhold status do not waive or otherwise eliminate plan premiums.

Comment: A few commenters suggested that beneficiaries identified with withhold problems be moved to direct bill. One commenter suggested the same, but with a finer point that would allow plans to initiate a move to direct billing when the SSA withhold has not worked for a reasonable period (for example, 60 days). Another commenter recommended that we allow plans to send notices to beneficiaries to inform them that withholding is not working and that a balance is accruing.

Response: We appreciate these suggestions and will take them into consideration as we continue to examine the extent and duration of withhold issues.

Comment: A few commenters requested that CMS establish similar provisions to protect plans from a negative financial impact when the premium withhold process is not successful, since MA organizations sometimes experience delays in payment from CMS. One commenter recommended that CMS institute performance guarantees for SSA payments and/or requiring SSA to pay interest to MA plans for late payments.

Response: As described previously, we continue to work with our internal processes, Social Security, and our contracting partners to refine the premium withhold system. We continue to discuss this process with our contracting partners and will develop operational strategies to successfully implement this process, including timely premium payment to plans.

Comment: Another commenter did not agree with the CMS' legal interpretation to exclude premium payment option from the nonpayment of premium provisions established in statute at section 1851(g)(3)(A) of the Act. The commenter further questions the Congressional intent of such a provision, since neither the statute, as established by the Balance Budget Act of 1997 (BBA), nor the supporting congressional interpretation of the BBA, provides specific exception to exclude premium withhold from this disenrollment provision.

Response: We are not prohibiting involuntary disenrollment solely on the basis that the individual has selected his/her premiums to be withheld from an SSA, RRB, or OPM benefit check. Rather, we are prohibiting such disenrollment when that request has not yet been successfully processed due to a system processing issue within CMS or between CMS and SSA (or RRB and OPM, when that occurs in the future). We are simply establishing this provision to protect the individual beneficiary from negative consequences (involuntary disenrollment) based on a system's issue that is beyond his or her control. This provision in no way relieves the individual of any premiums owed to the plan. The statutory authority at 1851(g)(3)(B)(i) of the Act provides Medicare Advantage organizations the option to disenroll individuals who fail to pay plan premiums, which is also applied to Part D plans—as directed by 1860–D1(b)(1)(A) of the Act to apply rules to Part D program similar to the ones established for the MA program.

With regard to paying the premium, we have established that the individual, by selecting the premium withhold option, is deemed to have made a payment to the plan and therefore is not subject to this involuntary disenrollment for non-payment of premium provision.

Comment: A commenter believed that all members should be treated the same for nonpayment of premium, regardless of the payment method chosen.

Response: We agree and believe that the provision, as written, supports that all individuals are treated equitably.

Comment: Several commenters requested that CMS expand this rule to include other automatic payment situations involving system issues, such as errors with electronic fund transfers or checking accounts.

Response: We decline to extend this provision to include errors that may occur from other financial institutions and maintain that this provision is limited to the premium withhold option, as described at § 422.265(f) and § 423.293.

Comment: Several commenters urged CMS to include additional protections for low-income individuals, specifically, that plans would not be allowed to involuntarily disenroll low-income individuals who receive extra help from Medicare in paying all or part of their Part D plan premiums. In addition, commenters requested that we allow beneficiaries to provide evidence to the plan that supports their low-income status to prevent the disenrollment, if the plan is not aware that the individual receives extra help.

Response: As explained above, section 1851(g)(3)(B)(i) of the Act provides MA plans the option to disenroll members who fail to pay premiums, and this option is also available to Part D plans, as directed by 1860–D1(b)(1)(A) of the Act. Therefore, we cannot prohibit plans from exercising this option if they so choose. However, if a plan chooses to exercise this option, our existing enrollment guidance permits plans to exclude their low-income subsidy eligible members from this policy and allow them to remain enrolled in the plan.

Comment: Several commenters believed that this provision should be extended to beneficiaries whose premiums are paid by a third-party funding source, such as a State Pharmaceutical Assistance Program (SPAP). Further, if involuntary disenrollment occurs when there is such a funding source, one commenter recommends that the individual be reinstated into the plan once the plan is notified of the third-party payer.

Response: We already have provisions in place to prohibit organizations from disenrolling or initiating the disenrollment process, if those organizations have been notified that the Part D portion of the premiums is being paid by an SPAP or other payer and the organization has not coordinated the receipt of the premium payment directly with the SPAP or other payer. Details of these requirements can be found in Chapter 14 of the CMS Medicare Prescription Drug Benefit Manual.

Comment: One commenter requested that disenrollment under the involuntary disenrollment for non-payment of premium provision only occur if the premium in arrears is above a certain threshold, for example at least 2 months premiums are past-due. Otherwise, the commenter believes that plans would be allowed to terminate these important benefits over what amounts to a very insignificant sum of money to the plan.

Response: The commenter raises an interesting issue; however, small amounts, in aggregate, could prove substantial to the organization. To ensure that all beneficiaries are treated equitably, we have established in sub-regulatory guidance that if plans choose to implement this option to disenroll individuals for non-payment of past-due premiums, that they must apply the rule consistently to all similarly situated individuals and for any amount owed and not paid during the grace period.

Comment: CMS should clarify that the prohibition to disenroll enrollees is applicable only to those premiums due after the date the enrollee requested premium withhold status.

Response: We agree that the prohibition on disenrollment is applicable to individuals only for those premiums due after the individual selects the premium withhold option. If, prior to requesting premium withhold, and individual's premiums are already in arrears, the plan can initiate involuntary disenrollment for non-payment of premium related to the premiums that were already past-due at the time premium withhold was requested.

Comment: Commenters urged CMS to add a provision allowing the plan to bill CMS for the amount of any premiums due, including reasonable interest, for the period in which the premiums are owed.

Response: We disagree that we should pay the individual's portion of the plan premium or interest on these premiums, and maintain that the individual is ultimately responsible for his/her premiums.

3. Retroactive Premium Collections and Beneficiary Repayment Options (§ § 422.262 and 423.293)

We proposed to amend the MA regulations at § 422.262 by adding new paragraph (h) and the Part D regulations at § 423.293 by revising paragraph (a) to expressly provide for the proration of past-due premiums over a period of monthly payments when the reason for the premium arrearage is other than a member's willful refusal to remit the premium. In making this proposal, we stated that we believed that beneficiaries should be able to spread out their obligation in such cases over at least the same period as the one during which past-due premiums were accruing. That is, if 7 months of premiums are due, then the member should have at least 7 months to repay. The final rule adopts these revisions by adding a new paragraph (h) to § 422.262 and in § 423.293 by revising paragraph (a) as set forth in our proposed rule. Based on comments, we modified our proposed language to clarify that other mutually acceptable means of repayment of past-due premiums are also permissible.

Comment: Many commenters agreed with the proposed rule. One commenter agreed with the proposed rule, but suggested we clarify that failure to stay current with a repayment agreement would constitute grounds for involuntary disenrollment.

Response: We believe § 422.74(b)(1)(i) already provides ample authority to initiate involuntary disenrollment procedures for a member that does not stay current with his or her repayment agreement.

Comment: Some commenters stated that allowing enrollees to repay past-due premiums over time would place a financial burden on plans. Some stated that direct billing is labor-intensive and that plans should be permitted to charge interest to members on past-due premiums to make up for the lost cash-flow.

Response: We do not have authority to permit plans to charge interest for past-due premiums. The recourse for plans established in statute and codified in regulation is that plans can initiate involuntary disenrollment of members that do not remit premium in a timely manner. Note that direct billing is already a member option, so the burden on plans will be mitigated by systems for direct billing that are already in use.

Comment: Some commenters stated that determinations of ''fault'' would be difficult to make, and that enrollee complaints would increase, including complaints about the disparate treatment of members. Others stated that we should not establish a separate ''right'' for individuals who ''fail'' premium withhold, while not providing the same ''right'' to others who have past-due premiums. Other commenters suggested requiring plans to ''waive'' premiums when the plan sponsor was ''at fault'' in creating the premium arrearage. Some commenters suggested we include a definition of ''without fault'' and include all situations where the individual could not reasonably be expected to make premium payments, including hospitalizations or other situations beyond the beneficiary's control.

Response: We have not further defined ''without fault'' since we believe the language of the regulation is clear. To the extent the member has not been previously notified of proposed involuntary disenrollment for non-payment of premium, the member is ''without fault'' in creating the premium arrearage. In such cases, where the premium arrearage is for more than a single month, the sponsoring organization must permit installment payments. We do not believe this provision will cause disparate treatment of members. Rather, all members with premium arrearages of more than a month and who were not responsible for having created them by either failing to respond to a remittance notice, or by failing to use a coupon book to send in their monthly premium, will have the same ''right'' to installment payment of past-due amounts. We are not further enumerating the possible ''without fault'' situations at this time. That said, we do not believe that being hospitalized would necessarily, in and of itself, constitute a case of ''without fault.'' Note that premiums are due monthly. In the event a hospitalization or lengthy illness prevents timely payment of premium, we would want and expect plan sponsors to be reasonable in their collection efforts.

Comment: Some commenters suggested that while ''without fault'' determinations are being made there should be no recourse against an enrollee. These commenters also suggested developing an appeal process

related to ''without fault'' determinations.

Response: Disputes related to premium payments and involuntary disenrollment actions are already subject to the plan's internal grievance process.

Comment: One commenter stated that members are aware of their monthly premium liability upon enrollment in a plan and therefore should not be permitted to delay payment, when premium arrearages occur. Another commenter stated that extended payment plans are a hardship for beneficiaries.

Response: In some cases members believe they owe no premium or that their premium is being paid through premium withhold or through some other mechanism. In such cases premium arrearages can accrue through no fault of the member. In other words, it is not always the case that knowing premium liability is tantamount to delaying payment. In the case where a member finds hardship in an extended payment plan, remittance by lump sum is also possible.

Comment: Some commenters complained that extending repayment plans beyond the current plan year could result in members still owing past-due premiums at their renewal date. The commenter also stated that some members might disenroll from the plan during the Annual Election Period before they had completely repaid their premiums. Some commenters suggested that repayment plans, therefore, be limited to the number of months left in the current plan year.

Response: All members are free to select a new plan during the Annual Election Period and therefore have an opportunity to stop paying premium toward the end of a plan year, especially if they are considering enrollment in a new plan. Therefore, we do not agree that the potential for selection of a new plan during the Annual Election Period provides a compelling argument that installment plans always guarantee repayment before the end of the current plan year.

Comment: One commenter suggested adding additional options for members to repay past-due premiums, beyond the two mentioned in proposed regulation text.

Response: We agree with this comment and in response to this comment now indicate in the final regulation text that other mutually-agreeable repayment methods, beyond lump-sum and monthly installments, are acceptable.

Comment: One commenter recommended allowing plan sponsors to require repayment of the full past-due amount if it represents less than 2 months.

Response: We agree with this comment. It was not our intention to allow repayment of past-due premium amounts over a greater period of time than the number of months during which the past-due premiums accrued. If the premium arrearage is for a single month, then the member must pay the entire amount in a single payment.

Comment: One commenter suggested allowing the plan sponsor to exercise flexibility in working with members, that mandating specific member rights was inappropriate and that it might lead to premium payment abuses by members.

Response: While we rely on and assume plan reasonableness, we also assume member integrity. We believe we have achieved the correct balance between a plan sponsor's right to impose premium and a plan member's responsibility for payment of such premium.

Comment: One commenter stated that sections 1854(d)(1) and (2) of the Act did not support the interpretation that members should be permitted to pay past-due premiums over time.

Response: We do not agree. Section 1854(d)(1) of the Act is clear in requiring a plan sponsor to permit the payment of premium ''on a monthly basis.'' If, due to a system interface problem, or if, due to the failure, oversight or mistake of another party—for instance, a plan sponsor might neglect to provide a monthly billing statement to a member—and if a member's premium arrearage exceeds a single month, then the member should nevertheless retain the right to pay premiums on a monthly basis.

Comment: One commenter expressed concern that in cases where past-due premiums are owed but members are currently in premium withhold status, that computer systems would not currently support installment payments.

Response: It was never our intent to permit installment payments of past-due premiums through premium withhold. Many premium arrearages are caused by ''failures'' in the premium withhold system. It would be illogical to call on the premium withhold system to withhold past-due premiums that the premium withhold systems caused in the first place.

Comment: Some commenters stated we should limit liability for past-due premiums to three months, where the plan sponsor made no prior effort to collect. Some suggested requiring ''waiver'' of past-due premiums in cases of ''hardship.'' One commenter suggested having the Social Security Administration pay enrollee premiums during periods of temporary cessation of SSA checks—when, for instance, the enrollee is a resident of a State psychiatric institution. Finally, some commenters suggested limiting involuntary disenrollment to only cases where premium arrearages were for two months or more.

Response: We have no authority to limit liability for past-due premiums to only 3 months, regardless of the circumstances surrounding a specific case. Similarly, CMS has no authority to ''waive'' past-due premiums, nor can we require a plan sponsor to do so. Under Part D, there is the income-related subsidy program that would limit premium liability for most low-income individuals. However, there is no premium subsidy program under Part C. We also have no authority to require the Social Security Administration to pay premiums on enrollee's behalf, where premiums have not first been deducted from enrollee's Social Security checks. Finally, we have no authority to restrict involuntary disenrollment to only those cases where more than a single month's premium is past-due.

Comment: Some commenters suggested imposing fines or civil monetary penalties that would be payable to plan members on plan sponsors that send incorrect notices to members related to premiums.

Response: We do not have the authority to require plan sponsors to pay plan members fines or civil monetary penalties for incorrect notices related to plan premiums.

4. Prohibiting Improper Billing of Monthly Premiums (§ § 422.262 and 423.293)

We proposed to amend the MA regulations by adding new paragraph (g) to § 422.262, and the Part D regulations by adding new paragraph (e) to § 423.293, to explicitly prohibit improper billing. We stated it was inappropriate for an MAO or Part D plan to double bill members who have submitted a request that premiums be withheld under section 1860D–13(c) of the Act for Part D or section 1854(d) of the Act for Part C, and who are already having their premiums taken out of their Social Security payments. The final rule adopts the revisions to § 422.262 and § 423.293 with modifications based on comments. Specifically, based on comments we received, we have modified the language to clarify that we only intend to prohibit billing a beneficiary a second time for premiums that the beneficiary has already paid through premium withhold.

Comment: All commenters supported CMS's position that members should not be billed for premiums that had already been paid through premium withhold. However, some commenters suggested that the plan should be paid interest by Social Security or CMS, when the premium was actually withheld from a member's Social Security check, but the premium was not passed on to the plan sponsor in a timely manner.

Response: We will continue to work with plans to ensure timely payment of amounts due. In the case of premium withhold, we are exploring additional systems implementation options that include more robust reporting of premium withhold data, as well as more timely reconciliation of premium pass-through issues.

Comment: Some commenters suggested that when there is a premium withhold ''failure'' that members should be indemnified for the remainder of the plan year.

Response: We do not have the authority to indemnify such members from responsibility for premiums that they actually owe. On the other hand, to the extent members have already paid premiums through premium withholding, we fully intend to protect them from double billing and, in another part of this rule, from improper involuntary disenrollment.

Comment: Some commenters objected to the fact that a plan enrollee could simply request premium withhold and thereby avoid premium liability during the time it takes the plan to set-up premium withhold.

Response: We agree with this comment, and in response to this comment have clarified the regulation text to state that it is only in cases where premiums have already been paid by the member through premium withhold that it is prohibited under this regulation for a plan to bill a member more than once for such premiums.

5. Non-Renewal Notification Timelines (§ § 422.506 and 423.507)

We proposed revising § 422.506(a)(2)(ii), (a)(2)(iii), (b)(2)(ii), and (b)(2)(iii) of the MA regulations and § 423.507(a)(2)(ii), (a)(2)(iii), (b)(2)(ii) and (b)(2)(iii) of the Part D regulations, to change the beneficiary and public notice requirement from at least 90 days to at least 60 days, thus allowing more time for the contract non-renewal process to conclude, and any administrative appeal to conclude, while still allowing for a sufficient beneficiary notice period, prior to January 1st. This change will help ensure that all non-renewal decisions are final, prior to the start of marketing and enrollment activities.

Comment: Numerous comments opposed the reduction of the beneficiary and public notice period. The commenters stated that the reduction of days for beneficiaries to understand the impact of the non-renewal, evaluate their options, and make informed decisions would be difficult. The commenters urge CMS to maintain the 90 day notice period.

Response: The change in beneficiary and public notification timeframes was made to allow time for the notification process to conclude prior to the beginning of open enrollment, since the date for notifying plans regarding nonrenewals is now August 1 of each year. The 60-day beneficiary and public notification may not occur prior to the conclusion of the administrative appeal of a non-renewal determination. Shortening the notification period to 60 days will also increase the likelihood that any administrative appeal and the notification period can conclude prior to the start of the new plan year on January 1.

We believe a 60-day notice is sufficient for beneficiaries to make choices. Currently, beneficiaries cannot enroll, during the annual enrollment period, in a plan until November 15th of each year. The change in the notification timeframe does not limit the enrollment period for beneficiaries. The decrease in the beneficiary notification period only affects the amount of time plans may market to beneficiaries. We believe 60 days is a sufficient amount of time for beneficiaries to make a new health care choice. Therefore, we will not be making any changes based on this comment.

6. Reconsiderations (§ § 422.578, 422.582, 423.560, 423.580)

a. Medicare Advantage Program (§ § 422.578 and 422.582)

We proposed to revise § § 422.578 and 422.582 to allow a beneficiary's physician to request a standard plan reconsideration on the beneficiary's behalf without having been appointed as his or her representative. The final rule adopts the revisions to § § 422.578 and 422.582 as set forth in our proposed rule.

Comment: Many commenters agreed with the proposed change allowing a treating physician, with the enrollee's consent, to request a standard pre-service reconsideration. In addition to supporting the proposed change, one commenter recommended further revising § 422.584 of the regulations to specify that the physician making an expedited request must be currently providing treatment to the enrollee.

Response: We appreciate the commenters' support for this provision, and believe that permitting physicians to request standard pre-service appeals on their patients' behalf will help to make the appeals process more accessible to enrollees. However, we can not revise § 422.584 of the regulations to specify that the physician making an expedited request must be currently providing treatment to the enrollee because section 1852(g)(3)(A)(ii) of the Act permits any physician, regardless of his or her status as an enrollee's treating physician, to request an expedited determination or reconsideration on an enrollee's behalf.

Comment: A commenter requested that CMS clarify in the regulations that only a primary care physician (PCP) would be allowed to request a standard reconsideration of a pre-service request on behalf of the enrollee, not a specialty care physician.

Response: The term ''physician'', as used in subpart M, has the same meaning given to the term in section 1861(r) of the Act. Thus, the term includes any physician who is providing treatment to the enrollee. Therefore, it would be inappropriate to allow only PCPs to request standard pre-service reconsiderations. We continue to believe that any physician who is involved in providing care to an enrollee is in a good position to know whether a request for plan reconsideration is warranted and in the enrollee's best interest. Accordingly, we are not adopting the commenter's suggested revision.

Comment: A commenter asked CMS to clarify in the MA regulations that an enrollee's treating physician is limited to requesting a standard plan reconsideration of a pre-service request on an enrollee's behalf without being the enrollee's appointed representative.

Response: As currently drafted, we believe § 422.578 of this final rule already makes this limitation clear. It states in relevant part that a physician is limited to requesting ''a standard reconsideration of a pre-service request for reconsideration on the enrollee's behalf.'' (*See* 73 FR 28594).

Comment: A commenter was concerned that removing the need for an enrollee to actively appoint a representative could have serious implications for beneficiary rights. This same commenter also noted that the proposed change would raise significant operational issues. For example, the commenter questioned what would happen in a situation where an enrollee objects to being represented by the

physician, and asked whether there are limits on the representation, and if the initial representation would enable the physician to continue the appeals process through additional levels of appeal. Finally, the commenter questioned whether such representation is limited to disputes relating to services provided by the appealing physician. Given these concerns, the commenter suggested that the proposal be given further review prior to implementation.

Response: We appreciate the commenter raising these important issues concerning enrollee rights, limitations on physician representation of an enrollee, and the potential operational issues resulting from this policy. In the MA program, physicians have long been permitted to file coverage requests and plan level expedited appeals on their patients' behalf. The proposed policy represents a modest expansion of that right, but still limits the physician's ability to act on the enrollee's behalf only to plan level appeals, unless the physician is the enrollee's representative. As stated in the preamble to the proposed rule (73 FR 28579), we believe that for any appeal beyond the plan level, the enrollee should be directly involved in a decision to disclose his or her private health information to adjudicators because those adjudicators do not have the same relationship with the enrollee that the plan has. Accordingly, if an enrollee wishes his or her physician to request higher levels of appeal on his or her behalf, the physician must also be the enrollee's representative. If an enrollee does not want his or her physician to request an appeal, we believe the proposed rule addresses the commenter's concern. Consistent with § 422.578, the physician must notify the enrollee before filing the appeal request. We believe this policy will afford the enrollee sufficient opportunity to express any objections about the physician filing the appeal or to refuse the physician's representation. Given our experience with the MA and Part D programs, it is reasonable to believe that in the overwhelming number of cases, the enrollee will welcome the physician's willingness to pursue an appeal on the enrollee's behalf.

With respect to the commenter's question about whether the representation is limited to disputes relating to services provided by that physician, § 422.578 states that a physician who is providing treatment to an enrollee may, upon providing notice to the enrollee, request a standard reconsideration of a pre-service request on the enrollee's behalf. As the commenter notes, the regulation is not prescriptive about the relationship between the care the physician is providing to the enrollee and the need for the reconsideration request. However, we believe that given the treating physician's knowledge of and access to the medical information needed to support such a request, it is reasonable to presume that, in most instances, the treating physician will be the physician requesting the pre-service reconsideration. Finally, we note the receipt of numerous comments from beneficiary advocacy groups and medical associations in support of this provision as an appropriate means of allowing physicians to assist enrollees with the MA and Part D appeals processes. Accordingly, we have finalized the provision as proposed.

Comment: Many commenters asked CMS to clarify what type of documentation a physician would be required to produce to demonstrate that he or she is an enrollee's treating physician.

Response: Since the inception of the MA and Part D programs, we have received numerous comments asking us to make the appeals process more enrollee-friendly by allowing physicians to make initial determination and appeals requests on their patients' behalf without going through the formal appointment of representation process. We developed the proposed policy in response to those requests, and the overwhelming number of comments we received were supportive. Our proposal is a very limited extension of a physician's current appeal rights under the regulations (a physician currently has the right to request an initial determination or an expedited plan-level appeal on behalf of an enrollee without being his or her appointed representative). We merely proposed to extend this right to include standard pre-service plan-level appeals under MA and standard plan-level appeals under Part D. Thus, the process for handling physician-initiated plan-level appeal requests should be the same process that is currently being used to process and adjudicate expedited plan-level appeal requests. In addition, because we intended to make filing a standard plan-level appeal request easier for a physician than if he or she were filing as the enrollee representative, we expect the processes that plans to adopt for verifying a physician's status as the treating physician to be much simpler and more flexible than the process used to verify appointed representative status. If necessary based on experience under this final rule, we believe the proper place to further address this issue is in operational guidance. As such, we will consider the commenters' concerns as we develop future policy guidance, and will update Chapter 13 of the Managed Care Manual and Chapter 18 of the Prescription Drug Benefit Manual as appropriate.

b. Prescription Drug Benefit Program (§ 423.560 and 423.580)

(1) Definitions (§ 423.560)

We proposed to revise the regulation text of § 423.560 by adding a new definition for ''other prescriber'' that encompasses health care professionals, other than physicians, with the requisite authority under State law or other applicable law to write prescriptions for Medicare beneficiaries. In conjunction with the proposed new definition, we proposed to add ''or other prescriber'' after ''prescribing physician'' or ''physician'' throughout subpart M of part 423 in order to authorize these other prescribers to perform the same functions that prescribing physicians are allowed to perform with respect to the coverage determination and appeals processes as set out in subpart M of part 423. This final rule with comment period adopts the revisions to § 423.560 set forth in our proposed rule.

Comment: A few commenters requested further clarification regarding who could qualify as an ''other prescriber.'' One commenter suggested CMS ensure the definition of other prescriber is consistent with the definitions of treating physician and treating practitioner used in section 1861(r) of the Act.

Response: As noted in the preamble to the proposed rule (73 FR 28579), we believe it is important to provide enrollees who have prescriptions written by health care professionals, other than physicians, with prescribing authority under State law or other applicable law the same protections and assistance in the coverage and appeals processes that are currently available to enrollees whose prescriptions are written by a physician. We believe it is appropriate to defer to State law or other applicable law to determine who is considered an ''other prescriber'' under subpart M of the regulations because States are responsible for licensing and regulating such professionals. Although we may provide examples of other health care professionals who have prescribing authority under State or other applicable law in our guidance, any such list would not be exhaustive. Thus, it is ultimately a Part D plan sponsor's responsibility to ensure a health care professional making a request on behalf of an enrollee has

prescribing authority under State law or other applicable law.

(2) Right to a Redetermination (§ 423.580)

We proposed to revise the regulation text of § 423.580 to provide prescribing physicians and other prescribers with the ability to request standard redeterminations on behalf of enrollees, and require them to notify enrollees that they are taking this action. The final rule adopts the revisions to § 423.580 set forth in our proposed rule.

Comment: Although many commenters supported our proposal to allow physicians and other prescribers to request, upon notice to the enrollee, a standard redetermination, we received one comment opposing the proposal. The corresponding change that was proposed, and is being finalized in this rule, for the MA program allows a treating physician to request a plan-level appeal (reconsideration) on behalf of the enrollee for a pre-service request, but does not allow a treating physician to request a standard plan-level appeal for payment. The distinction between pre-service claims and claims for payment in the MA program was made due to the financial interest a treating physician may have in a claim for payment under the MA program. Under existing § 422.574(b), if the physician or other provider that furnished a service to an enrollee formally waives any right to payment from the enrollee for that service, the physician or other provider becomes a party to the organization determination and may request a plan-level appeal. The commenter opposing the proposal disagreed with the statement made in the preamble to the proposed rule that prescribing physicians do not have a financial interest in the payment of Part D claims because a physician who has a relationship with a pharmaceutical manufacturer may be more likely to prescribe one of the manufacturer's drugs. Finally, the commenter also believes that if an enrollee wants a physician or other prescriber to seek a redetermination on his or her behalf, then the enrollee should make that request to the provider in writing.

Response: We appreciate the comments received in support of this provision. We believe a policy of allowing prescribing physicians and other prescribers to request standard redeterminations on behalf of enrollees will help to make the appeals process more accessible to enrollees. With respect to the comment opposing this provision, we understand the commenter's concern about the potential for a prescriber to have some financial interest, but continue to believe that a physician or other prescriber requesting an appeal under Part D does not have a financial interest in the outcome of an appeal in the same manner as a physician requesting an appeal under the MA program. As noted in the preamble, the MA rules already allow a provider who has furnished a service to an enrollee to request a plan-level appeal if the provider waives any right to payment from the enrollee. Under the Part D program, a physician or other prescriber is generally not entitled to payment for the prescribed drug from either the enrollee or the plan and, therefore, is not in the same position as an MA provider with respect to a potential financial interest. Finally, we do not agree with the commenter's suggestion that an enrollee should submit a written request to his or her provider asking the provider to represent him or her in the redetermination process. Adding this requirement would essentially create a process identical to the appointment of representative process, which would not serve to enhance beneficiaries' access to the Part D appeals process.

Comment: A few commenters asked CMS to clarify the process a physician must use to inform an enrollee that he or she is requesting a standard redetermination on the enrollee's behalf. One commenter asked how the physician's notice to the enrollee is communicated to the Part D plan sponsor, and how receipt of such information impacts the adjudication timeframe.

Response: As noted previously, our intention is to make this process flexible for enrollees, providers, and plans. Thus, we have not included in regulation any requirements regarding the format of the physician's notice to either the enrollee or the plan. We believe this approach will allow plans to determine how to best implement these requirements. However, we will take these comments into consideration when developing any necessary operational guidance. If we determine that additional clarification is necessary, we will include any appropriate information in our operational manuals. Therefore, any additional polices we develop related to the issues raised by the commenters above will be added to Chapter 18 of the Prescription Drug Benefit Manual.

c. Miscellaneous Comments

Comment: We received one comment suggesting the provision in § 423.582 requiring prescribing physicians to submit written requests for redeterminations is an unnecessary formality that will frustrate the practitioner's ability to provide the best care for his or her patient.

Response: We believe the commenter's suggestion is outside the scope of the proposed rule because we did not propose to modify the written request requirement in § 423.582. We note that, although the written request requirement in § 423.578 was carried over from § 422.578 in accordance with section 1860D–4(g) of the Act, nothing in the Act or regulations prohibits an MA organization or a Part D plan sponsor from also accepting verbal requests. Rather, the regulations explicitly provide that the MA organization or Part D plan sponsor may adopt a policy for accepting oral requests. (See § 422.582(a) and § 423.582(a)).

Comment: A commenter suggested that a physician in the same specialty or subspecialty as the prescribing physician must be responsible for reviewing a medical necessity denial under § § 423.590(f)(2) and 423.600(e).

Response: The commenter's suggestion is outside the scope of the changes proposed in this rule because we did not propose to modify § 423.590(f)(2) or § 423.600(e). We note that the physician reviewer requirements contained in § 423.590(f)(2) and § 423.600(e) are consistent with § 422.590(g) of the regulations, which requires the reviewing physician to have ''expertise in the field of medicine that is appropriate for the services at issue'' but ''need not, in all cases, be of the same specialty or subspecialty as the treating physician.'' We continue to believe that the level of review provided by a physician having expertise in the field of medicine appropriate for the services at issue is sufficient for medical necessity denials under Part D. The regulatory language also makes it clear that a physician of the same specialty or subspecialty as the prescribing physician may need to review a Part D drug medical necessity denial in some situations.

Comment: Several commenters provided comments on the MA reconsideration process at the independent review entity (IRE) level of review. The commenters stated that IRE reconsiderations are generally limited to evidence and arguments submitted to the IRE by the MA plan and that beneficiaries often have difficulty contacting the IRE and are discouraged from participating in the process. The commenters requested that § 422.592 be amended to include a provision giving beneficiaries the right to submit allegations of fact and law to the IRE

and that such information could be submitted by telephone, fax or electronic mail.

Response: Amending § 422.592 of the MA appeals regulations is outside the scope of this final rule. However, we will consider the commenters' remarks for future rulemaking that involves the MA appeals process. We would like to note that, under the existing standard reconsideration process, when the IRE receives a case file from an MA plan, it sends an acknowledgement letter to the enrollee. The acknowledgement letter informs the enrollee that his or her appeal is being reviewed by the IRE and includes a comprehensive explanation of the enrollee's rights, including the right to provide the IRE with information that may help the enrollee's case.

Comment: We received comments urging CMS to revise § 423.578 to require uniform coverage determination and reconsideration procedures. In addition to making it easier for physicians, advocates, and beneficiaries to navigate the system, the commenters believe uniform requirements will make it easier for CMS to monitor plan performance.

Response: We appreciate the commenters' suggestion, however, amending § 423.578 as suggested is outside the scope of revisions contained in this rule. Moreover, we believe the Part D appeals process established in Subpart M of Part 423 largely establishes a uniform coverage determination and appeals process including, but not limited to, required adjudication timeframes for the plans and the IRE, requirements related to the timing, form and content of notices, and rules related to the exceptions process.

Comment: We received comments urging CMS to amend the Part D regulations at § 423.590 to allow the enrollee to request IRE review if a plan fails to meet its adjudication timeframe and also fails to forward the enrollee's request to the IRE within 24 hours of the expiration of the adjudication timeframe.

Response: We appreciate the commenters' suggestion, however, amending § 423.590 as suggested is outside the scope of this rule. However, we will consider this suggestion for future rulemaking regarding the Part D appeals process.

Comment: We received a comment that expressed concern that, except for retrospective self-reporting by plans, there is no mechanism for the IRE or CMS to monitor whether plans are meeting their decisional deadlines. Beneficiaries not represented by persistent advocates who know the rules may face unacceptable delays. The commenter urged CMS to develop a mechanism whereby coverage determinations are tracked in real time so that beneficiary rights to timely action can be protected.

Response: We concur that plans' timely decision-making for coverage determinations and redeterminations are two important areas for monitoring; however, there may be operational barriers to monitoring these transactions in real-time. As the commenter stated, the Part D Plan Reporting Requirements Exceptions and Appeals reporting sections require plans to report data related to these processes, including failure to meet decision timeframes. We consider these plan-reported data, along with other information sources, important first indicators for Plans failing to meet these requirements.

Comment: A commenter stated that to aid in monitoring, as well as to assist beneficiaries who are not receiving promised services, CMS should institute an effective complaint process for beneficiaries. The commenter also stated that complaints should be investigated and also used in CMS monitoring activities and reports. When available, beneficiaries should be allowed to have denied grievances appealed to state independent medical review processes.

Response: The commenter's suggestion to require that beneficiaries should be allowed to have denied grievances appealed to state independent medical review processes is beyond the scope of this rule. However, we note that we implemented a centralized Complaint Tracking Module (CTM) in 2006 in order to help capture and resolve complaints received from Medicare beneficiaries experiencing difficulties with their Part D benefit. The CTM allows CMS and Plan sponsors to work together to investigate and resolve complaints in a timely manner. Beneficiaries can also file a grievance directly with the plan sponsor. Plan sponsors, in turn, report grievance data to CMS as specified in the Part D Plan Reporting Requirements for CMS' monitoring and oversight.

In addition to contract monitoring and oversight, complaint data are incorporated in Part D plan ratings. Part D plan ratings include various operational and quality areas in which Plans' performances are rated for display on the Medicare Options Compare and the Medicare Prescription Drug Plan Finder at *http://www.medicare.gov.* These ratings empower beneficiaries to compare Medicare health and prescription drug plans in their geographic area.

7. Civil Money Penalties (§ § 422.760 and 423.760)

We proposed to clarify our regulations relating to CMPs in both § 422.760 and § 423.760 by adding paragraph (b)(2) of the respective sections to state that CMS may impose a penalty of not more than $25,000 for each enrollee covered under the organization's contract that is adversely affected or substantially likely to be adversely affected by the organization's deficiency (or deficiencies). When determining the amount of a penalty per determination, up to the $25,000 maximum, we will continue to take into account factors such as the severity of the infraction, the evidence supporting the infraction, the amount of harm caused to the Medicare beneficiary, and the organization's past conduct.

Our proposed change is aimed at protecting enrollees by clarifying that penalties can be substantial for noncompliance. CMS has the discretion to establish guidance on how CMPs will be calculated and the monetary limits of CMPs for violations.

Assessing CMPs at the level of each enrollee covered under the organization's contract—which enables the Agency to continue to levy CMPs at the ''per contract'' level—will help provide the necessary flexibility for CMS to better match CMP amounts to the specific violation underlying a CMP. However, we acknowledge that there may be alternative or additional approaches to the ''per beneficiary'' and ''per contract'' schema described here that would likewise meet the Agency's goals of providing meaningful penalties that deter violations of Medicare program requirements and protect Medicare beneficiaries. For example, tying CMP amounts to the number of days that violations existed may likewise be an effective approach for assessing meaningful CMPs. In our proposed rule, we therefore sought comments on our proposed clarification as well as whether any other approaches would more effectively deter MA organizations and Part D sponsors from engaging in conduct which violates CMS requirements. We also requested comments on the appropriate monetary range for CMPs imposed on MA organizations and Part D sponsors and whether some upper limit should exist on the total amount of a penalty imposed on an organization when a deficiency has adversely impacted a large number of enrollees covered by an MA organization or Part D sponsor. As discussed below, we received approximately 30 comments on CMP-related issues, but we did not receive

substantive suggestions on approaches or monetary ranges for CMPs.

Comment: One commenter supported CMS' clarification to the term ''determination'' when referring to CMPs. The commenter suggested that no upper limit for CMPs be specified. The commenter suggested that CMS have the flexibility to impose an appropriate monetary penalty without the constraint of an arbitrary cap.

Response: We agree that we need the flexibility to impose meaningful CMPs on plans. We have decided not to impose an upper limit for CMPs at this time.

Comment: One commenter stated that moving from calculating a penalty based on an organizational level to a membership level imposes significant increased business risk to plans that contract with CMS. This commenter also stated that this would allow CMPs to be levied not on the violation itself but on the membership.

Response: The proposed regulation does not change the basis for the CMP. The basis of the violation remains the same. The proposed regulation clarifies how the penalty is assessed. That is, we proposed to clarify that under some circumstances, determinations can be based on the number of adversely affected, or potentially adversely affected, enrollees. In such instances, a CMP would only be assessed on the number of adversely affected, or potentially adversely affected, enrollees, not the total number of enrollees in the plan. We are not making any changes based on this comment.

Comment: A few commenters stated that CMS' proposal is not appropriate for violations that are unintentional and/or do no harm to beneficiaries. The commenters stated that this level of CMPs would only be appropriate in rare circumstances when an organization intentionally and deliberately violated program rules or where the violations are egregious, knowingly, or willfully undertaken.

Response: The commenters were concerned about CMPs levied for an organization's unintentional acts and/or acts that do not involve harm to members. The current regulations clearly state that to impose a CMP on an organization, we must make a determination that a violation adversely affects, or potentially adversely affects, one or more of the organization's enrollees, regardless of whether such harm was intentional or not. The proposed regulations do not change this current requirement. As for violations that are found to be ''egregious, knowingly, or willfully undertaken,'' the statute and current regulations permit CMS to take into account such types of violations as one of, but not the sole governing factor when determining a civil money penalty. We are not making any changes to the proposed regulation based on these comments.

Comment: A few comments concerning the phrase ''substantial likelihood'' were received. One commenter stated that they were not sure what criteria or standards we would apply to determine when there is a substantial likelihood of a violation adversely affecting members. Another commenter requested guidance on what is meant by ''substantial likelihood of being adversely affected by a deficiency.''

Response: The language of ''substantial likelihood of adversely affecting'' comes directly from section 1857(g) of the Act. We must have the discretion to interpret this language when evaluating whether to impose a CMP, since each case may present a different set of circumstances and any determination of likely adverse effects on enrollees could depend on the specific facts of the case. We are not making changes based on these comments. We will consider whether future guidance should incorporate criteria to help determine when a deficiency has a substantial likelihood of adversely affecting an organization's members.

Comment: A commenter requested clarification to determine what the threshold for willful and purposeful neglect was.

Response: The term ''willful and purposeful neglect'' was not used in the proposed regulation with respect to civil money penalties. CMS is unsure what the commenter is referring to.

Comment: A commenter stated that the regulation should list what types of recourse the MA organization or Part D sponsor has prior to CMS imposing a civil money penalty.

Response: Civil money penalties are imposed for various violations. Some violations may be one time violations that have significant harmful effects on enrollees. In such cases, CMS may not consider it appropriate to offer recourse (such as a corrective action plan), given that the violation has already taken place and has significantly harmed enrollees, even if it is not likely to reoccur. We are not required to provide for recourse, such as a CAP prior to the issuance of a CMP. However, the regulations do provide for appeal rights for those organizations who believe we have inappropriately imposed a CMP. Therefore, we are not making any changes based on this comment.

Comment: One commenter urged CMS to continue to take into account an organization's past conduct when assessing the need for a CMP.

Response: We agree with the commenter and will continue to take into account an organization's past conduct when assessing the need for, or the amount of, a CMP.

Comment: One commenter stated that the language allows for assessment at both the contract level and the enrollee level.

Response: We developed the language to provide for discretion to impose a CMP at either the contract level or the enrollee level. This flexibility is necessary to ensure violations and penalties are appropriately matched.

Comment: A commenter was uncertain whether the deficiency's adverse effects are related only to those who are enrolled in a plan or also to individuals who have expressed interest in a plan.

Response: The statute states that any adverse or substantial likelihood of adverse effect be on ''an individual covered under the organization.'' We believe that this language requires that the individual be an enrollee of the plan and not just one who has expressed interest in the plan.

Comment: A few commenters were concerned that the proposed changes could result in massive penalties for relatively minor infractions if those infractions affect a large number of enrollees.

Response: To impose a CMP, current regulations require us to make a determination that a violation adversely affects or has the likelihood of adversely affecting an enrollee. In addition, we may impose a CMP only for deficiencies that could lead to termination under § 422.510(a) or § 423.509(a) (but not under § 422.510(a)(4) or § 423.509(a)(4)). Sections 422.510(a) and 423.509(a) do not contemplate a termination for a relatively minor infraction.

Comment: One commenter supports CMS' stated intention to consider the severity of the infraction and other extenuating circumstances in determining the amount of the penalty. The commenter also stated that CMS should recognize that PDP revenue is significantly lower than MA revenue and penalties should be tempered accordingly.

Response: Our regulations currently permit us to consider additional factors, as appropriate, in determining the amount of a CMP. These factors include the nature of the conduct, the degree of culpability of the organization, the harm which resulted or could have resulted, the financial condition of the

organization, the history of prior offenses, and other matters as justice requires. Although we may consider the financial condition of an organization, the relative revenue of a PDP sponsor compared to an MA organization would have no bearing on CMS' decision on a CMP.

Comment: One commenter stated that penalties could be excessive for large plans. The commenter stated that CMS should reduce the amount proposed, revise the formula, or not have assessments on a per member per violation basis. The commenter stated that if CMS chooses to retain the per member per violation basis, then CMPs should only be assessed for the most egregious, deliberate, and willful violations of the law or regulations.

Response: The formula to calculate a CMP based on $25,000 per violation is taken from section 1857(g) of the Act. Therefore, a statutory change would be required to change that dollar amount or formula. If an MA organization or Part D sponsor believes a CMP is excessive, the organization or sponsor has the right to request an appeal of the amount before an ALJ prior to paying a CMP.

Comment: A commenter recommended modifying § 422.760(b)(2) and § 423.760(b)(2) to be consistent with § 422.760(b)(1) and § 423.760(b)(1), which require that the deficiency adversely affects or has the substantial likelihood of adversely affecting one or more enrollees.

Response: We did not revise nor intend to revise § 422.760(b)(2) and 423.760(b)(2). We appreciate the comment and will consider it for future proposed regulations. We believe the general public should be provided an opportunity to comment on a change such as this.

Comment: A few commenters stated that there should be a maximum penalty amount designated or that the proposal should indicate that CMS has the discretion to issue guidance establishing a range or a cap for the calculations under this provision.

Response: At this time, we have not provided for maximum penalties. However, we have added language into the preamble stating that we may, if determined necessary, issue additional guidance for the range of penalties or caps associated with violations.

Comment: A number of commenters supported CMS' proposal, allowing CMS to calculate CMPs based upon each enrollee ''directly adversely affected (or with a substantial likelihood of being adversely affected).'' These commenters opposed upper limits on penalties and stated that the penalty should reflect the noncompliance of the organization. These commenters stated that the penalty should be more than the cost of compliance.

Response: We appreciate your comments. CMS also believes that the penalty should better reflect the infractions and the number of beneficiaries affected by the infraction.

Comment: A number of commenters stated that CMS should develop regulatory mechanisms to require Medicare Advantage and Part D plans to make financial compensation to beneficiaries who are harmed.

Response: Currently, there is no statutory authority to permit us to require Part C and Part D plans to compensate beneficiaries who are harmed by MA organizations and Part D sponsors. Such a requirement to compensate beneficiaries could violate section 1854(d)(1) of the Act, which prohibits cash payments to beneficiaries. In addition, there is no statutory provision that permits premiums to be waived. Thus, we believe such a change would require statutory amendment.

Comment: A number of commenters suggested that CMS repeal § 423.760(b)(2), which limits the penalty for uncorrected deficiencies to no more than $10,000 per week. The commenters stated that this penalty is remarkably low for uncorrected deficiencies and that the amount must be large enough to encourage organizations to correct deficiencies.

Response: We appreciate the comment and will consider it for future proposed regulations. CMS believes the general public should be provided an opportunity to comment on a change such as this.

Comment: A number of commenters stated that CMS should repeal § 423.760(b)(3), which limits the total penalty to $100,000. The commenters also stated that regulations at § 423.758 authorize a penalty of $250 per enrollee, or $100,000, whichever is greater. The commenters also stated that there is no reason to create an upper limit for plans with large enrollees.

Response: We believe that the commenters misunderstood the regulations. The regulations at § 423.760(b)(3) provide for penalties of $250 per enrollee, or $100,000, whichever is greater. Therefore, no upper limit exists for penalties.

Comment: Several commenters requested that CMS amend § 423.762 to set limitations on the settlement of CMPs. The commenters suggested that no more than 35 percent of the penalty may be deducted in any settlement.

Response: We appreciate the comment and will consider it for future proposed regulations. We believe the general public should be provided an opportunity to comment on a change such as this.

III. Collection of Information Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 30-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

Listed below is the discussion of the information collection requirements contained in this rule. Previously, we solicited public comments on the requirements in the proposed rule that published on May 16, 2008 (73 FR 28556). However, we are interested in receiving additional public comments pertaining to these requirements; therefore, we are re-soliciting public comments on the following:

A. ICRs Regarding Eligibility To Elect an MA Plan for Special Needs Individuals (§ 422.52)

Section 422.52(g) requires a SNP to establish a process to verify the Medicaid eligibility and special needs status of an individual prior to enrolling the individual in a form and manner specified by CMS. The associated cost with this provision is a time one time event in calendar year 2010, as the provision expires on December 31, 2010. This may require collaborative meetings between MA plan staff and State Medicaid staff to establish the process. This process could include calling the Medicaid eligibility verification system (EVS) and reviewing appropriate used to determine an individual's special need.

The burden associated with this requirement is the time and effort put forth by the SNP to establish a process and to verify eligibility. We estimate it would take one SNP approximately (4680 minutes/78 hours) to comply with

this requirement. The total number of respondents affected would be 324 organizations offering SNPs; therefore, the total annual burden is estimated to be 25,272 hours.

B. ICRs Regarding the Election Process (§ 422.60)

Section 422.60(g)(2) requires the organization that receives the enrollment to provide notification that describes the costs and benefits of the plan and the process for assessing care under the plan. The notification must be provided to all potential enrollees prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical), in a form and manner determined by CMS. Providing notification may include mailing a brochure or fact sheet with the aforementioned information and contacting potential enrollees to respond to any questions regarding the mailer.

The burden associated with this requirement is the time and effort put forth by the organization to provide notification that meets the requirements specified by CMS. We estimate it would take one MA organization (30 minutes/ .5 hours) to comply with this requirement. The total number of organizations affected is 5; therefore, total annual burden hours associated with the requirement is 2.5 hours.

C. ICR Regarding Benefits Under an MA MSA Plan (§ 422.103)

Section 422.103(e) requires all MA organizations offering MSA plans to provide enrollees with available information on the cost and quality of services in their service area, and to submit to CMS for approval a proposed approach to providing such information.

The burden associated with this requirement is the time and effort put forth by the MA organization offering MSA plans to provide information to enrollees and to submit the proposed approach to providing such information to CMS. About 3,300 Medicare beneficiaries are enrolled in Medicare MSA plans in 2008.

We expect that the burden upon health plans to develop cost and quality data for use by MSA enrollees would depend upon what data is available in their area. As stated in the preamble, we expect that organizations that already have mechanisms in place in connection with their commercial lines of business for providing their beneficiaries with cost or quality information could offer similar services to Medicare beneficiaries.

We estimate the burden associated with this requirement in terms of time and effort necessary for the two organizations offering MSA plans to develop the information and to submit this information to CMS as a start-up cost of 100 hours per organization to develop this information, with half of that cost occurring in subsequent years for organizations to maintain and update this information. In addition, expected additional entry by organizations in future years would add start-up costs in the initial year that plans enter. The total burden would be 200 hours in year 1 and 100 hours in subsequent years. While this burden is subject to the PRA, it is currently approved under OMB control number 0938–0753 with an expiration date of November 30, 2011.

D. ICRs Regarding Contract Provisions (§ 422.504)

Section 422.504(g)(1)(iii) establishes requirements that MA organizations specify in contracts with providers that enrollees are protected from incurring liability for payment of fees that are the legal obligations of the State. CMS proposed in the May 16, 2008, NPRM (73 FR 28556–28604) that all MA organizations with enrollees eligible for both Medicare and Medicaid, specify in contracts with providers that these enrollees will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts.

MIPPA established a limitation on cost sharing for full-benefit dual eligible individuals and qualified Medicare beneficiaries in dual eligible special needs plans. The MIPPA required that organizations offering these plans not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under Title XIX if the individual were not enrolled in such a plan. The interim final rule with comment period that was published on September 18, 2008, (73 FR 54225–54254) implemented the MIPPA provisions. The discussion of the burden hours associated with § 422.504 in the interim final rule with comment period should have explained that the requirement was specific to MA organizations with special needs plans. The burden was imposed on the 269 MA organizations offering a total of 436 full-benefit and qualified Medicare beneficiary plans. The total burden associated with § 422.504 in the interim final rule with comment period should have been 90,688 hours for 2010. This final rule with comment period also imposes information collection requirements contained in § 422.504. The requirements associated with this rule affect the remaining 363 MA organizations with a total of 2,964 (non-SNP) plans that were not addressed in the interim final rule with comment period. The burden affecting the 363 MA organizations is 616,512 hours for 2010.

The burden table at the end of this section reflects the burden imposed by § 422.504 on non-SNP plans. While the burden is subject to the PRA, it is currently approved under OMB control number 0938–0753 with an expiration date of November 30, 2011. Moreover, the cost associated with this provision is a one time event in calendar year 2010, as the provision expires on December 31, 2010.

E. ICRs Regarding Right to a Reconsideration (§ 422.578)

Section 422.578 states that any party to an organization determination may request that the determination be reconsidered under the procedures described in 422.582.

While there is burden associated with this requirement, burden associated with reconsiderations is exempt as stated under the Paperwork Reduction Act of 1995. In particular, 5 CFR 1320.4 excludes collection activities during the conduct of administrative actions such as redeterminations, reconsiderations, and/or appeals. Specifically, these actions are taken after the initial determination or a denial of payment.

F. ICRs Regarding the Enrollment Process (§ 423.32)

Section 423.32(g)(2) requires an organization that receives the enrollment to provide notification that describes the costs and benefits of the new plan and the process for assessing care under the plan and the beneficiary's ability to decline the enrollment or choose another plan. Such notification must be provided to all potential enrollees prior to the enrollment effective date.

The burden associated with this requirement is the time and effort put forth by the organization to provide such notification. We estimate it would take one organization 207 hours to comply with this requirement. We estimate 42 organizations would be affected annually by this requirement; therefore, the total annual burden associated with this requirement is 8,694 hours.

G. ICRs Regarding the Late Enrollment Penalty (§ 423.46)

Section 423.46(b) states that Part D sponsors must obtain information on prior creditable coverage from all enrolled or enrolling beneficiaries and

report this information to CMS in a form and manner determined by CMS.

The burden associated with this requirement is the time and effort put forth by the Part D sponsor to obtain the required information. To comply with this requirement, Part D sponsors would expend 15 minutes per new Part D enrollee. We estimate that there will be approximately 500,000 new Part D enrollees. Therefore the total annual burden associated with this requirement will be 125,000 hours/7,500,000 minutes for all enrollees.

Section 423.46(d) requires the Part D plan sponsor to retain all information collected concerning a credible coverage period determination in accordance with the enrollment records retention requirements described in subpart K, § 423.505(e)(1)(iii).

The burden associated with this requirement is the time and effort put forth by the Part D plan sponsor to retain the required information. To comply with this requirement, Part D sponsors would expend 5 minutes per new Part D enrollee. There are approximately 500,000 enrollees. We estimate the total annual burden associated with this requirement will be 41,667 hours/2,500,000 minutes for all new Part D enrollees.

H. ICRs Regarding Contract Provisions (§ 423.505)

Section 423.505(k)(5) states that the Chief Executive Officer, Chief Financial Officer, or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to the officer, must certify that the information provided is accurate, complete, and truthful and fully conforms to the requirements in §§ 423.336 and 423.343 and acknowledge that this information will be used for the purposes of obtaining Federal reimbursement. While there is burden associated with this requirement, we feel the burden associated with these requirements is exempt from the requirements of the Paperwork Reduction Act of 1995 (PRA) as defined in 5 CFR 1320.3(h)(1).

I. ICRs Regarding the Right to a Redetermination (§ 423.580)

Section 423.580 provides information on the ways for an enrollee to seek a redetermination. We made minor changes to this section that would permit a non-physician prescriber to request a redetermination on behalf of a beneficiary. This change would not have any information collection effects, but in any case the burden associated with a redetermination is exempt from the PRA as stipulated under 5 CFR 1320.4.

J. Burden Associated With the ICRs

We received no public comments on the burden estimates associated with the information collections described above. However, we have eliminated the estimates associated with provisions that are no longer included in this final rule (such as marketing provisions, effective October 1, 2008, that paralleled provisions in MIPPA and were set forth in our September 18, 2008 final rule (73 FR 54208)) and we have revised our estimates of the number of respondents who will be affected by some of the provisions in this rule, as detailed in the table below. We estimate that the aggregate annual burden associated with the collection of information section for this rule totals 200,835.5 hours for FY 2010 and 175,463.5 hours for each of the years in FY 2011 through 2018:

OMB No.	Requirements	Number of respondents	Burden hours	Total annual burden hours	Total annual cost**
0938–0753	422.52(g)	324	78	25,272	$549,161
0938–0753	422.60(g)(2)	5	.5	2.5	549,161
0938–0753	422.103(e)	2	100	200	10,996
0938–0753	422.504(g)(1)	363	208	616,512*	33,895,829*
None/Exempt	422.578	N/A	N/A	N/A	N/A
0938–0964	423.32(g)(2)	42	207	8,694	188,920
0938–0964	423.46(b)	500,000	15 min	125,000	2,716,250
0938–0964	423.46(d)	500,000	5 min	41,667	905,423
None/Exempt	423.505(k)(5)	N/A	N/A	N/A	N/A
None/Exempt	423.580	N/A	N/A	N/A	N/A

* The burden associated with requirement 422.504(g)(1) is already accounted for in the regulation CMS–4138–IFC.
** We provide more detail on how we estimate the cost burden associated with these provisions in the regulatory impact analysis section.

If you comment on these information collection and recordkeeping requirements, please do either of the following:

1. Submit your comments electronically as specified in the **ADDRESSES** section of this rule; or

2. Mail copies to the address specified in the **ADDRESSES** section of this rule and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, *Attn:* CMS Desk Officer, *CMS–4131–FC @omb.eop.gov.* Fax (202) 395–6974.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Waiver of Proposed Rulemaking

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on the proposed rule. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued. Section II.A.1 of this final rule with comment period addresses section 164 of the Medicare Improvements for Patients and Providers Act of 2008 (MIPPA) (Pub. L. 110–275) which became law after publication of the May 16, 2008 proposed rule. In this section of the final rule with comment period, we specify that we are adding definitions related to special needs plans to conform our regulations to section 164 of the MIPPA. Because these changes are in accordance with the statutory amendments, we find that it would be unnecessary and contrary to public interest to seek prior public

comment on these provisions. Therefore, we find good cause to waive the notice of proposed rulemaking and to issue these provisions on an interim basis. We are providing a 60-day public comment period.

VI. Regulatory Impact Analysis

A. Overall Impact

We have examined the impact 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) 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). Though we are not finalizing the changes originally proposed for the RDS program in the May 16, 2008 rule, we estimate that this rule will have economically significant effects: The provisions in this final rule, associated with our revision to the beneficiary cost sharing and reinsurance subsidy payments, are estimated to cost $30 million in FY 2010 and a total cost of $530 million in FYs 2010 through 2018. Accordingly, we have prepared an RIA.

We provide a separate estimate of the costs associated with the other provisions not related to the Part D definitions in this final rule. This estimate includes costs regarding: (1) Eligibility to elect an MA plan for special needs individuals (§ 422.52); (2) the election process (§ 422.60); (3) benefits under an MA MSA Plan (§ 422.103); (4) contract provisions (§ 422.504); (5) enrollment process (§ 423.32); and (6) the late enrollment penalty (§ 423.46). In estimating the cost of all the other provisions not related to the Part D definitions discussed in this final rule, we utilize, as appropriate, the figures of $14.68 (based on the United States Department of Labor (DOL) statistics for the hourly wages of word processors and typists) and $37.15 (based on DOL statistics for a management analyst)[4] plus the added OMB figures of 12 percent for overhead and 36 percent for benefits, respectively, to represent average costs to plans, sponsors and downstream entities. (Note that the wages cited for the provisions below include the hourly wage + an additional 48 percent to reflect overhead, benefit costs for total wages of $21.73 and $54.98, respectively). Using these figures the estimated total cost will be approximately $4,381,800 in fiscal year 2010 and $3,821,643 per year in fiscal years 2011 through 2018. This cost will be spread more or less evenly across participating plans, and hence will impose negligible burden on any plan in relation to existing administrative costs.

The RFA requires agencies to analyze options for regulatory relief of small entities, if a rule has a significant impact on a substantial number 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 $7.0 million to $34.5 million in any 1 year. Individuals and States are not included in the definition of a small entity. MA organizations and Part D sponsors, the only entities that will be affected by the provisions of this rule, are not generally considered small business entities. They must follow minimum enrollment requirements (5,000 in urban areas and 1,500 in non-urban areas) and because of the revenue from such enrollments, these entities generally are above the revenue threshold required for analysis under the RFA. While a very small rural plan could fall below the threshold, we do not believe that there are more than a handful of such plans.

A fraction of MA organizations and sponsors are considered small businesses because of their non-profit status. For an analysis to be necessary, however, 3 to 5 percent of their revenue would have to be affected by the provisions. We do not believe that any of these provisions rise to that threshold. Again, most of the provisions we are implementing are clarifications of existing policy or require minimal costs. Because MA organizations and Part D sponsors are the only entities that will be affected by the provisions and because of the minimal associated costs, we are not preparing an analysis for the RFA because the Secretary has determined, and we certify, 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 the Secretary has determined, and we certify, 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 by State, local or tribal governments, in the aggregate, or by the private sector of $100 million in 1995 dollars, updated annually for inflation. That threshold level is currently approximately $130 million. This rule does not contain mandates that will impose spending costs on State, local, or tribal governments, in the aggregate, or on the private sector, of $130 million.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a final rule that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. This rule will not have a substantial direct effect on State or local governments, preempt States, or otherwise have a Federalism implication.

With respect to economic benefits, we have no reliable basis for estimating the effects of these changes. Many of the changes clarify or codify existing policies though such clarification could contribute to greater plan efficiency and compliance with program regulations. Accordingly, we estimate that while there could be economic benefits associated with this final rule with comment period, they are difficult to gauge at this time.

Because there are costs to plans and sponsors associated with several provisions of this rule, however, we indicate general areas affected and specify the costs associated with these. For specific burden associated with the requirements and the bases for our

[4] The hourly rates for the burden requirement were developed using the Department of Labor, Bureau of Labor Statistics for May 2006 (National Occupational Employment and Wage Estimates).

estimates, see section III of this final rule with comment period.

B. Specific Impacts

1. Special Needs Plans

Several of the provisions set forth in this final rule with comment period concern special needs plans, in particular the requirement that special needs plans enroll only the appropriate special needs individuals and that they verify that individuals are eligible for the plan into which they wish to enroll. We estimate the total cost of the provision requiring verification of Medicaid eligibility or SNP status prior to beneficiary enrollment as $549,161 ($21.73 × 25,272 hours = $549,161). This cost is only in fiscal year 2010. (As noted above, other proposed provisions related to SNPs, such as the State coordination requirement, are not part of this final rule with comment period and thus have no projected impact for purposes of this rule.)

2. Medicare Medical Savings Account Plans (MSAs)

Costs associated with this provision are for reporting cost and quality information about the plans to enrollees. We estimate the total cost of these provisions as $10,996 ($54.98 × 200 hours) for the first year a plan provides such information, and half that cost in subsequent years to maintain and update the information.

3. Enrollment

We are setting forth requirements concerning Part D sponsor notification of full benefit dual eligible beneficiaries about enrollment options in addition to automatic enrollment. This provision requires that Part D sponsors obtain from Part D plan enrollees or those considering enrolling information concerning prior creditable coverage, and retain information collected concerning creditable coverage period determinations. We estimate the total cost of these provisions as $3,810,593. The annual costs for specific provisions are as follows:

- Notifying dual-eligible beneficiaries of enrollment options in addition to automatic enrollment ($21.73 × 8,694 hours = $188,920).
- Obtaining prior creditable coverage information ($21.73 × 125,000 hours = $2,716,250).
- Retaining prior creditable coverage information ($21.73 × 41,667 hours = $905,423).

4. Marketing

This rule no longer contains any marketing provisions and thus the projected impact is no longer applicable for purposes of this final rule with comment period.

5. Part D Definitions

With respect to the revisions to the Part D definitions, we do not expect a significant impact on small businesses, such as small pharmacies, as a result of changes to the definitions under Part D of negotiated prices, gross covered drug costs, and allowable risk corridor costs in this rule. These changes primarily impact which drug costs are reported to us and how plans calculate beneficiary cost sharing. Moreover, we assume they will require minimal, if any, changes in health plan, PBM and pharmacy operational systems. Even with the changes to the way in which beneficiary cost sharing is calculated resulting from these definition changes, health plans will still be required to ensure that pharmacies receive their contracted rate. We believe that health plans will account for any additional costs associated with the change in the way beneficiary costs are calculated in their Part D bids. As a result, we expect that these changes will increase Part D bids and Federal Government payments such that the total impact estimate for FYs 2010 through 2018 is $530 million. However, we do not expect these changes to significantly increase health plan costs.

With respect to the changes impacting which drug costs are reported to CMS and how Part D plans calculate beneficiary cost-sharing, we believe that the impact on pharmacies will be minimal, as the total compensation received by pharmacies should remain unaffected. However, Part D plans will need to include administrative costs paid to PBMs, which were previously included as drug costs, as administrative cost in their bids. They will also need to factor reductions in beneficiary cost sharing and reinsurance subsidy payments into their bids. The changes in beneficiary cost sharing and reinsurance subsidy payments are expected to increase Part D bids due to increased plan liability and therefore will increase the direct subsidy payments made by the Federal government to health plans. The changes regarding the reporting of drug costs are also expected to reduce the reinsurance payments and low-income cost sharing subsidy payments made by the Federal government. Specifically, the reinsurance subsidy, which is calculated as 80 percent of allowable reinsurance costs, is expected to decrease due to lower negotiated prices and therefore, lower allowable reinsurance costs. A reduction in the low-income cost sharing subsidy payments made by the Federal government is expected due to lower beneficiary cost sharing. We estimate the net cost of these changes to be $30 million for FY 2010 and a total cost of $530 million for FYs 2010 through 2018. These estimated costs reflect an increase in the direct subsidy payments made by the Federal Government and are net of reductions in Federal reinsurance payments and low-income cost sharing subsidy payments. These estimated costs are based on the assumption that overall program costs will remain the same. They do not include any potential reductions in plan administrative costs due to the ability of plan sponsors to negotiate lower administrative fees with PBMs as a result of increased transparency in drug prices.

In addition, we expect that the clarifications may require a small number of Part D sponsors to renegotiate their contracts with their PBMs to account for system changes to reflect the appropriate beneficiary cost sharing. We believe that most PBMs will be unaffected by the changes in reporting drug costs and the calculation of beneficiary cost sharing. Thus, we expect that the financial impact of the rule on PBMs will be minimal. However, certain PBMs that typically use the lock-in pricing approach could experience a financial impact from the drug cost reporting changes.

The proposed rule would have resulted in a decrease of $510 million in payments under the Retiree Drug Subsidy Program over 10 years, due to the requirement in the proposed rule that RDS sponsors report, and receive subsidy based on, pass-through rather than lock-in pricing. Because that requirement is not being adopted in this final rule, this decrease does not apply.

With respect to the changes impacting how Part D plans calculate beneficiary cost sharing, we believe that these changes will increase beneficiary premiums for plans that utilize the lock-in pricing approach but this increase will be more than offset by a decrease in beneficiary cost sharing under these plans. As a result, we expect that certain beneficiaries enrolled in these plans with very low drug utilization will see some increase in the total costs they pay for their prescription drug coverage. However, we expect that most beneficiaries, particularly those with high drug utilization, will see a decrease in the total costs they pay for their prescription drug coverage as a result of reduced beneficiary cost sharing.

C. Alternatives Considered

We considered whether or not the cost to codify these policies outweighed

the need to do so. With one possible exception, we determined that the cost to plans and sponsors to clarify and codify our policies would be minimal and outweighed the minimal costs to implement these.

With respect to the provisions concerning Medicare medical savings account plans, we considered the costs to plans of providing cost and quality information. We believe that such information is readily available to most MSA plans and that it will not be an undue burden on plans to provide such information. As discussed in detail in section II.A.2 of this final rule with comment period, commenters did not dispute this assessment and we have not made any changes to our impact assessment.

As discussed previously, many of the provisions clarify or codify current policy which we discuss in section II. of the preamble to this final rule with comment period. As such, we considered whether or not the cost to codify these policies outweighed the need to do so. With one possible exception, we determined that the cost to plans and sponsors to clarify and codify our policies are minimal and outweigh the minimal costs to implement these provisions.

With respect to the changes to the drug cost-related definitions in the Part D program, we have discussed the two alternatives at length in the preamble section of both the proposed and final rules. The two alternatives are—(1) The current approach of allowing both pass-through and lock-in prices, and (2) the approach of permitting only pass-through prices as the basis for Part D costs. As we discuss in section II.B, we believe there may be significant negative impacts on beneficiaries, market competition, pharmacies, and government expenditures associated with maintaining the current dual pricing approach and, therefore, we will allow only the single ''pass-through'' pricing approach as originally intended in the final rule establishing the Part D prescription drug benefit.

D. Accounting Statement

As required by OMB Circular A–4 (available at *http://www.whitehouse.gov/omb/circulars/a004/a-4.pdf*), in the Table 1 below, we have prepared an accounting statement showing the classification of the expenditures associated with the provisions of this final rule with comment period. This table provides our best estimate of the increase in costs as a result of the changes. The costs represent transfers by the Federal Government to Part D plans. Also, the cost for all other provisions not related to the Part D definitions is included in Table 1.

TABLE 1—ACCOUNTING STATEMENT: CLASSIFICATION OF ESTIMATED EXPENDITURES

Category	Transfers (in millions)
Increase in Federal Payments, FYs 2010—2018	
Annualized Monetized Transfers Using the 7% Discount Rate	$55.8.
Annualized Monetized Transfers Using the 3% Discount Rate	57.5.
From Whom To Whom?	Federal Government to Part D Plans.
Category	**Costs ($ Millions)**
Cost for All Other Provisions Not Related to the Part D Definitions for FY 2010–2018	
Annualized Monetized Costs Using the 7% Discount Rate	$3.9.
Annualized Monetized Costs Using the 3% Discount Rate	3.9.
Who is Affected?	MAOs/Part D Sponsors.

In accordance with the provisions of Executive Order 12866, this regulation was reviewed by the Office of Management and Budget.

List of Subjects

42 CFR Part 422

Administrative practice and procedure, Health facilities, Health maintenance organizations (HMO), Medicare, Penalties, Privacy, Reporting and recordkeeping requirements.

42 CFR Part 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMOs), Medicare, Penalties, Privacy, Reporting and recordkeeping.

■ For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services amends 42 CFR chapter IV as set forth below:

PART 422—MEDICARE ADVANTAGE PROGRAM

■ 1. The authority citation for part 422 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

Subpart A—General Provisions

■ 2. Section 422.2 is amended by—

■ A. Adding the definitions for ''Institutionalized-equivalent'' and ''Severe or disabling chronic condition'' in alphabetical order.

■ B. Revising the definition of ''Specialized MA Plans for Special Needs Individuals''.

The additions and revision read as follows:

§ 422.2 Definitions.

* * * * *

Institutionalized-equivalent means for the purpose of defining a special needs individual, an MA eligible individual who is living in the community but requires an institutional level of care. The determination that the individual requires an institutional level of care (LOC) must be made by—

(1) The use of a State assessment tool from the State in which the individual resides; and

(2) An assessment conducted by an impartial entity and having the requisite knowledge and experience to accurately identify whether the beneficiary meets the institutional LOC criteria. In States and territories that do not have an existing institutional level of care assessment tool, the individual must be assessed using the same methodology that State uses to determine institutional level of care for Medicaid nursing home eligibility.

* * * * *

Severe or disabling chronic condition means for the purpose of defining a special needs individual, an MA eligible individual who has one or more co-morbid and medically complex chronic conditions that are substantially disabling or life-threatening, has a high risk of hospitalization or other significant adverse health outcomes, and requires specialized delivery systems across domains of care.

* * * * *

Specialized MA Plans for Special Needs Individuals means an MA coordinated care plan that exclusively enrolls special needs individuals as set forth in § 422.4(a)(1)(iv) and that provides Part D benefits under Part 423 of this chapter to all enrollees; and which has been designated by CMS as meeting the requirements of an MA SNP as determined on a case-by-case basis using criteria that include the appropriateness of the target population, the existence of clinical programs or special expertise to serve the target population, and whether the proposal discriminates against sicker members of the target population.

■ 3. Amend § 422.4 by revising paragraph (a)(1)(iv) to read as follows:

§ 422.4 Types of MA plans.

(a) * * *

(1) * * *

(iv) A specialized MA plan for special needs individuals (SNP) includes any type of coordinated care plan that meets CMS's SNP requirements and exclusively enrolls special needs individuals as defined in § 422.2 of this subpart.

* * * * *

Subpart B—Eligibility, Election, and Enrollment

■ 4. Amend § 422.52 by revising paragraph (f) to read as follows:

§ 422.52 Eligibility to elect an MA plan for special needs individuals.

* * * * *

(f) *Establishing eligibility for enrollment.* A SNP must employ a process approved by CMS to verify the eligibility of each individual enrolling in the SNP.

■ 5. Amend § 422.60 by adding paragraph (g) to read as follows:

§ 422.60 Election process.

* * * * *

(g) *Passive enrollment by CMS.* In situations involving either immediate terminations as provided in § 422.510(a)(5) or other situations in which CMS determines that remaining enrolled in a plan poses potential harm to the members, CMS may implement passive enrollment procedures.

(1) *Passive enrollment procedures.* Individuals will be considered to have elected the plan selected by CMS unless they—

(i) Decline the plan selected by CMS, in a form and manner determined by CMS, or

(ii) Request enrollment in another plan.

(2) *Beneficiary notification.* The organization that receives the enrollment must provide notification that describes the costs and benefits of the plan and the process for accessing care under the plan and clearly explains the beneficiary's ability to decline the enrollment or choose another plan. Such notification must be provided to all potential enrollees prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical), in a form and manner determined by CMS.

(3) *Special election period.* All individuals will be provided with a special election period, as described in § 422.62(b)(4).

■ 6. Section 422.74 is amended by—

■ A. Revising paragraph (d)(1) introductory text.

■ B. Adding a new paragraph (d)(1)(iv).

The revision and addition read as follows:

§ 422.74 Disenrollment by the MA organization.

* * * * *

(d) * * *

(1) Except as specified in paragraph (d)(1)(iv) of this section, an MA organization may disenroll an individual from the MA plan for failure to pay basic and supplementary premiums under the following circumstances:

* * * * *

(iv) An MA organization may not disenroll an individual who had monthly premiums withheld per § 422.262(f)(1) and (g) of this part, or who is in premium withhold status, as defined by CMS.

* * * * *

Subpart C—Benefits and Beneficiary Protections

■ 7. Amend § 422.101 by adding paragraph (f)(2) to read as follows:

§ 422.101 Requirements relating to basic benefits.

* * * * *

(f) * * *

* * *

(2) MA organizations offering SNPs must also develop and implement the following model of care components to assure an effective management structure:

(i) Target one of the three SNP populations defined in § 422.2 of this part.

(ii) Have appropriate staff (employed, contracted, or non-contracted) trained on the SNP plan model of care to coordinate and/or deliver all services and benefits.

(iii) Coordinate the delivery of care across healthcare settings, providers, and services to assure continuity of care.

(iv) Coordinate the delivery of specialized benefits and services that meet the needs of the most vulnerable beneficiaries among the three target special needs populations as defined in § 422.2 of this part, including frail/disabled beneficiaries and beneficiaries near the end of life.

(v) Coordinate communication among plan personnel, providers, and beneficiaries.

■ 8. Amend § 422.103 by adding new paragraph (e) to read as follows:

§ 422.103 Benefits under an MA MSA plan.

* * * * *

(e) All MA organizations offering MSA plans must provide enrollees with available information on the cost and quality of services in their service area, and submit to CMS for approval a proposed approach to providing such information.

Subpart F—Submission of Bids, Premiums, and Related Information and Plan Approval

■ 9. Amend § 422.262 by adding new paragraphs (g) and (h) to read as follows:

§ 422.262 Beneficiary premiums.

* * * * *

(g) *Prohibition on improper billing of premiums.* MA organizations shall not bill an enrollee for a premium payment period if the enrollee has had the premium for that period withheld from his or her Social Security, Railroad Retirement Board or Office of Personnel Management check.

(h) *Retroactive collection of premiums.* In circumstances where retroactive collection of premium amounts is necessary and the enrollee is without fault in creating the premium arrearage, the Medicare Advantage organization shall offer the enrollee the option of payment either by lump sum, by equal monthly installment spread out over at least the same period for which the premiums were due, or through other arrangements mutually acceptable to the enrollee and the Medicare Advantage organization. For monthly

installments, for example, if 7 months of premiums are due, the member would have at least 7 months to repay.

Subpart K—Application Procedures and Contracts for Medicare Advantage Organizations

■ 10. Subpart K heading is revised to read as set forth above.

■ 11. Amend § 422.504 by revising paragraph (g)(1) to read as follows:

§ 422.504 Contract provisions.

* * * * *

(g) * * *

(1) Effective January 1, 2010, each MA organization must adopt and maintain arrangements satisfactory to CMS to protect its enrollees from incurring liability (for example, as a result of an organization's insolvency or other financial difficulties) for payment of any fees that are the legal obligation of the MA organization. To meet this requirement, the MA organization must—

(i) Ensure that all contractual or other written arrangements with providers prohibit the organization's providers from holding any enrollee liable for payment of any such fees;

(ii) Indemnify the enrollee for payment of any fees that are the legal obligation of the MA organization for services furnished by providers that do not contract, or that have not otherwise entered into an agreement with the MA organization, to provide services to the organization's enrollees; and

(iii) For all MA organizations with enrollees eligible for both Medicare and Medicaid, specify in contracts with providers that such enrollees will not be held liable for Medicare Part A and B cost sharing when the State is responsible for paying such amounts, and inform providers of Medicare and Medicaid benefits, and rules for enrollees eligible for Medicare and Medicaid. The MA plans may not impose cost-sharing that exceeds the amount of cost-sharing that would be permitted with respect to the individual under title XIX if the individual were not enrolled in such a plan. The contracts must state that providers will—

(A) Accept the MA plan payment as payment in full, or

(B) Bill the appropriate State source.

* * * * *

■ 12. Amend § 422.506 by revising paragraphs (a)(2)(ii), (a)(2)(iii), (b)(2)(ii), and (b)(2)(iii) to read as follows:

§ 422.506 Non-renewal of contract.

(a) * * *

(2) * * *

(ii) Each Medicare enrollee by mail at least 60 days before the date on which the non-renewal is effective. This notice must include a written description of alternatives available for obtaining Medicare services within the service area, including alternative MA plans, Medigap options, and original Medicare and must receive CMS approval prior to issuance; and,

(iii) The general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

* * * * *

(b) * * *

(2) * * *

(ii) To each of the MA organization's Medicare enrollees by mail at least 60 days before the date on which the non-renewal is effective; and

(iii) To the general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the MA organization's service area.

* * * * *

Subpart M—Grievances, Organization Determinations and Appeals

■ 13. Revise § 422.578 to read as follows:

§ 422.578 Right to a reconsideration.

Any party to an organization determination (including one that has been reopened and revised as described in § 422.616) may request that the determination be reconsidered under the procedures described in § 422.582, which address requests for a standard reconsideration. A physician who is providing treatment to an enrollee may, upon providing notice to the enrollee, request a standard reconsideration of a pre-service request for reconsideration on the enrollee's behalf as described in § 422.582. An enrollee or physician (acting on behalf of an enrollee) may request an expedited reconsideration as described in § 422.584.

■ 14. Revise § 422.582 to read as follows:

§ 422.582 Request for a standard reconsideration.

(a) *Method and place for filing a request.* A party to an organization determination or, upon providing notice to the enrollee, a physician who is treating an enrollee and acting on the enrollee's behalf, must ask for a reconsideration of the determination by making a written request to the MA organization that made the organization determination. The MA organization may adopt a policy for accepting oral requests.

(b) *Timeframe for filing a request.* Except as provided in paragraph (c) of this section, a request for reconsideration must be filed within 60 calendar days from the date of the notice of the organization determination.

(c) *Extending the time for filing a request.* (1) *General rule.* If a party or physician acting on behalf of an enrollee shows good cause, the MA organization may extend the timeframe for filing a request for reconsideration.

(2) *How to request an extension of timeframe.* If the 60-day period in which to file a request for reconsideration has expired, a party to the organization determination or a physician acting on behalf of an enrollee may file a request for reconsideration with the MA organization. The request for reconsideration and to extend the timeframe must—

(i) Be in writing; and

(ii) State why the request for reconsideration was not filed on time.

(d) *Parties to the reconsideration.* The parties to the reconsideration are the parties to the organization determination, as described in § 422.574, and any other provider or entity (other than the MA organization) whose rights with respect to the organization determination may be affected by the reconsideration, as determined by the entity that conducts the reconsideration.

(e) *Withdrawing a request.* The party or physician acting on behalf of an enrollee who files a request for reconsideration may withdraw it by filing a written request for withdrawal at one of the places listed in paragraph (a) of this section.

Subpart O—Intermediate Sanctions

■ 15. Amend § 422.760 by—

■ A. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), respectively.

■ B. Adding new paragraph (b)(2) to read as follows:

§ 422.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

* * * * *

(b) * * *

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more MA enrollees, CMS may calculate

a CMP of up to $25,000 for each MA enrollee directly adversely affected (or with the substantial likelihood of being adversely affected) by a deficiency.

* * * * *

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

■ 16. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart B—Eligibility and Enrollment

■ 17. Amend § 423.32 by adding paragraph (g) to read as follows:

§ 423.32 Enrollment process.

* * * * *

(g) *Passive enrollment by CMS.* In situations involving either immediate terminations as provided in § 423.509(a)(5) or § 422.510(a)(5) of this chapter, or other situations in which CMS determines that remaining enrolled in a plan poses potential harm to plan members, CMS may implement passive enrollment procedures.

(1) *Passive enrollment procedures.* Individuals will be considered to have enrolled in the plan selected by CMS unless individuals—

(i) Decline the plan selected by CMS, in a form and manner determined by CMS; or

(ii) Request enrollment in another plan.

(2) *Beneficiary notification.* The organization that receives the enrollment must provide notification that describes the costs and benefits of the new plan and the process for accessing care under the plan and the beneficiary's ability to decline the enrollment or choose another plan. Such notification must be provided to all potential enrollees prior to the enrollment effective date (or as soon as possible after the effective date if prior notice is not practical), in a form and manner determined by CMS.

(3) *Special election period.* All individuals will be provided with a special enrollment period, as described in § 423.38(c)(8)(ii).

■ 18. Amend § 423.34 by—

■ A. Revising paragraph (d)(1).

■ B. Adding paragraph (d)(3).

The revision and addition reads as follows:

§ 423.34 Enrollment of full-benefit dual eligible individuals.

* * * * *

(d) *Automatic enrollment rules.* (1) *General rule.* Except for full-benefit dual eligible individuals who are qualifying covered retirees with a group health plan sponsor as specified in paragraph (d)(3) of this section, CMS automatically enrolls full-benefit dual eligible individuals who fail to enroll in a Part D plan into a PDP offering basic prescription drug coverage in the area where the individual resides that has a monthly beneficiary premium amount (as defined in § 423.780(b) of this part). In the event that there is more than one PDP in an area with a monthly beneficiary premium at or below the low-income premium subsidy amount, individuals are enrolled in such PDPs on a random basis.

* * * * *

(3) *Exception for full-benefit dual eligible individuals who are qualifying covered retirees.* (i) Full-benefit dual eligible individuals who are qualifying covered retirees as defined in § 423.882, and for whom CMS has approved the group health plan sponsor to receive the Retiree Drug Subsidy described in Subpart R of this Part, also are automatically enrolled in a Part D plan, consistent with this paragraph, unless they elect to decline that enrollment.

(ii) Before effectuating such an enrollment, however, CMS will provide notice to such individuals of their choices and advise them to discuss the potential impact of Medicare Part D coverage on their group health plan coverage. This notice informs such individuals that they will be deemed to have declined to enroll in Part D unless they affirmatively enroll in a Part D plan or contact CMS and confirm that they wish to be auto-enrolled in a PDP. Individuals who elect not to be auto-enrolled, may enroll in Medicare Part D at a later time if they choose to do so.

* * * * *

■ 19. Amend § 423.44 by revising paragraph (d)(1) introductory text and adding paragraph (d)(1)(iv) as follows:

§ 423.44 Involuntary disenrollment by the PDP.

* * * * *

(d) * * *

(1) Except as specified in paragraph (d)(1)(iv) of this section, a PDP sponsor may disenroll an individual from the PDP for failure to pay any monthly premium under the following circumstances:

* * * * *

(iv) A PDP sponsor may not disenroll an individual who had monthly premiums withheld per § 423.293(a) and (e) of this part or who is in premium withhold status, as defined by CMS.

* * * * *

■ 20. Amend § 423.46 by adding paragraph (b) through (d) to read as follows:

§ 423.46 Late enrollment penalty.

* * * * *

(b) *Role of Part D plan in determination of the penalty.* Part D sponsors must obtain information on prior creditable coverage from all enrolled or enrolling beneficiaries and report this information to CMS in a form and manner determined by CMS.

(c) *Reconsideration.* Individuals determined to be subject to a late enrollment penalty may request reconsideration of this determination, consistent with § 423.56(g) of this part. Such review will be conducted by CMS, or an independent review entity contracted by CMS, in accordance with guidance issued by CMS. Decisions made through this review are not subject to appeal, but may be reviewed and revised at the discretion of CMS.

(d) *Record retention.* Part D plan sponsors must retain all information collected concerning a creditable coverage period determination in accordance with the enrollment records retention requirements described in § 423.505(e)(1)(iii).

Subpart C—Benefits and Beneficiary Protections

■ 21. Section 423.100 is amended by—

■ A. Revising the definition of ''incurred costs.''

■ B. Revising the definition of ''negotiated prices.''

The revision reads as follows:

§ 423.100 Definitions.

* * * * *

Incurred costs means costs incurred by a Part D enrollee for—

(1)(i) Covered Part D drugs that are not paid for under the Part D plan as a result of application of any annual deductible or other cost-sharing rules for covered Part D drugs prior to the Part D enrollee satisfying the out-of-pocket threshold under § 423.104(d)(5)(iii), including any price differential for which the Part D enrollee is responsible under § 423.124(b); or

(ii) Nominal cost-sharing paid by or on behalf of an enrollee, which is associated with drugs that would otherwise be covered Part D drugs, as defined in § 423.100, but are instead paid for, with the exception of said nominal cost-sharing, by a patient assistance program providing assistance outside the Part D benefit, provided that documentation of such nominal cost-sharing has been submitted to the Part D plan consistent with the plan

processes and instructions for the submission of such information; and

(2) That are paid for—

(i) By the Part D enrollee or on behalf of the Part D enrollee by another person, and the Part D enrollee (or person paying on behalf of the Part D enrollee) is not reimbursed through insurance or otherwise, a group health plan, or other third party payment arrangement, or the person paying on behalf of the Part D enrollee is not paying under insurance or otherwise, a group health plan, or third party payment arrangement;

(ii) Under a State Pharmaceutical Assistance Program (as defined in § 423.454 of this part); or

(iii) Under § 423.782 of this part.

* * * * *

Negotiated prices means prices for covered Part D drugs that—

(1) The Part D sponsor (or other intermediary contracting organization) and the network dispensing pharmacy or other network dispensing provider have negotiated as the amount such network entity will receive, in total, for a particular drug;

(2) Are reduced by those discounts, direct or indirect subsidies, rebates, other price concessions, and direct or indirect remuneration that the Part D sponsor has elected to pass through to Part D enrollees at the point of sale; and

(3) Includes any dispensing fees.

* * * * *

■ 22. Amend § 423.104 by revising paragraph (g)(1) to read as follows:

§ 423.104 Requirements related to qualified prescription drug coverage.

* * * * *

(g) * * *

(1) *Access to negotiated prices.* A Part D sponsor is required to provide its Part D enrollees with access to negotiated prices for covered Part D drugs included in its Part D plan's formulary. Negotiated prices must be provided even if no benefits are payable to the beneficiary for covered Part D drugs because of the application of any deductible or 100 percent coinsurance requirement following satisfaction of any initial coverage limit. Negotiated prices must be provided when the negotiated price for a covered Part D drug under a Part D sponsor's benefit package is less than the applicable cost-sharing before the application of any deductible, before any initial coverage limit, before the annual out-of-pocket threshold, and after the annual out-of-pocket threshold.

* * * * *

■ 23. Revise § 423.128(e)(6) to read as follows:

§ 423.128 Dissemination of Part D plan information.

* * * * *

(e) * * *

(6) Be provided no later than the end of the month following any month when prescription drug benefits are provided under this part, including the covered Part D spending between the initial coverage limit described in § 423.104(d)(3) and the out-of-pocket threshold described in § 423.104(d)(5)(iii).

Subpart F—Submission of Bids and Monthly Beneficiary Premiums; Plan Approval

■ 24. Amend § 423.293 by adding new paragraphs (a)(4) and (e) to read as follows:

§ 423.293 Collection of monthly beneficiary premium.

(a) * * *

(4) *Retroactive collection of premiums.* In circumstances where retroactive collection of premium amounts is necessary and the enrollee is without fault in creating the premium arrearage, the Medicare Advantage organization shall offer the enrollee the option of payment by lump sum, by equal monthly installment spread out over at least the same period for which the premiums were due, or through other arrangements mutually acceptable to the enrollee and the Medicare Advantage organization. For monthly installments, for example, if 7 months of premiums are due, the member would have at least 7 months to repay.

* * * * *

(e) *Prohibition on improper billing of premiums.* Part D plan sponsors shall not bill an enrollee for a premium payment period if the enrollee has had the premium for that period withheld from his or her Social Security, Railroad Retirement Board or Office of Personnel Management check.

Subpart G—Payments to Part D Plan Sponsors for Qualified Prescription Drug Coverage

■ 25. Amend § 423.308 by—

■ A. Revising the definition of ''actually paid.''

■ B. Adding the definition of ''administrative costs.''

■ C. Revising the definitions of ''allowable risk corridor costs,'' ''gross covered prescription drug costs,'' and ''target amount''.

The addition and revisions read as follows:

§ 423.308 Definitions and terminology.

* * * * *

Actually paid means that the costs must be actually incurred by the Part D sponsor and must be net of any direct or indirect remuneration (including discounts, charge backs or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits offered to some or all purchasers) from any source (including manufacturers, pharmacies, enrollees, or any other person) that would serve to decrease the costs incurred under the Part D plan. Direct and indirect remuneration includes discounts, chargebacks or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits from manufacturers, pharmacies or similar entities obtained by an intermediary contracting organization with which the Part D plan sponsor has contracted, regardless of whether the intermediary contracting organization retains all or a portion of the direct and indirect remuneration or passes the entire direct and indirect remuneration to the Part D plan sponsor and regardless of the terms of the contract between the plan sponsor and the intermediary contracting organization.

Administrative costs means costs incurred by a Part D sponsor in complying with the requirements of this Part for a coverage year and that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs. Administrative costs include amounts paid by the Part D sponsor to an intermediary contracting organization for covered Part D drugs dispensed to enrollees in the sponsor's Part D plan that differ from the amount paid by the intermediary contracting organization to a pharmacy or other entity that is the final dispenser of the covered Part D drugs. For example, any profit or loss retained by an intermediary contracting organization (through discounts, rebates, or other direct or indirect price concessions) when negotiating prices with dispensing entities is considered an administrative cost.

* * * * *

Allowable risk corridor costs means—

(1) The subset of costs incurred under a Part D plan (not including administrative costs, but including dispensing fees) that are attributable to basic prescription drug coverage only and that are incurred and actually paid by the Part D sponsor to—

(i) A dispensing pharmacy or other dispensing provider (whether directly or through an intermediary contracting organization) under the Part D plan;

(ii) The parties listed in § 423.464(f)(1) of this part with which the Part D sponsor must coordinate benefits, including other Part D plans, as the result of any reconciliation process developed by CMS under § 423.464 of this part; or

(iii) An enrollee (or third party paying on behalf of the enrollee) to indemnify the enrollee when the reimbursement is associated with obtaining drugs under the Part D plan; and

(2) These costs must be based upon imposition of the maximum amount of copayments permitted under § 423.782 of this part. The costs for any Part D plan offering enhanced alternative coverage must be adjusted not only to exclude any costs attributable to benefits beyond basic prescription drug coverage, but also to exclude any prescription drug coverage costs determined to be attributable to increased utilization over standard prescription drug coverage as the result of the insurance effect of enhanced alternative coverage in accordance with CMS guidelines on actuarial valuation.

* * * * *

Gross covered prescription drug costs mean those actually paid costs incurred under a Part D plan, excluding administrative costs, but including dispensing fees, during the coverage year. They equal the sum of the following:

(1) The share of negotiated prices (as defined by § 423.100 of this part) actually paid by the Part D plan that is received as reimbursement by the pharmacy, or other dispensing entity, reimbursement paid to indemnify an enrollee when the reimbursement is associated with an enrollee obtaining covered Part D drugs under the Part D plan, or payments made by the Part D sponsor to other parties listed in § 423.464(f)(1) of this part with which the Part D sponsor must coordinate benefits, including other Part D plans, or as the result of any reconciliation process developed by CMS under § 423.464 of this part.

(2) Nominal cost-sharing paid by or on behalf of an enrollee which is associated with drugs that would otherwise be covered Part D drugs, as defined in § 423.100 of this part, but are instead paid for, with the exception of said nominal cost-sharing, by a patient assistance program providing assistance outside the Part D benefit, provided that documentation of such nominal cost-sharing has been submitted to the Part D plan consistent with the plan processes and instructions for the submission of such information.

(3) All amounts paid under the Part D plan by or on behalf of an enrollee (such as the deductible, coinsurance, cost sharing, or amounts between the initial coverage limit and the out-of-pocket threshold) in order to obtain Part D drugs that are covered under the Part D plan. If an enrollee who is paying 100 percent cost sharing (as a result of paying a deductible or because the enrollee is between the initial coverage limit and the out-of-pocket threshold) obtains a covered Part D drug at a lower cost than is available under the Part D plan, such cost-sharing will be considered an amount paid under the plan by or on behalf of an enrollee under the previous sentence of this definition, if the enrollee's costs are incurred costs as defined under § 423.100 of this part and documentation of the incurred costs has been submitted to the Part D plan consistent with plan processes and instructions for the submission of such information. These costs are determined regardless of whether the coverage under the plan exceeds basic prescription drug coverage.

Target amount means the total amount of payments (from both CMS and by or on behalf of enrollees) to a Part D plan for the coverage year for all standardized bid amounts as risk adjusted under § 423.329(b)(1) of this part, less the administrative expenses (including return on investment) assumed in the standardized bids.

■ 26. Amend § 423.329 by revising paragraph (d)(2)(i) to read as follows:

§ 423.329 Determination of payments.

* * * * *

(d) * * *

(2) * * *

(i) *Interim payments.* CMS establishes a payment method by which interim payments of amounts under this section are made during a year based on the low-income cost-sharing assumptions submitted with plan bids under § 423.265(d)(2)(iv) of this part and negotiated and approved under § 423.272 of this part, or by an alternative method that CMS determines.

* * * * *

Subpart K—Application Procedures and Contracts With Part D Plan Sponsors

■ 27. Amend § 423.505 by revising paragraph (k)(5) to read as follows:

§ 423.505 Contract provisions.

* * * * *

(k) * * *

(5) *Certification of allowable costs for risk corridor and reinsurance information.* The Chief Executive Officer, Chief Financial Officer, or an individual delegated the authority to sign on behalf of one of these officers, and who reports directly to the officer, must certify (based on best knowledge, information, and belief) that the information provided for purposes of supporting allowable costs as defined in § 423.308 of this part, including data submitted to CMS regarding direct or indirect remuneration (DIR) that serves to reduce the costs incurred by the Part D sponsor for Part D drugs, is accurate, complete, and truthful and fully conforms to the requirements in § 423.336 and § 423.343 of this part and acknowledge that this information will be used for the purposes of obtaining Federal reimbursement.

* * * * *

■ 28. Amend § 423.507 by revising paragraphs (a)(2)(ii), (a)(2)(iii), (b)(2)(ii) and (b)(2)(iii) to read as follows:

§ 423.507 Nonrenewal of contract.

(a) * * *

(2) * * *

(ii) Each Medicare enrollee by mail at least 60 days before the date on which the non-renewal is effective. This notice must include a written description of alternatives available for obtaining qualified prescription drug coverage within the PDP region, including MA–PD plans, and other PDPs, and must receive CMS approval prior to issuance; and

(iii) The general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's service area.

* * * * *

(b) * * *

(2) * * *

(ii) To each of the Part D plan sponsor's Medicare enrollees by mail at least 60 days before the date on which the non-renewal is effective; and

(iii) To the general public, at least 60 days before the date on which the non-renewal is effective, by publishing a notice in one or more newspapers of general circulation in each community or county located in the Part D plan sponsor's service area.

* * * * *

Subpart L—Effect of Change of Ownership or Leasing of Facilities During Term of Contract

■ 29. Amend § 423.551 by adding paragraph (g) to read as follows:

§ 423.551 General provisions.

* * * * *

(g) *Sale of beneficiaries not permitted:* CMS will not recognize as a sale or transfer of a PDP line of business (qualifying as a change of ownership) a transaction that consists solely of the sale or transfer of individual beneficiaries or groups of beneficiaries enrolled in a pharmacy benefit package offered by a PDP sponsor apart from the rights and obligations related to the pharmacy benefit package (PBP).

Subpart M—Grievances, Coverage Determinations, and Appeals

■ 30. Amend § 423.560 by adding, in alphabetical order, the definition for ''Other prescriber'' to read as follows:

§ 423.560 Definitions.

* * * * *

Other prescriber means a health care professional other than a physician who is authorized under State law or other applicable law to write prescriptions.

* * * * *

■ 31. Amend § 423.566 by revising paragraph (c)(3) to read as follows:

§ 423.566 Coverage determinations.

* * * * *

(c) * * *

(3) The prescribing physician or other prescriber, on behalf of the enrollee.

■ 32. Amend § 423.568 by revising paragraph (a) to read as follows:

§ 423.568 Standard timeframe and notice requirements for coverage determinations.

(a) *Timeframe for requests for drugs benefits.* When a party makes a request for a drug benefit, the Part D plan sponsor must notify the enrollee (and the prescribing physician or other prescriber involved, as appropriate) of its determination as expeditiously as the enrollee's health condition requires, but no later than 72 hours after the receipt of the request, or, for an expedited request, the physician's or other prescriber's supporting statement.

* * * * *

■ 33. Amend § 423.570 by—

■ A. Revising paragraph (a).

■ B. Revising paragraph (b).

■ C. Revising paragraph (c)(1).

■ D. Revising paragraph (c)(3) introductory text.

■ E. Revising paragraph (c)(3)(ii).

■ F. Republishing paragraph (d) introductory text.

■ G. Revising paragraph (d)(1).

■ H. Revising paragraph (d)(2) introductory text.

■ I. Revising paragraph (d)(2)(iii).

The revisions read as follows:

§ 423.570 Expediting certain coverage determinations.

(a) *Request for expedited determination.* An enrollee or an enrollee's prescribing physician or other prescriber may request that a Part D plan sponsor expedite a coverage determination involving issues described in § 423.566(b) of this part. This does not include requests for payment of Part D drugs already furnished.

(b) *How to make a request.* (1) To ask for an expedited determination, an enrollee or an enrollee's prescribing physician or other prescriber on behalf of the enrollee must submit an oral or written request directly to the Part D plan sponsor or, if applicable, to the entity responsible for making the determination, as directed by the Part D plan sponsor.

(2) A prescribing physician or other prescriber may provide oral or written support for an enrollee's request for an expedited determination.

(c) * * *

(1) An efficient and convenient means for accepting oral or written requests submitted by enrollees, prescribing physicians, or other prescribers.

* * * * *

(3) A means for issuing prompt decisions on expediting a determination, based on the following requirements:

* * * * *

(ii) For a request made or supported by an enrollee's prescribing physician or other prescriber, provide an expedited determination if the physician or other prescriber indicates that applying the standard timeframe for making a determination may seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(d) *Actions following denial.* If a Part D plan sponsor denies a request for expedited determination, it must take the following actions:

(1) Make the determination within the 72-hour timeframe established in § 423.568(a) for a standard determination. The 72-hour period begins on the day the Part D plan sponsor receives the request for expedited determination, or, for an exceptions request, the physician's or other prescriber's supporting statement.

(2) Give the enrollee and prescribing physician or other prescriber prompt oral notice of the denial that—

* * * * *

(iii) Informs the enrollee of the right to resubmit a request for an expedited determination with the prescribing physician's or other prescriber's support and

* * * * *

■ 34. Amend § 423.572 by revising paragraph (a) to read as follows:

§ 423.572 Timeframes and notice requirements for expedited coverage determinations.

(a) *Timeframe for determination and notification.* Except as provided in paragraph (b) of this section, a Part D plan sponsor that approves a request for expedited determination must make its determination and notify the enrollee (and the prescribing physician or other prescriber involved, as appropriate) of its decision, whether adverse or favorable, as expeditiously as the enrollee's health condition requires, but no later than 24 hours after receiving the request, or, for an exceptions request, the physician's or other prescriber's supporting statement.

* * * * *

■ 35. Amend § 423.578 by—

■ A. Revising paragraphs (a) introductory text and (a)(2) introductory text.

■ B. Revising paragraphs (a)(2)(i) and (a)(3)

■ C. Revising paragraphs (a)(4) introductory text and (a)(5).

■ D. Revising paragraphs (b) introductory text and (b)(2) introductory text.

■ E. Revising paragraphs (b)(2)(i), (b)(4), (b)(5) introductory text, and (b)(6).

■ F. Revising paragraphs (c)(3)(i), (c)(4)(i) introductory text, and (c)(4)(i)(A).

■ G. Revising paragraph (f).

The revisions read as follows:

§ 423.578 Exceptions process.

(a) *Request for exceptions to a plan's tiered cost-sharing structure.* Each Part D plan sponsor that provides prescription drug benefits for Part D drugs and manages this benefit through the use of a tiered formulary must establish and maintain reasonable and complete exceptions procedures subject to CMS' approval for this type of coverage determination. The Part D plan sponsor grants an exception whenever it determines that the non-preferred drug for treatment of the enrollee's condition is medically necessary, consistent with the physician's or other prescriber's

statement under paragraph (a)(4) of this section.

* * * * *

(2) The exceptions criteria of a Part D plan sponsor must include, but are not limited to—

(i) A description of the criteria a Part D plan sponsor uses to evaluate a determination made by the enrollee's prescribing physician or other prescriber under paragraph (a)(4) of this section.

* * * * *

An enrollee or the enrollee's prescribing physician or other prescriber may file a request for an exception.

(4) A prescribing physician or other prescriber must provide an oral or written supporting statement that the preferred drug for the treatment of the enrollee's conditions—

* * * * *

(5) If the physician or other prescriber provides an oral supporting statement, the Part D plan sponsor may require the physician or other prescriber to subsequently provide a written supporting statement to demonstrate the medical necessity of the drug. The Part D plan sponsor may require the prescribing physician or other prescriber to provide additional supporting medical documentation as part of the written follow-up.

* * * * *

(b) *Request for exceptions involving a non-formulary Part D drug.* Each Part D plan sponsor that provides prescription drug benefits for Part D drugs and manages this benefit through the use of a formulary must establish and maintain exceptions procedures subject to CMS' approval for receipt of an off-formulary drug. The Part D plan sponsor must grant an exception whenever it determines that the drug is medically necessary, consistent with the physician's or other prescriber's statement under paragraph (b)(5) of this section, and that the drug would be covered but for the fact that it is an off-formulary drug. Formulary use includes the application of cost utilization tools, such as a dose restriction, including the dosage form, that causes a particular Part D drug not to be covered for the number of doses prescribed or a step therapy requirement that causes a particular Part D drug not to be covered until the requirements of the plan's coverage policy are met, or a therapeutic substitution requirement.

* * * * *

(2) The exception criteria of a Part D plan sponsor must include, but are not limited to—

(i) A description of the criteria a Part D plan sponsor uses to evaluate a prescribing physician's or other prescriber's determination made under paragraph (b)(5) of this section;

* * * * *

(4) An enrollee, the enrollee's appointed representative, or the prescribing physician or other prescriber (on behalf of the enrollee) may file a request for an exception.

(5) A prescribing physician or other prescriber must provide an oral or written supporting statement that the requested prescription drug is medically necessary to treat the enrollee's disease or medical condition because—

* * * * *

(6) If the physician or other prescriber provides an oral supporting statement, the Part D plan sponsor may require the physician or other prescriber to subsequently provide a written supporting statement. The Part D plan sponsor may require the prescribing physician or other prescriber to provide additional supporting medical documentation as part of the written follow-up.

(c) * * *

(3) * * *

(i) The enrollee's prescribing physician or other prescriber continues to prescribe the drug.

* * * * *

(4) * * *

(i) The Part D plan sponsor may not require the enrollee to request approval for a refill, or a new prescription to continue using the Part D prescription drug after the refills for the initial prescription are exhausted, as long as—

(A) The enrollee's prescribing physician or other prescriber continues to prescribe the drug;

* * * * *

(f) *Implication of the physician's or other prescriber's supporting statement.* Nothing in this section should be construed to mean that the physician's or other prescriber's supporting statement required for an exceptions request will result in an automatic favorable decision.

■ 36. Revise § 423.580 to read as follows:

§ 423.580 Right to a redetermination.

An enrollee who has received a coverage determination (including one that is reopened and revised as described in § 423.634) may request that it be redetermined under the procedures described in § 423.582, which address requests for a standard redetermination. The prescribing physician or other prescriber (acting on behalf of an enrollee), upon providing notice to the enrollee, may request a standard redetermination under the procedures described in § 423.582. An enrollee or an enrollee's prescribing physician or other prescriber (acting on behalf of an enrollee) may request an expedited redetermination as specified in § 423.584.

■ 37. Revise § 423.582 to read as follows:

§ 423.582 Request for a standard redetermination.

(a) *Method and place for filing a request.* An enrollee or an enrollee's prescribing physician or other prescriber (acting on behalf of the enrollee) must ask for a redetermination by making a written request with the Part D plan sponsor that made the coverage determination. The Part D plan sponsor may adopt a policy for accepting oral requests.

(b) *Timeframe for filing a request.* Except as provided in paragraph (c) of this section, a request for a redetermination must be filed within 60 calendar days from the date of the notice of the coverage determination.

(c) *Extending the time for filing a request*—(1) *General rule.* If an enrollee or prescribing physician or other prescriber acting on behalf of an enrollee shows good cause, the Part D plan sponsor may extend the timeframe for filing a request for redetermination.

(2) *How to request an extension of timeframe.* If the 60-day period in which to file a request for a redetermination has expired, an enrollee or a prescribing physician or other prescriber acting on behalf of an enrollee may file a request for redetermination and extension of time frame with the Part D plan sponsor. The request for redetermination and to extend the timeframe must—

(i) Be in writing; and

(ii) State why the request for redetermination was not filed on time.

(d) *Withdrawing a request.* The person who files a request for redetermination may withdraw it by filing a written request with the Part D sponsor.

■ 38. Amend § 423.584 by revising paragraphs (a), (b), (c)(2)(ii), and (d)(2)(iii) to read as follows:

§ 423.584 Expediting certain redeterminations.

(a) *Who may request an expedited redetermination.* An enrollee or an enrollee's prescribing physician or other prescriber may request that a Part D plan sponsor expedite a redetermination that involves the issues specified in § 423.566(b). (This does not include requests for payment of drugs already furnished.)

(b) *How to make a request.* (1) To ask for an expedited redetermination, an enrollee or a prescribing physician or other prescriber acting on behalf of an enrollee must submit an oral or written request directly to the Part D plan sponsor or, if applicable, to the entity responsible for making the redetermination, as directed by the Part D plan sponsor.

(2) A prescribing physician or other prescriber may provide oral or written support for an enrollee's request for an expedited redetermination.

(c) * * *

(2) * * *

(ii) For a request made or supported by a prescribing physician or other prescriber, the Part D plan sponsor must provide an expedited redetermination if the physician or other prescriber indicates that applying the standard timeframe for conducting a redetermination may seriously jeopardize the life or health of the enrollee or the enrollee's ability to regain maximum function.

(d) * * *

(2) * * *

(iii) Informs the enrollee of the right to resubmit a request for an expedited redetermination with the prescribing physician's or other prescriber's support; and

* * * * *

■ 39. Section 423.586 is revised to read as follows:

§ 423.586 Opportunity to submit evidence.

The Part D plan sponsor must provide the enrollee or the prescribing physician or other prescriber, as appropriate, with a reasonable opportunity to present evidence and allegations of fact or law, related to the issue in dispute, in person as well as in writing. In the case of an expedited redetermination, the opportunity to present evidence is limited by the short timeframe for making a decision. Therefore, the Part D plan sponsor must inform the enrollee or the prescribing physician or other prescriber of the conditions for submitting the evidence.

■ 40. Amend § 423.590 by revising paragraphs (d)(1), (e), and (f)(2) to read as follows:

§ 423.590 Timeframes and responsibility for making redeterminations.

* * * * *

(d) *Expedited redetermination.* (1) *Timeframe.* A Part D plan sponsor that approves a request for expedited redetermination must complete its redetermination and give the enrollee (and the prescribing physician or other prescriber involved, as appropriate), notice of its decision as expeditiously as the enrollee's health condition requires but no later than 72 hours after receiving the request.

* * * * *

(e) *Failure to meet timeframe for expedited redetermination.* If the Part D plan sponsor fails to provide the enrollee or the prescribing physician or other prescriber, as appropriate, with the results of its expedited redetermination within the timeframe described in paragraph (d) of this section, the failure constitutes an adverse redetermination decision, and the Part D plan sponsor must forward the enrollee's request to the IRE within 24 hours of the expiration of the adjudication timeframe.

(f) * * *

(2) When the issue is the denial of coverage based on a lack of medical necessity (or any substantively equivalent term used to describe the concept of medical necessity), the redetermination must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue. The physician making the redetermination need not, in all cases, be of the same specialty or subspecialty as the prescribing physician or other prescriber.

* * * * *

■ 41. Amend § 423.600 by revising paragraphs (b), (c), and (e) to read as follows:

§ 423.600 Reconsideration by an independent review entity (IRE).

* * * * *

(b) When an enrollee files an appeal, the IRE is required to solicit the views of the prescribing physician or other prescriber. The IRE may solicit the views of the prescribing physician or other prescriber orally or in writing. A written account of the prescribing physician's or other prescriber's views (prepared by either the prescribing physician, other prescriber, or IRE, as appropriate) must be contained in the IRE's record.

(c) In order for an enrollee to request an IRE reconsideration of a determination by a Part D plan sponsor not to provide for a Part D drug that is not on the formulary, the prescribing physician or other prescriber must determine that all covered Part D drugs on any tier of the formulary for treatment of the same condition would not be as effective for the individual as the non-formulary drug, would have adverse effects for the individual, or both.

* * * * *

(e) When the issue is the denial of coverage based on a lack of medical necessity (or any substantively equivalent term used to describe the concept of medical necessity), the reconsideration must be made by a physician with expertise in the field of medicine that is appropriate for the services at issue. The physician making the reconsideration need not, in all cases, be of the same specialty or subspecialty as the prescribing physician or other prescriber.

Subpart O—Intermediate Sanctions

■ 42. Amend § 423.760 by—

■ A. Redesignating paragraphs (b)(2) and (b)(3) as paragraphs (b)(3) and (b)(4), respectively.

■ B. Adding new paragraph (b)(2) to read as follows:

§ 423.760 Determinations regarding the amount of civil money penalties and assessment imposed by CMS.

* * * * *

(b) * * *

(2) If the deficiency on which the determination is based has directly adversely affected (or has the substantial likelihood of adversely affecting) one or more Part D enrollees, CMS may calculate a CMP of up to $25,000 for each Part D enrollee directly adversely affected (or with a substantial likelihood of being adversely affected) by a deficiency .

* * * * *

Subpart P—Premiums and Cost-Sharing Subsidies for Low-Income Individuals

■ 43. Amend § 423.772 by adding the definition of ''Best available evidence'', in alphabetical order, to read as follows:

§ 423.772 Definitions.

* * * * *

Best available evidence means evidence recognized by CMS as documentation or other information that is directly tied to State or Social Security Administration systems that confirm an individual's low-income subsidy eligibility status, and that must be accepted and used by the Part D sponsor to change low-income subsidy status.

* * * * *

■ 44. Amend § 423.782 by adding new paragraph (c) to read as follows:

§ 423.782 Cost-sharing subsidy.

* * * * *

(c) When the out-of-pocket cost for a covered Part D drug under a Part D sponsor's plan benefit package is less than the maximum allowable copayment, coinsurance or deductible amounts under paragraphs (a) and (b) of

this section, the Part D sponsor may only charge the lower benefit package amount.

■ 45. Amend § 423.800 by—

■ A. Revising paragraph (b).

■ B. Adding a new paragraph (d).

The revision and addition read as follows:

§ 423.800 Administration of subsidy program.

* * * * *

(b) *Reduction of premium or cost-sharing by PDP sponsor or organization.* Based on information provided by CMS under paragraph (a) of this section, or obtained under paragraph (d) of this section, the Part D sponsor offering the Part D plan in which a subsidy eligible individual is enrolled must reduce the individual's premiums and cost-sharing as applicable, and provide information to CMS on the amount of those reductions, in a manner determined by CMS. The Part D sponsor must track the application of the subsidies under this subpart to be applied to the out-of-pocket threshold.

* * * * *

(d) *Use of the best available evidence process to establish cost-sharing.* Part D sponsors must—

(1) Accept best available evidence as defined in § 423.772 of this part received from beneficiaries or other individuals acting directly on their behalf; and

(2) Update the subsidy eligible individual's LIS status. and respond to requests for assistance in securing acceptable evidence of subsidy eligibility from beneficiaries or other individuals acting directly on their behalf in accordance with the process(es) established by CMS, and within the reasonable timeframe(s) as determined by CMS.

Subpart R—Payment to Sponsors of Retiree Prescription Drug Plans

■ 46. Section 423.882 is amended by—

■ A. Adding the definition of ''actually paid'' in alphabetical order.

■ B. Adding the definition of ''administrative costs'' in alphabetical order.

■ C. Revising the definition of ''allowable retiree costs''.

■ D. Revising the definition of ''gross covered retiree plan-related prescription drug costs'', or ''gross retiree costs''.

The additions and revisions read as follows:

§ 423.882 Definitions.

* * * * *

Actually paid means that the costs must be actually incurred by the qualified retiree prescription drug plan and must be net of any direct or indirect remuneration (including discounts, charge backs or rebates, cash discounts, free goods contingent on a purchase agreement, up-front payments, coupons, goods in kind, free or reduced-price services, grants, or other price concessions or similar benefits offered to some or all purchasers) from any manufacturer or pharmacy that would serve to decrease the costs incurred under the qualified retiree prescription drug plan.

Administrative costs means costs incurred by a qualified retiree prescription drug plan that are not drug costs incurred to purchase or reimburse the purchase of Part D drugs.

Allowable retiree costs means the subset of gross covered retiree plan-related prescription drug costs actually paid by the sponsor of the qualified retiree prescription drug plan or by (or on behalf of) a qualifying covered retiree under the plan.

* * * * *

Gross covered retiree plan-related prescription drug costs, or *gross retiree costs*, means those Part D drug costs incurred under a qualified retiree prescription drug plan, excluding administrative costs, but including dispensing fees, during the coverage year. They equal the sum of the following:

(1) The share of prices paid by the qualified retiree prescription drug plan that is received as reimbursement by the pharmacy or by an intermediary contracting organization, and reimbursement paid to indemnify a qualifying covered retiree when the reimbursement is associated with a qualifying covered retiree obtaining Part D drugs under the qualified retiree prescription drug plan.

(2) All amounts paid under the qualified retiree prescription drug plan by or on behalf of a qualifying covered retiree (such as the deductible, coinsurance, or cost sharing) in order to obtain Part D drugs that are covered under the qualified retiree prescription drug plan.

* * * * *

■ 47. Revise § 423.888(b)(5)(i) to read as follows:

§ 423.888 Payment methods, including provision of necessary information.

* * * * *

(b) * * *

(5) *Special rule for insured plans.* (i) Interim Payments. Sponsors of group health plans that provide benefits through health insurance coverage (as defined in 45 CFR 144.103) and that choose either monthly payments, quarterly payments or an interim annual payment in paragraphs (b)(1) and (b)(2) of this section, may elect to determine gross covered plan-related retiree prescription drug costs for purposes of the monthly, quarterly or interim annual payments based on a portion of the premium costs paid by the sponsor (or by the qualifying covered retirees) for coverage of the covered retirees under the group health plan. Premium costs that are determined, using generally accepted actuarial principles, may be attributable to the gross covered plan-related retiree prescription drug costs incurred by the health insurance issuer (as defined in 45 CFR 144.103) for the sponsor's qualifying covered retirees, except that administrative costs and risk charges must be subtracted from the premium.

* * * * *

Authority: (Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program) (Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 7, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 13, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E9–148 Filed 1–6–09; 4:15 pm]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Part 423

[CMS–4131–P2]

RIN 0938–AP64

Medicare Program; Prescription Drug Benefit Program: Payments to Sponsors of Retiree Prescription Drug Plans

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make regulatory revisions based on a change in our interpretation of section 1860D–22(b) of the Social Security Act. We would interpret this provision as providing us with the authority to ''waive or modify'' statutory requirements pertaining to the Retiree Drug Subsidy (RDS) program in order to facilitate the offering of a prescription drug plan covering employees or retirees.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than March 13, 2009.

ADDRESSES: In commenting, please refer to file code CMS–4131–P2. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

You may submit comments in one of four ways (please choose only one of the ways listed).

1. *Electronically*. You may submit electronic comments on specific issues in this regulation to *http://www.regulations.gov*. Follow the instructions under the ''More Search Options'' tab.

2. *By regular mail*. You may mail written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–4131–P2, P.O. Box 8010, Baltimore, MD 21244–8010.

Please allow sufficient time for mailed comments to be received before the close of the comment period.

3. *By express or overnight mail*. You may send written comments to the following address only: Centers for Medicare & Medicaid Services, Department of Health and Human Services, *Attention:* CMS–4131–P2, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

4. *By hand or courier*. If you prefer, you may deliver (by hand or courier) your written comments before the close of the comment period to either of the following addresses: a. Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201; (Because access to the interior of the Hubert H. Humphrey (HHH) Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for persons wishing to retain a proof of filing by stamping in and retaining an extra copy of the comments being filed.)

b. 7500 Security Boulevard, Baltimore, MD 21244–1850.

If you intend to deliver your comments to the Baltimore address, please call telephone number (410) 786–9994 in advance to schedule your arrival with one of our staff members.

Comments mailed to the addresses indicated as appropriate for hand or courier delivery may be delayed and received after the comment period.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT: David Mlawsky, 410–786–6851.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following Web site as soon as possible after they have been received: *http://regulations.gov*. Follow the search instructions on that Web site to view public comments.

Comments received timely will be also available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, at the headquarters of the Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, Maryland 21244, Monday through Friday of each week from 8:30 a.m. to 4 p.m. To schedule an appointment to view public comments, phone 1–800–743–3951.

I. Background and Legislative History

The Balanced Budget Act of 1997 (BBA) (Pub. L. 105–33) established a new ''Part C'' in the Medicare statute (sections 1851 through 1859 of the Social Security Act (the Act)) that established the Medicare+Choice (M+C) program. Under section 1851(a)(1) of the Act, every individual entitled to Medicare Part A and enrolled under Medicare Part B, except for most individuals with end-stage renal disease (ESRD), could elect to receive benefits either through the original Medicare program or an M+C plan, if one was offered where he or she lived.

The Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 (BBRA), (Pub. L. 106–111), amended the M+C provisions of the BBA. Further amendments were made to the M+C program by the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) (Pub. L. 106–554), enacted December 21, 2000.

Subsequently, the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA) (Pub. L. 108–173) was enacted on December 8, 2003. This landmark legislation established the Medicare prescription drug benefit program (Part D) and made significant revisions to the provisions in Medicare Part C, governing what was renamed the Medicare Advantage (MA) program (formerly Medicare+Choice). The MMA directed that important aspects of the new Medicare prescription drug benefit program under Part D be similar to and coordinated with regulations for the MA program. The MMA also created a subsidy program involving payments to sponsors of retiree prescription drug programs, or the Retiree Drug Subsidy (RDS) program. This program allows for subsidy payments to sponsors of qualified retiree prescription drug plans for Part D drug costs for individuals who are eligible for, but not enrolled in, a Medicare Part D plan.

The MMA also specified that implementation of the prescription drug benefit and revised MA program provisions take place by January 1, 2006. Thus, we published final rules for the MA and Part D prescription drug programs, and the RDS Program, in the January 28, 2005 **Federal Register**. (For further discussion, see (70 FR 4588 through 4741) and (70 FR 4194 through 4585), respectively.) We subsequently published revisions to these regulations in an April 15, 2008 final rule (73 FR 20486).

Since the publication of these rules, we have gained a great deal of experience with all aspects of these programs. Based on this experience, as well as on recommendations from representatives of both the organizations that provide care and the Medicare beneficiaries that they serve, we determined that proposed changes to

the existing Part C, Part D, and RDS regulations were warranted. We believed that these changes would help plans understand and comply with our policies for all three programs, and aid MA organizations and Part D and RDS plan sponsors in implementing their health care and prescription drug benefit plans in ways that will better serve the Medicare population.

Thus, on May 16, 2008, we published a proposed rule (73 FR 28556) that would revise certain aspects of the MA, Part D, and RDS programs. Many of these proposed revisions would clarify existing policies or codified current guidance for all three programs. Subsequent to the publication of that proposed rule, the Medicare Improvements for Patients and Providers Act (MIPPA) (Pub. L. 110–275) was enacted on July 15, 2008. MIPPA included a number of provisions that addressed the same requirements that we had addressed in the proposed rule. In some cases, the MIPPA provisions paralleled our proposed requirements and in other instances they complemented or superseded them. Thus, in order to implement both the new MIPPA provisions and those proposed in our May 2008 proposed rule, we have published a series of rules to set forth the appropriate regulatory changes.

In the September 18, 2008 **Federal Register** (73 FR 54208), we published a final rule that finalized certain marketing provisions, effective October 1, 2008, that paralleled provisions in MIPPA that are not effective until January 1, 2009. In the same issue of the **Federal Register** (73 FR 54226), we published an interim final rule that addressed the other remaining provisions of MIPPA that impacted the MA and Part D programs and were not previously addressed in the May 2008 proposed rule.

Elsewhere in this **Federal Register**, we are publishing final regulations that respond to comments on the May 16, 2008 proposed rule and finalize Part C and Part D regulations from that proposed rule that either were not impacted by MIPPA or that complement MIPPA provisions. In the same rule published today containing the foregoing final regulations, we are publishing interim final regulations, with a comment period, that respond to the comments we received on the RDS provisions proposed in the May 16, 2008 proposed rule. In the preamble discussion of these interim final regulations, we indicate that we agree with concerns expressed by commenters regarding the application to the RDS program of two Part D policies that are being finalized. These interim final regulations preserve the status quo for the RDS program with respect to these policies while we invite comment on three different legal theories under which we could potentially apply these policies (a requirement to report pass-through pricing (as opposed to lock-in pricing)) and a requirement to report rebates and other price concessions that are retained by a pharmacy benefit management company or other intermediary contracting organization to Medicare Part D plans, but not to RDS plan sponsors. Specifically, we solicit comments on the possibility of applying one or more of those legal theories. However, one of these legal theories involves interpreting the waiver authority under section 1860D–22(b) of the Act (which incorporates waiver authority under section 1857(i) of the Act) to give us the authority to modify RDS regulations in order to permit to issue a final rule that preserves the status quo in the RDS program with respect to the two policies in question. In our current regulations, however, we have interpreted section 1860D–22(b) of the Act to apply only to Medicare Part D plans, and not RDS plan sponsors. In order for us to implement this legal theory, therefore, we would have to revise the regulations to establish our interpretation that the statutory waiver provision applies to RDS plan sponsors as well. Thus, to enable us potentially to adopt this legal theory (if in fact we choose to do so), we are publishing this proposed rule inviting public comment on this proposed change. Once we have reviewed the comments received on this proposed rule and the RDS interim final regulations published today, we will determine whether to adopt any of the legal theories discussed in the preamble discussion of the RDS interim final regulations, and whether to finalize the regulatory revisions based on our change in interpretation of section 1860D–22(b) of the Act set forth in this proposed rule.

II. Provisions of the Proposed Rule

The waiver authority in section 1860D–22(b) of the Act appears in a section of the Act that is otherwise devoted entirely to provisions that apply to the RDS program. In this context, section 1860D–22(b) of the Act provides that the employer group waiver provisions in section 1857(i) of the Act (Medicare Part C) ''shall apply with respect to *prescription drug plans* in relation to employment based retiree health coverage in a manner similar to the manner in which they apply to an MA plan in relation to employers. * * *'' (Emphasis added.) It is noteworthy that this subsection uses the term ''prescription drug plans'' rather than ''qualified retiree prescription drug plans,'' since section 1860D–41(a)(8) of the Act defines ''prescription drug plan'' as a plan offered ''under a policy contract or plan that has been approved under section 1860D–11(e)'' and ''by a PDP sponsor pursuant to, and in accordance with, a contract between the Secretary and the sponsor under section 1860D–12(b).'' This clearly describes a Part D plan, not an RDS plan, that is, a qualified retiree prescription drug plan (QRPDP).

Under ordinary principles of statutory construction, when a term is defined in statute, that definition applies when the same statute employs that term. However, given the fact that this waiver authority appears in a section otherwise devoted to the RDS program, and that the term ''qualified retiree prescription drug plan'' includes the three words, ''prescription drug plan,'' we believe that in this case the term ''prescription drug plan'' can be interpreted to encompass both a Part D ''prescription drug plan'' and a qualified retiree ''prescription drug plan'' (that is, this waiver authority arguably extends both to PDPs and QRPDPs), as long as the plan is offered ''in relation to employment-based retiree health coverage'' in either case.

However as noted previously, we have already interpreted the waiver authority in section 1860D–22(b) of the Act as applying only to Part D prescription drug plans. The employer group waiver authority in section 1860D–22(b) of the Act is set forth in part 423 subpart J (§ 423.458) of our regulations, which governs PDPs and MA–PDs, rather than subpart R, which governs QRPDPs under the RDS program. The preamble discussion of Subpart J in the January 28, 2005 final rule states that, for purposes of the discussion that follows in Subpart J, the term ''employer sponsored group prescription drug plan'' means ''a prescription drug plan under a contract between a PDP sponsor or MA organization offering an MA–PD plan and employers, labor organizations, or the trustees of funds established by one or more employers or labor organizations (or combination thereof) to furnish prescription drug benefits under employment based retiree health coverage.'' (*See* the January 28, 2005 final rule (70 FR 4320)). In other words, the preamble expressly states in its discussion of ''terminology'' that when we use the term ''employer sponsored group prescription drug plan,'' it is referring to a PDP or MA–PD, and not to a QRPDP under the RDS program.

In the discussion of the regulatory provision implementing the waiver authority in section 1860D–22(b) of the Act specifically, the preamble expressly states that ''[s]ection 1860D–22(b) of the Act extends the waiver authority that is provided for MA organizations related to Part C under section 1857(i) of the Act * * * *to prescription drug plans*.'' (emphasis added.) (*See* the January 28, 2005 final rule (70 FR 4323)). The next sentence states that ''[t]his waiver authority is intended to provide employment-based retiree health coverage an opportunity to furnish prescription drug benefits to its participants or beneficiaries *through Part D* in the most efficient and effective manner possible.'' *Id.* (emphasis added). Part D and the RDS program are mutually exclusive. An employer may either offer drug coverage through Part D, or receive an RDS payment for coverage it offers independent of Part D, but may not do both in the case of the same Medicare beneficiaries. We also discuss in the preamble only a ''process'' for ''authorizing waivers for *employer sponsored prescription drug plans*.'' *Id.* (emphasis added). As noted above, this term was defined in the preamble as limited to a PDP or MA–PD.

Finally, § 423.454, defines an ''employer-sponsored group prescription drug plan'' as a plan ''approved by CMS as a prescription drug plan'' (a PDP). Section 423.458(c) specifically provides only for waiving provisions that hinder the design or offering of, or enrollment in, an ''employer-sponsored group prescription drug plan.'' Thus, we believe that the current regulations unambiguously construe the authority in section 1860D–22(b) of the Act as applying only to PDPs and MA–PDs, and not to QRPDPs participating in the RDS program.

As noted previously, in a related interim final rule with comment period elsewhere in this **Federal Register**, we are soliciting public comments on whether we should adopt an interpretation of section 1860D–22(b) of the Act that would extend the scope of that provision to QRPDPs, as well as PDPs and MA–PDs. In the event that, following the review of such comments, should we decide to adopt such an interpretation, we would like to issue that interpretation as part of the rulemaking process as soon as possible. For this reason, we are publishing this proposed rule. However, we wish to reiterate that the fact that we are publishing this proposed rule does not mean that we have already decided to make this interpretation.

The proposed rule would adopt an interpretation of section 1860D–22(b) of the Act that would extend the scope of that provision to QRPDPs (as well as PDPs and MA–PDs) by revising the definition of ''employer-sponsored group prescription drug plan'' in § 423.454 and by making conforming changes to § 423.458.

III. Collection of Information Requirements

This document does not impose additional information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and budget under the authority of the Paperwork Reduction Act of 1995.

IV. Response to Comments

Because of the large number of public comments we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Regulatory Impact Statement

We have examined the impact of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993, as further amended), the Regulatory Flexibility Act (RFA) (September 19, 1980, Pub. L. 96–354), section 1102(b) of the Social Security Act, section 202 of the Unfunded Mandates Reform Act of 1995 (March 22, 1995; Pub. L. 104–4), Executive Order 13132 on Federalism (August 4, 1999) and the Congressional Review Act (5 U.S.C. 804(2)).

Executive Order 12866 (as amended by Executive Orders 13258 and 13422) 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 proposed 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 $7.0 million to $34.5 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, and the Secretary certifies, that this proposed rule would 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 603 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 for Medicare payment regulations and has fewer than 100 beds. We are not preparing an analysis for section 1102(b) of the Act because we have determined, and the Secretary certifies, that this proposed rule would 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. In 2008, that threshold is approximately $130 million. This proposed rule would have no consequential effect on State, local, or tribal governments 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 Executive Order 13132 are not applicable.

We draw the above conclusions because this proposed rule would give us the authority to relieve RDS sponsors of requirements/costs, rather than imposing requirements/costs on such entities.

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 423

Administrative practice and procedure, Emergency medical services, Health facilities, Health maintenance organizations (HMOs), Medicare, Penalties, Privacy, Reporting and recordkeeping.

For the reasons set forth in the preamble, the Centers for Medicare & Medicaid Services proposes to amend 42 CFR Part 423 as set forth below:

PART 423—VOLUNTARY MEDICARE PRESCRIPTION DRUG BENEFIT

1. The authority citation for part 423 continues to read as follows:

Authority: Secs. 1102, 1860D–1 through 1860D–42, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395w–101 through 1395w–152, and 1395hh).

Subpart J—Coordination of Part D Plans With Other Prescription Drug Coverage

2. Section 423.454 is amended by revising the definition ''Employer-sponsored group prescription drug plan'' to read as follows:

§ 423.454 Definitions.

* * * * *

Employer-sponsored group prescription drug plan means prescription drug coverage offered to retirees who are Part D eligible individuals under employment-based retiree health coverage. For purposes of this subpart, employment-based retiree health coverage is such coverage (as defined in § 423.882) provided through a Medicare Part D plan, or for which a plan sponsor could qualify for payments under Subpart R of this part.

* * * * *

3. Section 423.458 is amended by—

A. Republishing the heading of paragraph (c).

B. Revising paragraph (c)(1).

C. Redesignating paragraph (c)(2) as paragraph (c)(3).

D. Adding a new paragraph (c)(2).

The revision and addition read as follows:

§ 423.458 Application of Part D rules to certain Part D plans on and after January 1, 2006.

* * * * *

(c) Employer group waiver. (1) *General rule for employer-sponsored group prescription drug plans that are Medicare Part D plans.* CMS may waive or modify any requirement under this part that hinders the design of, the offering of, or the enrollment in an employer-sponsored group prescription drug plan, including authorizing the establishment of separate premium amounts for enrollees of the employer-sponsored group prescription drug plan and limitations on enrollment in such plan to Part D eligible individuals participating in the sponsor's employment-based retiree health coverage. Any entity seeking to offer, sponsor, or administer an employer-sponsored group prescription drug plan may request, in writing, a waiver or modification of additional requirements under this Part that hinder its design of, the offering of, or the enrollment in, such employer-sponsored group prescription drug plan.

(2) *General rule for employer-sponsored group prescription drug plans for which a sponsor could qualify for payments under Subpart R of this part.* CMS may waive or modify any requirement under this Part that hinders the design of, the offering of, or the enrollment in an employer-sponsored group prescription drug plan.

* * * * *

Authority: Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program.

Dated: November 7, 2008.

Kerry Weems,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: November 13, 2008.

Michael O. Leavitt,

Secretary.

[FR Doc. E9–151 Filed 1–6–09; 4:15 pm]

BILLING CODE 4120–01–P

Federal Register

Monday,
January 12, 2009

Part V

The President

Proclamation 8335—Establishment of the Marianas Trench Marine National Monument

Proclamation 8336—Establishment of the Pacific Remote Islands Marine National Monument

Proclamation 8337—Establishment of the Rose Atoll Marine National Monument

Federal Register
Vol. 74, No. 7
Monday, January 12, 2009

Presidential Documents

Title 3—

The President

Proclamation 8335 of January 6, 2009

Establishment of the Marianas Trench Marine National Monument

By the President of the United States of America

A Proclamation

Over approximately 480 nautical miles, the Mariana Archipelago encompasses the 14 islands of the United States Commonwealth of the Northern Mariana Islands and the United States Territory of Guam that sit atop the Mariana Ridge in an area known as the Mariana Volcanic Arc. The Mariana Volcanic Arc is part of a subduction system in which the Pacific Plate plunges beneath the Philippine Sea Plate and into the Earth's mantle, creating the Mariana Trench. Six of the archipelago's islands have been volcanically active in historic times, and numerous seamounts along the Mariana Ridge are volcanically or hydrothermically active. The Mariana Trench is approximately 940 nautical miles long and 38 nautical miles wide within the United States Exclusive Economic Zone and contains the deepest known points in the global ocean.

The Mariana Volcanic Arc contains objects of scientific interest, including the largest active mud volcanoes on Earth. The Champagne vent, located at the Eifuku submarine volcano, produces almost pure liquid carbon dioxide. This phenomenon has only been observed at one other site in the world. The Sulfur Cauldron, a pool of liquid sulfur, is found at the Daikoku submarine volcano. The only other known location of molten sulfur is on Io, a moon of Jupiter. Unlike other reefs across the Pacific, the northernmost Mariana reefs provide unique volcanic habitats that support marine biological communities requiring basalt. Maug Crater represents one of only a handful of places on Earth where photosynthetic and chemosynthetic communities of life are known to come together.

The waters of the archipelago's northern islands are among the most biologically diverse in the Western Pacific and include the greatest diversity of seamount and hydrothermal vent life yet discovered. These volcanic islands are ringed by coral ecosystems with very high numbers of apex predators, including large numbers of sharks. They also contain one of the most diverse collections of stony corals in the Western Pacific. The northern islands and shoals in the archipelago have substantially higher large fish biomass, including apex predators, than the southern islands and Guam. The waters of Farallon de Pajaros (also known as Uracas), Maug, and Asuncion support some of the largest biomass of reef fishes in the Mariana Archipelago. These relatively pristine coral reef ecosystems are objects of scientific interest and essential to the long-term study of tropical marine ecosystems.

WHEREAS the submerged volcanic areas of the Mariana Ridge, the coral reef ecosystems of the waters surrounding the islands of Farallon de Pajaros, Maug, and Asuncion in the Commonwealth of the Northern Mariana Islands, and the Mariana Trench contain objects of scientific interest that are situated upon lands owned or controlled by the Government of the United States;

WHEREAS the United States continues to act in accordance with the balance of interests relating to traditional uses of the oceans recognizing freedom

of navigation and overflight and other internationally recognized lawful uses of the sea;

WHEREAS the islands, waters, and airspace of the Mariana Ridge are of particular importance to the national security of the United States;

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the ''Antiquities Act'') authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it is in the public interest to preserve the known volcanic areas of the Mariana Ridge, the marine environment around the islands of Farallon de Pajaros, Maug, and Asuncion in the Commonwealth of the Northern Mariana Islands, and the Mariana Trench for the care and management of the scientific objects therein:

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Antiquities Act do proclaim that there are hereby set apart and reserved as the Marianas Trench Marine National Monument (the ''monument'' or ''marine national monument'') for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described below and depicted on the accompanying map entitled ''Marianas Trench Marine National Monument'' attached to and forming a part of this proclamation. The monument includes the waters and submerged lands of the three northernmost Mariana Islands (the ''Islands Unit'') and only the submerged lands of designated volcanic sites (the ''Volcanic Unit'') and the Mariana Trench (the ''Trench Unit'') to the extent described as follows: The seaward boundaries of the Islands Unit of the monument extend to the lines of latitude and longitude depicted on the accompanying map, which lie approximately 50 nautical miles from the mean low water line of Farallon de Pajaros (Uracas), Maug, and Asuncion. The inland boundary of the Islands Unit of the monument is the mean low water line. The boundary of the Trench Unit of the monument extends from the northern limit of the Exclusive Economic Zone of the United States in the Commonwealth of the Northern Mariana Islands to the southern limit of the Exclusive Economic Zone of the United States in Guam approximately following the points of latitude and longitude identified on the accompanying map. The boundaries of the Volcanic Unit of the monument include a circle drawn with a 1 nautical mile radius centered on each of the volcanic features identified on the accompanying map and its legend. The Federal land and interests in land reserved consists of approximately 95,216 square miles of submerged lands and waters of the Mariana Archipelago, which is the smallest area compatible with the proper care and management of the objects to be protected.

Submerged lands that by legislation are subsequently granted by the United States to the Commonwealth of the Northern Mariana Islands but remain controlled by the United States under the Antiquities Act may remain part of the monument, for coordination of management with the Government of the Commonwealth of the Northern Mariana Islands. Any submerged lands and interests in submerged lands within the monument not owned or controlled by the United States shall be reserved as a part of the monument upon acquisition of title or control by the United States.

Management of the Marine National Monument

The Secretaries of Commerce, through the National Oceanic and Atmospheric Administration, and the Interior, shall manage the monument pursuant to applicable legal authorities and in consultation with the Secretary of Defense.

The Secretary of the Interior shall have management responsibility for the monument, in consultation with the Secretary of Commerce, except that the Secretary of Commerce shall have the primary management responsibility, in consultation with the Secretary of the Interior, with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and any other applicable authorities. The Secretaries of the Interior and Commerce shall not allow or permit any appropriation, injury, destruction, or removal of any feature of this monument except as provided for by this proclamation or as otherwise provided for by law.

The Secretaries of the Interior and Commerce shall take appropriate action pursuant to their respective authorities under the Antiquities Act and the Magnuson-Stevens Fishery Conservation and Management Act, and such other authorities as may be available to implement this proclamation, to regulate fisheries, and to ensure proper care and management of the monument.

Regulation of Scientific Exploration and Research

Subject to such terms and conditions as the Secretary deems necessary for the care and management of the objects of this monument, the Secretary of the Interior may permit scientific exploration and research within the monument, including incidental appropriation, injury, destruction, or removal of features of this monument for scientific study, and the Secretary of Commerce may permit fishing within the monument for scientific exploration and research purposes to the extent authorized by the Magnuson-Stevens Fishery Conservation and Management Act. The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.

Regulation of Fishing and Management of Fishery Resources

Within the Islands Unit of the monument, the Secretary of Commerce shall prohibit commercial fishing. Subject to such terms and conditions as the Secretary of Commerce deems necessary for the care and management of the objects of the Islands Unit, the Secretary, consistent with Executive Order 12962 of June 7, 1995, as amended, shall ensure that sustenance, recreational, and traditional indigenous fishing shall be managed as a sustainable activity consistent with other applicable law and after due consideration with respect to traditional indigenous fishing of any determination by the Government of the Commonwealth of the Northern Mariana Islands.

Monument Management Planning

The Secretaries of the Interior and Commerce shall, within 2 years of the date of this proclamation, prepare management plans within their respective authorities and promulgate implementing regulations that address any further specific actions necessary for the proper care and management of the objects identified in this proclamation. In developing and implementing any management plans and any management rules and regulations, the Secretaries shall designate and involve as cooperating agencies the agencies with jurisdiction or special expertise, including the Department of Defense, the Department of State, and other agencies through scoping in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), its implementing regulations and with Executive Order 13352 of August 26, 2004, Facilitation of Cooperative Conservation, and shall treat as a cooperating agency the Government of the Commonwealth of the Northern Mariana Islands, consistent with these authorities. The monument management plans shall ensure that the monument will be administered in accordance with this proclamation, and shall, as appropriate to their respective authorities, provide for:

1. management of the Islands Unit of the monument, in consultation with the Government of the Commonwealth of the Northern Mariana Islands, including designation of specific roles and responsibilities and the means

of consultation on management decisions as appropriate, without affecting the respective authorities or jurisdictions of the Commonwealth of the Northern Mariana Islands or the Secretaries of the Interior or of Commerce;

2. public education programs and public outreach regarding the coral reef ecosystem and related marine resources and species of the monument and efforts to conserve them;

3. traditional access by indigenous persons, as identified by the Secretaries in consultation with the Government of the Commonwealth of the Northern Mariana Islands, for culturally significant subsistence, cultural and religious uses within the monument;

4. a program to assess and promote monument-related scientific exploration and research, tourism, and recreational and economic activities and opportunities in the Commonwealth of the Northern Mariana Islands;

5. a process to consider requests for recreational fishing permits in certain areas of the Islands Unit, based on an analysis of the likely effects of such fishing on the marine ecosystems of these areas, sound professional judgment that such fishing will not materially interfere with or detract from the fulfillment of the purposes of this proclamation, and the extent to which such recreational fishing shall be managed as a sustainable activity consistent with Executive Order 12962, as amended, and other applicable law; and

6. programs for monitoring and enforcement necessary to ensure that scientific exploration and research, tourism, and recreational and commercial activities do not degrade the monument's coral reef ecosystem or related marine resources or species or diminish the monument's natural character.

The management plans and their implementing regulations shall impose no restrictions on innocent passage in the territorial sea or otherwise restrict navigation, overflight, and other internationally recognized lawful uses of the sea, and shall incorporate the provisions of this proclamation regarding Armed Forces actions and compliance with international law.

This proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the Commonwealth of the Northern Mariana Islands.

Advisory Council

The Secretaries of the Interior and Commerce, within 3 months of the date of this proclamation and after considering recommendations from the Governor of the Commonwealth of the Northern Mariana Islands, the Secretary of Defense, and the Secretary of Homeland Security, shall establish the Mariana Monument Advisory Council to provide advice and recommendations on the development of management plans and management of the monument. The Advisory Council shall consist of three officials of the Government of the Commonwealth of the Northern Mariana Islands and one representative each from the Department of Defense and the United States Coast Guard.

Members of the Advisory Council will be appointed for a term of 3 years by the Secretaries of the Interior and Commerce after nomination by the head of the pertinent executive branch agency or, with respect to the officials of the Government of the Commonwealth of the Northern Mariana Islands, by the Governor of the Commonwealth of the Northern Mariana Islands. The Advisory Council will adopt such procedures as it deems necessary to govern its activities. Each participating agency shall be responsible for the expenses of its representative and the Departments of the Interior and Commerce shall be equally responsible for the costs of the Advisory Council.

Emergencies, National Security, and Law Enforcement Activities

1. The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for national security or law enforcement purposes.

2. Nothing in this proclamation shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard).

2. The Armed Forces shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities, that its vessels and aircraft act in a manner consistent, so far as is reasonable and practicable, with this proclamation.

3. In the event of threatened or actual destruction of, loss of, or injury to a monument living marine resource resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretary of the Interior or Commerce, as appropriate, for the purpose of taking appropriate actions to respond to and mitigate any actual harm and, if possible, restore or replace the monument resource or quality.

4. Nothing in this proclamation or any regulation implementing it shall limit or otherwise affect the Armed Forces' discretion to use, maintain, improve, manage, or control any property under the administrative control of a Military Department or otherwise limit the availability of such property for military mission purposes.

This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, agents, or any other person.

All Federal lands and interests in lands within the boundaries of this monument are hereby withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws, to the extent that those laws apply.

The establishment of this monument is subject to valid existing rights.

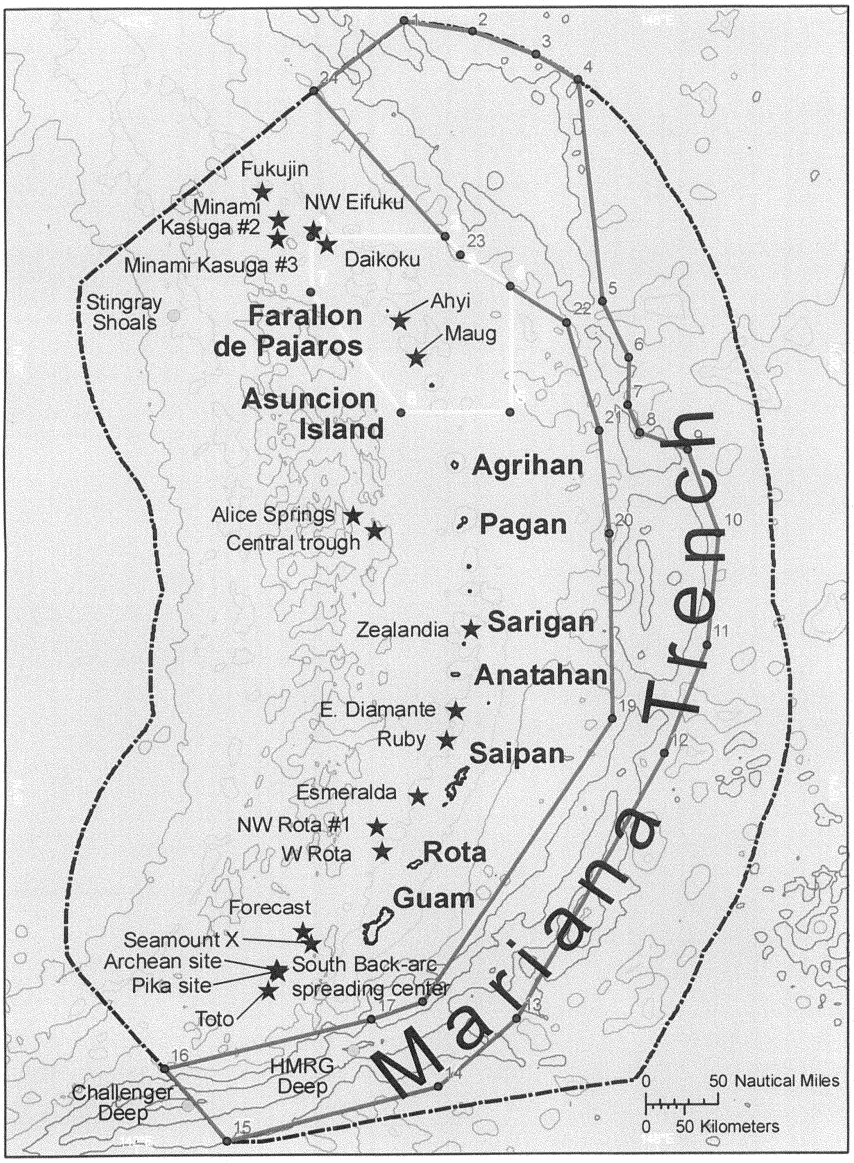
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be dominant over any other existing Federal withdrawal, reservation, or appropriation.

Warning is hereby given to all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

Billing code 3195–W9–P

Marianas Trench Marine National Monument



Trench Unit

Id	Longitude	Latitude
1	145° 5' 46" E	23° 53' 35" N
2	145° 52' 27.10" E	23° 45' 50.54" N
3	146° 36' 18.91" E	23° 29' 18.33" N
4	147° 5' 16.84" E	23° 11' 43.92" N
5	147° 22' 31.43" E	20° 38' 41.35" N
6	147° 40' 48.31" E	19° 59' 23.30" N
7	147° 39' 59.51" E	19° 27' 2.96" N
8	147° 48' 51.61" E	19° 8' 18.74" N
9	148° 21' 47.20" E	18° 56' 6.46" N
10	148° 42' 50.50" E	17° 58' 2.20" N
11	148° 34' 47.12" E	16° 40' 53.86" N
12	148° 5' 39.95" E	15° 25' 51.09" N
13	146° 23' 24.38" E	12° 21' 38.38" N
14	145° 28' 33.28" E	11° 34' 7.64" N
15	143° 3' 9" E	10° 57' 30" N
16	142° 19' 54.93" E	11° 47' 24.83" N
17	144° 42' 31.24" E	12° 21' 24.65" N
18	145° 17' 59.93" E	12° 33' 5.35" N
19	147° 29' 32.24" E	15° 49' 25.53" N
20	147° 27' 32.35" E	17° 57' 52.76" N
21	147° 20' 16.96" E	19° 9' 19.41" N
22	146° 57' 55.31" E	20° 23' 58.80" N
23	145° 44' 31.14" E	21° 11' 14.60" N
24	144° 5' 27.55" E	23° 2' 28.67" N

Islands Unit

Id	Longitude	Latitude
1	144° 1' 22.97" E	21° 23' 42.40" N
2	145° 33' 25.20" E	21° 23' 42.40" N
3	145° 44' 31.14" E	21° 11' 14.60" N
4	146° 18' 36.75" E	20° 49' 17.46" N
5	146° 18' 36.75" E	19° 22' 0.00" N
6	145° 3' 12.22" E	19° 22' 0.00" N
7	144° 1' 22.97" E	20° 45' 44.11" N

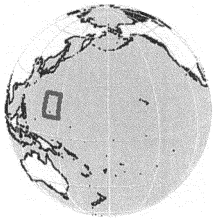
Vents Unit

Volcano	Longitude	Latitude
Fukujin	143° 27' 30" E	21° 56' 30" N
Minami Kasuga #2	143° 38' 30" E	21° 36' 36" N
NW Eifuku	144° 2' 36" E	21° 29' 15" N
Minami Kasuga #3	143° 38' 0" E	21° 24' 0" N
Daikoku	144° 11' 39" E	21° 19' 27" N
Ahyi	145° 1' 45" E	20° 26' 15" N
Maug	145° 13' 18" E	20° 1' 15" N
Alice Springs	144° 30' 0" E	18° 12' 0" N
Central trough	144° 45' 0" E	18° 1' 0" N
Zealandia	145° 51' 4" E	16° 52' 57" N
E. Diamante	145° 40' 47" E	15° 56' 31" N
Ruby	145° 34' 24" E	15° 36' 15" N
Esmeralda	145° 14' 45" E	14° 57' 30" N
NW Rota #1	144° 46' 30" E	14° 36' 0" N
W Rota	144° 50' 0" E	14° 19' 30" N
Forecast	143° 55' 12" E	13° 23' 30" N
Seamount X	144° 1' 0" E	13° 14' 48" N
South Backarc	143° 37' 8" E	12° 57' 12" N
Archaean site	143° 37' 55" E	12° 56' 23" N
Pika site	143° 38' 55" E	12° 55' 7" N
Toto	143° 31' 42" E	12° 42' 48" N

Sources:
NOAA Coral Reef Conservation Program
NMFS Coral Reef Ecosystem Division
NESDIS NGDC
NOS/CCMA Biogeography Branch
OAR Pacific Marine Environmental Lab

-10000 m
-8000 m
-6000 m
-4000 m
-2000 m

★ Active Hydrothermal Submarine Volcanoes
Trench Unit (59,732 nm²)
Islands Unit (12,388 nm²)
EEZ



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Presidential Documents

Title 3—

The President

Proclamation 8336 of January 6, 2009

Establishment of the Pacific Remote Islands Marine National Monument

By the President of the United States of America

A Proclamation

The Pacific Remote Islands area consists of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, which lie to the south and west of Hawaii. With the exception of Wake Island, these islands are administered as National Wildlife Refuges by the United States Fish and Wildlife Service of the Department of the Interior. These refuges are an important part of the most widespread collection of marine- and terrestrial-life protected areas on the planet under a single country's jurisdiction. They sustain many endemic species including corals, fish, shellfish, marine mammals, seabirds, water birds, land birds, insects, and vegetation not found elsewhere.

Wake Island, to the west of Honolulu, Hawaii, is the northernmost atoll in the Marshall Islands geological ridge and perhaps the oldest living atoll in the world. Though it was substantially modified by the United States to create a military base before and after World War II, its major habitats are the three low coral islands consisting of shells, coral skeletons, and sand, supporting atoll vegetation adapted to arid climate. Wake Island supports 12 species of resident nesting seabirds and 6 species of migratory shorebirds, including 2 species of tropicbirds, 3 species of boobies, Great Frigatebird, Sooty Tern, Brown Noddy, and Wedge-tailed Shearwater. Black-footed Albatross and Laysan Albatross recently recolonized Wake Island, making it one of the few northern albatross colonies outside the Hawaiian archipelago.

Shallow coral reefs thrive around the perimeter of Wake Island. Fish populations are abundant and support at least 323 species, including large populations of the Napoleon wrasse (*Chelinus*), sharks of several species, and large schools of the Bumphead parrotfish (*Bolbometapon*), all of which are globally depleted. Beyond the shallow reefs, the outer reef slope descends sharply to great depths.

Baker, Howland, and Jarvis Islands were first formed as fringing reefs around islands formed by Cretaceous-era volcanoes (approximately 120–75 million years ago). As the volcanoes subsided, the coral reefs grew upward, maintaining proximity to the sea surface. These low coral islands consist of coral rock, shells, and sand that support trees, shrubs, and grasses adapted to the arid climate at the equator. All three are surrounded by shallow coral reefs to depths of 100 meters, below which the reef slope descends steeply to great depths. Deep coral forests occur below photic zones of all three islands at depths below 200 meters, especially at Jarvis where surveys have revealed living colonies of precious and ancient gold coral up to 5,000 years old.

The waters surrounding Baker, Howland, and Jarvis Islands have fish biomass double that of the Papahanaumokuakea Marine National Monument, and 16 times that of the main Hawaiian Islands, due to the Equatorial Undercurrent that moves from west to east along the equator, creating localized nutrient-rich upwellings in shallows next to the islands. These are three

of only six islands in the entire Pacific Ocean where this phenomenon is possible. These islands are high in coral cover and biodiversity and are predator-dominated systems. Their biomass of top predators exceeds that of the Great Barrier Reef or Kenyan Marine Protected Areas. The islands now host about a dozen nesting bird species including several nesting and migratory bird species that are of conservation significance. Jarvis alone has nearly 3 million pairs of Sooty Terns. There are about 300 fish species found off the islands. Giant clams (*Tridacna*), Napoleon wrasses, and Bumphead parrotfish are common, and sharks of many species are especially abundant at Jarvis and commonly larger there than elsewhere. Endangered hawksbill turtle and threatened green turtles forage in nearshore waters. All three islands afford unique opportunities to conduct climate change research at the equator, far from population centers. The coral skeletons there have recorded the earth's climatic history for many millions of years.

Johnston Atoll, the northernmost island in the island chain, is an ancient atoll and probably one of the oldest in the Pacific Ocean. Unlike most atolls, it does not have a surrounding barrier reef but has a semicircular emergent reef around the north and western margins of the island. Four major habitats characterize Johnston: low-lying islets consisting of the remains of corals and shells, shallow coral reefs to depths of 150 meters, deeper reefs to depths of 1,000 meters or more, and the slope of the ancient volcano on which the island rests.

Johnston is a genetic and larval stepping stone from the Remote Islands to the Hawaiian Islands for invertebrates, other reef fauna, corals, and dolphins. Despite its isolation, Johnston supports thriving communities of Table corals (*Acropora*) and a total of 45 coral species, including a dozen species confined to the Hawaiian and northern Line Islands. Some 300 species of reef fish are at Johnston, including the endemic Nahacky's pygmy angelfish. Many threatened, endangered, and depleted species thrive there, including the green turtle, hawksbill turtle, pearl oyster, giant clams, reef sharks, groupers, humphead wrasse, bumphead parrotfish, whales, and dolphins. Endangered Hawaiian Monk Seals occasionally visit the atoll. Deep diving submersible surveys have revealed that Johnston supports the deepest reef building corals (*Leptoseris*) on record and large populations of hydrozoan corals (*Millepora, Distichopora*, *Staylaster*). Land areas support large populations of migratory shorebirds and resident seabird species, including populations of regional, national, or international significance: Wedge-tailed Shearwaters, Christmas Shearwaters, Red-tailed Tropicbirds, Brown Boobies, Great Frigatebirds, Gray-backed Terns, and White Terns. Approximately 200 threatened Green turtles forage at Johnston. The surrounding waters are used by six depleted or endangered listed cetacean species: Sperm, Blue, Sei, Humpback, and North Pacific Right whales. Spinner dolphins are abundant, and endangered Humpback whales may calve there.

Palmyra Atoll is a classic Darwinian atoll that formed atop a sinking Cretaceous-era volcano. Kingman Reef formed in the same manner but is considered an atoll reef because it lacks permanent fast land areas or islands. Kingman Reef contains a sheltered lagoon that served as a way station for flying boats on Hawaii-to-American Samoa flights during the late 1930s. There are no terrestrial plants on the reef, which is frequently awash, but it does support abundant and diverse marine fauna and flora. Palmyra Atoll is managed by the United States Fish and Wildlife Service as a wildlife refuge. In 2001, the Secretary of the Interior established National Wildlife Refuges at Palmyra Atoll and Kingman Reef.

Palmyra Atoll and Kingman Reef are known to be among the most pristine coral reefs in the world, with a fully structured inverted food web. Kingman Reef is the most pristine of any reef under U.S. jurisdiction. They are ideal laboratories for assessing effects of climate change without the difficulty of filtering anthropogenic impacts. Both Palmyra Atoll and Kingman Reef support higher levels of coral and other cnidarian species diversity (180–190 species) than any other atoll or reef island in the central Pacific, twice

as many as are found in Hawaii or Florida. Palmyra atoll has one of the best remaining examples of Pisonia grandis forest found in the Pacific region. This forest type has been lost or severely degraded over much of its range due to increased human population and development. Fish species diversity at Palmyra (418 species) is higher than, while that of Kingman (297 species) is comparable to, that of the other remote Pacific refuges. Many threatened, endangered, and depleted species thrive there, including the green and hawksbill turtle, pearl oyster, giant clams (the highest concentration in the Pacific Remote Island Area), reef sharks, Coconut crabs, groupers, humphead and Napoleon wrasse, bumphead parrotfish, and dolphins. Significant numbers of threatened green turtles forage at both atolls, especially at Palmyra; endangered Hawksbill sea turtles forage at both atolls. Large schools of rare Melon-headed whales reside off both atolls. A possibly new species of beaked whale was recently described from 2 specimens stranded at Palmyra and 1 at Christmas Island. Palmyra supports 11 nesting seabird species including the third-largest Red-footed Booby colony in the world. Large numbers of Bristle-thighed Curlews, a migratory shorebird of conservation significance, winter at Palmyra.

WHEREAS Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll and their surrounding waters contain objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States;

WHEREAS the Department of Defense has historically maintained facilities, defensive areas, and airspace reservations at Wake Island and Johnston Atoll;

WHEREAS the United States continues to act in accordance with the balance of interests relating to traditional uses of the oceans recognizing freedom of navigation and overflight and other internationally recognized lawful uses of the sea;

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the ''Antiquities Act'') authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it is in the public interest to preserve the marine environment around the islands of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll for the care and management of the historic and scientific objects therein:

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Antiquities Act, do proclaim that there are hereby set apart and reserved as the Pacific Remote Islands Marine National Monument (the ''monument'' or ''marine national monument'') for the purpose of protecting the objects identified above, all lands and interests in lands owned or controlled by the Government of the United States within the boundaries described below and depicted on the accompanying maps entitled ''Pacific Remote Islands Marine National Monument'' attached to and forming a part of this proclamation. The monument includes the waters and submerged and emergent lands of the Pacific Remote Islands to the lines of latitude and longitude depicted on the accompanying maps, which lie approximately 50 nautical miles from the mean low water lines of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll. The Federal land and interests in land reserved consists of approximately 86,888 square miles, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby withdrawn from all forms of entry, location, selection, sale, leasing, or other disposition under the public land laws to the extent that those laws apply. Lands and interests in lands within the monument not owned or controlled by the United States shall be reserved as a part of the monument upon acquisition of title or control by the United States.

Management of the Marine National Monument

The Secretary of the Interior, in consultation with the Secretary of Commerce, shall have responsibility for management of the monument, including out to 12 nautical miles from the mean low water lines of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, pursuant to applicable legal authorities. However, the Secretary of Defense shall continue to manage Wake Island, according to the terms and conditions of an Agreement between the Secretary of the Interior and Secretary of the Air Force, unless and until such Agreement is terminated. The Secretary of Commerce, through the National Oceanic and Atmospheric Administration, and in consultation with the Secretary of the Interior, shall have primary responsibility for management of the monument seaward of the area 12 nautical miles of the mean low water lines of Wake, Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll, with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and any other applicable legal authorities. The Secretaries of Commerce and the Interior shall not allow or permit any appropriation, injury, destruction, or removal of any feature of this monument except as provided for by this proclamation and shall prohibit commercial fishing within boundaries of the monument.

The Secretaries of the Interior and of Commerce shall take appropriate action pursuant to their respective authorities under the Antiquities Act and the Magnuson-Stevens Fishery Conservation and Management Act, and such other authorities as may be available to implement this proclamation, to regulate fisheries, and to ensure proper care and management of the monument.

Regulation of Scientific Exploration and Research

Subject to such terms and conditions as the respective Secretary deems necessary for the care and management of the objects of this monument, the Secretary of the Interior may permit scientific exploration and research within the monument, including incidental appropriation, injury, destruction, or removal of features of this monument for scientific study, and the Secretary of Commerce may permit fishing within the monument for scientific exploration and research purposes to the extent authorized by the Magnuson-Stevens Fishery Conservation and Management Act. The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.

Regulation of Fishing and Management of Fishery Resources

The respective Secretaries may permit noncommercial fishing upon request, at specific locations in accordance with this proclamation. Noncommercial fishing opportunities currently allowed by the U.S. Fish and Wildlife Service at Palmyra Atoll may continue unless the Secretary of the Interior determines such fishing would not be compatible with the purposes of the Palmyra Atoll National Wildlife Refuge. The Secretary shall provide a process to ensure that recreational fishing shall be managed as a sustainable activity in certain areas of the monument, consistent with Executive Order 12962 of June 7, 1995, as amended, and other applicable law.

Monument Management Planning

The Secretaries of the Interior and Commerce shall, within 2 years of the date of this proclamation, prepare management plans within their respective

authorities and promulgate implementing regulations that address any further specific actions necessary for the proper care and management of the objects identified in this proclamation at Baker, Howland, and Jarvis Islands, Kingman Reef, and Palmyra Atoll. The Secretaries shall revise and update the management plans as necessary. The Secretary of the Interior shall revise the management plan to incorporate measures for the management of Johnston Atoll within 2 years of the date that the Department of Defense terminates its use of Johnston Atoll. If the Secretary of the Air Force terminates the Agreement regarding its use of Wake Island, the Secretary of the Interior shall revise the management plan to incorporate Wake Island management within 2 years of the date that the Air Force terminates its use of Wake Island. In developing and implementing any management plans and any management rules and regulations, the Secretaries shall consult and designate and involve as cooperating agencies the agencies with jurisdiction or special expertise, including the Department of Defense, in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.,*) its implementing regulations, and with Executive Order 13352, of August 26, 2004, Facilitation of Cooperative Conservation.

The management plans and their implementing regulations shall impose no restrictions on innocent passage in the territorial sea or otherwise restrict navigation and overflight and other internationally recognized lawful uses of the sea in the monument and shall incorporate the provisions of this proclamation regarding Armed Forces actions and compliance with international law.

This proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law.

Emergencies, National Security, and Law Enforcement Activities

1. The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for national security or law enforcement purposes.

2. Nothing in this proclamation shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard).

2. The Armed Forces shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities, that its vessels and aircraft act in a manner consistent, so far as is reasonable and practicable, with this proclamation.

3. In the event of threatened or actual destruction of, loss of, or injury to a monument resource or quality resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretary of the Interior or Commerce, as appropriate, for the purpose of taking appropriate actions to respond to and mitigate any actual harm and, if possible, restore or replace the monument resource or quality.

4. Nothing in this proclamation or any regulation implementing it shall limit or otherwise affect the Armed Forces' discretion to use, maintain, improve, manage, or control any property under the administrative control of a Military Department or otherwise limit the availability of such property for military mission purposes, including, but not limited to, defensive areas and airspace reservations.

The establishment of this monument is subject to valid existing rights.

This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, agents, or any other person.

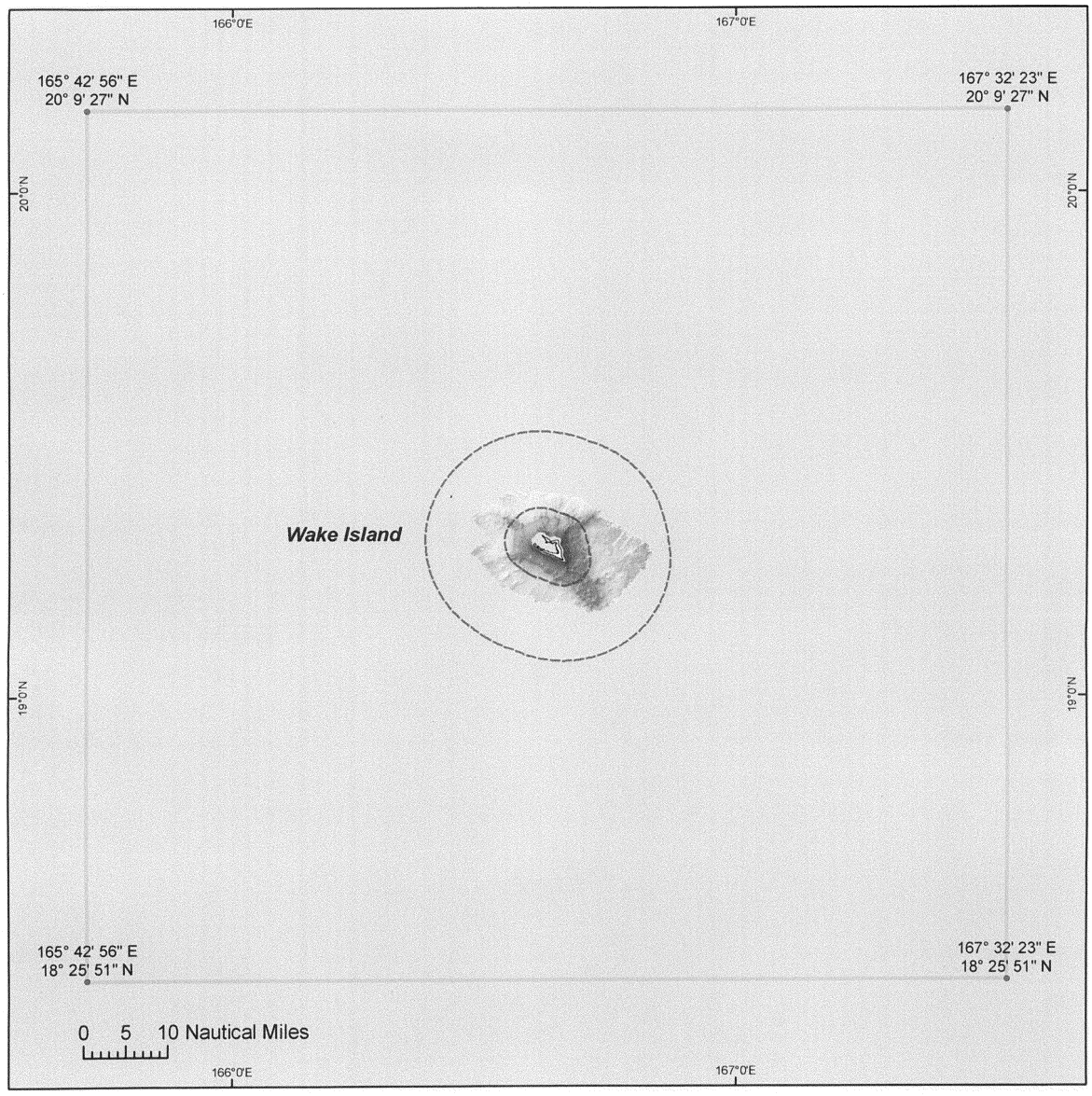
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be dominant over any other existing federal withdrawal, reservation, or appropriation.

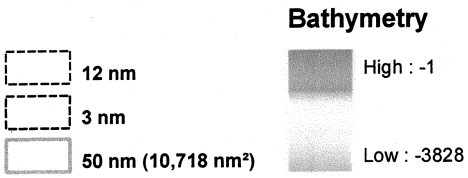
Warning is hereby given to all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

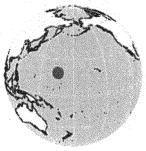
IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

Billing code 3195–W9–P

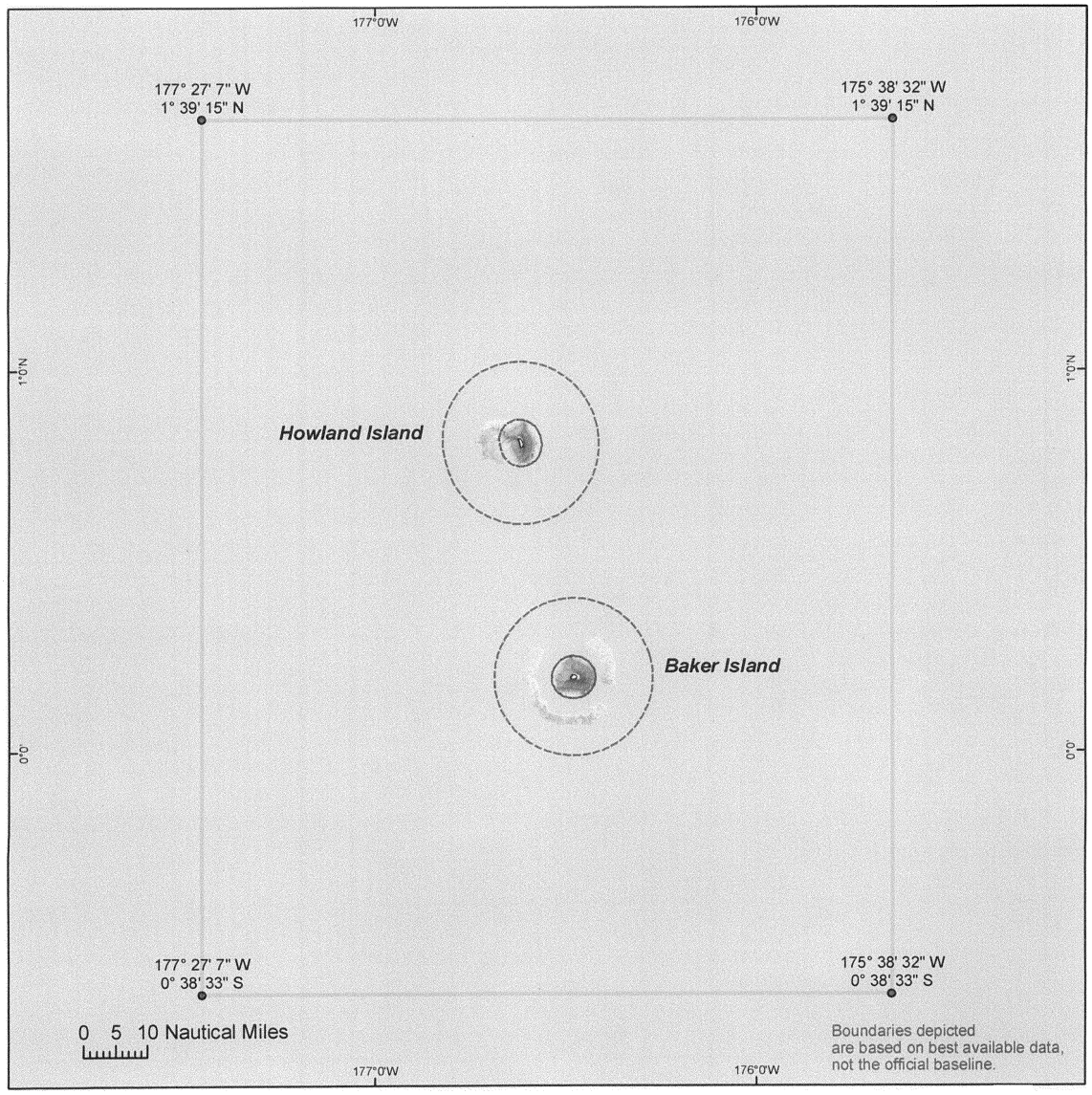
Pacific Remote Islands Marine National Monument







Pacific Remote Islands Marine National Monument



12 nm

3 nm

50 nm (15,531nm²)

Bathymetry

Value

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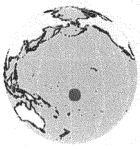
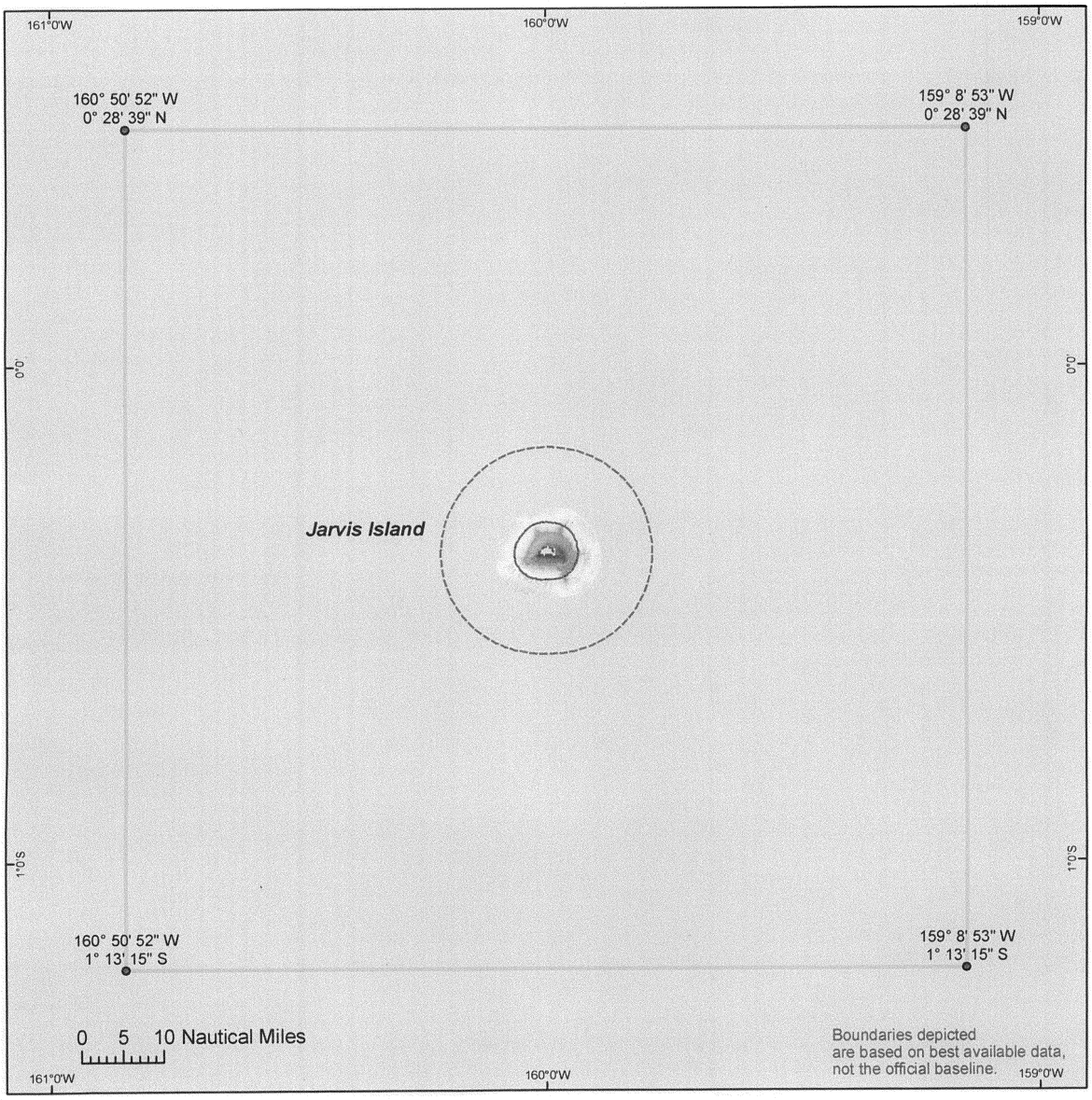
Low : -4726



Pacific Remote Islands Marine National Monument



Bathymetry

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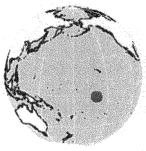
3 nm

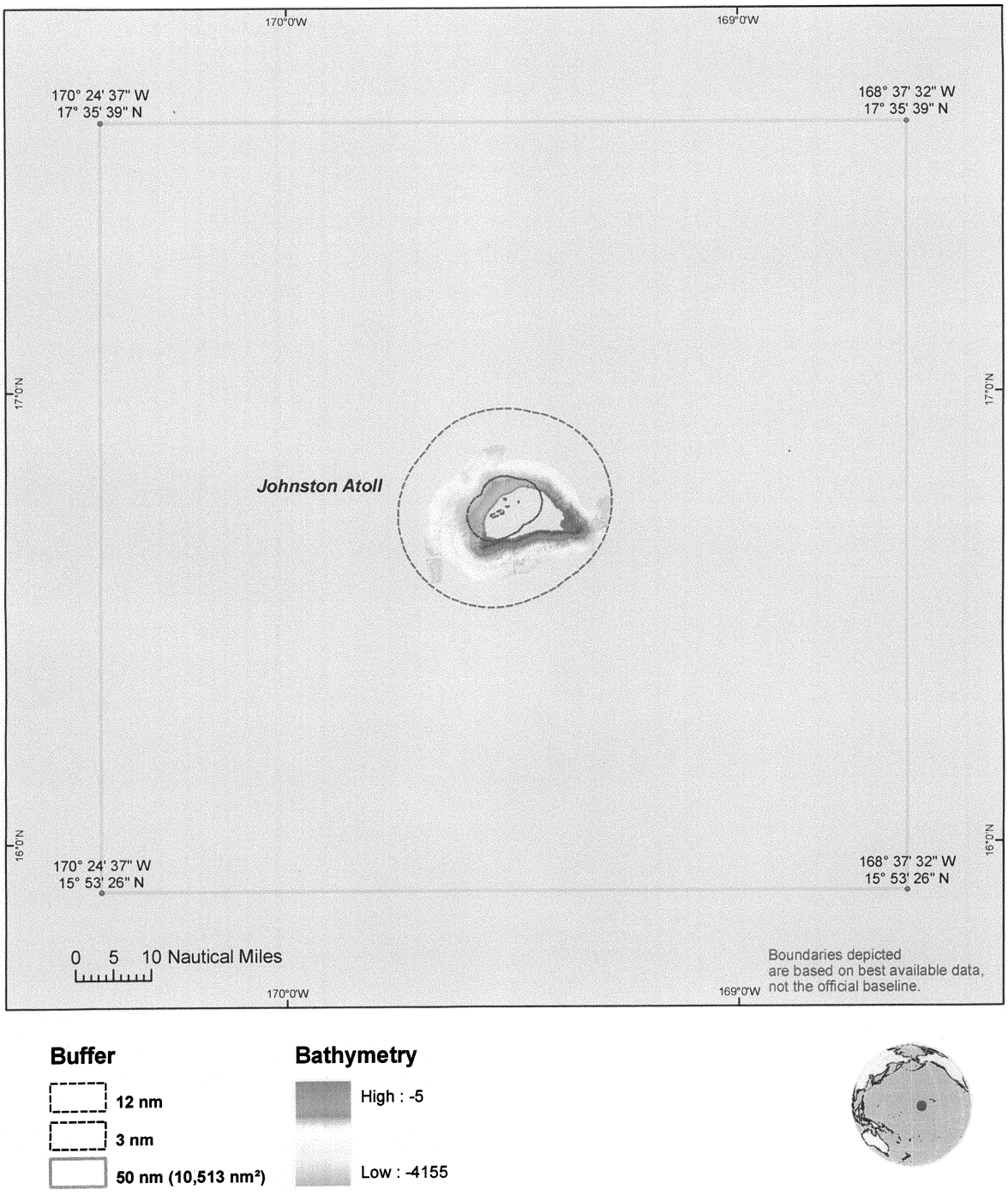
50 nm (10,433 nm²)

High : -3

Low : -3682



Pacific Remote Islands Marine National Monument



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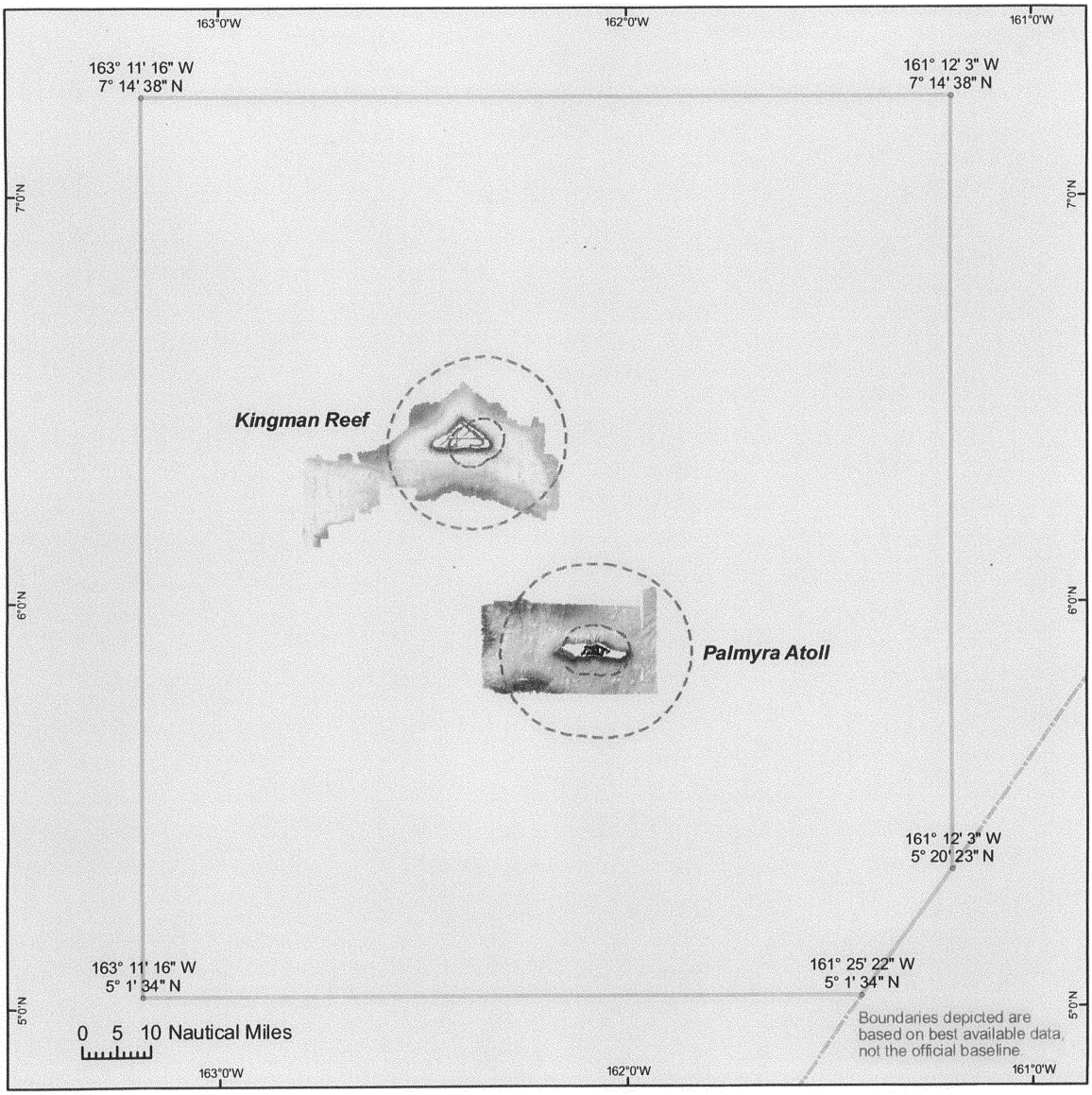

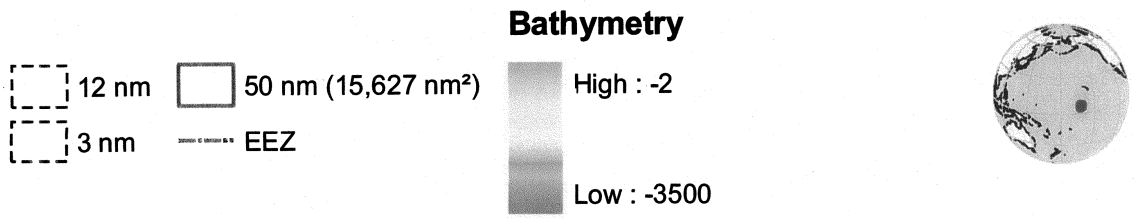

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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 8337 of January 6, 2009

Establishment of the Rose Atoll Marine National Monument

By the President of the United States of America

A Proclamation

In the Pacific Ocean approximately 130 nautical miles east-southeast of Pago Pago Harbor, American Samoa, lies Rose Atoll—the easternmost Samoan island and the southernmost point of the United States. This small atoll, which includes the Rose Atoll National Wildlife Refuge with about 20 acres of land and 1,600 acres of lagoon, remains one of the most pristine atolls in the world. The lands, submerged lands, waters, and marine environment around Rose Atoll support a dynamic reef ecosystem that is home to a very diverse assemblage of terrestrial and marine species, many of which are threatened or endangered.

One of the most striking features of Rose Atoll is the pink hue of fringing reef caused by the dominance of coralline algae, which is the primary reef-building species. Though there are roughly 100 species of stony corals, the shallow reefs are dominated by crustose coralline algae, making them distinctive and quite different from those found at other Samoan islands. The marine area provides isolated, unmolested nesting grounds for green and hawksbill turtles and has the largest number of nesting turtles in American Samoa. Its waters are frequented by numerous large predators: whitetip reef sharks, blacktip reef sharks, gray reef sharks, snappers, jacks, groupers, and barracudas. Species that have faced depletion elsewhere, some of which have declined worldwide by as much as 98 percent, are found in abundance at Rose Atoll, including giant clams, Maori wrasse, large parrotfishes, and blacktip, whitetip, and gray reef sharks. Humpback whales, pilot whales, and the porpoise genus Stenella have all been spotted at Rose Atoll. There are 272 species of reef fish, with seven species first described by scientists at Rose and dozens more new species discovered on the first deep water dive to 200 meters. Recent submersible dives around Rose Atoll have revealed abundant marine life, deep sea coral forests, and several new fish and invertebrate species.

Rose Atoll supports most of the seabird population of American Samoa, including 12 federally protected migratory seabirds, five species of federally protected shorebirds, and a migrant forest bird, the long-tailed cuckoo. Rare species of nesting petrels, shearwaters, and terns are thriving at Rose Atoll and increasing in number. The atoll is known to Samoans, who have periodically visited over the past millennium, as ''Nu'u O Manu'' (''Village of seabirds''). It is believed that Polynesians have harvested at Rose Atoll for millennia and several species, such as the giant clam, were used for cultural celebrations and events. Few relatively undisturbed islands remain in the world and Rose Atoll is one of the last remaining refuges for the seabird and turtle species of the Central Pacific. Threatened Pisonia atoll forest trees are also found at Rose Atoll.

WHEREAS the lands, submerged lands, and waters of and marine environment around Rose Atoll contain objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States;

WHEREAS the United States continues to act in accordance with the balance of interests relating to traditional uses of the oceans recognizing freedom

of navigation and overflight and other internationally recognized lawful uses of the sea;

WHEREAS section 2 of the Act of June 8, 1906 (34 Stat. 225, 16 U.S.C. 431) (the ''Antiquities Act'') authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected;

WHEREAS it is in the public interest to preserve the lands, submerged lands and waters of, and marine environment around Rose Atoll as necessary for the care and management of the historic and scientific objects therein:

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by the authority vested in me by section 2 of the Antiquities Act, do proclaim that there are hereby set apart and reserved as the Rose Atoll Marine National Monument (the ''monument'' or ''marine national monument'') for the purpose of protecting the objects described in the above preceding paragraphs, all lands and interests in lands owned or controlled by the Government of the United States within the boundaries that lie approximately 50 nautical miles from the mean low water line of Rose Atoll as depicted on the accompanying map entitled ''Rose Atoll Marine National Monument'' attached to and forming a part of this proclamation. The Federal land and interests in land reserved consists of approximately 13,451 square miles of emergent and submerged lands and waters of and around Rose Atoll in American Samoa, which is the smallest area compatible with the proper care and management of the objects to be protected.

All Federal lands and interests in lands within the boundaries of this monument are hereby withdrawn from all forms of entry, location, selection, sale, or leasing or other disposition under the public land laws to the extent that those laws apply.

Management of the Marine National Monument

The Secretary of the Interior shall have management responsibility for the monument, including Rose Atoll National Wildlife Refuge, in consultation with the Secretary of Commerce, except that the Secretary of Commerce, through the National Oceanic and Atmospheric Administration, shall have the primary management responsibility regarding the management of the marine areas of the monument seaward of mean low water, with respect to fishery-related activities regulated pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and any other applicable authorities. The Secretary of Commerce shall initiate the process to add the marine areas of the monument to the Fagatele Bay National Marine Sanctuary in accordance with the National Marine Sanctuaries Act (16 U.S.C. 1431 *et seq.*), including its provision for consultation with an advisory council, to further the protection of the objects identified in this proclamation. In developing and implementing any management plans and any management rules and regulations, the Secretary of Commerce shall consult with the Secretary of the Interior and shall designate and involve as cooperating agencies the agencies with jurisdiction or special expertise, including the Department of State, the Department of Defense, and other agencies through scoping in accordance with the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), its implementing regulations and with Executive Order 13352 of August 26, 2004, Facilitation of Cooperative Conservation, and shall treat as a cooperating agency the Government of American Samoa, consistent with these authorities.

The Secretary of the Interior shall continue to manage the Rose Atoll National Wildlife Refuge consistent with the protection of the objects identified in this proclamation. The Secretary of the Interior shall, in developing any

management plans and any management rules and regulations governing the Rose Atoll National Wildlife Refuge, comply with the National Environmental Policy Act and consult with the Secretary of Commerce.

For the purposes of protecting the objects identified above, the Secretaries of the Interior and Commerce, respectively, shall not allow or permit any appropriation, injury, destruction, or removal of any feature of this monument except as provided for by this proclamation or as otherwise provided for by law.

Regulation of Scientific Exploration and Research

Subject to such terms and conditions as the Secretaries deem necessary for the care and management of the objects of this monument, the Secretary of the Interior may permit scientific exploration and research within the monument, including incidental appropriation, injury, destruction, or removal of features of this monument for scientific study, and the Secretary of Commerce may permit fishing within the monument for scientific exploration and research purposes to the extent authorized by the Magnuson-Stevens Fishery Conservation and Management Act. The prohibitions required by this proclamation shall not restrict scientific exploration or research activities by or for the Secretaries, and nothing in this proclamation shall be construed to require a permit or other authorization from the other Secretary for their respective scientific activities.

Regulation of Fishing and Management of Fishery Resources

The Secretaries shall prohibit commercial fishing within the monument. Subject to such terms and conditions as the Secretaries deem necessary for the care and management of the objects of this monument, the Secretaries may permit noncommercial and sustenance fishing or, after consultation with the Government of American Samoa, traditional indigenous fishing within the monument. The Secretaries of the Interior and Commerce, respectively, in consultation with the Government of American Samoa, shall provide for a process to ensure that recreational fishing shall be managed as a sustainable activity consistent with Executive Order 12962 of June 7, 1995, as amended, and other applicable law.

This proclamation shall be applied in accordance with international law. No restrictions shall apply to or be enforced against a person who is not a citizen, national, or resident alien of the United States (including foreign flag vessels) unless in accordance with international law. The management plan and implementing regulations shall impose no restrictions on innocent passage in the territorial sea or otherwise restrict navigation and overflight and other internationally recognized lawful uses of the sea in the monument and shall incorporate the provisions of this proclamation regarding Armed Forces actions and compliance with international law.

Nothing in this proclamation shall be deemed to diminish or enlarge the jurisdiction of the Government of American Samoa. The Secretaries of the Interior and Commerce shall, in developing any management plans and any management rules and regulations governing the marine areas of the monument, as described above, consult with the Government of American Samoa.

Emergencies, National Security, and Law Enforcement Activities

1. The prohibitions required by this proclamation shall not apply to activities necessary to respond to emergencies threatening life, property, or the environment, or to activities necessary for national security or law enforcement purposes.

2. Nothing in this proclamation shall limit agency actions to respond to emergencies posing an unacceptable threat to human health or safety or to the marine environment and admitting of no other feasible solution.

Armed Forces Actions

1. The prohibitions required by this proclamation shall not apply to activities and exercises of the Armed Forces (including those carried out by the United States Coast Guard).

2. The Armed Forces shall ensure, by the adoption of appropriate measures not impairing operations or operational capabilities, that its vessels and aircraft act in a manner consistent, so far as is reasonable and practicable, with this proclamation.

3. In the event of threatened or actual destruction of, loss of, or injury to a monument living marine resource resulting from an incident, including but not limited to spills and groundings, caused by a component of the Department of Defense or the United States Coast Guard, the cognizant component shall promptly coordinate with the Secretary of the Interior or Commerce, as appropriate for the purpose of taking appropriate actions to respond to and mitigate any actual harm and, if possible, restore or replace the monument resource or quality.

4. Nothing in this proclamation or any regulation implementing it shall limit or otherwise affect the Armed Forces'; discretion to use, maintain, improve, manage, or control any property under the administrative control of a Military Department or otherwise limit the availability of such property for military mission purposes.

The establishment of this monument is subject to valid existing rights.

This proclamation is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity, by any party against the United States, its agencies, instrumentalities, or entities, its officers, employees, or agents, or any other person.

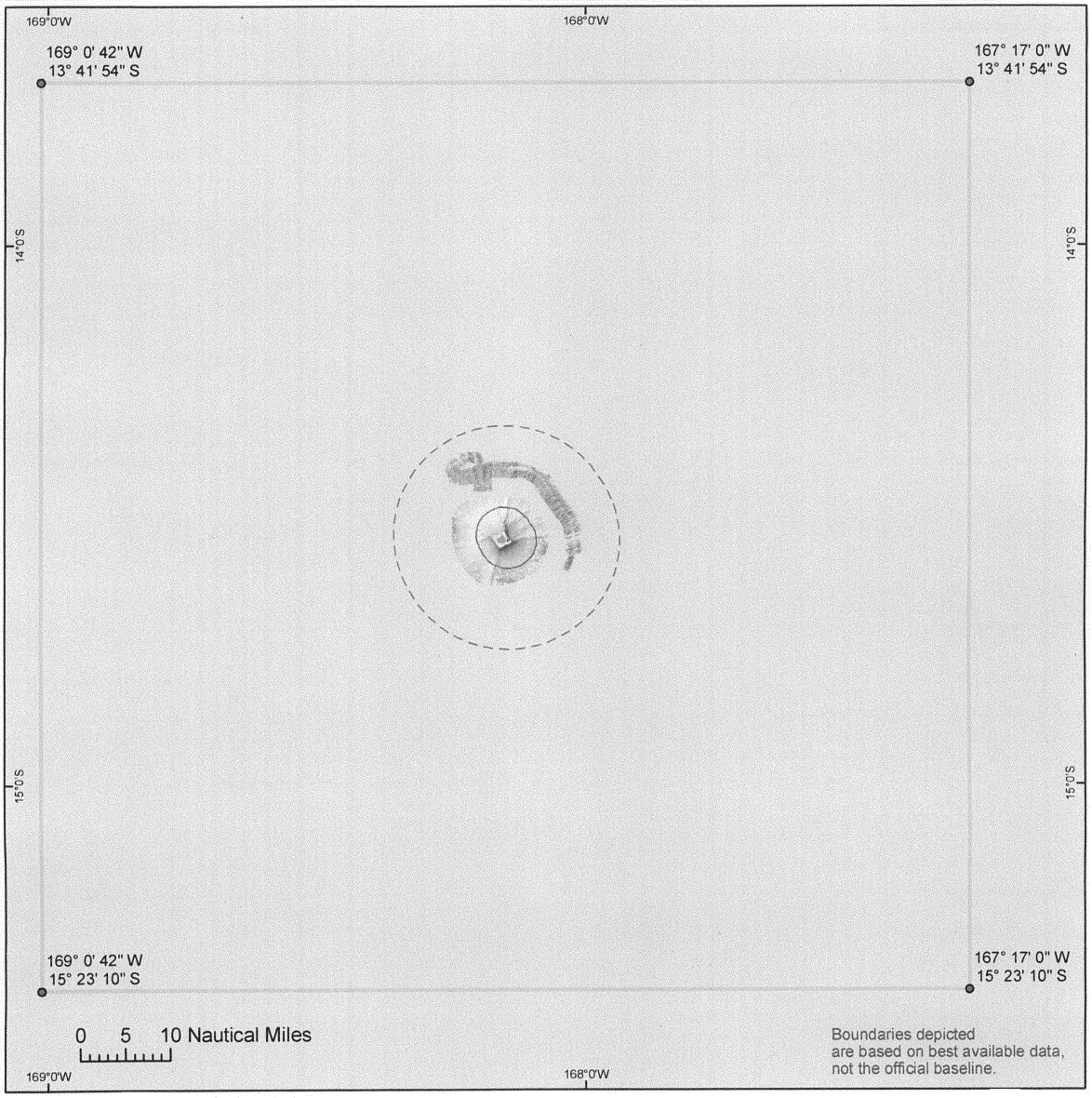
Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be dominant over any other existing Federal withdrawal, reservation, or appropriation.

Warning is hereby given to all unauthorized persons not to appropriate, excavate, injure, destroy, or remove any feature of this monument and not to locate or settle upon any lands thereof.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of January, in the year of our Lord two thousand nine, and of the Independence of the United States of America the two hundred and thirty-third.

Billing code 3195–W9–P

Rose Atoll Marine National Monument



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