(1) Alternative Methods of Compliance (AMOCs): The Manager, Standards Office, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN: Albert Mercado, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4119; fax: (816) 329–4090. Before using any approved AMOC on any airplane to which the AMOC applies, notify your appropriate principal inspector (PI) in the FAA Flight Standards District Office (FSDO), or lacking a PI, your local FSDO.

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

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

Special Flight Permit

(j) We are allowing permission to ferry an airplane to a maintenance location to accomplish actions required by paragraph (1) of this AD provided that the air conditioning is switched off during the entire flight duration.

Related Information

(k) Refer to MCAI EASA AD No.: 2010–0130, dated June 29, 2010; and SOCATA Service Bulletin SB 70–176, amendment 1, dated February 2010, for related information.

Issued in Kansas City, Missouri, on September 22, 2010.

Patrick R. Mullen,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2010–24248 Filed 9–27–10; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

[Docket No. FAA–2010–0326; Notice No. 10–12]

RIN 2120–AJ68

Update of Overflight Fees

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This NPRM proposes to adjust existing Overflight Fees by using current FAA cost accounting data and air traffic activity data. This action is necessary because operational costs for providing air traffic control and related services for Overflights have increased steadily since the fees were established in 2001. The adjustment of Overflight Fees would result in an increased level of cost recovery for the services being provided.

DATES: Send your comments on or before December 27, 2010.

ADDRESSES: You may send comments identified by Docket Number FAA–2010–0326 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 Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations 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.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

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 electronic form of all 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) or you may visit *http://DocketsInfo.dot.gov.*

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time and follow the online instructions for accessing the docket, or, go to Docket Operations 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 technical questions concerning this proposed rule contact David Lawhead, Office of Financial Controls, Financial Analysis Division (AFC 300), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9759 facsimile (202) 267–5271, e-mail to *Dave.Lawhead@FAA.gov.* For legal questions concerning this proposed rule contact Michael Chase, AGC–240, Office of Chief Counsel, Regulations Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3110; e-mail to *michael.chase@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 related rulemaking documents.

Authority for This Rulemaking

The FAA's authority to establish these fees is found in Title 49 of the United States Code. This rulemaking is promulgated under the authority described in Chapter 453, Section 45301 *et seq.* Under that Chapter, the FAA is charged with prescribing regulations for the collection of fees for air traffic control and related services provided to aircraft, other than military and civilian aircraft of the United States government or a foreign government, that transit U.S.-controlled airspace, but neither take off from nor land in the United States ("Overflights"). This proposed regulation is within the scope of that authority.

I. Background

The FAA's Overflight Fees were initially authorized in the Federal Aviation Reauthorization Act of 1996 (Pub. L. 104–264, enacted October 9, 1996). Overflight Fees are charges for aircraft flights that transit U.S.-controlled airspace, but neither land in nor depart from the United States. Following enactment of the initial fee authority, and as mandated by that authority, the FAA issued an Interim Final Rule (IFR), "Fees for Air Traffic Services for Certain Flights through U.S. Controlled Airspace" (62 FR 13496), on March 20, 1997. Under the terms of the IFR, the FAA sought public comment on the IFR while concurrently beginning to assess Overflight Fees 60 days after its publication, on May 19, 1997.

On July 17, 1997, petitions for judicial review of the IFR were filed in the U.S.

Court of Appeals for the District of Columbia (the Court) by the Air Transport Association of Canada (ATAC) and seven foreign air carriers. Those petitions were consolidated into a single case (*Asiana Airlines* v. *FAA,* 134 F.3d 393 (D.C. Cir. 1998)). The litigation proceeded throughout the remainder of 1997 while the FAA continued to collect fees pursuant to the statute.

On January 30, 1998, the Court issued a decision, upholding the FAA on three process and procedure issues, but vacating the Rule because the Court found that the methodology the FAA used to allocate costs did not conform to the statute. The FAA immediately suspended billing operations, and eventually refunded nearly $40 million in fees that had then been collected.

Although the 1997 IFR (62 FR 13496) had been set aside by the Court, the statutory requirement that the FAA establish Overflight Fees through an IFR remained in effect. One of the principal criticisms the FAA had received from the public commenters on its 1997 IFR concerned the quality of the cost information upon which the Overflight Fees were based. The FAA had already begun developing a new Cost Accounting System (CAS) in 1996. Early data from the new CAS was becoming available in 1998. Thus, when the FAA decided, following the initial litigation, to issue a new IFR, a key element of that decision was that the fees would be derived from cost data from the new CAS.

A new IFR was published in the **Federal Register** on June 6, 2000 (65 FR 36002), with fees scheduled to go into effect on August 1, 2000. This new IFR was challenged in court by the ATAC and a slightly different group of seven foreign air carriers. The FAA began assessing and collecting the new Overflight Fees as scheduled on August 1, 2000, while public comments were still being received by the FAA on its second IFR. The litigation proceeded concurrently, with oral arguments held on May 14, 2001.

On July 13, 2001, the Court again vacated the FAA's IFR, this time because the Court believed the FAA had failed to explain a key assumption in its costing methodology. (*Air Transport Association of Canada* v. *FAA;* 00–1344, July 13, 2001). Under the Court's order, there were 45 days before the IFR was to be vacated. As noted above, the FAA had solicited public comment on the IFR at the time it was published. The FAA had received many comments on the several issues raised in the litigation. At the time the Court's decision was issued, the FAA was nearing completion of a Final Rule that would address these issues in the disposition of public comments section of its preamble.

The FAA therefore proceeded on two fronts. It successfully petitioned the Court not to vacate the IFR while it proceeded concurrently with issuance of the Final Rule ("Fees for FAA Services for Certain Flights," 66 FR 43680) on August 20, 2001, with revised fees effective immediately. In addition to addressing the public comments received on the IFR, the Final Rule reduced fees by about 15 percent due to adjustments in the original cost data. A new challenge to the revised fees was brought after the issuance of the Final Rule by ATAC and the same group of air carriers. The two cases, one challenging the IFR (65 FR 36002) issued in 2000 and the other challenging the Final Rule (66 FR 43680) issued in 2001, were combined by the Court into a single case.

While the litigation was still pending, on November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), which included a provision that amended the Overflight Fee authorization (1) To require that the fees be "reasonably" (rather than "directly") related to costs, (2) to clarify that the Administrator has sole authority to determine the costs upon which the fees are based, and (3) to state explicitly that such cost determinations by the Administrator are not subject to judicial review. Meanwhile, the litigation proceeded into 2003, with the FAA continuing to collect the fees as required by statute.

On April 8, 2003, the Court issued a decision setting aside the Final Rule and remanding it back to the FAA, finding that the agency had not adequately explained its handling of controller labor costs in deriving the fees. *Air Transport Association of Canada* v. *FAA,* 323 F.3d 1093 (D.C. Cir. 2003). The Court also found that the Overflight Fees amendments in the ATSA statute were inapplicable because of a generic "savings" provision in the ATSA legislation that stated that nothing enacted in ATSA was applicable to any litigation ongoing prior to the date of enactment of ATSA. Fee collections were immediately suspended.

On December 12, 2003, Congress enacted VISION 100—CENTURY OF AVIATION REAUTHORIZATION ACT, (Vision 100). Section 229 of that Act explicitly "adopted, legalized, and confirmed" both the IFR published in 2000 and the Final Rule published in 2001. In addition, the FAA was directed to hold a consultation meeting with users (those who pay the Overflight Fees to the FAA) and to submit a report to Congress addressing the issues that had been in dispute in the litigation before resuming the billing and collection of the Overflight Fees.

Because there were ambiguous and potentially conflicting provisions in Vision 100 concerning Overflight Fees, the Administrator issued an Order on July 21, 2004, that set forth her interpretation of the language of the statute and, based on that interpretation, made determinations as to the ultimate disposition of Overflight Fees collected by the FAA under both the 2000 IFR and the 2001 Final Rule. The FAA retained a portion of the funds collected under the Final Rule, while either refunding or providing credits to the airlines for all of the fees collected under the IFR and a portion of the fees collected under the Final Rule. A copy of that Order, "Order Directing the Disposition of Certain Fees Collected by the Federal Aviation Administration Pursuant to 49 U.S.C. Section 45301," has been placed in the docket.

The FAA met with users in September 2004 and submitted a report to Congress at the same time, as mandated by the Vision 100 statute. This cleared the way for the FAA to resume the billing and collection of Overflight Fees. In most cases, amounts previously collected by the FAA under the IFR and under the Final Rule up until the date of the ATSA enactment were provided as credits to frequent payers. These amounts were, in most cases, roughly offset by amounts owed by the carriers and other users for the one-year period from March 2003 through February 2004. The carriers had not been billed for this period while the litigation was ongoing, but were ultimately determined by the Administrator to be liable for those fees.

Since that time, the FAA has followed the normal process of issuing monthly bills for the services provided to Overflights. The fees currently being charged were derived from cost and activity data for FY 1999. This NPRM proposes to update the existing fees by using cost and activity data for FY 2008 to derive the fees. The cost methodology applied in this NPRM is applied in the same manner as in 2001, except that overhead has been included in the cost base for the fees this time as a direct result of the ATSA amendment that changed the previous statutory requirement that fees be "directly" related to costs to a less stringent requirement that the fees be "reasonably" related to costs.

The FAA's CAS has been evolving and improving over time. The CAS has always relied on the best available data,

and as new systems and techniques have evolved, the quality and accuracy of the data has improved. There are areas, such as the reporting of labor costs, where costs were allocated or assigned in the past based on estimates, but today are determined by actual data. This is not a difference in how the data is gathered, but rather an improvement in the quality and accuracy of the basic data. A detailed explanation of how the CAS data was assembled can be found in the "Costing Methodology Report, FY 2008," which has been placed in the docket for this rulemaking.

Overflight Fees Aviation Rulemaking Committees (ARC)

In 2004, the FAA established an Overflight Fees ARC. That Committee held two meetings in early 2005, but never issued a report or made a recommendation to the FAA before its Charter expired. Subsequently, on December 17, 2008, the FAA issued a new Charter for an Overflight Fees ARC to advise and make recommendations to the FAA on the updating of its Overflight Fees. The Overflight Fees ARC met several times in 2009 and issued its report and recommendations to the FAA on August 26, 2009. A copy of this report has been placed in the docket. The report contains three principal recommendations:

1. That the FAA pursue the updating of its Overflight Fees through the normal notice and comment type of rulemaking, rather than through the interim final rule process previously mandated by Congress;

2. That, in updating the fees, the FAA abide by the policies of the International Civil Aviation Organization (ICAO), whereby the principle of gradualism is applied so that any substantial fee increase (as in this case where a 9-year update is involved) is spread over several years; and

3. That, in this instance, the specific increases be accomplished over 4 increments, on October 1st of each year from 2011 through 2014, with annual increases of 14% for Enroute and 8% for Oceanic.

The FAA believes that the ARC recommendations are a reasonable approach to move forward on a consensus basis to update its Overflight Fees. This NPRM proposes to implement the recommendations of the ARC. It should be noted that the annual increases recommended by the ARC (14% for the Enroute fee and 8% for the Oceanic fee) were derived from information presented to the ARC by the FAA. The FAA had shown the ARC that, in order for the FAA to approach the cost recovery called for by Federal policy guidance on user fees, based on actual cost and activity data for FY 2008, fee increases of approximately 69% and 36%, respectively, for Enroute and Oceanic, would be necessary. Spreading this increase over 4 years produces the recommended levels of 14% per year, compounded, for Enroute and 8% per year, compounded, for Oceanic.

The actual dollar amounts of each fee as of each of the four October 1st fee revision dates would be as follows:

Time period	Enroute (per 100 nautical miles)	Oceanic (per 100 nautical miles)
October 1, 2011	$38.44	$17.22
October 1, 2012	43.82	18.60
October 1, 2013	49.95	20.09
October 1, 2014	56.86	21.63

II. Discussion of the Proposal

The proposed rule would update the FAA's existing Overflight Fees, which are presently based on Fiscal Year (FY) 1999 cost and activity data. The fees have not been updated since they were initially established on August 20, 2001.

The current fees are derived arithmetically from final FAA CAS data for FY 1999 and from the Enhanced Traffic Management System (ETMS) data for the same year. The updated fees would be derived using basically the same methodology as in 2001, but would be derived from final, audited CAS data and ETMS data for FY 2008. The only difference would be that the updated fees would include overhead in the cost base. Overhead originally was excluded from the cost base for the existing fees, but would be included in the derivation of the updated fees as the result of the previously discussed change in the applicable statutory authority (changing the requirement that fees be "directly" related to costs to a requirement that the fees be "reasonably" related to costs).

Separate overflight fees have been established, and are currently in effect, for flights that transit U.S.-controlled airspace in each of two operational environments—Enroute and Oceanic—without either taking off from or landing in the United States. The updated Enroute fee would be derived by taking (from CAS) the total costs incurred in the Enroute environment in FY 2008 and dividing that number by the number of miles flown in U.S.-controlled Enroute airspace in FY 2008. This would produce a per-mile cost that would be levied as a charge per 100 nautical miles flown, using Great Circle Distance (GCD), from point of entry into, to point of exit from, U.S.-controlled airspace. The separate Oceanic fee is determined in precisely the same manner, by dividing total Oceanic costs for FY 2008 by the total number of Oceanic miles flown in FY 2008. The actual step-by-step derivation of these fees, using actual numbers for FY 2008, is shown in the "Overflight Fee Development Report" which is included in the docket for this rulemaking.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there would be no new requirement for information collection associated with this proposed rule. The FAA information used to track and bill overflights (including the information collection necessary to implement this proposal) is accessed from flight plans filed with the FAA. The collection of Domestic and International Flight Plans is approved under OMB collection Control # 2120–0026. The FAA seeks comment on whether a revision to this information collection would be necessary as a result of this proposal.

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.

III. Regulatory Evaluation, Regulatory Flexibility Determination, 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 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.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this proposed rule. The reasoning for this determination follows:

Benefit

The benefit of this proposed rule would be that the overflight fees will be more closely related to the actual costs of providing FAA's services for these flights.

Costs

Taxes and government fees are a transfer payment, and, by OMB directive, transfers are not considered a societal cost. Therefore, this rule imposes no costs. We do provide an estimate of the transfers. There would be a 4-year phase-in of fees with yearly increases (14% Enroute and 8% Oceanic). Increases would begin in 2011 and end in 2014. We have determined that approximately 80% of Overflight Fees for domestic operators would be Enroute and 20% would be Oceanic. (See Table 1.)

Most of the transfers from this proposed rule would be borne by foreign operators. The estimated transfers from foreign operators to the FAA are about $73 million ($52 million, present value). (See Table 2.)

Using the preceding information, the FAA estimates that the total transfers resulting from this proposed rule from U.S. entities to the FAA over 5 years would be about $1.1 million ($0.8 million, present value). Again, government fees and taxes are considered transfers and not societal costs, so this proposed rule does not increase society's costs.

Table 1. Domestic Operators' Overflight Fees

Oceanic	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees (20%)	$152,612	$152,612	$152,612	$152,612	$152,612	$763,059
Proposal	$152,612	$164,821	$178,006	$192,247	$207,627	$895,312
Incremental Transfer	$0	$12,209	$25,395	$39,635	$55,015	$132,254
EnRoute	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees (80%)	$610,447	$610,447	$610,447	$610,447	$610,447	$3,052,236
Proposal	$610,447	$695,910	$793,337	$904,404	$1,031,021	$4,035,119
Incremental Transfer	$0	$85,463	$182,890	$293,957	$420,574	$982,883
Total Incremental Transfers	$0	$97,672	$208,285	$333,592	$475,589	$1,115,137
PV Transfers	$0	$79,729	$158,899	$237,847	$316,905	$793,380

Table 2. Foreign Operators' Overflight Fees

Oceanic	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees	$21,640,240	$21,640,240	$21,640,240	$21,640,240	$21,640,240	$108,201,200
Proposal	$21,640,240	$23,371,459	$25,241,176	$27,260,470	$29,441,308	$126,954,653
Incremental Transfer	$0	$1,731,219	$3,600,936	$5,620,230	$7,801,068	$18,753,453
EnRoute	FY 2011	FY 2012	FY 2013	FY 2014	FY 2015	FY 2011-2015
Current Fees	$33,784,067	$33,784,067	$33,784,067	$33,784,067	$33,784,067	$168,920,335
Proposal	$33,784,067	$38,513,836	$43,905,773	$50,052,582	$57,059,943	$223,316,202
Incremental Transfer	$0	$4,729,769	$10,121,706	$16,268,515	$23,275,876	$54,395,867
Total Incremental Transfers	$0	$6,460,989	$13,722,642	$21,888,745	$31,076,944	$73,149,320
PV Transfers	$0	$5,274,091	$10,468,938	$15,606,373	$20,707,880	$52,057,282

The FAA has, therefore, determined that this proposed rule is not an economically "significant regulatory action", but is a "significant regulatory action" for other reasons as defined in section 3(f) of Executive Order 12866

and is "significant" as defined in DOT's Regulatory Policies and Procedures.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. 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 proposed or final 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 Act.

The FAA ranked in descending order all domestic entities based on their Overflight Fees. Then we identified 5 small entities having publicly-available financial information (using a size standard of 1,500 or fewer employees) in the top 20 percent of the ranking. We retrieved their annual revenue from World Aviation Directory and compared it to their annualized compliance costs. Of these 5 entities, all of them have annualized compliance costs as a percentage of annual revenues lower than 0.1 percent. We believe this economic impact is not significant. Consequently, the FAA certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

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 (in 1995 dollars) 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 $143.1 million in lieu of $100 million. This proposed rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. We determined that 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 312d 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 regulatory action" under the executive order because, while it is a "significant regulatory action" under DOT's Regulatory Policies and Procedures, it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

Plain English

Executive Order 12866 (58 FR 51735, Oct. 4, 1993) requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain unnecessary technical language or jargon that interferes with their clarity?
- Would the regulations be easier to understand if they were divided into more (but shorter) sections?
- Is the description in the preamble helpful in understanding the proposed regulations?

Please send your comments to the address specified in the Addresses section of this preamble.

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 or notice 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 in 14 CFR Part 187

Administrative practice and procedure, Air transportation.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend Chapter I of Title 14, Code of Federal Regulations, as follows:

PART 187—FEES

1. The authority citation for part 187 continues to read as follows:

Authority: 31 U.S.C. 9701, 49 U.S.C. 106(g), 49 U.S.C. 106(l)((6), 40104–401–5, 40109, 40113–40114, 44702.

2. In part 187, Appendix B is amended by revising paragraph (e)(2) to read as follows:

Appendix B to Part 187—Fees for FAA Services for Certain Flights

* * * * *

(e) * * *

(2) A User (operator of an Overflight) is assessed a fee for each 100 nautical miles (or portion thereof) flown in each segment and type of U.S.-controlled airspace. Separate calculations are made for transiting Enroute and Oceanic airspace. The total fee charged for an Overflight between any entry and exit point is equal to the sum of these two charges. This relationship is summarized as: $R_{ij} = X*DE_{ij} + Y*DO_{ij,}$

Where:

Rij = the fee charged to aircraft flying between entry point i and exit point j,

DE_{ij} = total great circle distance traveled in each segment of U.S.-controlled Enroute airspace expressed in hundreds of nautical miles for aircraft flying between entry point i and exit point j for each segment of Enroute airspace.

DO_{ij} = total great circle distance traveled in each segment of U.S.-controlled Oceanic airspace expressed in hundreds of nautical miles for aircraft flying between entry point i and exit point j for each segment of Oceanic airspace.

X and Y = the values respectively set forth in the following schedule:

Time period	X (Enroute)	Y (Oceanic)
Through September 30, 2011	$33.72	$15.94
October 1, 2011 through September 30, 2012	38.44	17.22
October 1, 2012 through September 30, 2013	43.82	18.60
October 1, 2013 through September 30, 2014	49.95	20.09
October 1, 2014 and beyond	56.86	21.63

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Issued in Washington, DC, on September 22, 2010.

Carl W. Burrus,

Director, Office of Financial Controls.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 35

Agricultural Swaps

AGENCY: Commodity Futures Trading Commission.

ACTION: Advanced notice of proposed rulemaking and request for comment.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is charged with proposing rules to implement new statutory provisions enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). Section 723(c)(3) of the Dodd-Frank Act provides that swaps in an "agricultural commodity" (as defined by the Commission) are prohibited unless entered into pursuant to a rule, regulation or order of the Commission adopted pursuant to section 4(c) of the Commodity Exchange Act ("CEA" or "Act"). This advance notice of proposed rulemaking ("ANPRM") requests comment on the appropriate conditions, restrictions or protections to be included in any such rule, regulation or order governing the trading of agricultural swaps.

DATES: Comments must be received on or before October 28, 2010. The Commission is not inclined to grant extensions of this comment period.

ADDRESSES: You may submit comments, identified with "Agricultural Swaps ANPRM" in the subject line, by any of the following methods:

- *E-mail for comments: agswapsANPR@cftc.gov.*
- *Mail:* David A. Stawick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.
- *Hand Delivery/Courier:* Same as mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. All comments provided in any electronic form or on paper will be published on the CFTC Web site, without review and without removal of personally identifying information. All comments are subject to the CFTC privacy policy.

FOR FURTHER INFORMATION CONTACT: Donald Heitman, Senior Special Counsel, (202) 418–5041, *dheitman@cftc.gov,* or Ryne Miller, Attorney Advisor, (202) 418–5921, *rmiller@cftc.gov,* Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581.

SUPPLEMENTARY INFORMATION:

I. Background

On July 21, 2010, President Obama signed the Dodd-Frank Wall Street Reform and Consumer Protection Act.[1] Title VII of the Dodd-Frank Act [2] amended the CEA[3] to establish a comprehensive new regulatory framework for swaps and security-based

[1] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010). The text of the Dodd-Frank Act may be accessed at *http://www.cftc.gov/LawRegulation/OTCDERIVATIVES/index.htm.*

[2] Pursuant to § 701 of the Dodd-Frank Act, Title VII may be cited as the "Wall Street Transparency and Accountability Act of 2010."

[3] 7 U.S.C. 1 *et seq.*