AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

FEDERAL REGISTER

Vol. 77 Wednesday,
No. 2 January 4, 2012

Pages 213–418

OFFICE OF THE FEDERAL REGISTER

The **FEDERAL REGISTER** (ISSN 0097–6326) is published daily, Monday through Friday, except official holidays, by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). The Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 is the exclusive distributor of the official edition. Periodicals postage is paid at Washington, DC.

The **FEDERAL REGISTER** provides a uniform system for making available to the public regulations and legal notices issued by Federal agencies. These include Presidential proclamations and Executive Orders, Federal agency documents having general applicability and legal effect, documents required to be published by act of Congress, and other Federal agency documents of public interest.

Documents are on file for public inspection in the Office of the Federal Register the day before they are published, unless the issuing agency requests earlier filing. For a list of documents currently on file for public inspection, see *www.ofr.gov.*

The seal of the National Archives and Records Administration authenticates the Federal Register as the official serial publication established under the Federal Register Act. Under 44 U.S.C. 1507, the contents of the **Federal Register** shall be judicially noticed.

The **Federal Register** is published in paper and on 24x microfiche. It is also available online at no charge at *www.fdsys.gov*, a service of the U.S. Government Printing Office.

The online edition of the **Federal Register** is issued under the authority of the Administrative Committee of the Federal Register as the official legal equivalent of the paper and microfiche editions (44 U.S.C. 4101 and 1 CFR 5.10). It is updated by 6:00 a.m. each day the **Federal Register** is published and includes both text and graphics from Volume 59, 1 (January 2, 1994) forward. For more information, contact the GPO Customer Contact Center, U.S. Government Printing Office. Phone 202-512-1800 or 866-512-1800 (toll free). E-mail, *gpo@custhelp.com.*

The annual subscription price for the **Federal Register** paper edition is $749 plus postage, or $808, plus postage, for a combined **Federal Register, Federal Register** Index and List of CFR Sections Affected (LSA) subscription; the microfiche edition of the **Federal Register** including the **Federal Register** Index and LSA is $165, plus postage. Six month subscriptions are available for one-half the annual rate. The prevailing postal rates will be applied to orders according to the delivery method requested. The price of a single copy of the daily **Federal Register,** including postage, is based on the number of pages: $11 for an issue containing less than 200 pages; $22 for an issue containing 200 to 400 pages; and $33 for an issue containing more than 400 pages. Single issues of the microfiche edition may be purchased for $3 per copy, including postage. Remit check or money order, made payable to the Superintendent of Documents, or charge to your GPO Deposit Account, VISA, MasterCard, American Express, or Discover. Mail to: U.S. Government Printing Office—New Orders, P.O. Box 979050, St. Louis, MO 63197-9000; or call toll free 1-866-512-1800, DC area 202-512-1800; or go to the U.S. Government Online Bookstore site, see *bookstore.gpo.gov.*

There are no restrictions on the republication of material appearing in the **Federal Register.**

How To Cite This Publication: Use the volume number and the page number. Example: 77 FR 12345.

Postmaster: Send address changes to the Superintendent of Documents, Federal Register, U.S. Government Printing Office, Washington, DC 20402, along with the entire mailing label from the last issue received.

SUBSCRIPTIONS AND COPIES

PUBLIC

Subscriptions:

Paper or fiche	**202–512–1800**
Assistance with public subscriptions	**202–512–1806**

General online information **202–512–1530; 1–888–293–6498**

Single copies/back copies:

Paper or fiche	**202–512–1800**
Assistance with public single copies	**1–866–512–1800 (Toll-Free)**

FEDERAL AGENCIES

Subscriptions:

Paper or fiche	**202–741–6005**
Assistance with Federal agency subscriptions	**202–741–6005**

Printed on recycled paper.

Contents

Federal Register

Vol. 77, No. 2

Wednesday, January 4, 2012

Agriculture Department
See Forest Service
See Rural Business-Cooperative Service

Census Bureau
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Geographic Partnership Programs, 262–263

Centers for Disease Control and Prevention
NOTICES
Meetings:
Disease, Disability, and Injury Prevention and Control Special Emphasis Panel, 291

Centers for Medicare & Medicaid Services
RULES
Medicare and Medicaid Programs:
Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; etc., Corrections, 217–227
Medicare Program:
Payment Policies under the Physician Fee Schedule, Five Year Review of Work Relative Value Units, etc.; Corrections, 227–232
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 291–293

Coast Guard
RULES
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers:
Implementation of 2010 Amendments; Hours of Rest and Security-related Training, 232–233

Commerce Department
See Census Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Defense Department
NOTICES
Privacy Act; Systems of Records, 271–273

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Revisions to the California State Implementation Plan:
San Joaquin Valley Unified Air Pollution Control District, 214–217
PROPOSED RULES
Approval and Promulgation of Air Quality Implementation Plans:
Colorado; Procedural Rules, Conflicts of Interest, 235–237
Protection of Stratospheric Ozone:
Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export, 237–259
NOTICES
Proposed Consent Decrees:
Clean Air Act Citizen Suit, 281–282
Proposed Settlement Agreements, 282–284

Executive Office of the President
See Presidential Documents

Export-Import Bank
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 284

Federal Aviation Administration
RULES
Flightcrew Member Duty and Rest Requirements, 330–403

Federal Energy Regulatory Commission
NOTICES
Combined Filings, 273–277
Environmental Assessments; Availability, etc.:
Sabine Pass Liquefaction, LLC and Sabine Pass LNG, LP, 277–278
Extensions of Time for Filing:
Southcross CCNG Transmission Ltd., 278
Southcross Mississippi Pipeline, LP, 278
Initial Market-Based Rate Filings Including Requests for Blanket Section 204 Authorization:
Brea Generation LLC, 279
Brea Power II LLC, 278–279
Erie Wind, LLC, 279–280
Perrin Ranch Wind, LLC, 280
Rhode Island Engine Genco LLC, 280
Rhode Island LFG Genco LLC, 279
License Amendment Applications:
Green Mountain Power Corp., 281

Federal Highway Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 320–321
Section 4(f) Policy Paper; Availability, 321–322

Federal Reserve System
NOTICES
Changes in Bank Control:
Acquisitions of Shares of a Bank or Bank Holding Company, 284–285
Formations of, Acquisitions by, and Mergers of Bank Holding Companies, 285
Proposals to Engage in or to Acquire Companies Engaged in Permissible Nonbanking Activities, 285–286

Federal Trade Commission
PROPOSED RULES
Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances, etc, 234–235
Rules and Regulations Under the Textile Fiber Products Identification Act, 234

Federal Transit Administration
NOTICES
Limitation on Claims Against Proposed Public Transportation Projects, 322

Fiscal Service
RULES
U.S. Savings Bonds, Series EE and I, 213–214

Fish and Wildlife Service
NOTICES
Endangered Species Receipt of Applications for Permit, 298–300
Endangered Species; Marine Mammals; Issuance of Permits, 300–301

Forest Service
NOTICES
Requests for Nominations:
Forest Resource Coordinating Committee, 260

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See National Institutes of Health
NOTICES
Medicaid Program:
Initial Core Set of Health Care Quality Measures for Medicaid Eligible Adults, 286–291

Homeland Security Department
See Coast Guard

Interior Department
See Fish and Wildlife Service

International Trade Administration
NOTICES
Antidumping and Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Certain Cut-To-Length Carbon-Quality Steel Plate from India, Indonesia, and the Republic of Korea, 264–266
Certain Cut-To-Length Carbon-Quality Steel Plate from Italy and Japan, 263–264
Antidumping Duty or Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Sunset Reviews, 266
Initiation of New Shipper Reviews:
Fresh Garlic from the People's Republic of China, 266–267

International Trade Commission
NOTICES
Investigations:
Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea, 301–303

Marine Mammal Commission
NOTICES
Meetings; Sunshine Act, 303–304

National Credit Union Administration
NOTICES
Meetings; Sunshine Act, 304

National Institutes of Health
NOTICES
Meetings:
Center for Scientific Review, 293–297
Eunice Kennedy Shriver National Institute of Child Health & Human Development, 296–297
National Institute of Allergy and Infectious Diseases, 297–298

National Oceanic and Atmospheric Administration
NOTICES
Applications:
Marine Mammals; File No. 16621, 267–268
Marine Mammals; File No. 16998, 268
Permits:
Marine Mammals; File No. 15682, 268–269

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 304

Patent and Trademark Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Matters Related to Patent Appeals, 269–271

Postal Regulatory Commission
NOTICES
New Postal Products, 304–306

Presidential Documents
PROCLAMATIONS
Trade:
Generalized System of Preferences Duty-Free Treatment; Modifications (Proc. 8770), 405–412
Harmonized Tariff Schedule of the U.S.; Modifications (Proc 8771), 413–418

Public Debt Bureau
See Fiscal Service

Rural Business-Cooperative Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 260–262

Securities and Exchange Commission
NOTICES
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Exchange, Inc., et al., 316–319
Chicago Board Options Exchange, Inc., 306–312
Chicago Stock Exchange, Inc., 312–313
NYSE Arca, Inc., 313–315
The Depository Trust Co., 315–316

State Department
NOTICES
Culturally Significant Objects Imported for Exhibition Determinations:
Gauguin and Polynesia; An Elusive Paradise, 320
Put Your Freedom in the Corner, Save it for a Rainy Day by Martin Kippenberger, 319–320

Surface Transportation Board
NOTICES
Release of Waybill Data, 322–323

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration

See Surface Transportation Board

Treasury Department
See Fiscal Service

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Accelerated Payment Verification of Completion Letter, 325
Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, 324–325
Application for Dependency and Indemnity Compensation by Parent(s), Including Accrued Benefits and Death Compensation, 326
Application for U.S. Flag for Burial Purposes, 326–327
Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, 323
Approval of School Attendance, 324
Certification of Change or Correction of Name, Government Life Insurance, 325
Fiduciary Statement in Support of Appointment, 327
State Application for Interment Allowance, 326
Trainee Request for Leave, 323

Separate Parts In This Issue

Part II
Transportation Department, Federal Aviation Administration, 330–403

Part III
Presidential Documents, 405–418

Reader Aids
Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8770 407
8771 413

14 CFR

117 330
119 330
121 330

16 CFR

Proposed Rules:

303 234
305 234

31 CFR

351 213
359 213
363 213

40 CFR

52 214

Proposed Rules:

52 235
82 237

42 CFR

410 (2 documents) 217, 227
411 217
414 227
415 227
416 217
419 217
489 217
495 (2 documents) 217, 227

46 CFR

1 232
10 232
11 232
12 232
13 232
14 232
15 232

Rules and Regulations

Federal Register
Vol. 77, No. 2
Wednesday, January 4, 2012

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.

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 351, 359, and 363

United States Savings Bonds, Series EE and I

AGENCY: Bureau of the Public Debt, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This rule increases the amount of book-entry Series EE and Series I savings bonds a person may acquire each year.

DATES: Effective January 4, 2012.

ADDRESSES: You can download this final rule at the following Internet addresses: *http://www.publicdebt.treas.gov, http://www.gpo.gov,* or *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: D. Michael Linder, Director, Division of Program Administration, Office of Retail Securities, Bureau of the Public Debt, at (304) 480–6319 or *mike.linder@bpd.treas.gov.*

Ann Fowler, Attorney-Adviser, David Copenhaver, Senior Attorney, Edward Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692 or *ann.fowler@bpd.treas.gov.*

SUPPLEMENTARY INFORMATION: This rule increases the amount of book-entry Series EE and Series I savings bonds a person may acquire each year. Prior to this change, an investor could purchase up to $5,000 each of definitive and book-entry Series EE savings bonds ($10,000 total), and $5,000 each of definitive and book-entry Series I savings bonds ($10,000 total) per person, per calendar year. However, Treasury discontinued the issuance of definitive savings bonds, effective January 1, 2012. (See 76 FR 66,855 (Oct. 28, 2011)). In order to allow investors to maintain the same level of savings that existed prior to the elimination of definitive savings bonds, this rule will permit investors to acquire a principal amount of $10,000 of book-entry Series EE savings bonds and $10,000 of book-entry Series I savings bonds per person, per calendar year. Book-entry savings bonds are offered to individuals through TreasuryDirect®, which is an Internet-accessed, book-entry system for purchasing, holding, and conducting transactions in Treasury securities.

Procedural Requirements

Executive Order 12866. This rule is not a significant regulatory action pursuant to Executive Order 12866.

Administrative Procedure Act (APA). Because this rule relates to United States securities, which are contracts between Treasury and the owner of the security, this rule falls within the contract exception to the APA, 5 U.S.C. 553(a)(2). As a result, the notice, public comment, and delayed effective date provisions of the APA are inapplicable to this rule.

Regulatory Flexibility Act. The provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.,* do not apply to this rule because, pursuant to 5 U.S.C. 553(a)(2), it is not required to be issued with notice and opportunity for public comment.

Paperwork Reduction Act (PRA). We ask for no collections of information in this final rule. Therefore, the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply.

Congressional Review Act (CRA). This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 *et seq.,* because it is a minor amendment that is not expected to lead to any of the results listed in 5 U.S.C. 804(2). This rule will take effect upon publication in the **Federal Register**, after we submit a copy of it to Congress and the Comptroller General.

List of Subjects

31 CFR Part 351

Bonds, Federal Reserve System, Government securities.

31 CFR Part 359

Bonds, Federal Reserve System, Government securities.

31 CFR Part 363

Bonds, Electronic funds transfer, Federal Reserve system, Government securities, Securities.

Accordingly, for the reasons set out in the preamble, 31 CFR chapter II, subchapter B, is amended as follows:

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

■ 1. The authority citation for part 351 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 2. Revise § 351.65 to read as follows:

§ 351.65 What amount of book-entry Series EE savings bonds may I acquire per year?

The principal amount of book-entry Series EE savings bonds that you may acquire in any calendar year is provided at § 363.52.

§ 351.66 [Removed and Reserved]

■ 3. Remove and reserve § 351.66.

§ 351.67 [Removed and Reserved]

■ 4. Remove and reserve § 351.67.

PART 359—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES I

■ 5. The authority citation for part 359 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3105.

■ 6. Revise § 359.50 to read as follows:

§ 359.50 What amount of book-entry Series I savings bonds may I acquire per year?

The principal amount of book-entry Series I savings bonds that you may acquire in any calendar year is provided at § 363.52.

§ 359.51 [Removed and Reserved]

■ 7. Remove and reserve § 359.51.

§ 359.52 [Removed and Reserved]

■ 8. Remove and reserve § 359.52.

PART 363—REGULATIONS GOVERNING SECURITIES HELD IN TREASURYDIRECT

■ 9. The authority citation for part 363 continues to read as follows:

Authority: 5 U.S.C. 301; 12 U.S.C. 391; 31 U.S.C. 3102, *et seq.;* 31 U.S.C. 3121, *et seq.*

■ 10. Revise § 363.52 to read as follows:

§ 363.52 What is the principal amount of book-entry Series EE and Series I savings bonds that I may acquire in one year?

(a) The principal amount of book-entry savings bonds that you may acquire in any calendar year is limited to $10,000 for Series EE savings bonds and $10,000 for Series I savings bonds.

(b) Bonds purchased or transferred as gifts will be included in the computation of this limit for the account of the recipient for the year in which the bonds are delivered to the recipient.

(c) Bonds purchased as gifts or in a fiduciary capacity are not included in the computation for the purchaser. Bonds received due to the death of the registered owner are not included in the computation for the recipient.

(d) We reserve the right to take any action we deem necessary to adjust the excess, including the right to remove the excess bonds from your TreasuryDirect account and refund the payment price to your bank account of record using the ACH method of payment.

Mark Reger,

Acting Fiscal Assistant Secretary.

[FR Doc. 2011–33762 Filed 1–3–12; 8:45 am]

BILLING CODE 4810–39–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2011–0547; FRL–9480–1]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is finalizing approval of revisions to the San Joaquin Valley Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). These revisions were proposed in the **Federal Register** on July 11, 2011 and concern volatile organic compound (VOC), oxides of nitrogen (NO_X), and particulate matter (PM) emissions from open burning. We are approving a local rule that regulates these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: *Effective Date:* This rule is effective on February 3, 2011.

ADDRESSES: EPA has established docket number EPA–R09–OAR–2011–0547 for this action. Generally, documents in the docket for this action are available electronically at *http://www.regulations.gov* or in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *http://www.regulations.gov,* some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps, multi-volume reports), and some may not be available in either location (*e.g.,* confidential business information (CBI)). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *kay.rynda@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document, ''we,'' ''us'' and ''our'' refer to EPA.

Table of Contents

I. Proposed Action
II. Public Comments and EPA Responses
III. EPA Action
IV. Statutory and Executive Order Reviews

I. Proposed Action

On July 11, 2011 (76 FR 132), EPA proposed to approve the following rules into the California SIP.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4103	Open Burning	04/15/10	04/05/11
SJVUAPCD		Table 9–1, Final Staff Report and Recommendations on Agricultural Burning.	05/20/10	04/05/11

We proposed to approve these rules because we determined that they complied with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

II. Public Comments and EPA Responses

EPA's proposed action provided a 30-day public comment period. During this period, we received comments from the following party.

1. Sarah Jackson, Earthjustice; letter and email dated and received August 10, 2011.

The comments and our responses are summarized below.

Comment #1: Earthjustice commented on the meaning of reasonably available control measures (RACM) under section 172(c)(1) of the CAA, noting that ''EPA has interpreted 'reasonably available' to be a measure that is 'technologically and economically feasible and can be readily implemented.' '' Earthjustice further asserted that ''economic feasibility considers more than simply affordability and the cost-benefit ratio'' and that ''Congress intended RACM to be applied as those measures became available.''

Response #1: We agree that RACM under section 172(c)(1) incorporates considerations of technical and economic feasibility. We note, however, that, ''Congress provided EPA and States a great deal of deference for determining what measures to include in an attainment plan'' under CAA section 172(c)(1) and that ''[b]y including language in Section 172(c)(1) that only 'reasonably available' measures be considered for RACT/RACM, and that implementation of these measures need be applied only 'as expeditiously as practicable,' Congress clearly intended that the RACT/RACM requirement be driven by an overall requirement that the measure be 'reasonable.' '' 72 FR 20610 (April 25, 2007).

Comment #2: Earthjustice asserted that, ''[t]he District's RACM determination is flawed because it applies a feasibility test that is inconsistent with EPA guidance and CAA standards.'' In particular, Earthjustice argued that the ''10 percent of the crop category's net profits'' test used by District ''fails to analyze whether an alternative is technologically or economically feasible.'' Earthjustice suggested that the District should conduct a more comprehensive economic analysis taking into consideration how the costs of alternatives to open burning will impact production, employment, competition, and prices.

Reponse #2: As an initial matter, we disagree with the commenter that the District has made a ''RACM determination'' with respect to Rule 4103. The District has provided an assessment of the economic and technical feasibility of potential control measures for this source category, which

EPA has evaluated to determine whether additional controls for this source category might be reasonably available for implementation in the area. As stated in the TSD for our proposal, EPA will take action in separate rulemakings on the State's RACM demonstration for the relevant NAAQS based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment dates in the SJV.

We disagree that the District's feasibility test is inconsistent with the CAA or EPA guidance. Neither the CAA nor EPA's implementing regulations define ''technical and economic feasibility'' for purposes of determining what control measures are ''reasonably available,'' and, as noted above, section 172(c)(1) provides considerable deference to States' determinations of what control measures are reasonably available.

In this case, the District assessed the availability of alternatives to open burning by evaluating both technological and economic feasibility. *See, e.g.,* Staff Report § 1.2. For those crop categories for which it found a technically feasible alternative to burning, the District assessed economic feasibility by comparing the per-acre costs for the alternative to the per-acre net profit for that category. *Id.* § 1.2.2. Where an alternative's cost exceeded ten percent of profits, the District found the alternative to be economically infeasible. *Id.* Table 9–1. As explained by the District ''[t]he 10 percent threshold utilized in this analysis represents the economic significance level generally utilized by the District in the development of District rules, and represents the level that a regulatory action would pose a significant economic impact to affected sources.'' *Id.* § 1.2.2.

As we have previously noted, looking at the percent of profits can provide useful information concerning the economic feasibility of particular control measures. *See, e.g.,* 75 FR 2082. Although we encourage the District to conduct further economic analysis of the feasibility of alternatives to open burning, we also recognize that resource constraints limit the amount of analysis that the District can perform.

We also note that our evaluation of the stringency of the rule does not rest solely upon the District's assessment of economic and technical feasibility, but also takes into consideration other indicators of technical and economic feasibility. *See* 72 FR 20614 (''in reviewing the State's selection of measures for RACM * * * EPA may independently supplement the rationale of the State * * *''). For example, as noted in the TSD, we compared the control requirements in Rule 4103 with analogous rules in other local districts and states and concluded that Rule 4103 was as stringent as or more stringent than those other rules. We have not received any information to undermine this conclusion. As such, we continue to believe that Rule 4103 requires all control measures that have been demonstrated to be ''reasonably available'' for open burning activities in the San Joaquin Valley.

Comment #3: Earthjustice referred to a letter indicating that the District will no longer permit open burning of citrus orchard removals ''when case-by-case analysis indicates sufficient biomass plant capacity and the availability of economically feasible chipping services.'' Earthjustice argued that ''[s]uch Director's discretion is not approvable into the SIP.''

Response #3: The District has not submitted these additional restrictions on open burning for approval into the SIP, and we therefore do not need to evaluate their approvability, and do not rely on them for our approval of Rule 4103.

Comment #4: Earthjustice argued that, ''Even if EPA finds the District's percent of profits test is a sufficient means of demonstrating economic infeasibility to reject potential RACM controls, EPA should reject the proposed rule because the District's application of this test is flawed.''

Response #4: As noted above, we have considered other factors in addition to the District's ''percent of profits'' test in assessing the technical and economic feasibility of potential RACM controls. Nonetheless, Earthjustice's specific points regarding the District's application of the percent of profits are addressed below.

Comment #4.a: Earthjustice noted that ''the District calculated the cost of compliance 'after tax' without accounting for tax implications of increased control costs'' and asserted that ''[t]his failure to adjust the cost estimates precludes any meaningful analysis of costs.''

Response #4.a: District staff explained that their calculations followed ''EPA and ARB established methodologies.'' Additionally, District staff clarified that, ''the primary costs associated with potential alternatives to open burning result from service costs, such as through the hiring of chipping and hauling services. The District does not expect tax implications associated with these non-capital expenditures, if any, to impact the cost analyses associated with this project.'' [1] We are not aware of any information that contradicts the District's assessment in this regard.

Comment #4.b: Earthjustice commented that, ''the District uses a 10-year cost amortization schedule without providing a rational basis for this term of years.'' Earthjustice argued that this assumption underestimates the lifespan of the vineyards and orchards and therefore produces artificially high annual cost figures.

Response #4.b: In response to this comment, District staff noted that Appendix H to the Staff Report provided information on the productivity over time of specific crops. District staff also listed numerous reasons for assuming a 10-year amortization schedule that were provided when this issue was raised at a California Senate Hearing including, for example:

1. 10-year analysis is used to standardize comparisons across various source categories (Example: 10-year analysis is also used for boilers, engines, and other source categories with real life spans in excess of 20–30 years).

2. Standard 10-year analysis is used by the California Air Resources Board and air districts for evaluating air pollution control economics.

3. Farms can change owners and change crops fairly frequently: For farms, periods longer than 10 years are speculative since farm viability is subject to global market forces, weather, water availability, etc.[2]

Comment #4.c: Earthjustice contended that the District ''inserted baseless assumptions to inflate the claimed costs. For example, the District assumes citrus root removal material must be separated from the tree material and transported to a composting facility at an additional cost of $244 per acre.'' Earthjustice claimed that, contrary to this assumption, biomass facility operators have indicated that roots can be chipped and transported to biomass facilities along with the rest of the chipped material. Similarly, Earthjustice asserted that the evidence in the record undermines the District's suggestion that grinding and hauling material to a biomass plant may not be technically feasible.

Response #4.c: We acknowledge some uncertainty about the cost of citrus root removal and disposal. According to District staff, ''the root removal process is independent from the chipping and biomass operations.'' Staff Report Appendix D at D–34. The District

[1] Email from Koshoua Thao, SJVUAPCD, to Rynda Kay, EPA, September 22, 2011.

[2] *Id.*

explains, ''Citrus is often grown in clay-like soil that adheres to its roots'' and ''biomass power plant operators will not accept any organic material with dirt or other unburnable contaminants''.[3] We do not dispute that biomass facilities have indicated that roots can be chipped and transported to biomass facilities, but we are not aware of any other evidence to support this claim and demonstrate that root chipping and biomass burning is reasonably available. This appears to be an evolving area and we encourage the District to reexamine whether it may be possible to send some or all citrus roots to biomass rather than landfill or compost. Nonetheless, at this time, we do not have sufficient specific evidence to challenge the District's assumption in this regard.

Comment #4.d: Earthjustice argued that ''[t]he District's allowance for walnut, almond, and pecan growers whose total nut acreage is less than 3,500 acres to burn 20 acres of prunings, plus an additional unrestricted amount if certain conditions are met, blatantly disregards any economic feasibility analysis.''

Response #4.d: We disagree that this allowance disregards any economic feasibility analysis. The District found that the cost of shredding up to 20 acres at once was not economically feasible and that shredding 20-plus acres was feasible only when a custom shredder was available. *See* Staff Report § 3.7.3. As a result, the District adopted an automatic 20 acre allowance plus a discretionary allowance depending on contractor availability.

Comment #5: Earthjustice contended that additional reductions are reasonably available under the appropriate feasibility analysis. The specific arguments raised by Earthjustice in support of its contention are addressed below.

Comment #5.a: Earthjustice argued that the proposed alternative to open burning of citrus orchard removal materials (grinding and hauling orchard removal materials to a biomass plant) is technically feasible because the biomass power plants that use San Joaquin Valley agricultural waste are physically capable of handling the 54,035-ton increase in material that would be caused by a total prohibition on burning citrus orchard removals.

Response #5.a: We agree that it is technically feasible to grind and haul orchard removal materials to a biomass plant. It is less clear, however, whether it is economically feasible. Even assuming that there is currently sufficient capacity for citrus removal materials at biomass facilities, the District has concluded that ''reliance on biomass facilities as a primary, long-term alternative method to open burning is not possible since there are no long-term federal or state funding commitments for the biomass facilities * * *'' Staff Report at 7–50. In addition, the Staff Report notes that, since urban waste is typically less expensive than agricultural waste, urban waste (particularly construction debris) may displace some of the current capacity for agricultural waste, as the economy improves and construction activity increases. *Id.* at 7–49. Additionally, the District explains that ''citrus material is typically less desirable'' than other biomass materials[4] and must be blended with other biomass fuels. Staff Report at 7–37.

In light of this economic uncertainty, EPA has recommended that the District continue closely monitoring the economic feasibility of sending citrus orchard removal material to biomass. In response, the District has agreed to ban the burning of citrus orchards ''on a case-by-case basis when analysis indicates sufficient biomass capacity and the availability of economically feasible chipping services.''[5] We believe that this interim step will have significant air quality benefits and we encourage the District to consider whether a complete or partial ban on citrus orchard burning is economically feasible. Nonetheless, we continue to believe that such a ban has not been demonstrated to be economically feasible at this time.

Comment #5.b: Earthjustice claimed that the proposed alternative to open burning of almond, walnut and pecan prunings (shredding the prunings and leaving the materials on the orchard floor) is technically feasible.

Response #5.b: As with the previous comment, we agree that this is technically feasible, but not that it has been shown to be economically feasible at all times. The District concluded that, although shredding is a technically feasible alternative to open burning, there is an insufficient supply of custom shredding services available to smaller farms. Staff Report Appendix D at D–36. EPA believes this is a reasonable conclusion based on historical data. However, as noted in the TSD, we recommend that the District reevaluate the availability of contractors to shred nut prunings based on updated data.

Comment #5.c: Earthjustice claimed that these proposed alternatives to open burning of citrus orchard removal materials and almond, walnut and pecan prunings are also economically feasible.

Response #5.c: The District's economic analysis indicated that sending citrus removal materials to biomass was not economically feasible. Staff Report Table 3–4. Similarly, the District's economic analysis indicated that the cost of shredding prunings from less than 25 acres at once was not economically feasible. For the reasons noted above (see responses 4c, 4d, and 5a) and given that no other agency has adopted more stringent restrictions on open burning than those currently in place in the District, we believe these conclusions are reasonable at this time. However, we encourage the District to reevaluate these postponements to ensure that the State adopts all RACM for open burning activities as expeditiously as practicable.

III. EPA Action

No comments were submitted that change our assessment that the submitted rules comply with the relevant CAA requirements. Therefore, as authorized in section 110(k)(3) of the Act, EPA is fully approving these rules into the California SIP.

IV. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described

[3] *Id.*

[4] *Id.*

[5] See letter dated June 27, 2011, from Seyed Sadredin to Deborah Jordan.

in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);

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

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

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

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

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

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

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).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by March 7, 2011. 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 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: September 30, 2011.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations 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 F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(388)(i)(B)(*2*), (*3*), (*4*) and (*5*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(388) * * *

(i) * * *

(B) * * *

(*2*) Rule 4103, ''Open Burning,'' amended on April 15, 2010, not effective until June 1, 2010.

(*3*) Table 9–1, Revised Proposed Staff Report and Recommendations on Agricultural Burning, approved on May 20, 2010.

(*4*) San Joaquin Valley Air Pollution Control District, Resolution No. 10–05–22, adopted on May 20, 2010.

(*5*) California Air Resources Board, Resolution 10–24, adopted on May 27, 2010.

* * * * *

[FR Doc. 2011–33660 Filed 1–3–12; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 416, 419, 489, and 495

[CMS–1525–CN]

RIN 0938–AQ26

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 30, 2011, entitled ''Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements.''

DATES: *Effective Date:* This correction is effective January 1, 2012.

FOR FURTHER INFORMATION CONTACT: Marjorie Baldo, (410) 786–0378, Hospital outpatient prospective payment issues. James Poyer, (410) 786–2261, and Donald Howard, (410) 786–6764, Hospital Value-Based Purchasing (VBP) Program Issues.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–28612 of November 30, 2011 (76 FR 74122), (hereinafter referred to as the CY 2012 OPPS/ASC final rule with comment period), there were a number of technical errors that are identified and corrected in the Correction of Errors section below. The provisions in this correction document are effective as if they had been included in the CY 2012 OPPS/ASC final rule with comment period (76 FR 74122) appearing in the November 30, 2011 **Federal Register**. Accordingly, the corrections are effective January 1, 2012.

II. Summary of Errors

A. Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Corrections

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to exclude line items that were eligible for payment in the claims year but did not meet the Medicare requirements for payment (76 FR 74141). Line items that did not meet the requirements for Medicare payment were rejected or denied during claims processing. It is our longstanding policy to not use line items that were rejected or denied for payment for modeling costs under the OPPS. In reviewing the claims data used to establish the APC median costs for the CY 2012 OPPS/ASC final rule with comment period, we discovered that the trim of unpaid lines was not applied correctly. We have corrected our programming logic in the OPPS data process to apply the line item trim correctly and have recalculated the median costs for each separately paid service using the claims that result from the correctly applied trim. We note that no other changes were made to the programming logic described in the CY 2012 OPPS/ASC final (see 76 FR 74141).

The correct application of the line item based trim has an impact on the APC median costs used to establish the relative payment, which impacts the CY 2012 OPPS/ASC payment rates, copayments, outlier threshold, and impacts. Due to the APC median costs changes, we had to recalculate the budget neutral weight scaler. Using the updated unscaled relative weights, the CY 2012 budget neutrality weight scaler changed from 1.3588 to 1.3585 (see 76 FR 74189). The changes associated with the revised APC median costs and the corrected budget neutrality weight scaler have no further impact on budget neutrality, in particular, those applied to the CY 2012 conversion factor. The correct application of the line item trim changed the data used to model the CY 2012 fixed-dollar outlier threshold. Using the corrected set of claims data, the CY 2012 OPPS/ASC fixed-dollar outlier threshold changed from $1,900 to $2,025 (see 76 FR 74209).

Also, as a result of the recalculated median costs, the APCs now displays violations of the two times rule, which caused the following APC codes to be added: APC 0105 Repair/Revision/Removal of Pacemakers, AICDs and Vascular Access Devices, APC 0263, Level I Miscellaneous Radiology Procedures, and APC 0655, Insertion/Replacement/Conversion of a Permanent Dual Chamber Pacing Electrode.

In addition, the recalculated median costs caused several APCs to no longer display violations of the two times rule, which caused the following APSC codes to be removed: APC 0262 Plain Film of Teeth, APC 0341 Skin Tests and APC 0660 Level II Otorhynolaryngologic Function Tests. We are revising Table 19—Final APC Exceptions to the 2 Times Rule for CY 2012 (76 FR 74227) to reflect these changes.

Furthermore, we made changes to Table 59—Estimated Impact of the Final CY 2012 Changes for the Hospital Outpatient Prospective Payments System (76 FR 74562) and the correlating preamble language (76 FR 74570). Specifically, a hospital that had submitted a claim containing a single line for which no payment was made, is no longer represented in the data, therefore, the number of facilities whose claims are represented in the data declined from 4,161 to 4,160, and the number of hospitals declined from 3,895 to 3,894 (see 76 FR 74558). Because of the trim of lines for which no payment was made from the single procedure bills from the remaining hospitals, the number of hospitals by category, and the impact for the categories have minor changes. In addition to the minor changes to the number of hospitals and the impacts by category of hospital, the estimated increase for all facilities and all hospitals when all changes are accounted for declines from 1.9 percent to 1.8 percent because the CY 2011 threshold models as if it were paying 1.0 percent of total payment for outliers rather than 0.93 percent. Therefore, the estimated total increase in payment based on the technical corrections noted above results in a decline of 0.1 percent.

To view the revised payment rates that result from the changed median costs, we refer readers to the Addenda and supporting files that are posted on the CMS Web site at: *http://www.cms.gov/HospitalOutpatientPPS/HORD.* Select ''CMS–1525–FC'' from the list of regulations. All revised Addenda for this correction document are contained in the zipped folder entitled ''2012 OPPS FC Addenda'' at the bottom of the page for CMS–1525–FC. The corrected CY 2012 table of updated offset amounts is posted on the OPPS Web site under ''Annual Policy Files,'' which is found on the left side of the page. The corrected CY 2012 OPPS file of median costs is found under supporting documentation for CMS–1525–FC.

ASC payment rates are based on the OPPS relative payment weights for the majority of services that are provided at ASCs. Therefore, the correct application of the line item based trim also has an impact on the CY 2012 ASC relative payment weights and ASC payment rates. Due to the changes to the OPPS relative payment weights, we had to recalculate the budget neutral ASC weight scaler (see 76 FR 74447 and 74448). Using the updated scaled OPPS relative weights, the CY 2012 budget neutrality ASC weight scaler changed from 0.9466 to 0.9477 (76 FR 74448). The changes associated with the revised OPPS relative payment weights and the corrected budget neutrality CY 2012 ASC weight scaler have no impact on the CY 2012 ASC conversion factor. To view the revised ASC payment rates that result from the revised ASC relative payment weights, see the ASC Addenda that are posted on the CMS Web site at: *http://www.cms.gov/ASCPayment/ASCRN.* Select ''CMS–1525–FC'' from the list of regulations. All revised ASC addenda for this correction document are contained in the zipped folder entitled ''Addenda AA, BB, DD1, DD2, and EE'' at the bottom of the page for CMS–1525–FC.

In addition to the incorrect application of the line item based trim, we failed to recognize that existing HCPCS code C9716 (Creations of thermal anal lesions by radiofrequency energy) was replaced with new CPT code 0288T (Anoscopy, with delivery of thermal energy to the muscle of the anal canal) (for example, for fecal incontinence). For CY 2012, the CPT Editorial Panel created new CPT code 0288T. Before CY 2012, this procedure was described by the Healthcare Common Procedure Coding System (HCPCS) as code C9716. In Addendum B of the CY 2012 OPPS/ASC final rule with comment period, both HCPCS code C9716 and 0288T were assigned to specific APCs. Specifically, HCPCS code C9716 has been assigned to APC 0150 (Level IV Anal/Rectal Procedures) and CPT code 0288T was mistakenly assigned to APC 0148 (Level I Anal/Rectal Procedures). Because HCPCS code C9716 and CPT code 0288T describe the same procedure, CMS is deleting HCPCS code C9716 on December 31, 2011, since it will be replaced with CPT code 0288T effective January 1, 2012. In addition, the APC assignment of CPT code 0288T will be corrected from APC 0148 to APC 0150 effective January 1, 2012. Since 0288T replaces C9716, it should have been assigned to the same APC that C9716 was assigned, APC 150. In addition, we neglected to reflect the inclusion of new HCPCS code G0451 (Development testing, with interpretation and report, per standardized instrument form) in

the mental health composite (APC 0034) and mistakenly assigned it status indicator ''S''. We have corrected this error and assigned status indicator ''Q3'' to HCPCS code G0451. These corrections are included in the revised OPPS and ASC addenda which are posted to the CMS Web site at *http://www.cms.gov/HospitalOutpatientPPS/HORD.*

In addition, the CY 2012 Statewide Average CCRs displayed in Table 11 (76 FR 74195 through 74198) and in the Annual Policy Files section on the CMS Web site at *http://www.cms.gov/HospitalOutpatientPPS/have* also been revised for CY 2012 and CY 2011 Cost-to-Charge Ratio (CCR) values. The tables incorrectly contain CY 2012 proposed rule CCR values as the Final CY 2012 Default CCR for Table 11 and as the Previous Default CCRs in the Annual Policy file. CMS uses overall hospital-specific CCRs calculated from the hospital's most recent cost report to determine outlier payments, payments for pass-through devices, and monthly interim transitional corridor payments under the OPPS during the PPS year. Medicare contractors cannot calculate a CCR for some hospitals because there is no cost report available. For these hospitals, CMS uses the Statewide average default CCRs to determine the payments mentioned above until a hospital's Medicare contractor is able to calculate the hospital's actual CCR from its most recently submitted Medicare cost report. These hospitals include, but are not limited to, hospitals that are new, have not accepted assignment of an existing hospital's provider agreement, and have not yet submitted a cost report.

We are correcting an amendatory instruction in regulations text § 416.171. In the amendatory instructions for § 416.171, we inadvertently revised the entire paragraph (b). Paragraph (b) contains 3 subparagraphs, (b)(1) through (3), respectively. We intended only to revise paragraph (b) introductory text, while making no additional changes to the subparagraphs. Therefore, we are correcting this error.

B. Hospital Value-Based Purchasing Corrections

Section 1886(o)(1)(C)(iii) of the Act requires the Secretary to conduct an independent analysis of appropriate minimum numbers of cases and measures for scoring under the Hospital Inpatient Value-Based Purchasing Program. In the CY 2012 OPPS/ASC final rule with comment period, we inappropriately referred to analyses performed by Brandeis University and Mathematica Policy Research together despite their slightly differing subjects and implications for CMS policies. This document corrects the erroneous references.

III. Waiver of Proposed Rulemaking and the 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). We also ordinarily provide a 30-day delay in the effective date of the provisions of a notice in accordance with section 553(d) of the APA (5 U.S.C. 553(d)). However, we can waive both the notice and comment procedure and the 30-day delay in effective date if the Secretary finds, for good cause, that it is impracticable, unnecessary, or contrary to the public interest to follow the notice and comment procedure or to comply with the 30-day delay in the effective date, and incorporates a statement of the finding and the reasons therefore in the notice.

The policies and payment methodologies finalized in the CY 2012 OPPS/ASC final rule with comment period have previously been subjected to notice and comment procedures. This correction notice merely provides technical corrections to the CY 2012 OPPS/ASC final rule with comment period that was promulgated through notice and comment rulemaking, and does not make substantive changes to the policies or payment methodologies that were finalized in the final rule with comment period. For example, to conform the document to the final policies of the CY 2012 OPPS/ASC final, this notice makes changes to revise inaccurate tabular information. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. In addition, we believe it is important for the public to have the correct information as soon as possible and find no reason to delay the dissemination of it. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

IV. Correction of Errors

■ In FR Doc. 2011–28612 of November 30, 2011 (76 FR 74122), make the following corrections:

A. Outpatient Prospective Payment System and Ambulatory Surgical Center Payment System Preamble Corrections

■ 1. On page 74189, in the first column, in the second full paragraph, in line 14, replace 1.3588 with 1.3585.

■ 2. On pages 74195 through 74198, Table 11—CY2012 Statewide Average CCRs, is corrected to read as follows:

BILLING CODE 4120–01–P

Revised Table 11 CY 2012 STATEWIDE AVERAGE CCRs

State	Urban/Rural	Final CY 2012 Default CCR	Previous Default CCR (CY 2011 OPPS Final Rule)
ALASKA	RURAL	0.487	0.479
ALASKA	URBAN	0.305	0.315
ALABAMA	RURAL	0.210	0.212
ALABAMA	URBAN	0.194	0.193
ARKANSAS	RURAL	0.221	0.223
ARKANSAS	URBAN	0.245	0.282
ARIZONA	RURAL	0.237	0.231
ARIZONA	URBAN	0.190	0.202
CALIFORNIA	RURAL	0.193	0.195
CALIFORNIA	URBAN	0.201	0.205
COLORADO	RURAL	0.342	0.350
COLORADO	URBAN	0.226	0.233
CONNECTICUT	RURAL	0.365	0.356
CONNECTICUT	URBAN	0.288	0.291
DISTRICT OF COLUMBIA	URBAN	0.302	0.313
DELAWARE	RURAL	0.280	0.279
DELAWARE	URBAN	0.347	0.362
FLORIDA	RURAL	0.182	0.185
FLORIDA	URBAN	0.164	0.172
GEORGIA	RURAL	0.238	0.246
GEORGIA	URBAN	0.214	0.220
HAWAII	RURAL	0.321	0.356
HAWAII	URBAN	0.306	0.308
IOWA	RURAL	0.296	0.252
IOWA	URBAN	0.269	0.288
IDAHO	RURAL	0.417	0.419
IDAHO	URBAN	0.353	0.384
ILLINOIS	RURAL	0.238	0.251
ILLINOIS	URBAN	0.230	0.239
INDIANA	RURAL	0.292	0.302
INDIANA	URBAN	0.262	0.270
KANSAS	RURAL	0.279	0.286
KANSAS	URBAN	0.208	0.215
KENTUCKY	RURAL	0.217	0.220
KENTUCKY	URBAN	0.239	0.244
LOUISIANA	RURAL	0.247	0.256

State	Urban/Rural	Final CY 2012 Default CCR	Previous Default CCR (CY 2011 OPPS Final Rule)
LOUISIANA	URBAN	0.224	0.235
MARYLAND	RURAL	0.276	0.284
MARYLAND	URBAN	0.246	0.256
MASSACHUSETTS	RURAL	0.427	N/A
MASSACHUSETTS	URBAN	0.322	0.314
MAINE	RURAL	0.438	0.460
MAINE	URBAN	0.453	0.450
MICHIGAN	RURAL	0.305	0.312
MICHIGAN	URBAN	0.305	0.320
MINNESOTA	RURAL	0.482	0.483
MINNESOTA	URBAN	0.320	0.311
MISSOURI	RURAL	0.243	0.258
MISSOURI	URBAN	0.260	0.264
MISSISSIPPI	RURAL	0.224	0.229
MISSISSIPPI	URBAN	0.189	0.182
MONTANA	RURAL	0.434	0.444
MONTANA	URBAN	0.386	0.399
NORTH CAROLINA	RURAL	0.251	0.254
NORTH CAROLINA	URBAN	0.257	0.264
NORTH DAKOTA	RURAL	0.322	0.351
NORTH DAKOTA	URBAN	0.421	0.360
NEBRASKA	RURAL	0.318	0.328
NEBRASKA	URBAN	0.252	0.259
NEW HAMPSHIRE	RURAL	0.323	0.323
NEW HAMPSHIRE	URBAN	0.291	0.290
NEW JERSEY	URBAN	0.212	0.221
NEW MEXICO	RURAL	0.264	0.277
NEW MEXICO	URBAN	0.288	0.307
NEVADA	RURAL	0.233	0.269
NEVADA	URBAN	0.167	0.178
NEW YORK	RURAL	0.419	0.415
NEW YORK	URBAN	0.356	0.375
OHIO	RURAL	0.320	0.327
OHIO	URBAN	0.234	0.241
OKLAHOMA	RURAL	0.239	0.260
OKLAHOMA	URBAN	0.217	0.208
OREGON	RURAL	0.311	0.306
OREGON	URBAN	0.328	0.340

State	Urban/Rural	Final CY 2012 Default CCR	Previous Default CCR (CY 2011 OPPS Final Rule)
PENNSYLVANIA	RURAL	0.270	0.275
PENNSYLVANIA	URBAN	0.199	0.210
PUERTO RICO	URBAN	0.492	0.505
RHODE ISLAND	URBAN	0.270	0.284
SOUTH CAROLINA	RURAL	0.211	0.222
SOUTH CAROLINA	URBAN	0.214	0.227
SOUTH DAKOTA	RURAL	0.307	0.316
SOUTH DAKOTA	URBAN	0.252	0.251
TENNESSEE	RURAL	0.211	0.221
TENNESSEE	URBAN	0.199	0.204
TEXAS	RURAL	0.236	0.245
TEXAS	URBAN	0.196	0.216
UTAH	RURAL	0.379	0.386
UTAH	URBAN	0.359	0.362
VIRGINIA	RURAL	0.226	0.241
VIRGINIA	URBAN	0.239	0.263
VERMONT	RURAL	0.407	0.411
VERMONT	URBAN	0.384	0.365
WASHINGTON	RURAL	0.368	0.367
WASHINGTON	URBAN	0.298	0.327
WISCONSIN	RURAL	0.351	0.412
WISCONSIN	URBAN	0.311	0.334
WEST VIRGINIA	RURAL	0.280	0.291
WEST VIRGINIA	URBAN	0.337	0.337
WYOMING	RURAL	0.386	0.393
WYOMING	URBAN	0.302	0.296

BILLING CODE 4120–01–C

■ 3. On page 74208, in the third column, in the first response to comment, in line 17, replace $1,900 with $2,025.

■ 4. On page 74209, in the first column, under the heading ''3. Final Outlier Calculation,''—

■ A. In the first full paragraph, in line 31, replace $1,900 with $2,025.

■ B. In the second paragraph, replace $1,900 with $2,025.

■ 5. On page 74210, in the third column, in the third paragraph—

■ A. In line 16, replace $307.74 with $309.46.

■ B. In line 19, replace $301.59 with $303.27.

■ 6. On page 74210, in the third column, in the fourth paragraph—

■ A. In line 5, replace $242.66 with $244.02 and $307.74 with $309.46.

■ B. In line 8, replace $237.81 with $239.14 and $301.59 with $303.27.

■ C. In lines 10 and 11, replace $123.10 with $123.78 and replace $307.74 with $309.46.

■ D. In lines 13 and 14, replace $120.63 with $121.31 and replace $301.59 with $303.27.

■ E. In line 16, replace $365.76 with $367.80.

■ F. In line 17, replace $242.66 with $244.02 and $123.10 with $123.78.

■ G. In line 19, replace $358.44 with $360.44 and $237.81 with $239.14, and replace $120.63 with $121.31.

■ 7. On page 74211, in the second column, under ''Step 1. Calculate the beneficiary* * *.''—

■ A. In line 5, replace $61.55 with $61.90.

■ B. In line 7, replace $307.74 with $309.46.

■ 8. On page 74227, in Table 19—Final APC Exceptions to the 2 Times Rule for CY 2012, the APC codes are revised by replacing APC code 0262 with APC code 0105, and APC 0341 with APC code 0263, and APC 0660 with APC code 0655. The APC codes are listed in numerical order.

■ 9. On page 74448, in the third column—

■ A. In the first full paragraph, in line 6, replace 0.9466 with 0.9477.

■ B. In the second paragraph, in line 6, replace 0.9466 with 0.9477.

■ 10. On pages 74562 through 74565, Table 59—Estimated Impact of the Final CY 2012 Changes for the Hospital

Outpatient Prospective Payment System, is corrected to read as follows:

BILLING CODE 4120–01–P

TABLE 59—ESTIMATED IMPACT OF THE FINAL CY 2012 CHANGES

FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENTS SYSTEM

	Number of Hospitals (1)	APC Recalibration (2)	New Wage Index and Rural Adjustment (3)	New Cancer Hospital Adjustment (4)	Comb (cols 2,3, & 4) with Market Basket Update (5)	Column 5 with Frontier Wage Index Adjustment (6)	All Changes (7)
ALL FACILITIES *	4,160	0.0	0.0	0.0	1.9	2.0	1.8
ALL HOSPITALS	3,894	0.2	0.0	-0.2	1.9	2.0	1.8
(excludes hospitals permanently held harmless and CMHCs)							
URBAN HOSPITALS	2,945	0.2	0.0	-0.2	2.0	2.0	1.9
LARGE URBAN	1,607	0.2	0.1	-0.2	2.0	2.0	1.9
(GT 1 MILL.)							
OTHER URBAN	1,338	0.2	0.0	-0.2	1.9	2.1	1.9
(LE 1 MILL.)							
RURAL HOSPITALS	949	0.1	-0.3	-0.2	1.5	1.7	1.5
SOLE COMMUNITY	384	0.0	-0.2	-0.2	1.5	2.0	1.4
OTHER RURAL	565	0.2	-0.4	-0.2	1.5	1.5	1.5
BEDS (URBAN)							
0 - 99 BEDS	1,028	-0.5	0.1	-0.2	1.2	1.3	1.2
100-199 BEDS	841	0.3	0.2	-0.2	2.1	2.2	2.0
200-299 BEDS	454	0.4	0.1	-0.2	2.3	2.4	2.2
300-499 BEDS	419	0.3	-0.2	-0.2	1.8	1.9	1.8
500 + BEDS	203	0.1	0.1	-0.2	1.9	1.9	1.9
BEDS (RURAL)							
0 - 49 BEDS	349	-0.1	-0.1	-0.2	1.5	1.8	1.5
50- 100 BEDS	355	0.0	-0.3	-0.2	1.4	1.7	1.4
101- 149 BEDS	140	0.2	-0.2	-0.2	1.7	1.9	1.7
150- 199 BEDS	57	0.0	-0.5	-0.2	1.2	1.8	1.2
200 + BEDS	48	0.1	-0.3	-0.2	1.5	1.5	1.4

	Number of Hospitals (1)	APC Recalibration (2)	New Wage Index and Rural Adjustment (3)	New Cancer Hospital Adjustment (4)	Comb (cols 2,3, & 4) with Market Basket Update (5)	Column 5 with Frontier Wage Index Adjustment (6)	All Changes (7)
VOLUME (URBAN)							
LT 5,000 Lines	597	-5.4	0.4	-0.2	-3.4	-3.2	-3.1
5,000 - 10,999 Lines	146	-2.1	0.1	-0.2	-0.4	-0.1	-0.4
11,000 - 20,999 Lines	235	-0.7	-0.1	-0.2	0.9	0.9	0.9
21,000 - 42,999 Lines	477	0.3	-0.1	-0.2	1.9	1.9	1.8
42,999 - 89,999 Lines	713	0.5	0.2	-0.2	2.3	2.4	2.2
GT 89,999 Lines	777	0.2	0.0	-0.2	1.9	2.0	1.9
VOLUME (RURAL)							
LT 5,000 Lines	67	-0.8	-0.6	-0.2	0.3	2.8	0.4
5,000 - 10,999 Lines	71	0.7	0.3	-0.2	2.7	2.8	2.5
11,000 - 20,999 Lines	174	0.3	-0.1	-0.2	1.8	2.1	1.7
21,000 - 42,999 Lines	282	0.3	-0.2	-0.2	1.8	2.0	1.8
GT 42,999 Lines	355	0.0	-0.3	-0.2	1.4	1.6	1.4
REGION (URBAN)							
NEW ENGLAND	150	-0.2	4.2	-0.2	5.7	5.7	5.4
MIDDLE ATLANTIC	355	0.1	0.0	-0.2	1.8	1.8	1.5
SOUTH ATLANTIC	449	0.3	-0.5	-0.2	1.5	1.5	1.6
EAST NORTH CENT.	472	0.3	-0.7	-0.2	1.3	1.3	1.1
EAST SOUTH CENT.	183	0.6	-0.8	-0.2	1.5	1.5	1.5
WEST NORTH CENT.	190	0.1	-0.1	-0.2	1.7	2.5	1.8
WEST SOUTH CENT.	498	0.3	0.1	-0.2	2.1	2.1	2.1
MOUNTAIN	208	0.1	-0.2	-0.2	1.6	2.0	1.6
PACIFIC	394	0.1	0.2	-0.2	2.0	2.0	1.9
PUERTO RICO	46	0.3	0.4	-0.2	2.3	2.3	2.3
REGION (RURAL)							
NEW ENGLAND	25	-0.9	-0.3	-0.2	0.4	0.4	0.5
MIDDLE ATLANTIC	67	-0.2	0.1	-0.2	1.6	1.6	1.6
SOUTH ATLANTIC	162	0.2	-0.2	-0.2	1.7	1.7	1.7
EAST NORTH CENT.	128	0.0	-0.8	-0.2	0.8	0.8	0.7
EAST SOUTH CENT.	170	0.6	-0.6	-0.2	1.7	1.7	1.7

		Number of Hospitals (1)	APC Recalibration (2)	New Wage Index and Rural Adjustment (3)	New Cancer Hospital Adjustment (4)	Comb (cols 2,3, & 4) with Market Basket Update (5)	Column 5 with Frontier Wage Index Adjustment (6)	All Changes (7)
	WEST NORTH CENT.	101	-0.3	0.1	-0.2	1.5	2.7	1.6
	WEST SOUTH CENT.	200	0.5	-0.1	-0.2	2.1	2.1	2.0
	MOUNTAIN	67	0.0	-0.7	-0.2	1.0	2.8	0.9
	PACIFIC	29	0.0	1.0	-0.2	2.7	2.7	2.8
TEACHING STATUS								
	NON-TEACHING	2,895	0.3	-0.1	-0.2	1.9	2.0	1.9
	MINOR	708	0.3	-0.1	-0.2	1.9	2.1	1.8
	MAJOR	291	-0.2	0.3	-0.2	1.9	1.9	1.8
DSH PATIENT PERCENT								
	0	11	-1.7	-0.2	-0.2	-0.2	-0.2	0.3
	GT 0 - 0.10	353	0.0	0.2	-0.2	1.9	2.0	1.9
	0.10 - 0.16	357	0.3	-0.3	-0.2	1.7	1.7	1.5
	0.16 - 0.23	734	0.3	-0.1	-0.2	1.9	2.1	1.8
	0.23 - 0.35	1,040	0.3	0.0	-0.2	2.0	2.1	1.9
	GE 0.35	785	0.1	0.1	-0.2	1.9	1.9	1.9
	DSH NOT AVAILABLE **	614	-6.1	0.6	-0.2	-3.9	-3.9	-3.8
URBAN TEACHING/DSH								
	TEACHING & DSH	903	0.2	0.1	-0.2	1.9	2.0	1.8
	NO TEACHING/DSH	1,456	0.4	0.0	-0.2	2.1	2.1	2.0
	NO TEACHING/NO DSH	10	-1.7	-0.2	-0.2	-0.2	-0.2	0.3
	DSH NOT AVAILABLE**	576	-6.4	0.7	-0.2	-4.1	-4.1	-4.0
TYPE OF OWNERSHIP								
	VOLUNTARY	2,061	0.2	0.1	-0.2	2.0	2.1	1.9
	PROPRIETARY	1,272	0.1	-0.1	-0.2	1.7	1.7	1.6
	GOVERNMENT	561	0.1	-0.3	-0.2	1.5	1.5	1.5
CMHCs		204	-32.5	-0.3	-0.2	-30.9	-30.9	-30.8
Cancer Hospitals		11	0.5	0.3	11.6	14.3	14.3	13.2

	Number of Hospitals (1)	APC Recalibration (2)	New Wage Index and Rural Adjustment (3)	New Cancer Hospital Adjustment (4)	Comb (cols 2,3, & 4) with Market Basket Update (5)	Column 5 with Frontier Wage Index Adjustment (6)	All Changes (7)
Column (1) shows total hospitals and/or CMHCs.							
Column (2) shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and the final recalibration of APC weights based on CY 2010 hospital claims data.							
Column (3) shows the budget neutral impact of updating the wage index by applying the FY 2012 hospital inpatient wage index.							
Column (4) shows the budget neutral impact of the cancer hospital payment adjustment which is estimated to result in an aggregate increase in OPPS payments to cancer hospitals of $71 million when TOPs are included.							
Column (5) shows the impact of all budget neutrality adjustments and the addition of the 1.9 percent OPD fee schedule increase factor (3.0 percent reduced by 1.0 percentage point for the productivity adjustment and further reduced by 0.1 percentage point in order to satisfy statutory requirements set forth in the Affordable Care Act).							
Column (6) shows the non-budget neutral impact of applying the frontier State wage adjustment, after application of the CY 2012 final OPD fee schedule increase factor.							
Column (7) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate and adds final outlier payments. This column also shows the expiration of section 508 wages on September 30, 2011 and the application of the frontier State wage adjustment for CY 2012.							
*These 4,160 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.							
** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.							

BILLING CODE 4120–01–C

■ 11. On page 74570 in the third column, in the first full paragraph, in line 9, replace 0.9466 with 0.9477.

B. Hospital Value-Based Purchasing Preamble Corrections

■ 1. On page 74532, second column, under heading ''b. Minimum Number of Cases for Mortality Measures, AHRQ Composite Measures, and HAC Measures,'' first paragraph, lines 1 and 2, replace ''analyses'' with ''analysis'' and remove the words ''and Mathematica''.

■ 2. In line 9, the words ''these analyses'' are corrected to read ''this analysis''.

■ 3. On page 74534, in the first column, under the first response, in line 20, the words ''the analyses'' are corrected to read ''the analysis''.

■ 4. In line 21, the words ''and Mathematica'' are removed.

C. Regulations Text Corrections

§ 416.171 [Corrected]

■ 1. On page 74582, in the second column, in § 416.171, ''Determination of payment rates for ASC services,'' in amendment 7, the instruction ''a. Revising paragraph (b)'' is corrected to read ''a. Revising paragraph (b) introductory text.''

(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: December 28, 2011.

Jennifer Cannistra,

Executive Secretary to the Department.

[FR Doc. 2011–33751 Filed 12–30–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 414, 415, and 495

[CMS–1524–CN and CMS–1436–CN]

RIN 0938–AQ25 and 0938–AQ00

Medicare Program; Payment Policies Under the Physician Fee Schedule, Five-Year Review of Work Relative Value Units, Clinical Laboratory Fee Schedule: Signature on Requisition, and Other Revisions to Part B for CY 2012; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors and typographical errors in the final rule with comment period entitled ''Medicare Program; Payment Policies under the Physician Fee Schedule, Five-Year Review of Work Relative Value Units, Clinical Laboratory Fee Schedule: Signature on Requisition, and Other Revisions to Part B for CY 2012'' which appeared in the November 28, 2011 **Federal Register**.

DATES: This correcting document is effective January 1, 2012.

FOR FURTHER INFORMATION CONTACT:

Ryan Howe, (410) 786–3355, or Chava Sheffield, (410) 786–2298, for issues related to the physician fee schedule practice expense methodology and direct expense inputs.

Sara Vitolo, (410) 786–5714, for issues related to work RVUs.

Christine Estella, (410) 786–0485, for issues related to the Physician Quality Reporting System, incentives for Electronic Prescribing (eRx) and Physician Compare.

Jamie Hermansen, or (410) 786–2064, or Stephanie Frilling, (410) 786–4507, for issues related to Annual Wellness Visit.

Rebecca Cole, (410) 786–4497, for issues related to physician payment not previously identified.

SUPPLEMENTARY INFORMATION:

I. Background

In FR Doc. 2011–28597 of November 28, 2011 (76 FR 73026), the final rule with comment period entitled ''Medicare Program; Payment Policies under the Physician Fee Schedule, Five-Year Review of Work Relative Value Units, Clinical Laboratory Fee Schedule: Signature on Requisition, and Other Revisions to Part B for CY 2012'' (hereinafter referred to as the CY 2012 PFS final rule with comment period) there were a number of technical errors that are identified and corrected in the Correction of Errors section. Accordingly, the corrections are effective January 1, 2012.

We note that this correction notice corrects the CY 2012 PFS final rule with comment period which reflects laws in effect as of November 1, 2011. Any statutory changes to PFS payment after November 1, 2011 were not reflected in the CY 2012 PFS final rule with comment period and are therefore not reflected in this correction notice. Payment files reflecting current law as of January 1, 2012 were made available through usual CMS notices and data files.

II. Summary of Errors and Corrections to the Addenda Posted on the CMS Web Site

A. Errors in the Preamble

1. Errors in Work Relative Value Units (RVUs) and Time Information

On pages 73028 and 73208, a discussion of CPT codes 96110 (Developmental screening, with interpretation and report, per standardized instrument form) and G0451 (Development testing, with interpretation and report, per standardized instrument form) was omitted from the final rule due to an inadvertent error. We note that we had cited a discussion regarding these two codes several times throughout the preamble. We are correcting this error by including our intended discussion through this correcting document.

On page 73141, we are correcting our response to comments to accurately reflect our policy regarding CPT codes 53445 (Insertion of inflatable urethral/bladder neck sphincter, including placement of pump, reservoir, and cuff) and 54410 (Removal and replacement of all component(s) of a multi-component, inflatable penile prosthesis at the same operative session). Due to an inadvertent error, the discussion of these codes did not reflect our discussion of revisions to the times for these codes for CY 2012. We include our discussion of time policies for these codes on an interim final basis for CY 2012.

On page 73166, we are correcting an inadvertent error in Table 15: CY 2012 Work RVUs for Services Reviewed in the CY 2011 PFS Final Rule with Comment Period, the Fourth-Five Year Review, and the CY 2012 PFS Proposed Rule. This table incorrectly identified that no time change had occurred for CPT code 53445.

On pages 73172 and 73178, we are correcting Table 16: CY 2011 and AMA RUC-Recommended Physician Time and Work Values for CY 2012 to accurately reflect time values for CPT codes 23415 (Coracoacromial ligament release, with or without acromioplasty), as well as revisions to the times for 53445 and 54410 already noted. The time values for CPT code 23415 that were listed in the CY 2012 PFS final rule time file were correct, but were inadvertently left out of Table 16. The time values for CPT codes 53345 and 54410 that were listed in the CY 2012 PFS final rule time file were not correct; the time file has been corrected to reflect correct times for CPT codes 53445 and 54410, previously discussed. We note that the time file that we used to calculate RVUs for the CY 2012 PFS final rule with comment period did not reflect the correct finalized published times in Table 16 on pages 73170 through 73181 for a limited number of codes. Specifically, we also have corrected the time values in the time file for CPT codes 28725 (Arthrodesis; subtalar), 28730 (Arthrodesis, midtarsal or tarsometatarsal, multiple or transverse), 62223 (Creation of shunt; ventriculo-peritoneal, -pleural, other terminus), 65285 (Repair of laceration; cornea and/or sclera, perforating, with reposition or resection of uveal tissue), 73080 (Radiologic examination, elbow; complete, minimum of 3 views), 73610 (Radiologic examination, ankle; complete, minimum of 3 views), and 73630 (Radiologic examination, foot; complete, minimum of 3 views) to reflect the correct time values in Table 16.

On page 73173, in Table 16, we are also correcting a typographical error for CPT code 28725 (Arthrodesis; subtalar).

On page 73190, we are correcting the status indicator of molecular pathology CPT codes that are new for CY 2012. We had intended to set the status indicator to allow reporting of these codes along with the laboratory CPT codes currently used to report these services. Due to an inadvertent error identifying the appropriate status indicator for tracking purposes, the published status indicator was incorrect.

On page 73265, in our discussion of the compression system services, we are updating our references to sections of the CY 2012 PFS final rule with comment period to correspond to the corrections identified elsewhere in this correcting document.

2. Errors in the Annual Wellness Visit

On pages 73306 through 73309, in our discussion of the Annual Wellness Visit, we made several technical and typographical errors in summarizing and responding to comments regarding the health risk assessment (HRA).

On page 73310, in our discussion regarding personalized prevention plans as part of the annual wellness visit, we inadvertently made technical and typographical errors.

On page 73311, in our discussion regarding a response to commenters on the physician's wellness team, we inadvertently made a technical error in our description of who comprises the wellness team.

3. Errors in the PE RVUs

On page 73313, we are correcting a typographical error in Table 39: Final RVUs for AWV Services for HCPCS code G0438 (Annual wellness visit, includes a personalized prevention plan of service (PPPS), first visit).

We are correcting a series of Practice Expense (PE) RVUs that appeared in Addenda B and C for CPT codes 90867 (Therapeutic repetitive transcranial magnetic stimulation (TMS) treatment; initial, including cortical mapping, motor threshold determination, delivery and management), 90868 (Therapeutic repetitive transcranial magnetic stimulation (TMS) treatment; subsequent delivery and management, per session), and 90869 (Therapeutic repetitive transcranial magnetic stimulation (TMS) treatment; subsequent motor threshold re-determination with delivery management) that were incorrect as a result of a technical error. The price input for the new direct practice expense equipment item ''NeuroStar TMS Therapy System'' (EQ342) was incorrectly calculated. The corrected price is included in the corrected final CY 2012 direct PE database. The final PE RVUs displayed in the corrected versions of Addendum B and C reflect values resulting from the correction of this error.

We also note that because work RVUs factor into the calculation for PE RVUs, and time values factor into direct PE input values and specialty-level allocation of indirect PE, PE RVUs for CPT codes with corrected work RVUs or time values may have also changed as a result of the corrected work RVUs and time values. These changes are reflected in Addenda B and C and the direct PE database.

Further, we note that changes in PE RVUs for other codes not previously identified may occur due to various factors related to the relativity of the system including budget neutrality, changes in aggregate physician times, and adjustments to maintain PE RVU shares. These changes also are reflected in Addenda B and C. In order to account for these corrected values, we are correcting errors in Table 85: Impact of Final Rule With Comment Period and Estimated Physician Update on CY 2012 Payment for Selected Procedures.

4. Errors in the Physician Quality Reporting System

On page 73333, in our discussion of core measures directly below Table 42, we inadvertently made a typographical error in referencing a Table number.

On page 73334, in our discussion of zero percent performance rates, we made a typographical error. Although the final requirement to not count measures with a zero percent performance rate is indicated throughout the rule, including Tables 40, 41, and 42, in a response on page 73334, we erroneously stated ''only'' instead of ''not.''

On page 73336, in our discussion of measures groups, we made a typographical error in referencing a Table number.

On page 73337, in our summary of the CY 2012 proposed rule regarding the reporting criteria for the group practice reporting option (GPRO), we inadvertently referenced the wrong **Federal Register** page number and also made a typographical error in referencing the number of NQF-endorsed quality measures we proposed.

On page 73339, in our discussion of GPROs we inadvertently made a typographical error in referencing the dates. The correct year is 2012, which is the year in which the reporting period for the 2012 Physician Quality Reporting System lies.

On page 73343, we made typographical errors in referencing Table numbers of the CY 2012 proposed rule. In addition, in our discussion of contact information, we incorrectly referenced the 2011 Physician Quality Reporting System instead of the 2012 Physician Quality Reporting System.

On page 73345, in our discussion of core measures, we inadvertently made typographical errors in referencing Table numbers.

On page 73348, in one of our responses to comments, we inadvertently made typographical errors in referencing two Table numbers.

On page 73362, in Table 47, the measure entitled ''Ischemic Vascular Disease (IVD): Complete Lipid Profile and LDL Control <100'' was inadvertently listed twice.

On page 73365, in Table 48, we are correcting measure numbers for several measures that were retired in 2010. Specifically, the Measure entitled ''Use of Appropriate Medications for Asthma'' and the Measure entitled ''Smoking and Smoking and Tobacco Use Cessation, Medical Assistance: a. Advising Smokers to Quit, b. Discussing Smoking and Tobacco Use Cessation Medications, c. Discussing Smoking and Tobacco Use Cessation Strategies'' were inadvertently listed with Physician Quality Reporting System numbers and should be listed as ''TBD.''

On page 73368, third column, first full paragraph, we inadvertently excluded the COPD measures group as a measures group that also contains measures available for reporting as individual measures.

On page 73373, in reference to Table 56, we inadvertently excluded a footnote to indicate that the CAD measures group contained measures that are also available for reporting as individual measures.

On page 73383, in our response to commenters who urged CMS to reduce the number of GPRO measures a GPRO must report under the Physician Quality Reporting System, we inadvertently made an error in stating we finalized 30 measures available for reporting under the GPRO. As indicated in Table 71 and in the third column, first full paragraph on page 73383, we finalized 29 measures available for reporting under the GPRO.

On page 73388, second column, first full paragraph, we incorrectly referenced the first quarter of 2012 instead of the first quarter of 2013.

5. Errors in the Electronic Prescribing (eRx) Incentive Program

On page 73415, we inadvertently made a typographical error by referencing G code G8642 instead of G9642 (G8642 was the G-Code created in 2011 for the significant hardship exemption for professionals in rural areas with limited high speed Internet access).

6. Errors in the Impact Analysis

On page 73457, In Table 85: Impact of Final Rule with Comment Period and Estimated Physician Update on CY 2012 Payment for Selected Procedures, we discuss the corrected work RVUs in section II.A.3. of this document, entitled ''Errors in the PE RVUs''.

7. Errors in the Addenda Listing

On page 73469, in our discussion of the Addenda, we inadvertently listed Addendum C as reserved.

B. Errors in the Addenda Posted on the CMS Web Site

On page 73469 of the CY 2012 PFS final rule with comment period, we noted that the Addenda A through H for the CY 2012 PFS final rule with comment period would only be available via the Internet. In this document, we note that we will be correcting the following Addenda:

- Addendum B—Relative Value Units and Related Information Used in Determining Medicare Payments for CY 2012.
- Addendum C.—Codes with Proposed RVUs Subject to Comment for CY 2012.

We are removing HCPCS code G0450 from Addendum B. This code was incorrectly included in the final rule Addenda due to a technical error. In addition, we are correcting the status indicator in Addendum B for CPT code 96110.

Additionally, due to a typographical error, we are correcting the physician work and malpractice RVUs that appeared in Addenda B and C for CPT code 90845 (Psychoanalysis). The correct physician work and malpractice RVUs were listed in the preamble text.

Due to the changes previously noted in this section and in section II.A.3. of this document, we are correcting errors in these Addenda by replacing the Addenda in their entirety. In addition, we are correcting supporting tables that are available online, such as the time file and the direct PE input database. Errors to all updated tables are a result of the technical and typographical errors identified and summarized in this correcting document. As stated in the CY 2012 PFS final rule with comment period, Addenda B and C are available online at *http://www.cms.gov/PhysicianFeeSched.* To access supporting information on this correction notice, click on the link on the left side of the screen titled, ''PFS Federal Regulations Notices'' for a chronological list of PFS **Federal Register** and other related documents and select CMS–1524–CN.

III. Waiver of Proposed Rulemaking and 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the Secretary finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

This document merely corrects typographical and technical errors in the preamble and addenda of the CY 2012 Physician Fee Schedule final rule with comment period. The provisions of that final rule with comment period have been subjected to notice and comment procedures. The corrections contained in this document are consistent with, and do not make substantive changes to, the policies and payment methodologies that were adopted in the CY 2012 PFS final rule with comment period. As a result, the corrections made through this correcting document are intended to ensure that the CY 2012 PFS final rule with comment period accurately reflects the policies adopted in that rule.

Therefore, we find for good cause that it is unnecessary and would be contrary to the public interest to undertake further notice and comment procedures to incorporate the corrections in this document into the CY 2012 PFS final rule with comment period. For the same reasons, we find that there is good cause to waive the 30-day delay in the effective date for these corrections. Further, we believe that it is in the public interest to ensure that the CY 2012 PFS final rule with comment period accurately reflects our policies as of the date they take effect. Therefore, we find that delaying the effective date of these corrections beyond the effective date of the final rule with comment period would be contrary to the public interest. In so doing, we find good cause to waive the 30-day delay in effective date.

IV. Correction of Errors

■ In FR Doc. 2011–28597 of November 28, 2011 (76 FR 73026), the final rule with comment period, make the following corrections:

■ 1. Page 73028, third column,

■ a. After line 31 (item ''(23)''), the text is corrected by adding a new item to read as follows ''(24) Central Nervous System Assessments/Tests (CPT codes 96110, G0451)''.

■ b. Line 32 (Item ''(24)''), the reference ''(24)'' is corrected to read ''(25)''.

■ 2. Page 73141, second column,

■ a. Second full paragraph that begins with the phrase ''Response: We agree with the AMA RUC'' and ends with the phrase ''CPT code 53445 for CY 2012'' is corrected to read as follows:

''*Response:* We agree with the AMA RUC that the 25th percentile work RVU of 13.00 is appropriate for this service. We are assigning an interim final work RVU of 13.00 to CPT code 53445 for CY 2012. CPT code 53445 can be found in Addenda B and C to this CY 2012 PFS final rule.

Regarding the physician time associated with CPT code 53445, in the CY 2012 PFS proposed rule (76 FR 42799 through 42800) we stated that since Medicare claims data indicate that this service is predominantly performed in the outpatient setting, that we did not believe that this service should reflect work that is typically associated with an inpatient service. In the CY 2012 PFS proposed rule, we proposed to accept the AMA RUC-recommended physician times, understanding that the AMA RUC was collecting additional information on the physician time associated with this CPT code (and CPT code 54410) through a specialty society survey. Following publication of the CY 2012 PFS proposed rule, we realized that we had not reviewed the additional specialty society survey information on physician time. After review, we do not believe it is appropriate for this service which is now predominantly furnished in the outpatient setting to continue to reflect work that is typically associated with an inpatient service. In order to ensure consistent treatment of physician time, we believe it is appropriate to apply our methodology described

previously to address 23-hour stay site-of-service anomalies. Therefore, on an interim final basis for CY 2012, we are removing the subsequent observation care visit, reducing the discharge management day service to one-half, and adjusting the times accordingly. We are assigning CPT code 53445 the following times on an interim final basis for CY 2012: 50 minutes pre-service evaluation, 15 minutes pre-service positioning, 20 minutes dress, scrub, and wait, 90 minutes intra-service time, 35 minutes post-service time, half of a hospital discharge management day service, 1 Level 2 established patient office or other outpatient visit, and 3 Level 3 established patient office or other outpatient visits. CMS time refinements can be found in Table 16.

For CY 2009, CPT code 54410 (Removal and replacement of all component(s) of a multi-component, inflatable penile prosthesis at the same operative session) was identified as potentially misvalued through the site-of-service anomaly screen. As detailed in the CY 2012 PFS proposed rule (76 FR 42799), for CY 2012 we proposed a work RVU of 15.18, which corresponded to the current (CY 2011) work RVU and the AMA RUC-recommended work RVU for this service. Regarding the physician time assigned to CPT code 54410, in the PFS proposed rule we proposed to remove the subsequent hospital care visit and keep the AMA RUC-recommended physician times for the other components of this service, with the understanding that the AMA RUC was collecting additional information on the physician time associated with this CPT code (and CPT code 53445). We received no public comments on our proposal for CPT code 54410.

We continue to believe that a work RVU of 15.18 appropriately reflects the physician work associated with this service. Therefore, we are assigning an interim final work RVU of 15.18 to CPT code 54410 for CY 2012. CPT code 54410 can be found in Addenda B and C to this CY 2012 PFS final rule. Following publication of the CY 2012 PFS proposed rule, we realized that we had not reviewed the additional specialty society survey information on physician time for CPT code 54410 that we had received. After reviewing the additional information, we do not believe it is appropriate for this service which is now predominantly furnished in the outpatient setting to continue to reflect work that is typically associated with an inpatient service. In order to ensure consistent and appropriate treatment of physician time, we believe it is appropriate to apply our methodology described previously to address 23-hour stay site-of-service anomalies. Therefore, on an interim final basis for CY 2012, we are removing the subsequent observation care visit, reducing the discharge management day service to one-half, and adjusting the times accordingly. We are assigning CPT code 54410 the following times on an interim final basis for CY 2012: 40 minutes pre-service evaluation, 10 minutes pre-service positioning, 15 minutes dress, scrub, and wait, 120 minutes intra-service time, 40 minutes post-service time, half of a hospital discharge management day service, 1 Level 2 established patient office or other outpatient visit, and 3 Level 3 established patient office or other outpatient visits. CMS time refinements can be found in Table 16.''

■ b. Third full paragraph, line 5 through 9, the sentence, ''Also, for CY 2012, we received no public comments on the CY 2012 proposed work RVUs for CPT codes 52341, 52342, 52343, 52344, 52345, 52346, 52400, 52500, 54410, and 54530.'' is corrected to read ''For CY 2012, we received no public comments on the CY 2012 proposed work RVUs for CPT codes 52341, 52342, 52343, 52344, 52345, 52346, 52400, 52500, and 54530''.

■ 3. On page 73166, Table 15: CY 2012 Work RVUs for Services Reviewed in the CY 2011 PFS Final Rule with Comment Period, the Fourth-Five Year Review, and the CY 2012 PFS Proposed Rule, column 7, line 16 (CPT code 53445), the '''' (blank entry) is corrected to read ''Yes''.

■ 4. Page 73172, Table 16: CY 2011 and AMA RUC-Recommended Physician Time and Work Values for CY 2012.

■ a. Line 8 (CPT code 23415),

■ (1) Column 15, the figure ''0'' is corrected to read ''0.5''.

■ (2) Column 20, the figure ''0'' is corrected to read ''2.0''.

■ (3) Column 21, the figure ''0'' is corrected to read ''2.0''.

■ b. Line 9 (CPT code 23415),

■ (1) Column 15, the figure ''0'' is corrected to read ''0.5''.

■ (2) Column 20, the figure ''0'' is corrected to read ''2.0''.

■ (3) Column 21, the figure ''0'' is corrected to read ''2.0''.

■ 5. Page 73173, line 10—CPT code 28725, column 21, the figure ''0'' is corrected to read ''3.0''.

■ 6. Page 73178,

■ a. Line 17 (CPT code 53445),

■ (1) Column 9, the figure ''25'' is corrected to read ''35''.

■ (2) Column 15, the figure ''1'' is corrected to read ''0.5''.

■ (3) Column 17, the figure ''1'' is corrected to read ''0''.

■ b. Line 20 (CPT code 54410),

■ (1) Column 9, the figure ''30'' is corrected to read ''40''.

■ (2) Column 15, the figure ''1'', is corrected to read ''0.5''.

■ 7. Page 73190, upper fourth of the page, second column, first partial paragraph, and third column first partial paragraph, the sentences beginning with ''These molecular pathology codes'' and ending with ''payment for these services'' are corrected to read as follows:

''These molecular pathology codes appear in Addendum B to this final rule with the procedure status indicator of B (Bundled code. Payments for covered services are always bundled into payment for other services not specified. If RVUs are shown, they are not used for Medicare payment. If these services are covered, payment for them is subsumed by the payment for the services to which they are incident (for example, a telephone call from a hospital nurse regarding care of a patient)). While these services would traditionally be assigned a procedure status indicator of I (Not Valid for Medicare purposes. Medicare uses another code for the reporting of, and the payment for these services), assigning these CPT codes a procedure status indicator of B will allow CMS to gather claims information important to evaluating eventual pricing of these new molecular pathology CPT codes.''

■ 8. Page 73208, third column,

■ a. Immediately after the end of the first partial paragraph ending with ''CPT code 95939,'' the paragraph is corrected by adding a new paragraph to read as follows:

''(24) Central Nervous System Assessments/Tests (CPT Codes 96110, G0451)

For CY 2012, the CPT Editorial Panel revised the long descriptor for CPT code 96110 from (Developmental testing; limited (e.g., Developmental Screening Test II, Early Language Milestone Screen), with interpretation and report) to (Developmental screening, with interpretation and report, per standardized instrument form). With this change, we believe that the service described by CPT code 96110 is a screening service and no longer falls within the scope of benefits of the Medicare program, as defined by the Social Security Act. Therefore, for CY 2012, we assigned CPT code 96110 a procedure status indicator of N (Non-covered service. These codes are non-covered services. Medicare payment may not be made for these codes. If RVUs are shown, they are not used for Medicare payment). In order to continue to make payment under the PFS for the

testing services previously described under CPT code 96110, for CY 2012 we created HCPCS code G0451 (Developmental testing, with interpretation and report, per standardized instrument form). In order to calculate resource-based RVUs for HCPCS code G0451, we crosswalked the utilization, direct practice expense inputs, and malpractice risk factor from CPT code 96110 to HCPCS code G0451. We note that CPT code 96110 did not have physician work RVUs, therefore no physician work RVUs have been assigned to HCPCS code G0451. The CY 2012 interim final RVUs assigned to HCPCS code G0451 are included in Addenda B to this final rule with comment period.''

■ b. First full paragraph, line 1, the reference number ''(24)'' is corrected to read ''(25)''.

■ 9. Page 73265,

■ a. First column, second partial paragraph, line 1, the reference ''III.B.1.b.'' is corrected to read ''III.C.1.a.''.

■ b. Second column,

■ (1) First partial paragraph, line 10, the reference ''III.B.1.b.'' is corrected to read ''III.C.1.a.''.

■ (2) Second partial paragraph, line 6, the reference, ''III.B.1.b.'' is corrected to read ''III.C.1.a.''.

■ 10. On page 73306,

■ a. Second column, first partial paragraph, lines 9 through 16, the sentence ''The remaining 22 comments provided feedback about the impact of the annual wellness visit as a whole requested modifications or additional elements to the annual wellness visit, and coverage for additional preventive serves and vaccines.'' is corrected to read ''The remaining 22 comments provided feedback about the impact of the annual wellness visit as a whole, requested modifications to, or additional elements added to the annual wellness visit, and coverage for additional preventive services and vaccines.''

■ b. Third column, first partial paragraph, line 2, the word ''supports'' is corrected to read ''supported''.

■ 11. On page 73308, first column,

■ a. First full paragraph, lines 6 through 20, the sentence ''If positive tobacco use is identified during the annual wellness visit, additional questions can be asked by the health professional followed by the process of motivational interviewing (the health professional offers personalized information to the patient) and shared decision-making (the health professional work with the patient to discover what is important to the patient and the patient's motivation to change behavior) in the development of the personalized prevention plan during the annual wellness visit encounter.'' is corrected to read ''If positive tobacco use is identified during the annual wellness visit, additional questions can be asked by the health professional followed by the process of motivational interviewing and shared decision-making (the health professional offers personalized information to the patient and works with the patient to discover what is important to the patient and his or her motivation to change behavior) in the development of the personalized prevention plan during the annual wellness visit encounter.''

■ b. Second full paragraph, lines 8 through 15, the sentence ''We note that Medicare covers counseling to prevent tobacco use as an ''additional preventive service'' under Medicare Part B (additional information available in Pub. 100–3, Medicare National Coverage Determinations Manual, Chapter 1, Section 210.41).'' is corrected to read ''We note that Medicare covers tobacco use cessation counseling as an ''additional preventive service'' under Medicare Part B (additional information available in Pub. 100–03, Medicare National Coverage Determinations Manual, Chapter 1, Section 210.4.1).''

■ c. Last partial paragraph, line 3 through the second column, line 6, the sentence ''One commenter agreed with the provisions of the proposed rule that did not include cognitive assessment as part of the HRA, however, the commenter believed that general questions about memory should be included in the HRA.'' is corrected to read ''One commenter agreed with the provisions of the proposed rule, which did not include cognitive assessment as part of the HRA. However, the commenter believed that general questions about memory should be included in the HRA.''

■ 12. On page 73309, third column, second full paragraph, line 1, the phrase ''Comment: A few comments'' is corrected to read ''Comment: A few commenters''.

■ 13. On page 73310, first column, second full paragraph, lines 5 and 6, the phrase ''but update the HRA'' is corrected to read ''but the patient should update the HRA.''

■ 14. On page 73311, third column, first partial paragraph, line 1, the phrase ''working on his or her wellness team are needed on a particular day'' is corrected to read ''working on the physician's wellness team are needed on a particular day''.

■ 15. On page 73313, Table 39: Final RVUs for AWV Services, line 2 (CPT code G0438), column 4, the figure ''4.99'' is corrected to read ''4.89''.

■ 16. On page 73333, second line immediately following Table 42, the reference to ''Table M 9'' is corrected to read ''Table 48''.

■ 17. On page 73334, third column, third full paragraph, line 9, the phrase ''proposal to only count measures'' is corrected to read ''proposal to not count measures''.

■ 18. On page 73336, third column, last paragraph, line 17, the reference ''Table 42'' is corrected to read ''Table 44''.

■ 19. On page 73337, lower third of the page, third column,

■ a. Line 2, the reference ''(76 FR 32859)'' is corrected to read ''(76 FR 42859)''.

■ b. Line 8, the phrase ''30 NQF-endorsed '' is corrected to read ''44 NQF-endorsed''.

■ 20. On page 73339, lower half of the page, second column, first full paragraph,

■ a. Lines 20 and 21, the date, ''January 1, 2011'' is corrected to read ''January 1, 2012''.

■ b. Line 22, the date ''October 31, 2011'' is corrected to read ''October 31, 2012''.

■ 21. On page 73343, second column, first full paragraph,

■ a. Line 19, the reference to ''Tables 52 through 55'' is corrected to read ''Tables 29 through 56''.

■ b. Lines 20 and 21, the phrase ''2011 Physician Quality Reporting System'' is corrected to read as ''2012 Physician Quality Reporting System''.

■ 22. On page 73345, top of the page (before the table), first column, last line, the reference ''Tables 48 and 49'' is corrected to read ''Tables 47 and 48''.

■ 23. On page 73348, first column, first response, line 9, the reference ''Tables 48 and 49'' is corrected to read ''Tables 47 and 48''.

■ 24. On page 73362, in Table 47, last line, the entry for the measure ''Ischemic Vascular Disease (IVD): Complete Lipid Profile and LDL Control <100'' is corrected by deleting the entry.

■ 25. On page 73365, in Table 48, first column (Physician Quality Reporting System Number),

■ a. Row 11, the figures ''114 & 115'' are corrected to read ''TBD''.

■ b. Row 25, the figure ''240'' is corrected to read ''TBD''.

■ 26. On page 73368, third column, second full paragraph, lines 11 and 12, the phrase ''CAP, and Asthma'' is corrected to read ''CAP, COPD, and Asthma''.

■ 27. On page 73373, at the end of Table 56: Measures Included in the 2012 CAD Measures Group, the table is corrected by adding a footnote to read as follows: ''The measures contained within this measures group are also available for reporting as individual measures.''

■ 28. On page 73383, first column, second full paragraph, line 2, the phrase ''30 of the 40 measures'' is corrected to read ''29 of the 41 measures''.
■ 29. On page 73388, second column, fourth full paragraph, line 7, the phrase ''than the end of the first quarter of 2012.'' is corrected to read ''than the end of the first quarter of 2013.''
■ 30. On page 73415, third column, second full paragraph, line 4, the parenthetical phrase ''(report G-code G9642).'' is corrected to read ''(report G-Code G8642).''
■ 31. Page 73457, Table 85: Impact of Final Rule with Comment Period and Estimated Physician Update on CY 2012 Payment for Selected Procedures,
■ a. Line 10 (CPT code 43239),
■ (1) Column 10, ''351.95'' is corrected to read ''351.61''.
■ (2) Column 12, ''255.10'' is corrected to read ''254.85''.
■ b. Line 11(CPT code 66821),
■ (1) Column 10, ''326.42'' is corrected to read ''326.08''.
■ (2) Column 12, ''236.60'' is corrected to read ''236.35''.
■ c. Line 13, (CPT code 67210),
■ (1) Column 10, ''524.18'' is corrected to read ''523.84''.
■ (2) Column 12, ''379.94'' is corrected to read ''379.69''.
■ 32. Page 73469, lower third of the page, second full paragraph, line 20, the title ''Addendum C—[Reserved]'' is corrected to read ''Addendum C.—Codes With Proposed RVUs Subject to Comment for CY 2012''.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: December 29, 2011.

Jennifer M. Cannistra,

Executive Secretary to the Department, Department of Health, Human Services.

[FR Doc. 2011–33757 Filed 12–30–11; 4:15 pm]

BILLING CODE 4120–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

46 CFR Parts 1, 10, 11, 12, 13, 14, and 15

[Docket No. USCG–2004–17914]

Implementation of the 2010 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978—Hours of Rest and Security-Related Training

AGENCY: Coast Guard, DHS.

ACTION: Notice of policy.

SUMMARY: The Coast Guard announces steps for implementing the 2010 amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended, (STCW) concerning hours of rest and security-related training requirements. Because the final rule implementing the 2010 amendments to the STCW will not be published before the 1 January 2012 entry into force date, there is a need to provide guidance on implementation of the amendments related to these requirements, which will impact U.S. vessels and seafarers beginning on 1 January 2012. This notice applies to all vessels subject to STCW under current regulations.

DATES: This policy is effective January 1, 2012.

ADDRESSES: This notice is available in the docket and can be viewed by going to *http://www.regulations.gov*, inserting USCG–2004–17914 in the ''Keyword'' box, and then clicking ''Search.'' You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey, Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Mrs. Mayte Medina, Office of Vessel Activities (CG–522), (202) 372–1406, email *Mayte.Medina2@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 as amended, (STCW) sets forth minimum training and hours of rest requirements for merchant mariners. In 2007, the IMO embarked on a comprehensive review of the entire STCW Convention and STCW Code, which sets forth provisions for implementing the STCW Convention. The Parties adopted these amendments on June 25, 2010 at the STCW Diplomatic Conference in Manila, Philippines. The amendments are scheduled to enter into force for all ratifying countries on January 1, 2012. The 2010 amendments include security training and certification requirements for vessel personnel working on board vessels; and changes to the hours of rest requirements applicable to personnel working on board U.S. vessels.

The Convention is not self-implementing; therefore, the United States, as a signatory to the STCW Convention, must initiate regulatory changes to ensure full implementation of the amendments to the STCW Convention and STCW Code. The United States implements these provisions under the Convention and under the authority of United States domestic laws at United States Code titles 5, 14, 33, and 46.

The Coast Guard published a Supplemental Notice of Proposed Rulemaking (SNPRM) on August 1, 2011 (76 FR 45908), proposing changes to implement the STCW Convention and Code, to address the comments received from the public in response to the Notice of Proposed Rulemaking (NPRM) published on November 17, 2009 (74 FR 59354), and to incorporate the 2010 amendments to the STCW Convention that will come into force on January 1, 2012. The public comment period for the SNPRM ended on September 30, 2011. The Coast Guard will be publishing a final rule (FR) to implement amendments to the STCW, including the 2010 amendments, and ensure that the U.S. is meeting its obligations under the Convention. The comments received will be discussed in the final rule.

Discussion

This notice applies to all vessels subject to STCW under current regulations. This includes all seagoing vessels, as defined in 46 CFR 15.1101, meaning self-propelled vessels engaged in commercial service that operate beyond the Boundary Line established by 46 CFR part 7, except those vessels that have been determined to be otherwise exempt from, or not subject to further obligation of, STCW under 46 CFR 15.103(e) and (f).

Although full implementation of the hours of rest and security training requirements necessitate regulatory changes, the Coast Guard is issuing this notice to implement mechanisms to lessen the port state control impact on United States vessels while operating abroad, and while the Coast Guard publishes the final rule.

Hours of Rest

The 2010 amendments to the STCW Convention and Code amended the rest hours requirements as follows: (1) Expanded the application for hours of work and rest periods for mariners to include all personnel with designated safety, prevention of pollution, and

security duties onboard any vessel; (2) changed the weekly rest hours requirements from 70 hours to 77 hours; and (3) required the recording of hours of rest.

Full implementation of these amendments will require regulatory changes to 46 CFR 15.1111. The Coast Guard will not be enforcing these STCW requirements until the regulations are published. Vessels operating in foreign ports are encouraged to implement these requirements to avoid any potential port state control detentions. Hours of rest for each crewmember can be documented in the vessel logbook.

Security Training Requirements

The STCW Convention requires that mariners who commenced service after 1 January 2012 meet the training requirements for vessel personnel with designated security duties and security awareness, as appropriate. In addition, the STCW Convention also provides transitional provisions for mariners who started service prior to 1 January 2012. Recognizing that the implementation date is fast approaching, and that there may be practical difficulties for all seafarers with security related requirements to obtain necessary certifications and/or the necessary endorsements required in accordance with regulation VI/6 of the 2010 Manila Amendments, the IMO issued Circular STCW.7/Circ.17. The Circular provides advice for port State control officers on transitional arrangements leading up to full implementation of the 2010 Manila Amendments on 1 January 2017. The Circular also recommends that Administrations inform their port State control authorities that, until 1 January 2014, it would be sufficient to accept compliance with section 13 of the International Ship and Port Facility Security (ISPS) Code, even if a seafarer's documentation with regard to the security-related training in regulation VI/6 is not in accordance with the 2010 Manila Amendments.

Taking the information in the Circular into account, the Coast Guard has determined that the requirements in 33 CFR 104.220 (vessel personnel with security duties) and 104.225 (security training for all other personnel) meet the requirements of Section 13 of the ISPS Code. Therefore, the Coast Guard will continue to enforce 33 CFR 104.220 and 104.225, and the requirements in Section 13 of the ISPS Code.

Vessels operating in foreign ports should ensure that all personnel, except for the vessel security officer (VSOs), working on board the vessel are in possession of the appropriate course completion certificate or a company letter as proof of meeting the requirements in 33 CFR 104.220 or 104.225, and Section 13 of the ISPS Code. VSOs must hold the appropriate endorsement on their credential.

This notice is issued under authority of 5 U.S.C. 552(a), 46 U.S.C. 8304, 33 CFR part 104, 46 CFR parts 10, 11, 12, and 15, and 33 CFR 1.05–1.

Dated: December 28, 2011.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2011–33818 Filed 12–30–11; 4:15 pm]

BILLING CODE 9110–04–P

Proposed Rules

Federal Register
Vol. 77, No. 2
Wednesday, January 4, 2012

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.

FEDERAL TRADE COMMISSION

16 CFR Part 303

Rules and Regulations Under the Textile Fiber Products Identification Act

AGENCY: Federal Trade Commission (''FTC'' or ''Commission'').

ACTION: Extension of the deadline for filing public comments.

SUMMARY: The Commission grants a thirty (30) day extension until February 2, 2012 for filing public comments in response to the Commission's Advance Notice of Proposed Rulemaking and request for public comment published on November 7, 2011 (''ANPR'').

DATES: Comments must be received on or before February 2, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Textile Rules, 16 CFR Part 303, Project No. P948404'' on your comment, and file your comment online at *https://ftcpublic.commentworks.com/ftc/textilerulesanpr* by following the instructions on the web-based form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex G), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Attorney, (202) 326–2098, or Edwin Rodriguez, Attorney, (202) 326–3147, Division of Enforcement, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 7, 2011, the Commission published its ANPR (76 FR 68690) seeking comment on the overall costs, benefits, necessity, and regulatory and economic impact of the Commission's Rules and Regulations under the Textile Fiber Products Identification Act (''Textile Rules'').[1] The ANPR designated January 3, 2012, as the deadline for filing public comments.

On December 20, 2011, the American Apparel and Footwear Association, the American Fiber Manufacturers Association, Inc., the Canadian Apparel Federation, the National Retail Federation, the Retail Industry Leaders Association, and the U.S. Association of Importers of Textiles and Apparel requested that the Commission extend the comment period for thirty (30) days until February 2, 2012. These six trade associations represent apparel retailers, consumer brand companies, importers, and manufacturers that have a substantial interest in the operation and enforcement of the Textile Rules' labeling provisions. They state that, to provide useful comments to the Commission, they need sufficient time to consult with and to solicit information from their member companies. They explain that the relevant executives have been largely unavailable for consultation during the November–December holiday season because it is the busiest time of year for their companies. Therefore, they request a thirty (30) day extension of the current deadline to February 2, 2012.

The input of these trade associations would likely assist the Commission in evaluating the Textile Rules' effectiveness and determining whether and how to amend the Rules. Moreover, the requested short extension of the comment period will not substantially delay the rulemaking process. The Commission recognizes that its ANPR requests comments on complex issues and believes that extending the comment period to facilitate a more complete record outweighs any harm that might result from a thirty (30) day delay. Accordingly, the Commission is extending the comment period for thirty (30) days until February 2, 2012.

By direction of the Commission.

Richard C. Donohue,

Acting Secretary.

[FR Doc. 2011–33695 Filed 1–3–12; 8:45 am]

BILLING CODE 6750–01–P

[1] The Commission issued the Textile Rules to implement the Textile Fiber Products Identification Act, 15 U.S.C. 70–70k.

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AB03

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act (''Appliance Labeling Rule'')

AGENCY: Federal Trade Commission.

ACTION: Extension of comment period.

SUMMARY: In a November 28, 2011 **Federal Register** Notice, the Federal Trade Commission (''Commission'') published an Advance Notice of Proposed Rulemaking (''ANPR'') on disclosure requirements for heating and cooling equipment. In response to a request, the Commission is extending the comment period from January 10, 2012 to February 6, 2012.

DATES: Written comments must be received on or before February 6, 2012.

ADDRESSES: Interested parties may file a comment online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Regional Labeling for Heating and Cooling Equipment (16 CFR Part 305) (Project No. P114202)'' on your comment, and file your comment online at *https://public.commentworks.com/ftc/regional-disclosuresanpr,* by following the instructions on the webbased form. If you prefer to file your comment on paper, mail or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Room H–113 (Annex H), 600 Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Hampton Newsome, Attorney, (202) 326–2889, Division of Enforcement, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Commission is extending the comment period for its ANPR on heating and cooling equipment disclosures to February 6, 2012. The Commission's November 28, 2011 ANPR (76 FR 72872) solicited comments on possible disclosures for heating and cooling equipment to help industry members

and consumers determine whether equipment meets applicable new Department of Energy (''DOE'') efficiency standards for specific regions. The ANPR's comment period ends on January 10, 2012. Shortly after publication of the ANPR, DOE issued a related Notice of Data Availability [1] seeking comments on an enforcement plan for the new regional standards. The FTC disclosures and the DOE plan involve overlapping issues. DOE's comment period ends February 6, 2012.

At a joint December 16, 2011 public meeting about the FTC disclosures and the DOE plan, the American Council for an Energy Efficient Economy requested that the FTC extend its comment deadline to match DOE's February 6, 2012 date. The Commission is extending the deadline as requested. The extension will ensure consistent timing in the FTC and DOE comment periods and will provide additional time for comment preparation.

By direction of the Commission.

Richard C. Donohue

Acting Secretary.

[FR Doc. 2011–33696 Filed 1–3–12; 8:45 am]

BILLING CODE 6750–01–P

[1] 76 FR 76328 (Dec. 7, 2011).

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2011–0963; FRL–9615–6]

Approval and Promulgation of Air Quality Implementation Plans; Colorado; Procedural Rules; Conflicts of Interest

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve Section 1.11 of Colorado's procedural rules as adopted by the Air Quality Control Commission (Commission) on January 16, 1998 and submitted to EPA as a State Implementation Plan (SIP) revision on November 5, 1999. Section 1.11 specifies certain requirements regarding the composition of the Commission and disclosure by its members of potential conflicts of interest. We are also reproposing approval of a portion of Colorado's January 7, 2008 submittal to meet the ''infrastructure'' requirements of section 110(a)(2) of the Clean Air Act (CAA) for the 1997 8-hour ozone National Ambient Air Quality Standards (NAAQS), specifically the portion intended to address the requirements of section 110(a)(2)(E)(ii) of the CAA. We previously proposed approval, 76 FR 28707, of this portion as part of our action on the January 7, 2008 submittal. This action is being taken under section 110 of the CAA.

DATES: Comments must be received on or before February 3, 2012.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–OAR–2011–0963, by one of the following methods:

- *http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: komp.mark@epa.gov.*
- *Fax:* (303) 312–6064 (please alert the individual listed in the **FOR FURTHER INFORMATION CONTACT** if you are faxing comments).
- *Mail:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129.
- *Hand Delivery:* Director, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Such deliveries are only accepted Monday through Friday, 8 a.m. to 4:30 p.m., excluding Federal holidays. Special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R08–OAR–2011–0963. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA, without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.* For additional instructions on submitting comments, go to Section I. General Information of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8 a.m. to 4 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mark Komp, Air Program, Environmental Protection Agency (EPA), Region 8, Mailcode 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6022, *komp.mark@epa.gov.*

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Purpose of This Action
II. Background of State's Submittals
III. EPA's Analysis of the State's Submittals
IV. Consideration of Section 110(l) of the CAA
V. Proposed Action
VI. Statutory and Executive Order Reviews

Definitions

For the purpose of this document, we are giving meaning to certain words or initials as follows:

(i) The words or initials *Act* or *CAA* mean or refer to the Clean Air Act, unless the context indicates otherwise.

(ii) The words *EPA, we, us* or *our* mean or refer to the United States Environmental Protection Agency.

(iii) The initials *SIP* mean or refer to State Implementation Plan.

(iv) The words *State* or Colorado mean the State of Colorado, unless the context indicates otherwise.

(v) The word *Commission* means the Colorado Air Quality Control Commission.

I. Purpose of This Action

EPA is proposing to fully approve Section 1.11 of Colorado's procedural rules, adopted by the State of Colorado on January 16, 1998 and submitted to EPA on November 5, 1999. The approval into Colorado's SIP of Section 1.11 will make it federally enforceable. Section 1.11 of Colorado's procedural rules mandates that the Commission have at least a majority of members that represent the public interest and do not derive a significant portion of their income from persons subject to permits or enforcement orders under Colorado's air quality regulations or the CAA. The proposed approval will also federally mandate that Commission members disclose any potential conflicts of interest that arise during their terms of membership to the other commissioners in a public meeting of the Commission.

EPA is also reproposing approval of a portion of Colorado's January 7, 2008 submittal to meet the ''infrastructure'' requirements of Section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. On May 18, 2011, EPA proposed approval of Colorado's submittal with respect to (among other infrastructure requirements) the requirements of Section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS. However, in a final action on July 22, 2011, 76 FR 43906, EPA did not complete approval of the submittal with respect to Section 110(a)(2)(E)(ii). In this action, EPA reproposes, for reasons stated below, to approve the January 7, 2008 submittal with respect to the requirements of Section 110(a)(2)(E)(ii) for the 1997 ozone NAAQS.

II. Background of State's Submittals

Colorado adopted revisions to its procedural rules on January 16, 1998, and submitted part of the revised procedural rules to EPA on November 5, 1999.[1] Colorado's procedural rules govern all procedures and hearings before the Commission and certain procedures and hearings before the Air Pollution Control Division within the Colorado Department of Public Health and Environment. The role of the Commission is to adopt an air quality management program that fosters the health, welfare, convenience, and comfort of the inhabitants of the State of Colorado and implements this through its regulatory program. The Commission also hears appeals from the regulated community and the general public regarding the actions of the Air Pollution Control Division, including appeals of Division compliance orders and noncompliance penalty determinations, and challenges of Division denials of proposed permits or of permit terms and conditions, for construction permits and operating permits. The proposed revisions to the Commission's procedural rules, last revised in 1984, were intended to bring the Commission current with all applicable procedural requirements for their official actions. In particular, Section 1.11 was intended to address the requirements of section 128 of the CAA.

Separately, on January 7, 2008, Colorado provided a submittal to meet the requirements of Section 110(a)(2) of the CAA for the 1997 8-hour ozone NAAQS. Under Section 110(a)(1) of the CAA, within three years of EPA's promulgation of a new or revised standard, states are required to make a submittal, known as an ''infrastructure SIP,'' to meet the requirements of sections 110(a)(1) and (a)(2). Section 110(a)(1) provides the procedural and timing requirements for SIP submissions after a new or revised NAAQS is promulgated. Section 110(a)(2) lists specific elements the SIP must contain or satisfy. These infrastructure elements include requirements, such as modeling, monitoring, and emissions inventories that are designed to assure attainment and maintenance of the NAAQS.

III. EPA Analysis of State's Submittals

In its November 5, 1999, submittal, Colorado stated that Section 1.11 is the only provision in the Commission's procedural rules that the State intends to be part of the SIP and was submitted to EPA for approval. Colorado intended that all other requirements found in the procedural rules in all sections except Section 1.11 are not to be acted on as part of the SIP. As noted in the statement of basis for the Commission's adoption of section 1.11, the section is intended to satisfy the requirements of section 128 of the CAA.

Section 128 of the CAA requires SIPs to contain provisions that: (1) Any board or body which approves permits or enforcement orders under the CAA have at least a majority of its members represent the public interest and not derive any significant portion of their income from persons subject to permits or enforcement orders under the CAA; and (2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

Section 1.11 of Colorado's procedural rules provides that the Commission shall have at least a majority of members who represent the public interest and who do not derive a significant portion of their income from persons subject to permits or enforcement orders under Colorado's air quality regulations or under the CAA. Section 1.11 also provides that members of the Commission shall disclose any potential conflicts of interest that arise during their terms of membership to the other Commissioners in a public meeting of the Commission. The procedural rules elsewhere require that public meetings of the Commission be recorded and that the recordings are made available to the public at cost. These provisions meet the requirements of section 128 as stated above. EPA therefore proposes to approve section 1.11 of Colorado's procedural rules for inclusion into the SIP.

On May 18, 2011, EPA proposed approval of Colorado's infrastructure SIP submittal with respect to (among other infrastructure requirements) the requirements of Section 110(a)(2)(E) for the 1997 8-hour ozone NAAQS. EPA received adverse comments on, among other things, Colorado's implementation of sections 128 and 110(a)(2)(E)(ii). As a result, in a final action on July 22, 2011, 76 FR 43906, EPA deferred action on the submittal with respect to Section 110(a)(2)(E)(ii). Section 110(a)(2)(E)(ii) requires SIPs to comply with the requirements regarding state boards under Section 128 of the CAA. As discussed above, approval of Section 1.11 of the State's procedural rules will satisfy the requirements under section 128 regarding state boards, and will therefore satisfy the requirements of Section 110(a)(2)(E)(ii), as well. EPA therefore proposes to approve Colorado's January 7, 2008, submittal with respect to the requirements of section 110(a)(2)(E)(ii), which will complete EPA's action on all portions of the State's submittal to meet infrastructure requirements for the 1997 8-hour ozone NAAQS.

IV. Consideration of Section 110(l) of the CAA

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning

[1] In a notice of proposed action dated January 25, 2011, EPA erroneously stated that Colorado had not submitted this portion of Colorado's procedural rules for approval into the SIP (76 FR 4268). Due to this error, EPA disapproved the deletion of a provision regarding disclosure of potential conflicts of interest from Colorado's Common Provisions. EPA will correct the erroneous disapproval in a subsequent action, if EPA finalizes the approval of section 1.11 of Colorado's procedural rules for inclusion into the SIP.

attainment and reasonable further progress toward attainment of the NAAQS or any other applicable requirement of the Act. The Colorado SIP revisions that are proposed for approval in this action do not interfere with attainment of the NAAQS or any other applicable requirement of the Act. The revisions do not make substantive changes that relax the stringency of the Colorado SIP; instead, the submittal of Section 1.11 of Colorado's procedural rule meets a requirement of the CAA. Therefore, the revisions proposed for approval satisfy section 110(l) requirements.

V. Proposed Action

We are proposing for approval Section 1.11 of Colorado's procedural rule as adopted by the Commission on January 16, 1998, and submitted to EPA on November 5, 1999. We are also reproposing approval of a portion of Colorado's January 7, 2008, submittal to meet the ''infrastructure'' requirements of section 110(a)(2) for the 1997 8-hour ozone NAAQS, specifically the portion intended to address the requirements of section 110(a)(2)(E)(ii) of the CAA.

VI. Statutory and Executive Order Reviews

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

- Is not a ''significant regulatory action'' subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.);*
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 23, 2011.

James B. Martin,

Regional Administrator, Region 8.

[FR Doc. 2011–33760 Filed 1–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2011–0354; FRL–9614–5]

RIN 2060–AQ98

Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export

AGENCY: Environmental Protection Agency [EPA].

ACTION: Proposed rule.

SUMMARY: EPA is proposing to adjust the allowance system controlling U.S. consumption and production of hydrochlorofluorocarbons (HCFCs) as a result of a recent court decision vacating a portion of the rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export; Final Rule.'' EPA interprets the court's vacatur as applying to the part of the rule that establishes the company-by-company baselines and calendar-year allowances for HCFC–22 and HCFC–142b. Following the August 5, 2011 interim final rule allocating allowances for 2011, this action proposes to relieve the regulatory ban on production and consumption of these two chemicals following the court's vacatur by establishing company-by-company HCFC–22 and HCFC–142b baselines and allocating production and consumption allowances for 2012–2014.

DATES: Written comments on this proposed rule must be received by the EPA Docket on or before February 3, 2012, unless a public hearing is requested. Any party requesting a public hearing must notify the contact listed below under **FOR FURTHER INFORMATION CONTACT** by 5 p.m. Eastern Standard Time on January 11, 2012. If a public hearing is requested, the hearing would be held on January 19, 2012 and commenters will have until February 21, 2012 to submit comments before the close of the comment period. If a hearing is held, it will take place at EPA headquarters in Washington, DC. EPA will post a notice on our Web site, *http://www.epa.gov/ozone/strathome.html,* announcing further information should a hearing take place.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2011–0354, by one of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: a-and-r-docket@epa.gov.*
- *Mail:* Docket # EPA–HQ–OAR–2011–0354, Air and Radiation Docket and Information Center, U.S. Environmental Protection Agency, Mail code: 6102T, 1200 Pennsylvania Ave. NW., Washington, DC 20460.
- *Hand Delivery:* Docket #EPA–HQ–OAR–2011–0354 Air and Radiation Docket at EPA West, 1301 Constitution Avenue NW., Room B108, Mail Code 6102T, Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OAR–2011–0354. EPA's policy is that all comments received will be included in the public docket without change and may be

made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at *www.epa.gov/epahome/dockets.htm.*

FOR FURTHER INFORMATION CONTACT:

Luke H. Hall-Jordan by telephone at (202) 343–9591, or by email at *hall-jordan.luke@epa.gov,* or by mail at U.S. Environmental Protection Agency, Stratospheric Protection Division, Stratospheric Program Implementation Branch (6205J), 1200 Pennsylvania Avenue NW., Washington, DC 20460. You may also visit the Ozone Protection Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/strathome.html* for further information about EPA's Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

Acronyms and Abbreviations. The following acronyms and abbreviations are used in this document.

CAA—Clean Air Act
CAAA—Clean Air Act Amendments of 1990
CFC—Chlorofluorocarbon
CFR—Code of Federal Regulations
EPA—Environmental Protection Agency
FR—Federal Register
HCFC—Hydrochlorofluorocarbon
HVAC—Heating, Ventilating, and Air Conditioning
Montreal Protocol—*Montreal Protocol on Substances that Deplete the Ozone Layer*
MOP—Meeting of the Parties
MT—Metric Ton
ODP—Ozone Depletion Potential
ODS—Ozone-Depleting Substances
Party—States and regional economic integration organizations that have consented to be bound by the *Montreal Protocol on Substances that Deplete the Ozone Layer*

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

I. General Information
A. Does this action apply to me?
B. What should I consider as I prepare my comments for EPA?
1. Confidential Business Information (CBI)
2. Tips for Preparing Your Comments
II. Background
A. How does the Montreal Protocol phase out HCFCs?
B. How does the Clean Air Act phase out HCFCs?
C. What sections of the Clean Air Act apply to this rulemaking?
D. How does this action relate to the recent court decision?
E. Comments Relevant to Recovery and Reclamation Issues in This Rulemaking Submitted in Response to the 2011 Interim Final Rule Allocating HCFC Allowances
III. How does EPA propose to allocate HCFC–22 and HCFC–142b allowances for 2012–2014?
A. What baselines does EPA propose to use for HCFC–22 and HCFC–142b allowances?
B. What factors did EPA consider in proposing allocation amounts for HCFC–22 and HCFC–142b?
1. How important is HCFC–22 relative to HCFC–142b for servicing existing equipment?
2. Can servicing needs be met with virgin and recovered material?
3. How would the allocation decline?
4. How will EPA address the court's decision with regard to 2010 HCFC allowances?
C. How Much HCFC–22 and HCFC–142b would be allocated in 2012–2014?
1. How does EPA propose to allocate HCFC–22 consumption allowances for 2012–2014?
2. How does EPA Propose to allocate HCFC–22 production allowances for 2012–2014?
3. How does EPA propose to allocate HCFC–142b consumption and production allowances for 2012–2014?
4. How would the aggregate for HCFC–22 and HCFC–142b translate entity-by-entity?
D. Are HCFC–141b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb allowances affected by this rulemaking?
E. How will EPA allocate other HCFCs?
IV. How does EPA propose to change the regulations governing transfers of allowances of Class II Controlled Substances?
A. How does EPA propose to change the regulations governing permanent transfers of Class II Allowances?
B. How does EPA propose to change the regulations governing transfers of Article 5 HCFC Allowances?
V. Statutory and Executive Order Reviews
A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review
B. Paperwork Reduction Act
C. Regulatory Flexibility Act (RFA)
D. Unfunded Mandates Reform Act
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks
H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use
I. National Technology Transfer and Advancement Act
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

I. General Information

A. Does this action apply to me?

This rule will affect the following categories:

—Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gases manufacturers and reclaimers;
—Other Chemical and Allied Products Merchant Wholesalers (NAICS code 422690), including chemical gases and compressed gases merchant wholesalers;
—Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing entities (NAICS code 333415), including air-conditioning equipment and commercial and industrial refrigeration equipment manufacturers;
—Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS code 423730), including air-conditioning (condensing unit, compressors) merchant wholesalers;
—Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers (NAICS code 423620), including air-conditioning (room units) merchant wholesalers; and
—Plumbing, Heating, and Air-Conditioning Contractors (NAICS code 238220), including Central air-conditioning system and commercial refrigeration installation; HVAC contractors.

This list is not intended to be exhaustive, but rather provides a guide

for readers regarding entities likely to be regulated by this action. This table lists the types of entities that could potentially be regulated by this action. Other types of entities not listed in this table could also be affected. To determine whether your facility, company, business organization, or other entity is regulated by this action, you should carefully examine these regulations. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. What should I consider as I prepare my comments for EPA?

1. Confidential Business Information (CBI)

Do not submit confidential business information (CBI) to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR 2.2.

2. Tips for Preparing Your Comments

When submitting comments, remember to do the following:

- Identify the rulemaking by docket number and other identifying information (subject heading, **Federal Register** date and page number).
- Follow directions. The Agency may ask you to respond to specific questions or organize comments by referencing a Code of Federal Regulations (CFR) part or section number.
- Explain why you agree or disagree with the proposal; suggest alternatives and substitute language for your requested changes.
- Describe any assumptions and provide any technical information and/or data that you used in preparing your comments.
- If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.
- Provide specific examples to illustrate your concerns, and suggest alternatives.
- Explain your views as clearly as possible, avoiding the use of profanity or personal threats.
- Make sure to submit your comments by the comment period deadline identified.

II. Background

EPA is undertaking this rulemaking as a result of the decision issued by the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Arkema* v. *EPA* (618 F.3d 1, DC Cir. 2010) regarding the December 15, 2009, final rule titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,'' published at 74 FR 66413 (2009 Final Rule). Certain allowance holders affected by the 2009 Final Rule filed petitions for judicial review of the rule under section 307(b) of the Clean Air Act. Among other arguments, the petitioners contended that the rule was impermissibly retroactive because in setting the baselines for the new regulatory period, EPA did not take into account certain inter-pollutant baseline transfers that petitioners had performed during the prior regulatory period.

The Court issued a decision on August 27, 2010, agreeing with petitioners that ''the [2009] Final Rule unacceptably alters transactions the EPA approved under the 2003 Rule,'' (*Arkema* v. *EPA,* 618 F.3d at 3). The Court vacated the rule in part, ''insofar as it operates retroactively,'' and remanded to EPA ''for prompt resolution,'' (618 F.3d at 10). The Court withheld the mandate for the decision pending the disposition of any petition for rehearing. EPA's petition for rehearing was denied on January 21, 2011. The mandate issued on February 4, 2011. More detail is provided on the case and EPA's interpretation of the Court's decision in section II.D. of this preamble.

EPA addressed the Court's partial vacatur as it relates to 2011 in an August 5, 2011, interim final rule, ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,'' (2011 Interim Final Rule). This proposed rule is a follow-on to that action, and proposes a path forward for the remainder of the regulatory period ending on December 31, 2014.

A. How does the Montreal Protocol phase out HCFCs?

The *Montreal Protocol on Substances that Deplete the Ozone Layer* is the international agreement aimed at reducing and eventually eliminating the production and consumption of stratospheric ozone-depleting substances (ODS). The U.S. was one of the original signatories to the 1987 Montreal Protocol and the U.S. ratified the Protocol on April 12, 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the U.S. could satisfy its obligations under the Montreal Protocol. Title VI includes restrictions on production, consumption, and use of ODS that are subject to acceleration if ''the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use * * * more rapidly than the applicable schedule'' prescribed by the statute (CAA § 606). Both the Montreal Protocol and the Clean Air Act (CAA) define consumption as production plus imports minus exports.

In 1990, as part of the London Amendment to the Montreal Protocol, the Parties identified HCFCs as ''transitional substances'' to serve as temporary, lower ozone depletion potential (ODP) substitutes for CFCs and other ODS. EPA similarly viewed HCFCs as ''important interim substitutes that will allow for the earliest possible phaseout of CFCs and other Class I substances''[1] (58 FR 65026). In 1992, through the Copenhagen Amendment to the Montreal Protocol, the Parties created a detailed phaseout schedule for HCFCs beginning with a cap on consumption for developed countries not operating under Article 5 of the Montreal Protocol (non-Article 5 Parties), a schedule to which the U.S. adheres. The consumption cap for each non-Article 5 Party was set at 3.1 percent (later tightened to 2.8 percent) of a Party's CFC consumption in 1989, plus a Party's consumption of HCFCs in 1989 (weighted on an ODP basis). Based on this formula, the HCFC consumption cap for the U.S. was 15,240 ODP-weighted metric tons (MT), effective January 1, 1996. This became the U.S. consumption baseline for HCFCs.

The 1992 Copenhagen Amendment created a schedule with graduated reductions and the eventual phaseout of HCFC consumption (Copenhagen, 23–25 November, 1992, Decision IV/4). Prior to a later adjustment in 2007, the schedule initially called for a 35 percent reduction of the consumption cap in 2004, followed by a 65 percent

[1] Class I refers to the controlled substances listed in appendix A to 40 CFR part 82 subpart A. Class II refers to the controlled substances listed in appendix B to 40 CFR part 82 subpart A.

reduction in 2010, a 90 percent reduction in 2015, a 99.5 percent reduction in 2020 (restricting the remaining 0.5 percent of baseline to the servicing of existing refrigeration and air-conditioning equipment), with a total phaseout in 2030.

The Copenhagen Amendment did not cap HCFC production. In 1999, the Parties created a cap on production for Non-Article 5 Parties through an amendment to the Montreal Protocol agreed by the Eleventh Meeting of the Parties (Beijing, 29 November—3 December 1999, Decision XI/5). The cap on production was set at the average of: (a) 1989 HCFC production plus 2.8 percent of 1989 CFC production, and (b) 1989 HCFC consumption plus 2.8 percent of 1989 CFC consumption. Based on this formula, the HCFC production cap for the U.S. was 15,537 ODP-weighted MT, effective January 1, 2004. This became the U.S. production baseline for HCFCs.

To further protect human health and the environment, the Parties to the Montreal Protocol adjusted the Montreal Protocol's phaseout schedule for HCFCs at the 19th Meeting of the Parties in September 2007. In accordance with Article 2(9)(d) of the Montreal Protocol, the adjustment to the phaseout schedule was effective on May 14, 2008.[2]

As a result of the 2007 Montreal Adjustment (reflected in Decision XIX/6), the U.S. and other developed countries are obligated to reduce HCFC production and consumption 75 percent below the established baseline by 2010, rather than 65 percent as previously required. The other milestones remain the same. The adjustment also resulted in a phaseout schedule for HCFC production that parallels the consumption phaseout schedule. All production and consumption for Non-Article 5 Parties is phased out by 2030.

Decision XIX/6 also adjusted the provisions for Parties operating under paragraph 1 of Article 5 (developing countries): (1) To set HCFC production and consumption baselines based on the average 2009–2010 production and consumption, respectively; (2) to freeze HCFC production and consumption at those baselines in 2013; and (3) to add stepwise reductions of 10 percent below baselines by 2015, 35 percent by 2020, 67.5 percent by 2025, and 97.5 percent by 2030—allowing, between 2030 and 2040, an annual average of no more than 2.5 percent to be produced or imported solely for servicing existing air-conditioning and refrigeration equipment. All production and consumption for Article 5 Parties will be phased out by 2040.

In addition, Decision XIX/6 adjusted Article 2F to allow developed countries to produce ''up to 10 percent of baseline levels'' for export to Article 5 countries ''in order to satisfy basic domestic needs'' until 2020.[3] Paragraph 14 of Decision XIX/6 notes that no later than 2015, the Parties would consider ''further reduction of production for basic domestic needs'' in 2020 and beyond. Under paragraph 13 of Decision XIX/6, the Parties will review in 2015 and 2025, respectively, the need for the ''servicing tails'' for developed and developing countries. The term ''servicing tail'' refers to an amount of HCFCs used to service existing equipment, such as certain types of air-conditioning and refrigeration appliances.

B. How does the clean air act phase out HCFCs?

The U.S. has chosen to implement the Montreal Protocol phaseout schedule on a chemical-by-chemical basis. In 1992, environmental and industry groups petitioned EPA to implement the required phaseout by eliminating the most ozone-depleting HCFCs first. Based on the available data at that time, EPA believed the U.S. could meet, and possibly exceed, the required Montreal Protocol reductions through a chemical-by-chemical phaseout that employed a ''worst-first'' approach focusing on certain chemicals earlier than others. In 1993, as authorized by section 606 of the CAA, the U.S. established a phaseout schedule that eliminated HCFC–141b first and would greatly restrict HCFC–142b and HCFC–22 next, followed by restrictions on all other HCFCs and ultimately a complete phaseout (58 FR 15014, March 18, 1993; 58 FR 65018, December 10, 1993).

On January 21, 2003 (68 FR 2820), EPA promulgated regulations (2003 Final Rule) to ensure compliance with the first reduction milestone in the HCFC phaseout: The requirement that by January 1, 2004, the U.S. reduce HCFC consumption by 35 percent and freeze HCFC production. In the 2003 Final Rule, EPA established chemical-specific consumption and production baselines for HCFC–141b, HCFC–22, and HCFC–142b for the initial regulatory period ending December 31, 2009. Section 601(2) states that EPA may select ''a representative calendar year'' to serve as the company baseline for HCFCs. In the 2003 Final Rule, EPA concluded that because the entities eligible for allowances had differing production and import histories, no single year was representative for all companies. Therefore, EPA assigned an individual consumption baseline year to each company by selecting its highest ODP-weighted consumption year from among the years 1994 through 1997.

[2] Under Article 2(9)(d) of the Montreal Protocol, an adjustment enters into force six months from the date the depositary (the Ozone Secretariat) circulates it to the Parties. The depositary accepts all notifications and documents related to the Protocol and examines whether all formal requirements are met. In accordance with the procedure in Article 2(9)(d), the depositary communicated the adjustment to all Parties on November 14, 2007. The adjustment entered into force and became binding for all Parties on May 14, 2008.

[3] Paragraphs 4–6 of adjusted Article 2F read as follows:

''4. Each Party shall ensure that for the twelve-month period commencing on 1 January 2010, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, twenty-five per cent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

5. Each Party shall ensure that for the twelve-month period commencing on 1 January 2015, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the sum referred to in paragraph 1 of this Article. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed, annually, ten per cent of the calculated level referred to in paragraph 2 of this Article. However, in order to satisfy the basic domestic needs of the Parties operating under paragraph 1 of Article 5, its calculated level of production may exceed that limit by up to ten per cent of its calculated level of production of the controlled substances in Group I of Annex C as referred to in paragraph 2.

6. Each Party shall ensure that for the twelve-month period commencing on 1 January 2020, and in each twelve-month period thereafter, its calculated level of consumption of the controlled substances in Group I of Annex C does not exceed zero. Each Party producing one or more of these substances shall, for the same periods, ensure that its calculated level of production of the controlled substances in Group I of Annex C does not exceed zero. However:

i. each Party may exceed that limit on consumption by up to zero point five per cent of the sum referred to in paragraph 1 of this Article in any such twelve-month period ending before 1 January 2030, provided that such consumption shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020;

ii. each Party may exceed that limit on production by up to zero point five per cent of the average referred to in paragraph 2 of this Article in any such twelve-month period ending before 1 January 2030, provided that such production shall be restricted to the servicing of refrigeration and air conditioning equipment existing on 1 January 2020.''

EPA assigned individual production baseline years in the same manner. EPA also provided for new entrants that began importing after the end of 1997 but before April 5, 1999, the date the advanced notice of proposed rulemaking was published. EPA took this action to ensure that small businesses that might not have been aware of the impending rulemaking would be able to continue in the HCFC market.

The 2003 Final Rule apportioned production and consumption baselines to each company in amounts equal to the amounts in the company's highest ''production year'' or ''consumption year,'' as described above. It completely phased out the production and import of HCFC–141b by granting 0 percent of that substance's baseline for production and consumption in the table at 40 CFR 82.16. EPA did, however, create a petition process to allow applicants to request small amounts of HCFC–141b beyond the phaseout. The 2003 Final Rule also granted 100 percent of the baselines for production and consumption of HCFC–22 and HCFC–142b for each of the years 2003 through 2009. EPA was able to allocate allowances for HCFC–22 and HCFC–142b at 100 percent of baseline because, in light of the concurrent complete phaseout of HCFC–141b, the allocations for HCFC–22 and HCFC–142b, combined with projections for consumption of all other HCFCs, remained below the 2004 cap of 65 percent of the U.S. baseline.

EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (*i.e.,* calendar year). Prior to December 15, 2009, EPA had not allocated any HCFC allowances for year 2010 or beyond. The regulations at section 82.15(a) and (b) only addressed the production and import of HCFC–22 and HCFC–142b for the years 2003–2009. Through the 2009 Final Rule (74 FR 66412), EPA addressed the production and import of HCFC–22 and HCFC–142b for the 2010–2014 control periods. Absent the granting of calendar-year allowances, section 82.15 would have prohibited the production and import of HCFC–22 and HCFC–142b after December 31, 2009. The 2009 Final Rule allowed for continued production and consumption, at specified amounts, of HCFC–142b, HCFC–22, and other HCFCs not previously included in the allowance system, for the 2010–2014 control periods.

In the U.S., an allowance is the unit of measure that controls production and consumption of ODS. EPA establishes company-by-company baselines (also known as ''baseline allowances'') and allocates calendar-year allowances equal to a percentage of the baseline for specified control periods. A calendar-year allowance represents the privilege granted to a company to produce or import one kilogram (not ODP-weighted) of the specific substance. EPA allocates two types of calendar-year allowances—production allowances and consumption allowances. ''Production allowance'' and ''consumption allowance'' are defined at section 82.3. To produce an HCFC for which allowances have been allocated, an allowance holder must expend both production and consumption allowances. To import an HCFC for which allowances have been allocated, an allowance holder must expend consumption allowances. An allowance holder exporting HCFCs for which it has expended consumption allowances may obtain a refund of those consumption allowances upon submittal of proper documentation to EPA.

Since EPA is implementing the phaseout on a chemical-by-chemical basis, it allocates and tracks production and consumption allowances on an absolute kilogram basis for each chemical. Upon EPA approval, an allowance holder may transfer calendar-year allowances of one type of HCFC for calendar-year allowances of another type of HCFC, with transactions weighted according to the ODP of the chemicals involved. Pursuant to section 607 of the CAA, EPA applies an offset to each HCFC transfer by deducting 0.1 percent from the transferor's allowance balance. The offset benefits the ozone layer since it ''results in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions'' (42 U.S.C. 7671f).

The U.S. remained comfortably below the aggregate HCFC cap through 2009. The 2003 Final Rule announced that EPA would allocate allowances for 2010–2014 in a subsequent action and that those allowances would be lower in aggregate than for 2003–2009, consistent with the next stepwise reduction for HCFCs under the Montreal Protocol. EPA stated its intention to determine the number of allowances that would be needed for HCFC–22 and HCFC–142b, bearing in mind that other HCFCs would also contribute to total HCFC consumption. EPA noted that it would likely achieve the 2010 reduction step by applying a percentage reduction to the HCFC–22 and HCFC–142b baselines. EPA subsequently monitored the market to estimate servicing needs and market adjustments in the use of HCFCs, including HCFCs for which EPA did not establish baselines in the 2003 Final Rule.

In the 2009 Final Rule, EPA determined both the estimated demand for HCFC–22 during the 2010–2014 regulatory period and the percentage of that estimated demand for which it was appropriate to allocate allowances. As described in section III.B. of this action, EPA determined that the percentage of the estimated demand allocated in the form of allowances should not remain constant from year to year but rather should decline on an annual basis. For 2010, EPA allocated allowances equal to 80 percent of the estimated demand for HCFC–22, concluding that reused, recycled, and reclaimed material could meet the remaining 20 percent. Under the 2009 Final Rule, the percentage of estimated demand for which there was no allocation, and therefore would need to be met through recycling and reclamation, rose from 20 percent in 2010 to 29 percent in 2014 to ensure the U.S. market would have a viable reclamation industry and could meet the 2015 stepwise reduction under the Montreal Protocol.

The determinations EPA made in the 2009 Final Rule regarding (1) the total estimated demand for HCFC–22 in 2010–2014 and (2) the percentage of that estimated demand that EPA would address through an allowance allocation were not at issue in the litigation and are unaffected by the Court's decision. As such, EPA did not revisit either determination with respect to 2011 in the 2011 Interim Final Rule (76 FR 47451), but rather relied on the existing record from the 2009 Final Rule (74 FR 66412). The 2011 Interim Final Rule established new baselines that (1) credited the 2008 inter-pollutant trades at issue in *Arkema* v. *EPA* based on the Court's decision and (2) reflected inter-company, single-pollutant baseline transfers that occurred since the 2009 Final Rule was signed. The 2011 Interim Final Rule also (3) allocated HCFC–22 and HCFC–142b allowances for 2011, (4) clarified EPA's policy on all future inter-pollutant transfers, and (5) updated company names.

C. What sections of the Clean Air Act apply to this rulemaking?

Several sections of the CAA apply to this rulemaking. Section 605 of the CAA phases out production and consumption and restricts the use of HCFCs in accordance with the schedule set forth in that section. As discussed in the 2009 Final Rule (74 FR 66416), section 606 provides EPA authority to set a more stringent phaseout schedule than the schedule in section 605 based on an

EPA determination regarding current scientific information or the availability of substitutes, or to conform to any acceleration under the Montreal Protocol. EPA previously set a more stringent schedule than the section 605 schedule through a rule published December 10, 1993 (58 FR 65018). Through the 2009 Final Rule, EPA made a further adjustment to the section 605 schedule based on the acceleration under the Montreal Protocol as agreed to at the Meeting of the Parties in September 2007. The more stringent schedule established in that rule is unaffected by the recent Court decision and is therefore still in effect.

Section 606 provides authority for EPA to promulgate regulations that establish a schedule for production and consumption that is more stringent than what is set forth in section 605 if: ''(1) based on an assessment of credible current scientific information (including any assessment under the Montreal Protocol) regarding harmful effects on the stratospheric ozone layer associated with a class I or class II substance, the Administrator determines that such more stringent schedule may be necessary to protect human health and the environment against such effects, (2) based on the availability of substitutes for listed substances, the Administrator determines that such more stringent schedule is practicable, taking into account technological achievability, safety, and other relevant factors, or (3) the Montreal Protocol is modified to include a schedule to control or reduce production, consumption, or use of any substance more rapidly than the applicable schedule under this title.'' It is only necessary to meet one of the three criteria. In the 2009 Final Rule, EPA determined that all three criteria had been met with respect to the schedule for phasing out production and consumption of HCFC–22 and HCFC–142b.

As noted in the 2009 Final Rule, while section 606 is sufficient authority for establishing a more stringent schedule than the section 605 phaseout schedule, section 614(b) of the CAA provides that in the case of a conflict between the CAA and the Montreal Protocol, the more stringent provision shall govern. Thus, section 614(b) requires the Agency to establish phaseout schedules at least as stringent as the schedules contained in the Montreal Protocol. To meet the 2010 stepdown requirement, EPA is continuing to allocate HCFC allowances at a level that will ensure the aggregate HCFC production and consumption will not exceed 25 percent of the U.S. baselines. For more discussion of this point, see 74 FR 66416.

Finally, section 607 addresses transfers of allowances both between companies and chemicals. EPA is further clarifying the policy and procedures applicable to permanent inter-pollutant transfers in this action, and is proposing a minor change to the regulations governing inter-pollutant transfers to provide additional clarity to stakeholders.

D. How does this action relate to the recent court decision?

Certain allowance holders affected by the 2009 Final Rule filed petitions for review in the U.S. Court of Appeals for the District of Columbia Circuit. Among other arguments, the petitioners, Arkema, Inc., Solvay Fluorides, LLC, and Solvay Solexis, Inc., contended that the rule was impermissibly retroactive because in setting the baselines for the new regulatory period, EPA did not take into account certain inter-pollutant baseline transfers that petitioners had performed during the prior regulatory period. The 2011 Interim Final Rule contained a description of those transfers and the EPA approvals of those transfers. As explained in the 2011 Interim Final Rule, the transfers at issue occurred in 2008. Solvay Solexis, Inc. submitted two Class II Controlled Substance Transfer Forms for consumption allowance transfers to Solvay Fluorides, LLC on February 15, 2008, and March 4, 2008. Arkema, Inc. submitted two Class II Controlled Substance Transfer Forms for consumption and production allowance transfers on April 18, 2008. Each company requested EPA's approval to convert HCFC–142b allowances to HCFC–22 allowances, and checked a box on the EPA transfer form indicating that ''baseline'' allowances would be transferred. EPA sent non-objection notices to both Solvay Solexis, Inc. and Solvay Fluorides, LLC on February 21, 2008 and March 20, 2008 and to Arkema, Inc. in April 2008. The transfer requests and EPA's approvals were attached to petitioners' court filings and are available in the docket for this action.

In the Notice of Proposed Rulemaking titled ''Protection of Stratospheric Ozone: Adjustments to the Allowance System for Controlling HCFC Production, Import, and Export,'' published in the **Federal Register** at 73 FR 78680 on December 23, 2008 (2008 Proposed Rule), EPA requested comments on establishing baselines for the 2010–2014 regulatory period ''with or without'' taking into account baseline inter-pollutant transfers made during the 2003–2009 regulatory period (73 FR 78687). The proposed regulatory text accounted for the inter-pollutant transfers discussed above. The increase in HCFC–22 baseline allowances for Arkema, Inc. and Solvay Fluorides, LLC presented in the 2008 Proposed Rule resulted in a larger amount of HCFC–22 baseline allowances overall and therefore a lower percentage of HCFC–22 baselines allocated across the board in each control period. Specifically, the proposed shift resulted in a 16 percent decrease in allocation share for all other HCFC–22 allowance holders, and increases for the petitioners: Arkema and Solvay. For more detail on the effect of these transfers, see section III.C. of this preamble.

In the 2009 Final Rule, after considering comments, EPA determined that allowing inter-pollutant transfers from one regulatory period to become a part of the baseline in the next regulatory period could undermine the Agency's chemical-by-chemical phaseout approach and could encourage market manipulation. EPA also concluded that section 607 of the CAA was best read as limiting inter-pollutant transfers to those conducted on an annual basis. For these reasons, EPA did not take the 2008 inter-pollutant transfers into account in establishing the baselines for the 2009 Final Rule covering 2010–2014.

The Court issued a decision on August 27, 2010, agreeing with petitioners that ''the [2009] Final Rule unacceptably alters transactions the EPA approved under the 2003 Rule'' (*Arkema* v. *EPA,* 618 F.3d at 3). The Court vacated the rule in part, ''insofar as it operates retroactively,'' and remanded to EPA ''for prompt resolution,'' (618 F.3d at 10). The Court withheld the mandate for the decision pending the disposition of any petition for rehearing. On November 12, 2010, EPA filed a petition for rehearing, which was denied on January 21, 2011. The mandate issued on February 4, 2011.

Because the Court vacated the rule only in part, without specifying which part or parts were vacated, EPA may adopt a reasonable interpretation of the vacatur's extent. In doing so, EPA is relying on its expertise in administering the HCFC phaseout regulations under Title VI of the CAA. First, EPA notes that the rule contains elements that were not at issue in the litigation. EPA concludes that the vacatur has no effect on allowances for any substances other than HCFC–142b and HCFC–22, since the petitioners' claims and the opinion itself discuss only those two substances. Similarly, EPA concludes that other discrete portions of the rule, such as the

provisions on use and introduction into interstate commerce, are unaffected by the vacatur.

The baselines for HCFC–142b and HCFC–22 were clearly at issue in the litigation and indeed are the focus of the Court's opinion. The Court found that ''the Agency's refusal to account for the Petitioners' baseline transfers of inter-pollutant allowances in the Final Rule is impermissibly retroactive,'' (618 F.3d at 9). Because baseline and calendar year allowances are inextricably linked,[4] EPA has determined that the Court's vacatur voided the HCFC–22 and HCFC–142b baselines in 40 CFR 82.17 and 82.19 as well as the percentage of baseline allocated for those specific substances in 40 CFR 82.16 for all companies listed in those sections.[5] This means that until EPA establishes new baselines and allocates new calendar-year allowances, production and import of these two substances is prohibited under 40 CFR 82.15. Recognizing this scenario, on January 28, 2011, EPA sent letters to affected stakeholders informing them that the Agency would exercise enforcement discretion for a limited period provided their production and import did not exceed specified levels and provided that they adhered to additional conditions.

In determining the meaning of the Court's vacatur, EPA considered whether this interpretation was consistent with what the Court intended and a good fit for the specific circumstances, which include the goals and design of the HCFC allowance program and the basic structure of the 2009 Final Rule. While this interpretation is appropriate in this instance, it is possible that another interpretation would be more appropriate in a case involving a program with different goals, design, or structure.

EPA's initial response to the Court's partial vacatur was to issue the 2011 Interim Final Rule (76 FR 47451). Through today's notice, EPA is proposing a way to address the Court's decision as it relates to the remainder of the regulatory period ending December 31, 2014. In addition, the Agency is taking comment on whether the vacatur and remand should be interpreted as applying to the 2010 allocations, and if so, how allowances might be adjusted to reflect this. See section III.B.4. for EPA's proposed approach to address 2010 allowances.

E. Comments Relevant to Recovery and Reclamation Issues in This Rulemaking Submitted in Response to the 2011 Interim Final Rule Allocating HCFC Allowances

The EPA received 15 submissions from 13 commenters in response to the 2011 interim final rule. Three comments were received late. Specifically, the Agency had asked for comment on several issues relevant to HCFC–22 supply and the status of recovery and reclamation, including: (1) Previous estimates of HCFC–22 demand; (2) the amount of virgin HCFC–22 currently in inventory, available for reuse and/or waiting for import from abroad; and (3) whether there is an overall surplus of the gas. The Agency received comments directly answering these questions, along with other comments that are of relevance to this proposed rulemaking.

EPA is not providing a complete response to comments on the 2011 interim final rule in this preamble; however, EPA is acknowledging the most relevant comments here in order to highlight certain stakeholder concerns regarding the future implementation of the HCFC phaseout program. It is the Agency's responsibility to implement Title VI of the CAA, and its policy objective is to do so in a way that smoothly transitions the U.S. away from HCFCs to non-ODS alternatives. Therefore, EPA is particularly interested in stakeholder input regarding the status of HCFC–22 recovery and reclamation, because this information applies directly to previously-stated policy goals. This section notes the following three issues discussed in comments to the 2011 Interim Final Rule.

1. Supply of HCFC–22

a. Economic feasibility of reclamation.

b. Economic incentives for recovery and emissions prevention.

c. Effect of virgin gas supplies on dry-shipped condensing units.

2. Providing Allowances to Reclaimers

3. Providing Allowances to Manufacturers of HCFC Blends

1. Supply of HCFC–22

Nine commenters submitted comments requesting that EPA decrease consumption allowances for 2012–2014. Another company also supported such a decrease, as long as updated market conditions indicate there is a need to do so and all allowance holders are affected proportionally. Commenters suggested that excess supply was due to several factors. Additionally, commenters stated the price of HCFC–22 is low, indicating that virgin supplies are not constrained to the extent that the Agency had anticipated. Some commenters pointed to the unused consumption allowances for 2010 as evidence of over-supply and the need for decreasing the total number of consumption allowances.

(a) *Economic feasibility of reclamation:* Most commenters, many of whom are reclaimers, are concerned about the excess supply and low price of virgin HCFC–22 because this situation makes reclaim financially unfeasible. EPA understands that reclaimers can stay in business only if reclaimed gas can be profitably sold for a price that does not exceed the price of virgin gas, and the price of virgin gas will increase only when the supply has contracted. The Agency promotes reclamation via separation and distillation, which requires very little virgin gas, and recognizes that reclaiming without significant blending further increases the costs of reclamation.

(b) *Economic incentives for recovery and emissions prevention:* Commenters also pointed out that the excess supply and low price of HCFC–22 do not incentivize recovery in general, and likely promote venting and poor maintenance practices. EPA agrees that if the gas is not valuable then there will be little incentive to reuse it or proactively prevent leaks, in addition to increasing the likelihood of venting (which is illegal under section 608 of the CAA).

(c) *Effect of virgin gas supplies on dry-shipped condensing units:* Two commenters also specifically mention the increased popularity in dry-shipped condensing units that are eventually charged with HCFC–22 as a symptom of this over-supply. The Agency recognizes that the majority of commenters believe that there is an excess of HCFC–22 on

[4] The reason baseline and calendar-year allocations are inextricable is because calendar-year allocations are expressed as a percentage of baseline, and the percentage of baseline allocated for a specific substance varies depending on the sum of all company baselines for that substance. The process works as follows for each specific HCFC: First, all the company-specific baselines listed in the tables at 40 CFR 82.17 and 82.19 are added to determine the aggregate amount of baseline production and consumption, respectively. Second, EPA determines how many consumption allowances the market needs for a given year, taking into account recycled, reused, and reclaimed material, and divides that amount by the aggregate amount of baseline allowances. The resulting percentage listed in the table at section 82.16 becomes what each company is allowed to consume in a given control period. For example, a company with 100,000 kg of HCFC–22 baseline allowances would multiply that number by the percentage allowed for 2011 (for example, 32 percent) to determine its calendar-year allowance is 32,000 kg. Historically and in this proposed rule, EPA has allocated the same percentage of baseline allowances for production as it does for consumption.

[5] The companies' allocations are inter-related because, as noted in footnote 4, the percentage of baseline allocated varies according to the sum of the company-specific baselines.

the market, which has direct negative consequence for reclaim and recovery, and thus overall ODS emissions. Additionally, EPA has received a petition (included in the docket) from the Carrier Corporation, dated February 3, 2011, concerning dry-shipped HCFC–22 condensing units. EPA is taking comment on whether the installation of dry-shipped HCFC–22 condensing units will affect the phaseout of virgin HCFC–22 production and import.

EPA undertook an analysis to gauge whether there is a surplus of HCFC–22 and, if so, how large the surplus is. A memo in the docket for this rulemaking details EPA's analysis of the HCFC–22 market. The results indicate EPA should consider allocating between 11 to 47 percent less per year between 2012 and 2014 relative to the amounts that appeared in the 2009 Final Rule. Consequently, EPA is proposing in this rulemaking to allocate fewer HCFC–22 consumption allowances than contemplated in the 2009 Final Rule for 2012–2014 in order to promote recovery and reclamation and encourage transition to non-ODS alternatives (see section III.B. and III.C.). As stated in the 2009 Final Rule, ''The Agency strongly encourages increased recovery and either recycling or reclamation of HCFC–22 * * * Recovery becomes even more important in light of the 2015 Montreal Protocol phasedown step, when the U.S. HCFC consumption cap is reduced from 3,810 ODP-weighted metric tons to 1,524 ODP-weighted metric tons,'' (74 FR 66422).

2. Providing Allowances to Reclaimers

Two commenters requested that EPA provide HCFC allowances to certified reclaimers. As explained in the report titled ''Analysis of Equipment and Practices in the Reclamation Industry,'' which is included in the docket for this rulemaking, ''refrigerant reclamation refers to the reprocessing and upgrading of recovered refrigerant through such mechanisms as filtering, drying, distillation and chemical treatment in order to restore the substance to specifications outlined in the Air-Conditioning, Heating, and Refrigeration Institute (AHRI)'s Standard 700–1995.'' The commenters argue increasing allocations to reclaimers would increase the amount of reclaimed HCFCs available for purchase. The comments are similar to those submitted prior to the finalization of the 2009 Final Rule, which allocated HCFC allowances for 2010–2014. EPA responded to this request at the time (74 FR 66422; Response to Comments document for the 2008 NPRM), but discusses the issue further here.

The Agency's primary concern is that providing reclaimers with allowances could foster unsustainable reclamation practices that rely on blending instead of investing in the technology to fully reclaim HCFCs. Based on the phaseout schedule and the decrease in annual allocations, reclamation through separation and distillation will be more important in 2015 when the HCFC–22 allocation must drop by at least 45 percent from 2010 levels and absolutely necessary by 2020, by which time import and production of HCFC–22 must be phased out entirely. In addition, many businesses have either found a way to secure reliable access to virgin HCFCs or have made investments to reclaim HCFCs in a sustainable way, without a direct allocation of allowances.

EPA is also concerned that providing allowances to reclaimers does not address the key structural issue that the industry and the HCFC transition are facing: The price of HCFC–22 is too low to foster reclamation and is not sending the necessary signal to move consumers to non-ODS alternatives. While providing allowances to reclaimers would likely decrease the cost to recover and reclaim HCFCs, EPA is concerned about what effect providing allowances to reclaimers would have on the market price of HCFC–22. EPA is seeking comment on whether providing allowances to reclaimers would affect the market price of HCFC–22, and what effect that price change would have on the transition away from ODS and the sustainability of the reclamation industry.

EPA continues to believe that allocating fewer allowances is the best way to foster reclamation and recovery. Thus, this proposal does not include an allocation for reclaimers. However, the Agency has included the relevant comments on the Interim Final Rule in the docket for this rulemaking and welcomes further comment on this issue from all interested parties.

3. Providing Allowances to Manufacturers of HCFC Blends

One small business has informed EPA that it cannot acquire either HCFC allowances or the HCFCs it needs to manufacture its HCFC blend (see the letters from ICOR dated May 17, 2011 and September 6, 2011). The company asserts that the cap and trade system is in practice ''cap and no trade,'' where companies hold onto their allowances, even if they have no intention of using them. The commenter argues that this leads to artificially high prices for HCFCs and HCFC allowances. To remedy this situation, the commenter requests that EPA take unused allowances and provide those allowances to companies that either purchased HCFCs or HCFC consumption allowances in 2008 and 2009. EPA notes that the inability to acquire allowances and/or HCFCs themselves does not appear to be a widespread problem, as numerous companies have made a significant number of transfers over the last year alone, and no other company has indicated it cannot acquire HCFCs. However, EPA is taking comment on whether other companies are having difficulty acquiring HCFCs or HCFC allowances.

Some historical background may help to provide context on how EPA provided flexibility for small businesses when establishing the HCFC allocation system. In the 2003 Final Rule, published January 21, 2003, EPA assigned individual company baselines by considering the highest production and consumption years for every company between the years 1994–1997—a four year period preceding regulation of the production and import of HCFCs. ''Consumption'' is defined by the Clean Air Act as ''the amount of that substance produced in the United States, plus the amount imported, minus the amount exported,'' (42 U.S.C. 7671). A company had to be manufacturing or importing HCFCs at that time in order to be assigned a baseline. In addition, the EPA provided an exception allowing new entrants provided that they began importing after the end of 1997, but before April 5, 1999, the date the EPA published the advanced notice of proposed rulemaking for the regulatory period 2003–2009. The Agency believed that such small businesses might not have been aware of the impending rulemaking that would affect their ability to continue in the HCFC market.

In addition to the exception for late entrants made in the 2003 Final Rule, there is significant flexibility in the types of transfers companies can conduct. Companies can transfer allowances between companies and, on a temporary basis, between chemicals. A guidance memo, titled ''Flexibility in the HCFC Allowance System,'' describing this flexibility further is available in the docket and on EPA's Web site. Companies can also purchase HCFCs at the wholesale price, which, according to comments on the 2011 Interim Final Rule, has been decreasing. The allocation system in part was established to discourage the use of HCFCs and companies' continuation in the HCFC market. As stated in the 2003 Final Rule, ''businesses that desired an

allocation of HCFC allowances would have known the risks of jumping into the business at this juncture'' (66 FR 38073). Since that statement more than nine years ago, access to information and knowledge of the risks regarding entering or continuing in the HCFC market have only increased. Furthermore, new entrants have entered the market by purchasing consumption allowances, as EPA predicted they could back in 2003. All entities wishing to enter the HCFC import or production market can continue to purchase allowances for HCFCs.

As the market continues to decrease in size, EPA does not believe that expanding the pool of allowance holders is necessary to prevent disruption of the continued servicing of existing equipment. EPA explored several options that would have expanded the number of allowance holders in the 2008 NPRM (73 FR 78867) and determined the current approach with adjustment for transfers of baseline allowances was appropriate (74 FR 66419; Response to Comments for the 2008 NPRM). Given EPA's intent to phase down, and ultimately phase out, the use of HCFCs, consistent with the requirements of the CAA and obligations under the Montreal Protocol, EPA believes it is justified in continuing to allocate only to those entities who participated in the market at the initial stages, as well as those that have entered the market by purchasing HCFC baseline allowances in accordance with the established practices. EPA does not believe that providing allowances to companies that were not importing or producing HCFCs prior to EPA regulation is appropriate at this time given the disruption it would create to the existing regulatory framework. However, in light of the large number of HCFC allowances that were not used in 2010 and the difficulty at least one company is having in getting HCFCs, EPA welcomes comments on whether an allocation to manufacturers of HCFC blends who are having difficulty acquiring HCFCs or HCFC allowances would be appropriate. Commenters supporting such an allocation should consider (1) how EPA might determine the total amount of such an allocation, (2) how EPA might determine which companies should receive allowances, (3) how EPA would verify that allowance holders are refusing to sell HCFCs and HCFC allowances, (4) how EPA might set baselines for these companies, (5) whether EPA should provide allowances in addition to the amount proposed in this rule, or as part of the amount proposed in this rule, and (6) how providing allowances to an additional set of companies would affect the U.S. transition away from HCFCs.

III. How does EPA propose to allocate HCFC–22 and HCFC–142b allowances for 2012–2014?

EPA is proposing to continue the system established in previous rulemakings (68 FR 2820, 74 FR 66412, 76 FR 47451) to address HCFC production and import in the U.S. The process works as follows for each specific HCFC: First, all the company-specific baselines listed in the tables at 40 CFR 82.17 and 82.19 are added to determine the aggregate amount of baseline production and consumption, respectively. Second, EPA determines how many consumption allowances the market needs for a given year, taking into account recycled, reused, and reclaimed material, and divides that amount by the aggregate amount of baseline allowances. The resulting percentage listed in the table at section 82.16 becomes what each company is allowed to consume in a given control period. For example, a company with 100,000 kg of HCFC–22 baseline allowances would multiply that number by the percentage allowed for the year (for example, 32 percent in 2011) to determine its calendar-year allowance is 32,000 kg. Historically, EPA has allocated the same percentage of baseline allowances for production as it does for consumption.

Specifically, EPA is proposing to (1) establish 2012–2014 company-by-company consumption and production baselines for HCFC–22 and HCFC–142b in the tables at 40 CFR 82.17 and 82.19 identical to the baselines established in the 2011 Interim Final Rule (76 FR 47468), (2) allocate company-by-company production and consumption allowances for these substances for 2012–2014 by establishing percentages of production and consumption baselines in the table at section 82.16 and (3) revise the regulatory text at 40 CFR 82.23 to make the procedure for all future inter-pollutant transfers clear. EPA will address the allocations for the control periods beyond 2014 at a later date. All aspects of the 2009 Final Rule promulgated on December 15, 2009 (74 FR 66412) that are not addressed in this proposed rule are unchanged.

Additionally, EPA notes that beginning January 1, 2015, section 605 of the CAA prohibits the use and introduction into interstate commerce of any HCFC unless it ''(1) has been used, recovered and recycled; (2) is used and entirely consumed (except for trace quantities) in the production of other chemicals; or (3) is used as a refrigerant in appliances manufactured prior to January 1, 2020.'' In addition, EPA's regulations at 40 CFR 82.15 restrict use and introduction into interstate commerce of HCFC–141b, HCFC–142b, and HCFC–22 beginning in 2010, with limited exceptions. If entities will need HCFCs in 2015 and beyond for uses other than the exemptions contained in section 605, they should contact EPA prior to 2013. Entities should understand that the statutory prohibition in section 605 generally will prevent EPA from accommodating such needs, with the possible exception of de minimis quantities.

A. What baselines does EPA propose to use for HCFC–22 and HCFC–142b allowances?

In the 2009 Final Rule, EPA presented the allocation structure for HCFC–22 and HCFC–142b for the control periods 2010–2014: Allocating a percentage of the baseline production and consumption allowances. The rationale for this system is discussed further at 74 FR 66412. The Court found no fault with EPA's framework for allocating HCFCs in the 2009 Final Rule, except the aspects of the rule deemed to be retroactive, *i.e.,* not taking into account inter-pollutant baseline transfers that occurred in the prior regulatory period in establishing company-specific baseline allowances. To address this, EPA is proposing to establish baselines for 2012–2014 identical to the HCFC–22 and HCFC–142b baselines established in the 2011 Interim Final Rule (76 FR 47451) that reflect past inter-pollutant baseline transfers deemed permanent by the Court.

EPA cited several reasons why it would prefer to set baselines without taking into account inter-pollutant transfers in the 2009 Final Rule (74 FR 66420), the Response to Comments document included in the record for that rulemaking, and the 2011 Interim Final Rule (76 FR 47451). However, EPA is recognizing the 2008 transfers in establishing the baselines through 2014 in accordance with the Court's decision. The Agency is providing advance notice that for the 2015–2019 regulatory period, it would consider using more recent production and import data than the 1994–1997 data used to set baselines for the first time in the 2003 Final Rule. The Agency is particularly interested in stakeholders' views on whether there would be an environmental benefit to doing so.

B. What factors did EPA consider in proposing allocation amounts for HCFC–22 and HCFC–142b?

In the 2009 Final Rule, EPA decided to allocate HCFC–22 and HCFC–142b allowances based on the projected servicing needs for those compounds, taking into account the amount of those needs that can be met through recycling and reclamation. EPA is not changing that approach in this proposed rulemaking and continues to believe it is necessary to promote use of reused, recycled, and reclaimed material in anticipation of the 2015 phasedown step. However, EPA is proposing to allocate fewer consumption allowances for HCFC–22 relative to the 2009 Final Rule based on analysis of updated market conditions. The proposed allocation and the supporting documentation are discussed in section III.B.2. Regardless of the extent to which the total number of consumption allowances differs from the total number allocated in the 2009 Final Rule, the specific amounts allocated per company will be different than the 2009 Final Rule. In accordance with the Court's decision in *Arkema* v. *EPA,* the Agency is proposing to reflect the 2008 inter-pollutant transfers in companies' baselines, and EPA therefore needs to allocate a different percentage of company baselines in order for the aggregate number of annual HCFC consumption allowances to be less than (or equal to) the 2009 Final Rule. EPA is also proposing to allocate different percentages of baseline for annual consumption than for annual production (described in the rest of the preamble as ''decoupling'').

Separate from the proposed allocation change, EPA is taking comment on whether or not to provide more HCFC–22 and/or HCFC–142b consumption and/or production through this rulemaking than it did in the 2009 Final Rule as a result of the unforeseen circumstances presented by the Court's decision in *Arkema* v. *EPA.* While the Agency's preference is not to provide recoupment, EPA is considering an approach to the 2013 allocation or 2013 and 2014 allocations that could allocate allowances to account for lost opportunities to produce and consume in 2010, given that 2010 allowance levels were based on baselines that are inconsistent with the Court's finding (section III.B.4. discusses this in more depth).

1. How important is HCFC–22 relative to HCFC–142b for servicing existing equipment?

HCFC–22 is the most widely-used HCFC. The demand for its use in servicing existing equipment was the primary factor affecting EPA's allocation of production and consumption allowances of HCFCs for the current regulatory period. Prior to issuing the 2009 Final Rule and the 2009 *Servicing Tail Report,* EPA issued and sought comment on three versions of a draft report analyzing servicing demand for the HCFC appliances in the U.S. refrigeration and air-conditioning sector projected to be in service from 2010–2019 (all versions available at Docket EPA–HQ–OAR–2008–0496: Published November 4, 2005 at 70 FR 67172; released at a stakeholder meeting on September 29, 2006; published December 23, 2008, with 2008 Proposed Rule). The *Servicing Tail Report* focuses on air-conditioning and refrigeration appliances because such equipment represents the bulk of the servicing need. In addition, the servicing exception to the use ban for HCFC–22 and HCFC–142b pertains only to use as a refrigerant in such equipment. Under 40 CFR 82.15(g) nearly all other uses of newly produced material for these two HCFCs were banned effective January 1, 2010. HCFC–142b has primarily been used as a foam blowing agent, a use that was prohibited beginning in 2010 (40 CFR 82.15(g)). The projected servicing demand for existing refrigeration equipment containing HCFC–142b is extremely low: Approximately 100 MT. EPA therefore focused the analysis on HCFC–22 because that compound is the predominant HCFC in the installed base of air-conditioning and refrigerant equipment for which servicing in the U.S. will likely continue.

As discussed in the 2009 Final Rule, the majority of HCFC–22 equipment that is projected to be in use from this point onward will be air-conditioning applications, including window units, packaged terminal units, unitary air-conditioning, chillers, dehumidifiers, water and ground source heat pumps, and motor vehicle air-conditioning in buses and trains. The report projected that approximately 145.6 million units of all such types of HCFC–22 air-conditioning equipment were in use in 2010, decreasing by about 41 percent in 2015 and 86 percent in 2020. In addition, approximately 3.8 million units of HCFC–22 refrigeration equipment were in use in 2010. The installed base of HCFC–22 refrigeration equipment is projected to decrease from 2010 levels by about 44 percent in 2015 and 75 percent in 2020. For more on the *Servicing Tail Report,* see 74 FR 66424 and the *Servicing Tail Report* included in the docket.

EPA estimates that the servicing need for HCFC–22 will continue to decrease each year, and consistent with the 2009 Final Rule, EPA proposes to account for this by allocating a smaller amount for 2012 than was allocated for 2011. This approach is described in section III.B.3. of this action, along with more recent market data on the need for, and availability of, HCFC–22.

2. Can servicing needs be met with virgin and recovered material?

In the 2009 Final Rule, the Agency recognized that servicing demand can be met with a combination of newly-manufactured or imported HCFCs (virgin HCFCs) and HCFCs that have been recovered and either reused, recycled or reclaimed. Therefore, EPA did not anticipate that virgin HCFC–22 would need to be produced or imported to meet the entire HCFC–22 servicing demand in each year between 2010 and 2014. The *Servicing Tail Report* analyzes various scenarios regarding reclamation. EPA continues to believe that reused, recycled, and reclaimed material can help meet HCFC–22 servicing needs and is therefore proposing to maintain the same approach to meeting servicing needs at this time. While the Agency is not changing its approach, EPA believes that the percentage of overall demand that can be met by reclaimed material is higher than originally projected. EPA is taking comment on the new projections of reclaim capabilities outlined in the memo included in the docket for this rulemaking titled, ''Analysis of HCFC–22 Servicing Needs in the U.S. Air Conditioning and Refrigeration Sector: Additional Considerations for Estimating Virgin Demand,'' (Adjustment Memo).

3. How would the allocation decline?

As explained in the preamble to the 2009 Final Rule, without year-to-year reductions in the allocations for virgin HCFC–22, the HCFC–22 market could be oversaturated, and the contribution of reused, recycled, and reclaimed refrigerant would decrease, both in the total number of kilograms and as the proportion of overall need.

EPA is particularly concerned with encouraging a smooth transition to the 2015 stepdown. At that date, the U.S. must meet a 90 percent reduction below the baseline for all HCFCs. EPA's *Servicing Tail Report* shows that even a 20 percent recovery rate would be insufficient to meet the demand for

HCFC–22 in 2015. As shown in Table 4–5 in the report, demand for HCFC–22 in 2015 was projected to be 38,800 MT while the cap for all HCFCs equates to 27,709 MT of HCFC–22 (assuming no allocation for any other HCFCs). In developing the 2009 Final Rule, EPA calculated that to meet the total demand in 2015, the recovery rate would have to increase to 26 percent (representing 29 percent of total servicing demand).

EPA determined in the 2009 Final Rule a level of allocation projected to meet the servicing demand over 2010–2014. In addition to EPA's request for comment on whether to address or not address 2010 allowances (see section III.B.4.), the Agency is proposing to establish lower overall HCFC–22 consumption allocation levels for 2012–2014 than those the Agency determined were appropriate in the 2009 Final Rule. The Adjustment Memo in the docket to this rulemaking discusses recent data and stakeholder feedback that indicate that demand for virgin HCFC–22 is lower than originally projected, and that the number of consumption allowances should be 11 to 47 percent lower relative to the 2009 Final Rule. Specifically, the memo examines (1) surplus inventory of HCFC–22 from past years, (2) reclaimer capacity, and (3) increased recovery and re-use of HCFC–22 from the large retail food sector. EPA is taking comment on the analysis, supporting data, and assumptions presented in the Adjustment Memo.

Since EPA is continuing to allow the use of existing HCFC–22 appliances manufactured prior to January 1, 2010, reused, recycled, and reclaimed HCFC–22 will become more valuable as the phaseout progresses. The demand for HCFC–22 to service existing equipment will provide an economic incentive to increase the quantities of recovered HCFC–22 available for reuse, recycling, and reclamation. Therefore, the Agency believes that establishing a lower aggregate HCFC–22 consumption allocation for 2012–2014 than in the 2009 Final Rule is not only justified by decreased demand and the availability of surplus inventory from past years, but also because a lower virgin supply will further incentivize recovery and reclamation. The docket for the 2009 Final Rule (EPA–HQ–OAR–2008–0496) provides information on EPA's past assumptions regarding the availability of reused, recycled and reclaimed HCFC–22 to meet servicing demand, while the Adjustment Memo to this docket discusses recent changes in the HCFC–22 market.

In the 2009 Final Rule, EPA determined it was appropriate to establish an annual step-down with the assumption that the total demand to be met from recovered HCFC–22 would equal 12,500 MT each year. This is approximately the amount EPA projected would be needed to meet the servicing demand in 2015. Using this approach, the aggregate allocation for consumption would equal approximately 40,700 MT in 2012, and decrease each year after, as shown in Table 1. These values are derived by subtracting 12,500 MT from the estimated servicing demand each year. However, in light of changes to both virgin demand and reclaimer capabilities, EPA believes that the portion of demand met by recovered HCFC–22 could range from 12,500 MT to 19,700 MT each year (see the Adjustment Memo), and that reduced demand, along with surplus inventory estimates, warrant a significantly lower total allocation for 2012, 2013 and 2014. While Table 1 shows how the total allocation in the 2009 Final Rule was determined, the Agency is now proposing to allocate between 11 and 47 percent fewer consumption allowances for 2012 to 2014. EPA will not issue HCFC–22 and HCFC–142b allowances for 2015 or later until a future rulemaking.

TABLE 1—2009 FINAL RULE PROJECTION OF AMOUNT OF ANNUAL HCFC–22 DEMAND TO BE MET BY ALLOCATED AND RECOVERED MATERIAL

	2012	2013	2014
Estimated Demand (MT)	53,200	48,400	43,600
Recovered Amount (MT)	12,500	12,500	12,500
Total Allocation (MT)	40,700	35,900	31,100

As the total servicing demand decreases, assuming the supply of recovered HCFCs stays at a constant level results in recovered material comprising a greater proportion of the total demand each year. Using this assumption and the projected demand level from the 2009 Final Rule, the percentage of the total servicing demand to be met with recovered material would rise from 21.6 percent of total demand in 2011 to 28.7 percent in 2014, though the total amount of recovered material needed would remain at 12,500 MT for each year. In the Adjustment Memo, EPA considers two HCFC–22 allocation scenarios for each year. The larger allocation scenario considers: (1) An annual surplus inventory drawdown of 6,000 MT; (2) the same 12,500 MT of annual recovery and reclamation used in the 2009 Final Rule; and (3) a minimum expected recovery and reuse rate of 20 percent of total demand in the large retail food sector each year. The smaller allocation scenario considers: (1) The same surplus inventory drawdown of 6,000 MT; (2) an annual reclamation amount of 19,700 MT, or 35 percent of estimated servicing demand in 2012; and (3) a maximum expected recovery and reuse rate of 70 percent of total demand in the large retail food sector. These two scenarios indicate that EPA should decrease annual allocations relative to the 2009 Final Rule by between 11 and 47 percent each year—with the exact range varying slightly year by year. As summarized in Table 4 of the Adjustment Memo, the Agency is proposing to issue HCFC–22 consumption allowances as follows: Between 25,100 and 36,200 MT in 2012 (a decrease of 11 to 38 percent); between 20,800 and 31,400 MT in 2013 (a decrease of 13 to 42 percent) and between 16,400 and 26,300 MT in 2014 (a decrease of 15 to 47 percent). As percentages of baseline, these proposed amounts correspond to allocations of 17.7 to 25.5 percent in 2012, 14.7 to 22.1 percent in 2013, and 11.6 to 18.5 percent in 2014.

In summary, the Agency is proposing to reduce consumption allowances relative to the 2009 Final Rule. The Agency is also proposing to decouple production allowances and allocate either the same amount of production as in the 2009 Final Rule or the same percentage of baseline as in the 2009 Final Rule. A memo included in the docket for this rulemaking provides an overview of the various scenarios (see the Overview Memo).

4. How will EPA address the court's decision with regard to 2010 HCFC allowances?

EPA's first step in addressing the Court's decision was to establish baselines for 2011 that reflected the 2008 inter-pollutant transfers that were at issue in the litigation and to allocate allowances for 2011 as a percentage of those baselines. As noted in the Interim Final Rule (76 FR 47451), EPA interprets the Court's decision as applying, at a minimum, to the baseline and calendar-year allowances for 2011–2014. The Agency is taking comment on whether to interpret the decision as applying to the 2010 allocation, and if so, how allowances in future control periods might be adjusted to reflect this. The petitioners in the case, Arkema and Solvay, have stated that EPA should ''restore the allowances of which Arkema and Solvay were deprived unlawfully in 2010,'' or ''provide a method to compensate Arkema and Solvay for year 2010 allowances that rightfully should have been available'' (February 4, 2011 letter to Drusilla Hufford, EPA, from William Hamel, Arkema, and March 7, 2011 letter to Drusilla Hufford, EPA, from Don Magid, Solvay, both available in the docket for this rulemaking). As a result of these requests, EPA is considering whether to grant additional allowances for all companies that would have received higher allocations in 2010 if the 2008 inter-pollutant transfers had been reflected in the baselines published in the 2009 Final Rule. The companies affected, and the additional allowances they would have received (hereinafter described as ''recoupment allowances''), are included in Table 2, below.

TABLE 2—PROPOSED RECOUPMENT ALLOWANCES

Company	Chemical	Consumption (kg)	Production (kg)
Arkema	HCFC–22	4,749,692	4,611,848
DuPont	HCFC–142b	2,339	0
Honeywell	HCFC–142b	58,291	107,097
Solvay Fluorides	HCFC–22	1,157,895	0
Solvay Solexis	HCFC–142b	0	289,800

EPA is taking comment on four possible options with regard to this issue: (1) Providing recoupment allowances in 2013 in addition to the aggregate level of production and consumption specified in the 2009 Final Rule; (2) allocating recoupment allowances over two years (2013–2014) in addition to the aggregate level of production and consumption specified in the 2009 Final Rule; (3) allocating recoupment allowances from the aggregate level of production and consumption specified in the 2009 Final Rule over two years (2013–2014); and (4) treating missed allowances from 2010 as impossible to recoup. EPA is also taking comment on: (1) Whether it should provide recoupment for HCFC–22 and HCFC–142b, or just HCFC–22 allowances; and (2) whether it should provide recoupment for production and consumption, or just consumption allowances. EPA is seeking comment on these two points because: (1) The Court's decision only addresses the losses of the petitioners Arkema and Solvay, who appear to be most concerned with recoupment for HCFC–22 allowances; (2) neither of the petitioners has specifically requested recoupment for production allowances; and (3) while Solvay Solexis could receive recoupment allowances for HCFC–142b production (see Table 2), it would receive nearly ten times more HCFC–142b production allowances under this proposed rule absent recoupment than the 2009 Final Rule, which could avoid the need for HCFC–142b production allowance recoupment. When considering the options included in this section, commenters should consider options 1–4 providing or not providing recoupment for HCFC–142b and providing or not providing recoupment for production allowances. Additionally, EPA recognizes that any option to provide recoupment in addition to the aggregate level of consumption is, to some extent, in tension with the proposal to decrease the aggregate allocation and might impede the intended effects of allocating fewer HCFC–22 allowances.

If EPA provides recoupment, the Agency is proposing to address this issue in addition to the proposed establishment of baselines reflecting the Court's decision on past inter-pollutant transfers, and the proposed allocation of HCFC–22 production and consumption allowances. Under each of these approaches, the U.S. would still be well below its HCFC cap under the Montreal Protocol. EPA is not proposing a recoupment option that would begin in 2012 because waiting until 2013 provides companies that may receive recoupment allowances time to prepare for the increase in calendar-year allowances.

Under option 1, each company would get the percentage of baseline listed in proposed section 82.16(a)(1). The companies listed in Table 2 would receive an additional one-time allocation in 2013 of the amount specified in the table. Granting recoupment allowances under option 1 would add 329 ODP-weighted MT of allowed HCFC consumption and 280 ODP-weighted MT of allowed HCFC production in 2013. The result is an increase in allowed HCFC consumption and production (ODP-weighted) by 17 percent and 15 percent, respectively, beyond that allowed in the 2009 Final Rule, assuming constant levels of overall consumption and production. While the number of allowances would be higher in 2013 than envisioned in the 2009 Final Rule, it would not increase environmental damage during the regulatory period from 2010–2014 relative to the projections in the 2009 Final Rule: Approximately 425 ODP-weighted MT of HCFC consumption allowances and approximately 930 ODP-weighted MT of HCFC production allowances were not used by allowance holders in 2010 (source: EPA's ODS Tracking System). This one-year increase in allowances in 2013 would keep the aggregate level of consumption and production for 2010–2014 below the level envisioned in the 2009 Final Rule. Since the 2014 allocation would be unchanged from (or less than) the 2009 Final Rule level, option 1 could be preferable to a two-year recoupment option because it could smooth the transition to the 2015 stepdown under the Montreal Protocol. Option 1 would also restore the companies' lost opportunity to produce or consume in 2010 without reducing the amount of allowances other companies receive further.

Option 1 is not without disadvantages. First, it would increase the number of allowances available for use in 2013, which might impede the

development of a viable reclamation industry and hamper the transition to the 2015 stepdown. Second, this option significantly increases the number of allowances in 2013 for certain companies receiving recoupment, meaning that those companies arguably could have difficulty selling the full amount of HCFC–22 produced or imported with allowances that year. However, if companies receiving extra allowances all in one year cannot sell the full amount in that year, they may store produced and/or imported material for sale or use in later years, or sell the allowances to other producers or importers for use in that same year. Third, companies not receiving recoupment would have the same number of allowances as they would under a no-recoupment scenario, but they would have a smaller share of all allowances allocated under this option compared to a no recoupment scenario.

Under the second option, recoupment allowances would be provided over two years (2013–2014) instead of one year as in option 1. Each entity listed in Table 2 would receive half of the amount listed in the table in 2013 and 2014 in addition to the percentage of baseline as listed in proposed section 82.16(a)(1). Option 2 would increase allowed consumption and production relative to the 2009 Final Rule levels by 8 percent in 2013 and by 10 percent and 9 percent, respectively, in 2014. This options shares some of the advantages of option 1: (1) The amount allocated between 2010 and 2014 is still below the amount envisioned as total usage during that period in the 2009 Final Rule when taking into consideration the number of allowances not used in 2010, and (2) it restores the companies' lost opportunity to produce or consume in 2010 without reducing the amount of allowances other companies would receive under no recoupment.

A significant downside to this option is that it increases the number of allowances available in 2013 and 2014, and may hamper the smooth transition in 2015 to 10 percent of baseline under the Montreal Protocol, since the decrease between the 2014 allocation and 2015 allocation for HCFC–22 would be larger under this option than in option 1. Also, like option 1, companies who would not receive recoupment would have a smaller share of all allowances compared to a no recoupment scenario.

Under option 3, EPA could provide recoupment allowances as part of the aggregate allocation level. The letters included in the docket from Don Magid, Solvay Fluorides, to Drusilla Hufford, EPA, dated March 7, 2011, and from William Hamel, Arkema, to Drusilla Hufford, EPA, dated February 4, 2011, express support for this option. One way to do this would be to allocate HCFC–22 allowances (both recoupment for 2010 and their allotted percentage of baseline for 2013 and 2014) to the companies listed in Table 2, and then allocate the remainder to all other allowance holders by revising the percentage of baseline allocated. A memo to the docket explains this approach in more detail (see ''Memo: Recoupment Options''). Providing all recoupment from the allocated level in the 2009 Final Rule (or a lesser amount) in one year is not possible because there are too few allowances to provide recoupment and regular allowances for HCFC–142b. Additionally, the memo explains that if the Agency provides recoupment for HCFC–142b production allowances, the Agency will have no choice but to increase the aggregate number of production allowances.

The primary benefit of option 3 is that it keeps the overall consumption allocation at the same level (or less) as that in the 2009 Final Rule, and should therefore not negatively affect the transition to the 2015 stepdown or recovery and reclamation. However, for the years during which recoupment occurred, companies not receiving recoupment under this option would receive fewer allowances, and a smaller share of overall allowances, than under the other recoupment scenarios. The amount of allowances received by these companies also would be smaller than the amount they would have received under the 2008 Proposed Rule, and would decrease further if EPA decides to allocate less than the amounts in the 2009 Final Rule.

EPA is also considering option 4, under which the Agency would not provide recoupment allowances. As part of the evaluation of this option, EPA is considering the effect of the Court's partial vacatur and remand on the 2010 allocation. The Court issued its decision on August 27, 2010, but stayed the mandate pending resolution of any petition for rehearing. The 2009 Final Rule remained in effect during 2010. EPA's petition for rehearing was denied on January 21, 2011, and the mandate issued on February 4, 2011. While EPA has not interpreted the vacatur as nullifying 2010 allowances, EPA is considering whether to address the 2010 allocation on remand even if the partial vacatur does not apply to 2010.

EPA notes that all 2010 allowances expired on December 31, 2010 and therefore have no value in later years. See 74 FR 66415 (''EPA allocates allowances for specific years; they are valid between January 1 and December 31 of a given control period (*i.e.,* calendar year)''). 40 CFR Part 82 also makes it clear that allowances are tied to a specified control period. Section 82.16(a) states that ''In each control period * * * each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19.'' Furthermore, the definitions of unexpended allowances in section 82.3 specify that allowances are valid for specific control periods. The protection of stratospheric ozone allowance system at 40 CFR part 82 does not allow banking or borrowing of allowances. Since the Court's mandate issued on February 4, 2011, no company could have possessed 2010 allowances on the date the mandate issued, because all unexpended 2010 allowances had already expired.

EPA seeks comment on whether it is possible to put the petitioners in *Arkema* v. *EPA* in the position they would have been in had they received the full amount of 2010 allowances to which they believed they were entitled. If EPA were to grant the petitioners additional 2010 allowances now, those allowances would have no value, as 2010 allowances can be expended only in 2010. The three recoupment options discussed above assume that by providing recoupment allowances in 2013, or 2013–2014, EPA can make up for the lost opportunity to provide or consume a specific amount of HCFC, which might either have been sold during 2010 or placed in inventory for sale during a subsequent year. Advantages of not providing recoupment allowances include (1) not increasing the amount of HCFC–22 on the market, which has advantages for the environment, public health, and for fostering a viable reclamation industry in advance of the 2015 stepdown, and (2) not decreasing the actual number or share of allowances for other allowance holders. Given the considerations above, including the structure of the program and the policy advantages noted, EPA's preference is not to provide recoupment allowances.

If EPA decides to provide recoupment, the Agency prefers option 1 because it has a minimal impact on the 2015 stepdown to 10 percent of baseline, addresses the Court's decision in the simplest manner, and does not further decrease the number of allowances companies would have received had EPA taken the 2008 inter-pollutant transfers into account in its 2009 Final Rule. EPA welcomes

comment on the matter. A memo in the docket for this rulemaking shows how EPA would effectuate each of the options in the regulatory text at 40 CFR part 82 (see ''Memo: Recoupment Options''). To effectuate this option, the regulatory text at 40 CFR 82.16(a) would be amended to add paragraph (a)(2) as set forth in the regulatory text of this proposed rule.

Any recoupment allowances allocated for 2013 or 2014 would function in the same way as other calendar-year allowances: For example, they could be used only in the calendar year for which they were issued and would expire at the end of that calendar year.

C. How much HCFC–22 and HCFC–142b would be allocated in 2012–2014?

As discussed previously, EPA is proposing to revise the tables in 40 CFR 82 that together specify the production and consumption allowances available during specified control periods. The tables at sections 82.17 and 82.19 apportion baseline production allowances and baseline consumption allowances, respectively, to individual companies for specific HCFCs during a particular regulatory period. Complementing these tables, the table at section 82.16 lists the percentage of baseline allocated to allowance holders for specific control periods. EPA is proposing to (1) retain this framework of complementary tables, (2) respond to the Court's remand by establishing baselines for 2012–2014 identical to those established in the 2011 Interim Final Rule (76 FR 47451), and (3) grant allowances based on percentages of baselines in a manner that achieves the 2010 phaseout step and lays the groundwork for the next phaseout step in 2015 (which could mean fewer 2012–2014 consumption allowances with or without fewer 2012–2014 production allowances as compared to the 2009 Final Rule). EPA has published an Overview Memo in the docket clarifying how the various options presented in this proposed rule might work separately or in combination.

In the 2009 Final Rule, 34.1 percent, 30.1 percent, and 26.1 percent of each company's HCFC–22 baselines were allocated for 2012, 2013, and 2014, respectively. As discussed above, EPA interprets the Court's vacatur as applying to the HCFC–22 and HCFC–142b allocations for each of these years. EPA intends to put in place new allocations through this rulemaking. EPA is proposing, at maximum, to allocate 28.7 percent, 25.3 percent and 21.9 percent of the HCFC–22 baseline for 2012, 2013 and 2014 consumption, respectively. EPA is also proposing an 11 to 47 percent reduction to this maximum amount for each year, which would correspond to annual consumption allowances of 17.7 to 25.5 percent of baseline in 2012, 14.7 to 22.1 percent in 2013, and 11.6 to 18.5 percent in 2014. The reduction could apply to consumption only or to consumption and production, if EPA chooses not to decouple consumption and production allowances.

The percent allocation for HCFC–142b was 0.47 percent of baseline in the 2009 Final Rule for 2012–2014. EPA is proposing to allocate 4.9 percent of HCFC–142b baseline for 2012–2014. As a reminder, the percentages allocated for 2013 and 2014 could be different if EPA decides to provide recoupment.

The 2009 Final Rule, which did not include the 2008 transfers of HCFC–142b to HCFC–22 baseline allowances in the baselines for the next regulatory period, had a total HCFC–22 consumption baseline of 119,384 MT. EPA is reflecting the baseline transfers in section 82.17 and 82.19 in accordance with the Court's decision. As a result, the aggregate HCFC–22 consumption baseline has increased to 141,865 MT. Since the aggregate HCFC–22 baseline is now higher due to the increase in the number of HCFC–22 baseline allowances for Arkema, Inc. and Solvay Fluorides, LLC, EPA is allocating a smaller percentage of the company-specific baselines (even without the proposed decrease in allocation) than in the 2009 Final Rule to achieve the same total number of HCFC–22 allowances. Thus, 40,700 MT of HCFC–22 consumption (the aggregate allocation amount for 2012 in the 2009 Final Rule) is equal to 34.1 percent of 119,384 MT (baseline) of HCFC–22 in the 2009 Final Rule, and 28.7 percent of 141,865 MT (baseline) for 2012 in this proposed rule. An 11 to 47 percent reduction in consumption allowances would change the percentage of baseline allocated to between 17.7 and 25.5 percent for 2012. The aggregate HCFC–22 production baseline is also increasing, from 110,619 MT in the 2009 Final Rule to 129,093 MT, to reflect Arkema, Inc.'s transfer of HCFC–142b baseline production allowances to HCFC–22 baseline production allowances.

The opposite is true for HCFC–142b, which had a larger aggregate consumption baseline in the proposed rule (21,089 MT), but now has a smaller consumption baseline (2,047 MT) since EPA is accounting for inter-pollutant transfers from HCFC–142b to HCFC–22. Thus, 100 MT of HCFC–142b consumption allowances (the aggregate allocation amount in each year between 2012 and 2014) is equal to 0.47 percent of 21,089 MT of HCFC–142b in the 2009 Final Rule, and 4.9 percent of 2,047 MT in this proposed rule. Aggregate HCFC–142b baseline production allowances are decreasing from 25,090 MT in the 2009 Final Rule to 9,444 MT in this proposed rule to reflect Arkema, Inc.'s transfer of HCFC–142b baseline production allowances.

In summary, EPA is proposing (1) to establish production and consumption baselines for 2012–2014 identical to those established in the 2011 Interim Final Rule (76 FR 47451) for HCFC–22 and HCFC–142b in the tables at sections 82.17 and 82.19. EPA is also proposing (2) to add new specified percentages of baseline for those substances to the table in section 82.16 for the 2012–2014 control periods. Without recoupment, the maximum proposed allocation amounts for consumption are specified in Table 1. Relative to the 2009 Final Rule, EPA is proposing to (3) allocate fewer HCFC–22 consumption allowances, the same amount or more HCFC–22 production allowances, and the same amount of HCFC–142b production and consumption allowances. If EPA chooses to provide recoupment allowances, the percentage of HCFC–22 baseline allocated to consumption could be 3.3 percent lower if EPA decides to provide recoupment from the total allocation in 2013 and 2014—regardless of the total allocation. The percentage of HCFC–22 baseline allocated to production could be 2.8 percent lower. The percentage of HCFC–142b baseline allocated to production and consumption could be 4.5 percent lower. Table 3 reflects the range of allocation percentages, including recoupment.

TABLE 3—PROPOSED PHASEOUT SCHEDULE FOR HCFC–22 AND HCFC–142B BETWEEN 2012 AND 2014 [6]

Control period	HCFC–22 Consumption		HCFC–22 Production		HCFC–142b Consumption and production	
	High %	Low %	High %	Low %	High %	Low %
2012	28.7	17.7	34.1	17.7	4.9	4.9
2013	25.3	11.4	30.1	11.4	4.9	0.4
2014	21.9	8.3	26.1	8.3	4.9	0.4

Consistent with the 2009 Final Rule, EPA is allocating different baseline percentages for HCFC–22 and HCFC–142b because EPA projects that the needs will differ for servicing air-conditioning and refrigeration appliances during the 2012–2014 control periods.

1. How does EPA propose to allocate HCFC–22 consumption allowances for 2012–2014?

For 2012, the 2009 Final Rule allocated HCFC–22 consumption allowances to meet about 76.5 percent of the servicing need, which translated into approximately 40,700 MT, or 59 percent of the total HCFC consumption cap for the 2012 control period. In this rulemaking, EPA is proposing to allocate 11 to 47 percent less for 2012 relative to the 2009 Final Rule; see the Adjustment Memo in the docket for a discussion of recent updates to estimated servicing demand and how much of that demand could reasonably be met by recovered or reclaimed refrigerant. In the 2009 Final Rule, 2013 and 2014 consumption allocations were 35,900 MT and 31,100 MT, respectively. The Agency is proposing to allocate 11 to 47 percent less for those years as well. Along with any reduction in consumption allowances, the final allocations in 2013 and 2014 will depend on which recoupment option the Agency chooses (including no recoupment). If the Agency issues recoupment, its preferred option is to allocate all recoupment (5,907 MT) in 2013 and do so in addition to the overall consumption allocation—regardless of whether the annual allocations are decreased relative to the 2009 Final Rule or not. In each year between 2012 and 2014, EPA's total HCFC consumption allocation including recoupment would be at least 36 percent below the Montreal Protocol cap, and would be below servicing demand as estimated in the *Servicing Tail Report.* Section III.B.4. of this preamble also discusses other recoupment options.

2. How does EPA propose to allocate HCFC–22 production allowances for 2012–2014?

In the 2009 Final Rule, EPA decided to use the same percentages for production and consumption allocations—deriving the percentages based on estimated need for each individual HCFC. In this rulemaking, EPA is proposing to decouple the percentage of baseline allocated for production and consumption allowances. The Agency is taking comment on two options with regard to decoupling production allowances: (1) Allocating the same aggregate number of HCFC–22 production allowances as in the 2009 Final Rule for 2012–2014, and (2) using the same baseline percentages as in the 2009 Final Rule to allocate HCFC–22 production allowances in 2012–2014. The proposal to decrease consumption allowances by 11 to 47 percent relative to the 2009 Final Rule would also apply to production allowances should the Agency decide not to decouple production allowances from consumption allowances.

Under option 1, EPA would decouple the percentage of baseline allocated for production from the percentage of baseline allocated for consumption. A range of percentages is provided in Table 3. EPA would effectuate this change in its regulations by replacing the table at 40 CFR 82.16 with two tables. One would allocate a percent of baseline for consumption allowances. In the other, EPA would allocate 28.7 percent of production baseline in 2012, 25.3 percent in 2013, and 21.9 percent in 2014. The resulting allocation would provide 37,050 MT of HCFC–22 production allowances in 2012. This aggregate allocation in 2012 is approximately two percent lower than the amount allocated in the 2009 Final Rule (37,050 MT in this proposed rule vs. 37,721 MT in the 2009 Final Rule) because the aggregate amount of baseline production allowances in this rulemaking did not increase by the same relative amount as aggregate baseline consumption allowances. Because Solvay did not transfer its HCFC–142b production allowances to HCFC–22 production allowances, HCFC–22 baseline consumption allowances are 18.8 percent higher in this rule, while baseline production allowances are only 16.7 percent higher. The memo to the docket for this rulemaking titled ''Effects of HCFC–22 and HCFC–142b Baseline Changes: 2009 Final Rule vs. 2011 Proposed Rule,'' (Baseline Memo) discusses the slight differences in allocation amounts in more detail. Absent recoupment, EPA would allocate 32,660 MT of HCFC–22 production allowances in 2013, and 28,271 MT of HCFC–22 production allowances in 2014 under option 1.

Under option 2, EPA would also decouple the percentage of baseline allocated for production from the percentage of baseline allocated for consumption. EPA would effectuate this change in its regulations by replacing the table at 40 CFR 82.16 with two tables. One would allocate a percentage of baseline for consumption allowances. The other would allocate 34.1 percent, 30.1 percent and 26.1 percent of baseline for production allowances in 2012, 2013, and 2014, respectively, consistent with the 2009 Final Rule. This approach would still provide the petitioners in *Arkema* v. *EPA* the benefit of their 2008 baseline transfers while giving other companies with production baselines approximately the same number of production allowances as they received in the 2009 Final Rule. Compared to the 2009 Final Rule, the net result of this option would increase allowed production by 6,299 MT in 2012, 5,560 MT in 2013, and 4,821 MT in 2014.

[6] Table 3 shows the highest and lowest percentage of baseline allocated being proposed in this rule. The high HCFC–22 consumption scenario shows the percentage allocated if EPA provides the same number of allowances relative to the 2009 Final Rule. The high HCFC–22 production scenario shows an increase in overall production allowances if EPA allocates the same percentage of baseline as in the 2009 Final Rule. The low HCFC–22 production and consumption scenarios take into consideration a reduction in allowances relative to the 2009 Final Rule and recoupment from the aggregate allocation in 2013 and 2014. Additionally, the low scenario for HCFC–22 production shows the percentage allocated if EPA does not decouple production and consumption. For HCFC–142b, the high percentage reflects the same thinking used in the 2011 Interim Final Rule. The low scenario incorporates consumption recoupment from the aggregate amount for 2013 and 2014.

EPA is interested in comments on a number of issues with regard to these two options. From a policy perspective, EPA is interested in comments on whether an increase in the total number of HCFC–22 production allowances would result in greater total HCFC production, either in the U.S. or globally. EPA notes that production of 1 kilogram of an HCFC requires both a production allowance and a consumption allowance (82.15(a)(1), (2)). Thus, an increase in production allowances without a corresponding increase in consumption allowances does not automatically result in greater production. The most likely scenario is that an increase in production allowances would result in greater U.S. production for export. This is because as stated in 82.20(a), ''A person may obtain at any time during the control period * * * consumption allowances equivalent to the quantity of class II controlled substances that the person exported from the U.S. and its territories to a foreign state * * * when that quantity of class II controlled substance was produced in the U.S. * * * with expended consumption allowances.'' In effect, current EPA regulations allow exporters to receive a refund of one consumption allowance for each kilogram they export if they show one consumption and one production allowance were expended for the material exported. Therefore, an increase in production allowances would not be expected to result in greater HCFC consumption in the U.S. As an aside, the Agency also allows for additional production for export to Article 5 countries under the Montreal Protocol through its allotment of Article 5 allowances. Until December 31, 2019, companies are allowed to produce up to 10 percent of their HCFC–22, HCFC–141b and HCFC–142b production baselines annually so long as the produced material is exported to an Article 5 country. Article 5 allowances and their proper use are described in more detail at 82.18(a)(2).

EPA welcomes comment on whether, relative to the 2009 Final Rule, an increase in the total number of production allowances, as proposed under option 2, would result in (1) an increase in U.S. consumption, (2) an increase in U.S. production, either for domestic use or for export, and/or (3) an increase in worldwide production and/or consumption of HCFCs. Moreover, given that one potential outcome might be an increase in U.S. exports of HCFC–22, EPA invites comment on the implications of such an increase for the U.S. economy and the global environment, particularly as it relates to the smooth U.S. phaseout of HCFC–22.

EPA also requests comments on whether section 605(c) would preclude allocating a different percentage of baseline for production than for consumption. Section 605(c) states that EPA must ''promulgate regulations phasing out the production * * * of class II substances in accordance with [section 605],'' subject to any acceleration under section 606. It further states that EPA must ''promulgate regulations to insure that the consumption of class II substances in the United States is phased out and terminated in accordance with the same schedule * * * as is applicable to the phase-out and termination of production of class II substances under [Title VI].'' EPA is considering three possible interpretations of the term ''schedule'' as referenced in section 605(c): (1) The schedule that appears on the face of section 605, which contains no deadlines until 2015; (2) the schedule that appears on the face of section 605, as accelerated under section 606; and (3) the specific allocation percentages or amounts established by EPA through rulemaking for each control period. EPA believes that the second interpretation is the most consistent with the statutory language and purpose. The Agency requested comment on this issue in the 2011 Interim Final Rule (76 FR 47451) and received four comments in favor of increasing production allowances, and two comments in opposition. Only one commenter responded specifically to EPA's interpretation of section 605, and the commenter agreed with the second interpretation presented.

In past actions, the Agency has made the initial schedule in section 605 more stringent to reflect modifications to the Montreal Protocol phaseout schedule for HCFCs. Under the 2007 Montreal Adjustment (reflected in Decision XIX/6), the U.S. is obligated to reduce HCFC production and consumption 75 percent below its aggregate baseline by 2010. EPA is not proposing to increase production to an amount that would be inconsistent with that obligation. Instead, EPA is taking comment on whether to allow production to increase relative to consumption, without encroaching on the cap.

Under option 2, the U.S. would still be below the Montreal Protocol's production cap (when all HCFCs are included) by at least 33 percent in each year, even when including recoupment (the memo to the docket entitled, ''Montreal Protocol Compliance,'' contains more detailed information on the implications of each option relative to the Montreal Protocol cap).

In summary, EPA seeks comment on whether to decouple production from consumption, and if so, which decoupling option to choose. EPA is also seeking comment on whether increasing production allowances above the 2009 Final Rule level, as in option 2, would negatively affect the transition to the 2015 phaseout step, under which the U.S. is obligated to reduce HCFC production and consumption 90 percent below its aggregate baseline.

3. How does EPA propose to allocate HCFC–142b allowances for 2012–2014?

Establishing HCFC–142b baseline allowances that take into account the 2008 inter-pollutant transfers discussed in section II.D. results in 2,047 MT of aggregate baseline consumption allowances and 9,444 MT of aggregate baseline production allowances. Consistent with the 2009 Final Rule, EPA is proposing to allocate 100 percent of the projected servicing need for HCFC–142b identified in that rule: 100 MT of consumption. To get to that level of consumption, EPA is proposing to allocate 4.9 percent of the aggregate consumption baseline, as reflected in the table at section 82.16. The aggregate allocation number for consumption is the same as in the 2009 Final Rule.

Using the same percentage (4.9 percent), EPA is proposing to allocate 463 MT of HCFC–142b production allowances for each control period between 2012 and 2014. The aggregate allocation for production is higher than the amount allocated in the 2009 Final Rule (463 MT in this proposed rule vs. 118 MT in the 2009 Final Rule). The proposed allocation is 292 percent higher than in the 2009 Final Rule because the aggregate amount of baseline HCFC–142b consumption allowances in this rulemaking decreased by a significantly larger amount than aggregate baseline HCFC–142b production allowances. HCFC–142b baseline consumption allowances are 90.3 percent lower in this rule, while baseline production allowances are only 62.4 percent lower. The difference between the change in production and consumption baselines is a result of Arkema trading most of its HCFC–142b production allowances, while Solvay did not. This higher amount of calendar-year production does not affect the U.S.'s ability to meet its obligations under the Montreal Protocol. The Baseline Memo in the docket for this rulemaking discusses the differences in more detail.

As discussed in section III.B.4. of this preamble, EPA is considering options to

allocate recoupment allowances in 2013 or 2013–2014 in addition to the 4.9 percent of baseline described above. If finalized, the 2013 option would result in an additional 61 MT of HCFC–142b consumption allowances and 397 MT of HCFC–142b production allowances. The 2013–2014 option would result in 30 MT of additional HCFC–142b consumption allowances and 198 MT of HCFC–142b production allowances each year.

4. How would the aggregate for HCFC–22 and HCFC–142b translate entity-by-entity?

For 2012, EPA is proposing to allocate (1) at maximum, approximately 40,700 MT of HCFC–22 consumption allowances, (2) 37,050 MT of HCFC–22 production allowances (with possible adjustments), (3) approximately 100 MT of HCFC–142b consumption allowances and (4) 463 MT of HCFC–142b production allowances. However, EPA actually allocates allowances to individual companies (*i.e.,* legal entities). Company-specific production and consumption baselines (also referred to as ''baseline allowances'') for HCFC–142b and HCFC–22 are listed at sections 82.17 and 82.19, respectively. The range of percentages of baseline each entity would receive for HCFC–22 and HCFC–142b in 2012 through 2014 is shown in Table 3 above. For the low percentage of baseline allocated, Table 3 shows how the proposed allocation combined with recoupment option 3 (recoupment provided from the total allocation, not in addition to the allocation) would affect allowances. For the high percentage of baseline allocated, Table 3 shows no change relative to the 2009 Final Rule on the consumption side and an increase in allowances on the production side. The percentages included in the proposed regulatory text at the end of this preamble are at the lower end of the range EPA is proposing to allocate.

Allowances allocated for individual control periods are called ''calendar-year allowances'' to distinguish them from the baseline production or consumption allowances. For 2012–2014, EPA is proposing to apportion production and consumption baselines for HCFC–22 and HCFC–142b on the same basis as in the 2009 Final Rule, except that EPA is making adjustments to reflect (1) the 2008 inter-pollutant transfers of baseline allowances deemed permanent by the Court, (2) inter-company, single-pollutant transfers of baseline allowances that occurred in 2010, and (3) changes in company names that occurred after the 2009 Final Rule was signed. All of these changes were made in the 2011 Interim Final Rule (76 FR 47451), and EPA is proposing to do the same for 2012–2014. Applying the approach described above, EPA would apportion production and consumption baselines for HCFC–22 and HCFC–142b to the following entities in the following amounts:

TABLE 4—BASELINE PRODUCTION ALLOWANCES OF HCFC–22 AND HCFC–142B IN 40 CFR 82.17

Person	Controlled substance	Allowances (kg)
Arkema	HCFC–22	46,692,336
	HCFC–142b	484,369
DuPont	HCFC–22	42,638,049
Honeywell	HCFC–22	37,378,252
	HCFC–142b	2,417,534
MDA Manufacturing	HCFC–22	2,383,835
Solvay Solexis	HCFC–142b	6,541,764

TABLE 5—BASELINE CONSUMPTION ALLOWANCES OF HCFC–22 AND HCFC–142B IN 40 CFR 82.19

Person	Controlled substance	Allowances (kg)
ABCO Refrigeration Supply	HCFC–22	279,366
Altair Partners	HCFC–22	302,011
Arkema	HCFC–22	48,637,642
	HCFC–142b	483,827
Carrier Corporation	HCFC–22	54,088
Coolgas Investment Property	HCFC–22	1,040,458
DuPont	HCFC–22	38,814,862
	HCFC–142b	52,797
H.G. Refrigeration Supply	HCFC–22	40,068
Honeywell	HCFC–22	35,392,492
	HCFC–142b	1,315,819
Mexichem Fluor Inc	HCFC–22	2,546,305
Kivlan & Company	HCFC–22	2,081,018
MDA Manufacturing	HCFC–22	2,541,545
Mondy Global	HCFC–22	281,824
National Refrigerants	HCFC–22	5,528,316
Refricenter of Miami	HCFC–22	381,293
Refricentro	HCFC–22	45,979
R-Lines	HCFC–22	63,172
Saez Distributors	HCFC–22	37,936
Solvay Fluorides	HCFC–22	3,781,691
Solvay Solexis	HCFC–142b	194,536
USA Refrigerants	HCFC–22	14,865

The proposed baselines listed above are identical to the tables presented in the 2011 Interim Final Rule (76 FR 47451).

D. Are HCFC–141b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb allowances affected by this rulemaking?

Since the Court's decision did not vacate this portion of the 2009 Final Rule, EPA is not proposing to change baselines and percentages of baseline allocated as calendar-year allowances for HCFC–141b, HCFC–123, HCFC–124, HCFC–225ca, and HCFC–225cb, except to make adjustments for inter-company, single-pollutant transfers of baseline allowances, as reflected in the 2011 Interim Final Rule (76 FR 47451). In the case of HCFC–141b, EPA is continuing to allocate 0 percent of baseline for U.S. consumption and production, consistent with 40 CFR 82.16(b).

E. How will EPA allocate other HCFCs?

As a result of EPA's allocation process, which is largely based on projected demand for HCFC–22 and HCFC–142b, minus an amount of HCFC–22 that is assumed to be reused, recycled, or reclaimed, the total allocation is lower than the aggregate HCFC cap under the Montreal Protocol. EPA recognizes that there could be some additional need for HCFCs not specifically included in this rule. While some niche applications in the U.S. use other HCFCs, such as HCFC–21, EPA is not aware of additional need for production or import of these substances at this time, as adequate amounts appear to be in inventory. However, EPA is not foreclosing the possibility of additional production or import for these niche uses. Also, some amount of HCFC–141b will likely continue to be produced or imported via the petition process during 2012–2014. EPA believes there is sufficient room under the cap for such continued production and import. The current regulations at 40 CFR 82.15 ban the production and import of class II substances for which EPA has apportioned baseline production and consumption allowances in excess of allowances held by the producer or importer, but do not ban the production and import of class II substances for which EPA has not apportioned baseline production and consumption allowances. This rule does not alter the current regulations in that respect. The producer or importer of an HCFC that is not subject to the allowance system would be required to report to EPA consistent with the existing recordkeeping and reporting requirements. If necessary, EPA could amend the regulations to set and apportion baselines and issue allowances for these HCFCs. Therefore, retaining room under the cap could provide the benefit of accounting for unanticipated growth in HCFCs that do not have allocations or other unforeseen events. However, EPA is not reserving room under the cap for the above-described reasons. EPA is allocating allowances based on modeled demand for virgin and recovered material in preparation for the next major stepdown period under the Montreal Protocol in 2015.

IV. How does EPA propose to change the regulations governing allowance transfers of Class II Controlled Substances?

The Agency is concerned about the possibility of companies undermining the HCFC chemical-by-chemical phaseout by performing inter-pollutant transfers in advance of future phaseout steps. EPA interprets the 2003 Final Rule, which established the transfer provisions at 40 CFR 82.23, as allowing only single-pollutant, inter-company transfers to be made on a permanent basis. Nevertheless, EPA recognizes that in *Arkema* v. *EPA,* the Court found that ''EPA's practice under the 2003 Rule was to allow petitioners' baseline transfers of inter-pollutant allowances'' (618 F.3d at 8). Therefore, EPA clarified its current policy on inter-pollutant transfers in the 2011 Interim Final Rule (76 FR 47459) and is repeating that clarification in this action. EPA is also proposing to modify the regulatory text in order to dispel any possibility of confusion in the future. In addition to modifying the regulatory text to address the duration of inter-pollutant transfers, EPA is also proposing to revise the regulatory text to reflect prior Agency statements pertaining to inter-pollutant transfers of Article 5 allowances.

A. How does EPA propose to change the regulations governing permanent transfers of Class II Allowances?

Sections 607(b) and (c) of the CAA address inter-pollutant and inter-company transfers of allowances, respectively. Inter-pollutant transfers are the transfer of an allowance of one substance to an allowance of another substance on an ODP-weighted basis. Inter-company transfers are transfers of allowances for the same ODS from one company to another company. Section 607(c) also authorizes inter-company transfers combined with inter-pollutant transfers, so long as the requirements of both are met. The corresponding regulatory provisions for HCFCs appear at 40 CFR 82.23.

The 2009 Final Rule updated the baselines for HCFC–22 and HCFC–142b to reflect name changes and inter-company baseline transfers, *i.e.,* transfers of baseline for a specific type of HCFC from one company to another. Doing so reflected the changes in the marketplace that had occurred since EPA promulgated the 2003 Final Rule. Inter-company baseline transfers provide a mechanism for new entrants to join the HCFC market and for other companies to expand their business. EPA recognizes that in some cases, entities are no longer actively involved in HCFC production, import, and/or export activities. EPA retained the baseline for such entities, noting that this had been a mechanism by which new entrants had entered the HCFC allowance system in the past.

The 2009 Final Rule also addressed four inter-pollutant baseline transfers made during the prior regulatory period (see section II.D. and the transfer forms in the docket for this action for more detail). EPA had proposed to adjust the company baselines to reflect these four inter-pollutant baseline transfers in the 2008 Proposed Rule. Eight commenters opposed, and two commenters supported, these proposed adjustments. At issue was whether the inter-pollutant baseline transfers should be part of the companies' baseline allowances in the next regulatory period.

After reviewing the comments, EPA concluded that adjusting the baselines to reflect inter-pollutant baseline transfers could create incentives for future manipulation of the allocation system in anticipation of future control periods. EPA remains concerned about the potential for such future manipulation if inter-pollutant baseline transfers during the current regulatory period change a company's baseline for future regulatory periods. For example, in 2020 EPA will no longer be issuing HCFC–22 production or consumption allowances (see section 82.16(e)). EPA expects that companies with HCFC–22 allowances would no longer be in the HCFC market at that date if they did not hold allowances for other HCFCs that may still be produced after 2020. If EPA were to allow inter-pollutant baseline transfers that carried forward into the new regulatory period, companies with HCFC–22 baselines in 2019 could convert them all to baselines for HCFC–123. Perpetuating the HCFC–22 baselines in a new form would be counter to the design of the chemical-by-chemical phaseout, under which the baseline allowances for a particular chemical are intended to drop out of the system upon the phase-out of that chemical.

As another example, in 2015, a producer or importer that previously had not participated in the HCFC–123 market could dominate that market by converting its HCFC–22 baseline in 2014 to HCFC–123 baseline. Given the different ODPs of HCFC–22 and HCFC–123 (0.055 and 0.02, respectively), converting one baseline allowance of HCFC–22 would result in 2.75 baseline allowances of HCFC–123. Also, since companies hold many more HCFC–22 baseline allowances than HCFC–123 baseline allowances, converting those HCFC–22 baseline allowances would have an overwhelming effect on the current HCFC–123 baseline allowance holders and the overall market. EPA agrees with commenters on the 2008 Proposed Rule that taking inter-pollutant baseline transfers into account in setting baselines could have the effect of moving the U.S. HCFC phasedown from a chemical-by-chemical phaseout, as established under the ''worst-first'' approach in the 1993 Final Rule, towards an ODP-weighted phasedown. Thus, there are important policy reasons going forward for not taking inter-pollutant transfers into account in establishing baselines for new regulatory periods.

Some commenters on the 2008 Proposed Rule stated that modifying the baselines by taking into account inter-pollutant transfers would be contrary to the CAA. One commenter argued that section 607 of the CAA allows EPA to approve inter-pollutant transfers of allowances only on a year-to-year basis. That commenter pointed to language in section 607(b) stating that EPA regulations are to permit ''a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year on an ozone depletion weighted basis.'' The commenter also discussed the legislative history of the 1990 CAA Amendments.

EPA does not agree with the commenter that the language of section 607(b) is clear on its face. However, where the statutory language is ambiguous, EPA has discretion to choose a reasonable interpretation of that language. EPA determined in the 2009 Final Rule that section 607(b) is best read as permitting only year-by-year inter-pollutant transfers. EPA continues to believe that this is the best interpretation of the statutory language. Section 607(b) states that EPA's rules are to permit ''a production allowance for a substance for any year to be transferred for a production allowance for another substance for the same year.'' This language emphasizes the year-by-year nature of such transactions. No parallel language appears in section 607(c). That section does, however, provide that any inter-pollutant transfers between two or more persons must meet the requirements of section 607(b).

As the Court noted, ''the Agency is certainly entitled to * * * institute a program that forbids baseline inter-pollutant transfers in the future,'' (*Arkema* v. *EPA,* 618 F.3d at 9). Hence, EPA concludes that requiring all inter-pollutant transfers to be conducted on a yearly—and thus temporary—basis going forward is the approach most consistent with the wording of section 607(b). Further discussion of the reasons for limiting inter-pollutant transfers to those conducted on a calendar-year basis is available in the Response to Comments on the 2008 Proposed Rule (included in the docket for this rulemaking).

Consistent with the Court's decision regarding past inter-pollutant transfers (those conducted during the prior regulatory period), the baselines established in this action for 2012–2014 take into account the 2008 inter-pollutant baseline transfers. EPA is clarifying, however, that it has not approved any inter-pollutant transfers of baseline allowances in the current regulatory period, and for the reasons given in the 2009 Final Rule and in this action, in the future, EPA intends to approve inter-pollutant transfers only on a year-by-year basis. Thus, in the context of the allowance system for protection of stratospheric ozone, companies should not expect that any inter-pollutant transfers they conduct will affect their baselines either in the current regulatory period or any future regulatory period.

EPA proposes to revise the regulations to avoid any further dispute about the Agency's position on this issue. In addition, EPA is proposing to clarify the procedures that apply to permanent, single-pollutant transfers. Specifically, EPA proposes to add a sentence at the beginning and end of section 82.23(d) of 40 CFR Part 82, so the text reads: ''(d) Permanent transfers. The procedures in paragraph (a) of this section apply to permanent inter-company transfers of baseline production allowances or baseline consumption allowances. A person receiving a permanent transfer of baseline production allowances or baseline consumption allowances (the transferee) for a specific class II controlled substance will be the person who has their baseline allowances adjusted in accordance with phaseout schedules in this subpart. No person may conduct permanent inter-pollutant transfers of baseline production allowances or baseline consumption allowances.''

B. How does EPA propose to change the regulations governing transfers of Article 5 HCFC allowances?

Article 5 allowances for Class II substances are the privileges granted under 40 CFR 82.18(a) to produce the specified HCFC for export only to countries listed in 40 CFR Subpart A, Appendix C, Annex 4. The countries listed in that annex are developing countries whose control obligations under the Montreal Protocol are addressed in Article 5 of the treaty and hence are referred to as ''Article 5 Parties.'' EPA is proposing to revise the regulations at 40 CFR 82.23(b) to reflect its previously stated intent to allow inter-pollutant transfers of Article 5 allowances. The regulations currently provide clarity on inter-company (single-pollutant) transfers of Article 5 allowances in section 82.23(a) by stating ''a person * * * may transfer to any other person * * * any quantity of the transferor's class II * * * Article 5 allowances for the same type of allowances * * *'' While 82.23(a) specifically includes Article 5 allowances in the list of allowances that may be transferred to another entity, 82.23(b), which governs inter-pollutant transfers, makes no mention of Article 5 allowances.

Section 82.23 was promulgated as part of the 2003 Final Rule (68 FR 2820). EPA specifically discussed the inter-pollutant transfer of Article 5 allowances at 68 FR 2834 stating, ''For example, after the 2003 phaseout of HCFC–141b and before 2010, a company receiving * * * Article 5 allowances for HCFC–141b could engage in inter-company transfers of those allowances, but not in inter-pollutant transfers [because no other HCFC Article 5 allowances would be available during that period]. In 2010, when * * * Article 5 allowances for HCFC–22 and HCFC–142b become available, these allowances will be transferable with the ones for HCFC–141b.'' These statements indicate that the Agency intended for companies to be able to perform inter-pollutant transfers of Article 5 allowances. The omission of Article 5 allowances from section 82.23(b) appears to have been an oversight. Therefore, EPA is proposing to revise the regulations to specifically provide for the inter-pollutant transfers of Article 5 allowances through this rulemaking. As with other types of inter-pollutant transfers, these transfers would be limited in duration to a single year.

EPA is also proposing to change the text at 82.23(a)(ii) for consistency with its previously stated policy on offsets for transfers of Article 5 allowances. Section 607(a) requires that transfers of production allowances ''will result in greater total reductions in the production in each year of * * * class II substances than would occur in that year in the absence of such transactions.'' In a November 10, 1994, **Federal Register** notice, EPA stated its interpretation that the section 607 offset requirement applies to Article 5 allowance transfers (59 FR 56287): ''Inter-pollutant transfers of Article 5 allowances will continue to require a one percent offset, as required by section 607 of the CAA * * *'' In the May 10, 1995 final rule at 60 FR 24980, EPA stated that ''With today's action, EPA permits inter-pollutant and inter-company transfers of Article 5 allowances as proposed * * *'' meaning EPA intended to require an offset for transfers of Article 5 allowances in the class I allowance system.

This intent to require an offset is also reflected in certain provisions of the class II allowance system in 40 CFR 82. Section 82.23(a)(i)(G) specifically requires an offset for Article 5 allowance inter-company transfers, stating that the transfer claim must set forth: ''For trades of consumption allowances, production allowances, export production allowances, or Article 5 allowances, the quantity of the 0.1 percent offset applied to the unweighted quantity traded that will be deducted from the transferor's allowance balance.'' The offset is also mentioned at section 82.23(a)(iii): ''In the case of transfers of * * * Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity (in kilograms) to be converted plus 0.1 percent of that quantity.'' This contrasts with section 82.23(a)(ii)(A), which states that in the case of Article 5 allowances, ''EPA will reduce the transferor's balance of unexpended allowances * * * by the quantity to be transferred,'' with no mention of an offset. In addition, in the introductory text for 82.23(a)(ii), Article 5 allowances are not mentioned: ''The transfer claim is the quantity (in kilograms) to be transferred plus, in the case of transfers of production or consumption allowances, 0.1 percent of that quantity;'' EPA is proposing to amend 82.23(a)(ii) and 82.23(a)(ii)(A) to require an offset for transfers of Article 5 allowances. This will make section 82.23(a) consistent throughout. Section 82.23(b) currently requires an offset of 0.1 percent for all inter-pollutant transfers. Thus, if EPA adds Article 5 allowances to section 82.23(b), an offset will automatically apply.

To reflect EPA's intent to allow inter-pollutant transfers of Article 5 allowances, and the requirement that an offset be deducted when an entity is transferring Article 5 allowances, the Agency is proposing to modify the regulatory text. EPA is proposing to modify the text at 40 CFR 82.23(a)(ii) to read as set forth in the regulatory text of this proposed rule.

The Agency is also proposing to modify the text at 40 CFR 82.23(b) by adding Article 5 allowances to the list of allowances that can be traded between pollutants. The text would read as set forth in the regulatory text of this proposed rule.

V. Statutory and Executive Order Reviews

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

Under Executive Order (EO) 12866 (58 FR 51735, October 4, 1993), this action is a ''significant regulatory action'' since it raises ''novel legal or policy issues.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

EPA did not conduct a specific analysis of the benefits and costs associated with this action. Many previous analyses provide a wealth of information on the costs and benefits of the U.S. HCFC phaseout including:

- The 1993 *Addendum to the 1992 Phaseout Regulatory Impact Analysis: Accelerating the Phaseout of CFCs, Halons, Methyl Chloroform, Carbon Tetrachloride, and HCFCs.*
- The 1999 Report *Costs and Benefits of the HCFC Allowance Allocation System.*
- The 2000 Memorandum *Cost/Benefit Comparison of the HCFC Allowance Allocation System.*
- The 2005 Memorandum *Recommended Scenarios for HCFC Phaseout Costs Estimation.*
- The 2006 ICR *Reporting and Recordkeeping Requirements of the HCFC Allowance System.*
- The 2007 Memorandum *Preliminary Estimates of the Incremental Cost of the HCFC Phaseout in Article 5 Countries.*
- The 2007 Memorandum *Revised Ozone and Climate Benefits Associated with the 2010 HCFC Production and Consumption Stepwise Reductions and a Ban on HCFC Pre-charged Imports.*

A memorandum summarizing these analyses is available in the docket.

B. Paperwork Reduction Act

This action does not impose any new information collection burden. EPA already requires recordkeeping and reporting for HCFCs, and this action does not amend those provisions. The Office of Management and Budget (OMB) has previously approved the information collection requirements contained in the existing regulations at 40 CFR part 82, subpart A under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0498. The OMB control numbers for EPA's regulations in 40 CFR are listed in 40 CFR part 9.

C. Regulatory Flexibility Act (RFA)

The Regulatory Flexibility Act (RFA) generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute, unless the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. We have considered the economic impacts of this proposed rule on small entities. For purposes of assessing the impacts of this rule on small entities, a small entity is defined as: (1) A small business as defined by the Small Business Administration's (SBA) regulations at 13 CFR 121.201; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

This action will affect the following categories:

—Industrial Gas Manufacturing entities (NAICS code 325120), including fluorinated hydrocarbon gases manufacturers and reclaimers;
—Other Chemical and Allied Products Merchant Wholesalers (NAICS code 422690), including chemical gases and compressed gases merchant wholesalers;
—Air-Conditioning and Warm Air Heating Equipment and Commercial

and Industrial Refrigeration Equipment Manufacturing entities (NAICS code 333415), including air-conditioning equipment and commercial and industrial refrigeration equipment manufacturers;

—Air-Conditioning Equipment and Supplies Merchant Wholesalers (NAICS code 423730), including air-conditioning (condensing unit, compressors) merchant wholesalers;

—Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers (NAICS code 423620), including air-conditioning (room units) merchant wholesalers; and

—Plumbing, Heating, and Air-Conditioning Contractors (NAICS code 238220), including Central air-conditioning system and commercial refrigeration installation; HVAC contractors.

After considering the economic impacts of this proposed rule on small entities, I certify this action will not have a significant economic impact on a substantial number of small entities as it relieves a regulatory ban on production and consumption that would otherwise apply in the wake of the Court's vacatur. EPA is continuing to allocate production and consumption allowances using the same approach described in the 2009 Final Rule with adjustments to reflect (1) 2008 inter-pollutant transfers of baseline allowances deemed permanent by the Court, (2) inter-company, single-pollutant transfers of baseline allowances that occurred in 2010, (3) changes in company names that occurred after the 2009 Final Rule was signed and (4) an updated picture on the demand for HCFC–22. EPA is not modifying the recordkeeping or reporting provisions and thus is not increasing the burden to small businesses. EPA's HCFC Phaseout Benefits and Costs Memo, included in this docket, provides a summary of previous small business analyses, as well as the most recent cost and benefit data used for the 2009 Final Rule. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

D. Unfunded Mandates Reform Act

This action contains no Federal mandates under the provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), 2 U.S.C. 1531–1538 for State, local, or tribal governments or the private sector. UMRA does not apply to rules that are necessary for the national security or the ratification or implementation of international treaty obligations. This rule implements the 2010 milestone for the phase-out of HCFCs under the Montreal Protocol. Therefore, this action is not subject to the requirements of sections 202 or 205 of the UMRA.

This action is also not subject to the requirements of section 203 of UMRA because it contains no regulatory requirements that might significantly or uniquely affect small governments. This action apportions production and consumption allowances and establishes baselines for private entities, not small governments.

E. Executive Order 13132: Federalism

Executive Order 13132, titled ''Federalism'' (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is defined in the Executive Order to include regulations that 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.''

This action does not have federalism implications. 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. This action is expected to primarily affect producers, importers, and exporters of HCFCs. Thus, the requirements of section 6 of the Executive Order do not apply.

F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000). This action does not significantly or uniquely affect the communities of Indian tribal governments. It does not impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045: Protection of Children From Environmental Health and Safety Risks

This action is not subject to EO 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined in EO 12866. The Agency nonetheless has reason to believe that the environmental health or safety risk addressed by this action may have a disproportionate effect on children. Depletion of stratospheric ozone results in greater transmission of the sun's ultraviolet (UV) radiation to the earth's surface. The following studies describe the effects of excessive exposure to UV radiation on children: (1) Westerdahl J, Olsson H, Ingvar C. ''At what age do sunburn episodes play a crucial role for the development of malignant melanoma,'' Eur J Cancer 1994: 30A: 1647–54; (2) Elwood JM Japson J. ''Melanoma and sun exposure: an overview of published studies,'' Int J Cancer 1997; 73:198–203; (3) Armstrong BK, ''Melanoma: childhood or lifelong sun exposure,'' In: Grobb JJ, Stern RS Mackie RM, Weinstock WA, eds. ''Epidemiology, causes and prevention of skin diseases,'' 1st ed. London, England: Blackwell Science, 1997: 63–6; (4) Whiteman D., Green A. ''Melanoma and Sunburn,'' Cancer Causes Control, 1994: 5:564–72; (5) Heenan, PJ. ''Does intermittent sun exposure cause basal cell carcinoma? A case control study in Western Australia,'' Int J Cancer 1995; 60: 489–94; (6) Gallagher, RP, Hill, GB, Bajdik, CD, *et. al.* ''Sunlight exposure, pigmentary factors, and risk of nonmelanocytic skin cancer I, Basal cell carcinoma,'' Arch Dermatol 1995; 131: 157–63; (7) Armstrong, DK. ''How sun exposure causes skin cancer: an epidemiological perspective,'' Prevention of Skin Cancer. 2004. 89–116.

This action implements the U.S. commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the U.S. can take to complete the overall phaseout of ODS and further decrease impacts on children's health from stratospheric ozone depletion.

H. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution, or Use

This action is not a ''significant energy action'' as defined in Executive Order 13211 (66 FR 28355 (May 22, 2001)), because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The rule issues allowances for the production and consumption of HCFCs.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (''NTTAA''), Public Law 104–113, 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations

Executive Order (EO) 12898 (59 FR 7629 (Feb. 16, 1994)) establishes Federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the U.S.

EPA has determined that this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations because the 2010 phaseout step increases the level of environmental protection for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. This action continues the implementation of the U.S. commitment to reduce the total basket of HCFCs produced and imported to a level that is 75 percent below the respective baselines. While on an ODP-weighted basis, this is not as large a step as previous actions, such as the 1996 Class I phaseout, it is one of the most significant remaining actions the U.S. can take to complete the overall phaseout of ODS and further lessen the adverse human health effects for the entire population.

List of Subjects in 40 CFR Part 82

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Exports, Hydrochlorofluorocarbons, Imports.

Dated: December 22, 2011.

Lisa P. Jackson,

Administrator.

40 CFR part 82 is proposed to be amended to read as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

2. Amend § 82.16 by revising paragraph (a) to read as follows:

§ 82.16 Phaseout schedule of class II controlled substances.

(a) *Calendar-year Allowances.* (1) In each control period as indicated in the following tables, each person is granted the specified percentage of baseline production allowances and baseline consumption allowances for the specified class II controlled substances apportioned under §§ 82.17 and 82.19:

CALENDAR-YEAR HCFC PRODUCTION ALLOWANCES

Control period	Percent of HCFC–141b	Percent of HCFC–22	Percent of HCFC–142b	Percent of HCFC–123	Percent of HCFC–124	Percent of HCFC–225ca	Percent of HCFC–225cb
2003	0	100	100	.....	.....	.....	.....
2004	0	100	100	.....	.....	.....	.....
2005	0	100	100	.....	.....	.....	.....
2006	0	100	100	.....	.....	.....	.....
2007	0	100	100	.....	.....	.....	.....
2008	0	100	100	.....	.....	.....	.....
2009	0	100	100	.....	.....	.....	.....
2010	0	41.9	0.47	125	125	125	125
2011	0	32.0	4.9	125	125	125	125
2012	0	17.7	4.9	125	125	125	125
2013	0	14.7	4.9	125	125	125	125
2014	0	11.6	4.9	125	125	125	125

CALENDAR-YEAR HCFC CONSUMPTION ALLOWANCES

Control period	Percent of HCFC–141b	Percent of HCFC–22	Percent of HCFC–142b	Percent of HCFC–123	Percent of HCFC–124	Percent of HCFC–225ca	Percent of HCFC–225cb
2003	0	100	100	.....	.....	.....	.....
2004	0	100	100	.....	.....	.....	.....
2005	0	100	100	.....	.....	.....	.....
2006	0	100	100	.....	.....	.....	.....
2007	0	100	100	.....	.....	.....	.....
2008	0	100	100	.....	.....	.....	.....
2009	0	100	100	.....	.....	.....	.....
2010	0	41.9	0.47	125	125	125	125
2011	0	32.0	4.9	125	125	125	125
2012	0	17.7	4.9	125	125	125	125
2013	0	14.7	4.9	125	125	125	125
2014	0	11.6	4.9	125	125	125	125

(2) *Recoupment allowances.* In the control period beginning January 1, 2013 and ending December 31, 2013, the following companies are granted a one-time amount of HCFC consumption and production allowances in addition to the percentage of baseline listed in the table at paragraph (a)(1) of this section: 4,749,692 kg of HCFC–22 consumption allowances and 4,611,848 kg of HCFC–22 production allowances to Arkema; 2,339 kg of HCFC–142b consumption allowances to DuPont; 58,291 kg of HCFC–142b consumption allowances and 107,097 kg of production allowances to Honeywell; 1,157,895 kg of HCFC–22 consumption allowances to Solvay Fluorides; and 289,800 kg of HCFC–142b production allowances to Solvay Solexis.

* * * * *

3. Amend § 82.23 by revising paragraphs (a)(ii) introductory text, (a)(ii)(A), (b)(1), and (d) to read as follows:

§ 82.23 Transfers of allowances of class II controlled substances.

(a) * * * (ii) The Administrator will determine whether the records maintained by EPA indicate that the transferor possesses unexpended allowances sufficient to cover the transfer claim on the date the transfer claim is processed. The transfer claim is the quantity (in kilograms) to be transferred plus 0.1 percent of that quantity. The Administrator will take into account any previous transfers, any production, and allowable imports and exports of class II controlled substances reported by the transferor. Within three working days of receiving a complete transfer claim, the Administrator will take action to notify the transferor and transferee as follows:

(A) The Administrator will issue a notice indicating that EPA does not object to the transfer if EPA's records show that the transferor has sufficient unexpended allowances to cover the transfer claim. In the case of transfers of production or consumption allowances, EPA will reduce the transferor's balance of unexpended allowances by the quantity to be transferred plus 0.1 percent of that quantity. In the case of transfers of export production or Article 5 allowances, EPA will reduce the transferor's balance of unexpended allowances, respectively, by the quantity to be transferred plus 0.1 percent of that quantity. The transferor and the transferee may proceed with the transfer when EPA issues a no objection notice. However, if EPA ultimately finds that the transferor did not have sufficient unexpended allowances to cover the claim, the transferor and transferee, where applicable, will be held liable for any knowing violations of the regulations of this subpart that occur as a result of, or in conjunction with, the improper transfer.

* * * * *

(b) *Inter-pollutant transfers.* (1) Effective January 1, 2003, a person (transferor) may convert consumption allowances, production allowances or Article 5 allowances for one class II controlled substance to the same type of allowance for another class II controlled substance listed in Appendix B of this subpart, following the procedures described in paragraph (b)(3) of this section.

* * * * *

(d) *Permanent transfers.* The procedures in paragraph (a) of this section apply to permanent inter-company transfers of baseline production allowances or baseline consumption allowances. A person receiving a permanent transfer of baseline production allowances or baseline consumption allowances (the transferee) for a specific class II controlled substance will be the person who has their baseline allowances adjusted in accordance with phaseout schedules in this subpart. No person may conduct permanent inter-pollutant transfers of baseline production allowances or baseline consumption allowances.

* * * * *

[FR Doc. 2011–33456 Filed 1–3–12; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register

Vol. 77, No. 2

Wednesday, January 4, 2012

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

Forest Service

Forest Resource Coordinating Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of call for nominations.

SUMMARY: The Forest Resource Coordinating Committee (FRCC) is filling eight vacant positions. Candidates who wish to be considered for membership on the Forest Resource Coordinating Committee should submit an AD–755 application form, cover letter, and resume to the Secretary of Agriculture. The application form and additional information can be found at *usda.gov/advisory_committee.xml.*

DATES: Nomination applications are to be post marked by March 2, 2012

ADDRESSES: Nomination applications should be sent to Tom Vilsack, Secretary, Department of Agriculture (USDA), 1400 Independence Avenue SW., Washington, DC, 20250, Attn: Forest Resource Coordinating Committee.

FOR FURTHER INFORMATION CONTACT: Maya Solomon, FRCC Coordinator, by phone at (202) 205–1376 or by email at *mayasolomon@fs.fed.us* or Ted Beauvais, FRCC Designted Federal Officer, by phone (202) 205–1190 or by email at *tbeauvais@fs.fed.us.*

Individuals who use telecommunications devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1 (800) 877–8339 between 8 a.m. and 8 p.m., Eastern Standard Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Positions are to be filled for:

- Two State foresters or equivalent State officials from geographically diverse regions of the United States.
- A representative of a State fish and wildlife agency.
- An owner of nonindustrial private forest land.
- Two conservation organization representatives.
- A representative from an Indian Tribe.
- A representative from a State Technical Committee established under section 1261 of the Food Security Act of 1985.

The 20-member committee was established by the Food, Conservation, and Energy Act of 2008 to advise the Secretary of Agriculture on priorities and issues related to non-industrial private forest land. Members are charged with helping to clarify individual agency responsibilities; provide advice on the allocation of funds; and give direction and coordination of actions within USDA and the broader forestry sector, with specific focus on owners of non-industrial private forestland.

Members will serve staggered terms of up to three years. The committee meets at least once a year, travel expenses for non-federal members will be reimbursed. Individuals currently serving on other USDA advisory councils or commissions are ineligible to serve on this committee.

Individuals and organizations who wish to nominate experts for this or any other USDA advisory committee should submit a letter to the Secretary listing these individuals' names and business addresses, phone numbers, and email contact information. These individuals may be contacted now or in the future to determine their interest in serving as a committee member.

The Forest Service has special interest in assuring that women, minority groups, and persons with disabilities are adequately represented on these advisory committees. We encourage and welcome nominations for qualified female, minority, or persons with disabilities.

Dated: December 27, 2011.

Robin L. Thompson,

Associate Deputy Chief, State and Private Forestry.

[FR Doc. 2011–33729 Filed 1–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the Feasibility Study program administered under the Rural Energy for America Program (REAP).

DATES: Comments on this notice must be received by March 5, 2012 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Management and Program Analyst, Rural Development, U.S. Department of Agriculture, STOP 3252, 1400 Independence Ave. SW., Washington, DC 20250–3201, Telephone (202) 260–1506.

SUPPLEMENTARY INFORMATION:

Title: Feasibility Study Program.

OMB Number: 0570–0061.

Expiration Date of Approval: September 30, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agency anticipates publishing a proposed rule for REAP in calendar year 2012. This proposed rule will include changes to the Feasibility Study program as well as combine all associated burden for REAP into one paperwork burden package. Since the current Feasibility Study paperwork burden package expires September 30, 2012, the period of time between expiration and the publication of a REAP final rule would have to allow for continued operation of the Feasibility Study program. Thus, approval for extension is needed.

This grant program, authorized under the 2008 Farm Bill, makes grants to eligible entities to conduct feasibility studies for renewable energy systems that are eligible for financial assistance under the REAP. Entities eligible to receive grants under this program are agricultural producers and rural small

businesses. Grant funds under this program may be used only to conduct feasibility studies for renewable energy systems that would qualify for funding under the REAP. Agricultural producers and rural small businesses would be required to pay at least 75 percent of the cost of the feasibility study.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.4 hours per response.

Respondents: Agricultural producers and rural small businesses.

Estimated Number of Respondents: 354.

Estimated Number of Responses per Respondent: 10.

Estimated Number of Responses: 3,395.

Estimated Total Annual Burden on Respondents: 4,811.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 22, 2011.

Chadwick O. Parker,

Acting Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–33685 Filed 1–3–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the Energy Audit and Renewable Energy Development Assistance (EA/REDA) program administered under the Rural Energy for America Program (REAP).

DATES: Comments on this notice must be received by March 5, 2012 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Amy Cavanaugh, Management and Program Analyst, Rural Development, U.S. Department of Agriculture, STOP 3252, 1400 Independence Ave. SW., Washington, DC 20250–3201, Telephone (202) 260–1506.

SUPPLEMENTARY INFORMATION:

Title: Energy Audit and Renewable Energy Development Assistance Program.

OMB Number: 0570–0059.

Expiration Date of Approval: July 31, 2012.

Type of Request: Extension of a currently approved information collection.

Abstract: The Agency anticipates publishing a proposed rule for REAP in calendar year 2012. This proposed rule will include changes to the EA/REDA program as well as combine all associated burden for REAP into one paperwork burden package. Since the current EA/REDA paperwork burden package expires July 31, 2012, the period of time between expiration and the publication of a REAP final rule would have to allow for continued operation of the program. Thus, approval for extension is needed.

This grant program, authorized under the 2008 Farm Bill, makes grants to eligible entities to provide energy audits and renewable energy development assistance to enable agricultural producers and rural small businesses to become more energy efficient and to use renewable energy technologies and resources. Entities eligible to receive grants under this program are State, tribal and local governments; land-grant colleges and universities or other institutions of higher learning; rural electric cooperatives; public power entities and instrumentalities of a State, tribal, or local government. Grant funds under this program may be used to conduct and promote energy audits; provide recommendations and information on how to improve the energy efficiency of the operations of the agricultural producers and rural small businesses; and provide recommendations and information on how to use renewable energy technologies and resources in the operations. No more than five percent of the grant can be used for administrative purposes. Agricultural producers and rural small businesses for which a grantee is conducting an energy audit must pay at least 25 percent of the cost of the energy audit.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.3 hours per response.

Respondents: State, tribal and local governments; land-grant colleges and universities or other institutions of higher learning; rural electric cooperatives; public power entities; and instrumentalities of a State, tribal, or local government.

Estimated Number of Respondents: 53.

Estimated Number of Responses per Respondent: 16.

Estimated Number of Responses: 865.

Estimated Total Annual Burden on Respondents: 1,161.

Copies of this information collection can be obtained from Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division at (202) 692–0040.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of USDA, including whether the information will have practical utility; (b) the accuracy of USDA's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (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 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. Comments may be sent to Jeanne Jacobs, Regulations and Paperwork Management Branch, Support Services Division, U.S. Department of Agriculture, Rural

Development, STOP 0742, 1400 Independence Ave. SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: December 21, 2011.

Judith A. Canales,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2011–33687 Filed 1–3–12; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Census Bureau

Proposed Information Collection; Comment Request; Geographic Partnership Programs

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 5, 2012.

ADDRESSES: Direct all written comments to Diana Hynek, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 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 Gregory Hanks, U.S. Census Bureau, Washington, DC 20233–7400, (301) 763–3093 (or via email at *Gregory.F.Hanks.Jr@census.gov*).

SUPPLEMENTARY INFORMATION:

I. Abstract

The mission of the Geography Division within the Census Bureau is to plan, coordinate, and administer all geographic and cartographic activities needed to facilitate Census Bureau statistical programs throughout the United States and its territories. The Geography Division manages programs to continuously update features, boundaries, addresses, and geographic entities in the Master Address File/Topologically Integrated Geographic Encoding and Referencing System (MAF/TIGER) database (MTDB). The Geography Division also conducts research into geographic concepts, methods, and standards needed to facilitate Census Bureau data collection and dissemination programs.

Geographic Partnership Programs (GPPs) allow designated participants, following Census Bureau guidelines, to review, update, and suggest modifications to addresses, features, boundaries, and geographic entities to maintain the Census Bureau MTDB and to ensure the accurate reporting of data from censuses and surveys. Because tribal, state, and local governments have address data, spatial data, and current knowledge about where growth and change are occurring in their jurisdictions, their input into the overall development of a continually maintained address list for censuses and surveys makes a vital contribution. Similarly, the Census Bureau recognizes that tribal, state, and local governments usually have the most authoritative data for addresses, features, and geographic boundaries in their jurisdictions. The benefits to local jurisdictions in sharing that information as part of the Census Bureau's geographic programs are realized in more accurate results of censuses and surveys.

II. Method of Collection

This pre-submission notice is for a generic clearance that will cover a number of activities required for updating the MTDB with participant-provided address and other geographic information, or obtaining address and spatial data for research and evaluation purposes. The information collected in these programs in cooperation with tribal, state, and local governments and other partners is essential to the mission of the Census Bureau and directly contributes to the successful outcome of censuses and surveys conducted by the Census Bureau. The generic clearance allows the Census Bureau to focus its limited resources on actual operational planning, development of procedures, and implementation of programs to update and improve the geographic information maintained in the MTDB.

The Census Bureau will develop guidelines and procedures for tribal, state, and local government submissions of address data and geographic boundaries, and will outline the mutual roles and responsibilities of each party within each Geographic Partnership Program. The list below includes typical geographic partnership programs, but is not exhaustive of all activities that may be performed under this generic clearance. The Census Bureau will follow the approved procedure when submitting any additional activities not specifically listed here.

A. Geographic Support System Initiative (GSS–I)

The GSS–I is an integrated program designed to improve address coverage, obtain continual spatial feature updates, and enhance the quality assessment and measurement for the MTDB. The GSS–I builds on the accomplishments of the last decade's MAF/TIGER Enhancement Program (the MTEP) which redesigned the MTDB, improved the positional accuracy of TIGER spatial features, and emphasized quality measurement. The Census Bureau plans on a continual update process for the MAF/TIGER throughout the decade to support current surveys, including the American Community Survey. Major participants are the U.S. Census Bureau with tribal, state, and local governments. The Census Bureau will contact tribal, state, and local governments to obtain files containing their address and spatial data, to explore data exchange opportunities, and share best practices.

B. Redistricting Data Program

The 2010 Census Redistricting Data Program is established in accordance with the provisions of Title 13 U.S.C. 141(C) and provides the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico the opportunity to specify the small geographic areas for which they wish to receive decennial census population totals for the purpose of reapportionment and redistricting. The law requires that the Census Bureau allow those having responsibility for apportionment or districting of each State be given the opportunity to specify geographic areas for which they wish to receive decennial census population counts. The law also requires that by April 1 of the year following the decennial census the Secretary of Commerce will furnish State officials or their designee(s) with population counts for standard census tabulation areas (e.g., counties, cities, census blocks, and Congressional districts) and if provided by the states, legislative districts and voting districts.

The States had the opportunity to verify the inclusion of their voting districts and suggested tabulation block boundary features during 2009 and early 2010, to ensure the voting district boundaries that were used by the Census Bureau are consistent with their submissions. In Phase 4 of the 2010 Redistricting Data Program, scheduled

to extend through 2012 and into 2013, States submit new plans for updated congressional and state legislative districts that will be used for retabulating the 2010 Census data to these new redistricted boundaries.

C. School District Review Program (SDRP)

The Census Bureau conducts the SDRP every two years under contract from the National Center for Education Statistics (NCES) of the U.S. Department of Education. The Census Bureau invites state education officials to participate in the review and update of its national inventory of school district boundaries and district information. State education officials collaborate with local superintendents on their responses. The participants review and provide updates and corrections to the elementary, secondary, and unified school district names and Federal Local Education Agency (LEA) identification numbers, school district boundaries, and the grade ranges for which a school district is financially responsible. The participants submit updated digital spatial files back to the Census Bureau.

The Census Bureau uses the updated school district information along with the most current Census population and income data, current population estimates, and tabulations of administrative records data, to form the Census Bureau's estimates of the number of children aged 5 through 17 in low-income families for each school district. These estimates of the number of children in low-income families residing within each school district are the basis of the funding allocation for each school district under Title I of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001, Public Law (Pub. L.) 107–110.

III. Data

OMB Control Number: 0607–0795.

Form Number: Not available at this time.

Type of Review: Regular submission.

Affected Public: State, local, and tribal governments.

Estimated Number of Respondents: 39,109.

Estimated Time per Response: 5–50 Hours (the 5 hours of burden is for 39,000. governments and the 50 hours is for 100 respondents).

Estimated Total Annual Burden Hours: 200,450.

Estimated Total Annual Cost: No monetary cost to the respondent.

Respondent Obligation: Voluntary.

Legal Authority: Title 13 U.S.C. 141 and 193.

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: December 28, 2011.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2011–33701 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–826, C–475–827, A–588–847]

Certain Cut-To-Length Carbon-Quality Steel Plate From Italy and Japan: Revocation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') orders on certain cut-to-length carbon-quality steel plate (''CTL Plate'') from Italy and Japan and of the countervailing duty (''CVD'') order on CTL Plate from Italy would not be likely to lead to the continuation or recurrence of material injury to an industry in the United States, the Department is publishing this notice of revocation of these AD and CVD orders.

DATES: *Effective Date:* January 4, 2012.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta Tzafolias (AD orders) or Eric Greynolds (CVD order), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0922 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2010, the Department of Commerce (the ''Department'') initiated and the ITC instituted sunset reviews of the AD and CVD orders on CTL Plate from India, Indonesia, Italy, Japan, and the Republic of Korea, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the ''Act''), respectively. *See Initiation of Five-Year (''Sunset'') Review,* 75 FR 67082 (November 1, 2010). As a result of its reviews, the Department found that revocation of the AD orders would likely lead to continuation or recurrence of dumping and that revocation of the CVD order would likely lead to continuation or recurrence of countervailable subsidization, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders revoked. *See Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and the Republic of Korea; Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 76 FR 12322 (March 7, 2011), and *Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, and the Republic of Korea: Final Results of Expedited Sunset Review,* 76 FR 12702 (March 8, 2011).

On December 27, 2011, the ITC determined that revocation of the AD and CVD orders on CTL Plate from Italy and Japan would not be likely to lead to the continuation or recurrence of material injury within a reasonably foreseeable time. *See Cut-To-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and Korea,* 76 FR 80963 (December 27, 2011) and USITC Publication 4296 (December 2011), entitled *Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and the Republic of Korea* (Inv. Nos. 701–TA–388–391 and 731–TA–817–821 (Second Review)).

Scope of the Orders

The merchandise subject to the AD and CVD orders is certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2)

flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in the scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in the scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope unless otherwise specifically excluded. The following products are specifically excluded from the orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel.

Regarding the scope of the order for Japan, the following additional exclusions apply with respect to abrasion-resistant steels: NK–EH–360 (NK Everhard 360) and NK–EH–500 (NK Everhard 500). NK–EH–360 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 361 min.; (b) Heat Treatment: controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.20 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.40 max., Ti: 0.005–0.020, B: 0.004 max. NK–EH–500 has the following specifications: (a) Physical Properties: Thickness ranging from 6–50 mm, Brinell Hardness: 477 min.; (b) Heat Treatment: Controlled heat treatment; and (c) Chemical Composition (percent weight): C: 0.35 max., Si: 0.55 max., Mn: 1.60 max., P: 0.030 max., S: 0.030 max., Cr: 0.80 max., Ti: 0.005–0.020, B: 0.004 max.

The merchandise subject to the orders is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the orders is dispositive.

Determination

As a result of the determinations by the ITC that revocation of these AD and CVD orders would not be likely to lead to continuation or recurrence of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department is revoking the AD and CVD orders on CTL Plate from Italy and Japan. Pursuant to section 751(d)(2) of the Act and 19 CFR 351.222(i)(2)(i), the effective date of revocation is December 6, 2010 (*i.e.,* the fifth anniversary of the effective date of publication in the **Federal Register** of the continuation of these orders).[1]

The Department will notify U.S. Customs and Border Protection, 15 days after publication of this notice, to terminate suspension of liquidation and collection of cash deposits on entries of the subject merchandise, entered or withdrawn from warehouse, on or after December 6, 2010. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping and/or countervailing duty deposit requirements. The Department will complete any pending administrative reviews of these orders.

This notice also serves as the only reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 27, 2011.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–33764 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Continuation of Antidumping and Countervailing Duty Orders: Certain Cut-to-Length Carbon-Quality Steel Plate from India, Indonesia, Italy, Japan, and Korea,* 70 FR 72607 (December 6, 2005).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–817, C–533–818, A–560–805, C–560–806, A–580–836, C–580–837]

Certain Cut-To-Length Carbon-Quality Steel Plate From India, Indonesia, and the Republic of Korea: Continuation of Antidumping and Countervailing Duty Orders

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

SUMMARY: As a result of the determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (the ''ITC'') that revocation of the antidumping duty (''AD'') orders on certain cut-to-length carbon-quality steel plate (''CTL Plate'') from India, Indonesia, and the Republic of Korea (''Korea'') would likely lead to continuation or recurrence of dumping, that revocation of the countervailing duty (''CVD'') orders on CTL Plate from India, Indonesia, and Korea would likely lead to the continuation or recurrence of a countervailable subsidy, and that revocation of these AD and CVD orders would likely lead to a continuation or recurrence of material

injury to an industry in the United States, the Department is publishing this notice of continuation of these AD and CVD orders.

DATES: *Effective Date:* January 4, 2012.

FOR FURTHER INFORMATION CONTACT: Irene Darzenta Tzafolias (AD orders) or Eric Greynolds (CVD orders), AD/CVD Operations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0922 and (202) 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 1, 2010, the Department initiated and the ITC instituted sunset reviews of the AD and CVD orders on CTL Plate from India, Indonesia, Italy, Japan, and Korea, pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended (the ''Act''), respectively. *See Initiation of Five-Year (''Sunset'') Review,* 75 FR 67082 (November 1, 2010). As a result of its reviews, the Department found that revocation of the AD orders would likely lead to the continuation or recurrence of dumping and that revocation of the CVD orders would likely lead to continuation or recurrence of countervailable subsidization, and notified the ITC of the margins of dumping and the subsidy rates likely to prevail were the orders revoked. *See Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and the Republic of Korea; Final Results of the Expedited Second Sunset Reviews of the Antidumping Duty Orders,* 76 FR 12322 (March 7, 2011), and *Certain Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, and the Republic of Korea: Final Results of Expedited Sunset Review,* 76 FR 12702 (March 8, 2011).

On December 27, 2011, the ITC determined that revocation of the AD and CVD orders on CTL Plate from India, Indonesia, and Korea would likely lead to the continuation or recurrence of material injury within a reasonably foreseeable time. *See Cut-To-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and Korea,* 76 FR 80963 (December 27, 2011) and USITC Publication 4296 (December 2011), entitled *Cut-to-Length Carbon-Quality Steel Plate From India, Indonesia, Italy, Japan, and the Republic of Korea* (Inv. Nos. 701–TA–388–391 and 731–TA–817–821 (Second Review)).

Scope of the Orders

The merchandise subject to the AD and CVD orders is certain hot-rolled carbon-quality steel: (1) Universal mill plates (*i.e.,* flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm, and of a nominal or actual thickness of not less than 4 mm, which are cut-to-length (not in coils) and without patterns in relief), of iron or non-alloy-quality steel; and (2) flat-rolled products, hot-rolled, of a nominal or actual thickness of 4.75 mm or more and of a width which exceeds 150 mm and measures at least twice the thickness, and which are cut-to-length (not in coils).

Steel products to be included in the scope are of rectangular, square, circular or other shape and of rectangular or non-rectangular cross-section where such non-rectangular cross-section is achieved subsequent to the rolling process (*i.e.,* products which have been ''worked after rolling'')—for example, products which have been beveled or rounded at the edges. Steel products that meet the noted physical characteristics that are painted, varnished or coated with plastic or other non-metallic substances are included within the scope. Also, specifically included in the scope are high strength, low alloy (''HSLA'') steels. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum.

Steel products to be included in the scope, regardless of Harmonized Tariff Schedule of the United States (''HTSUS'') definitions, are products in which: (1) Iron predominates, by weight, over each of the other contained elements, (2) the carbon content is two percent or less, by weight, and (3) none of the elements listed below is equal to or exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 1.50 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium, or 0.41 percent of titanium, or 0.15 percent of vanadium, or 0.15 percent zirconium. All products that meet the written physical description, and in which the chemistry quantities do not equal or exceed any one of the levels listed above, are within the scope unless otherwise specifically excluded. The following products are specifically excluded from the orders: (1) Products clad, plated, or coated with metal, whether or not painted, varnished or coated with plastic or other non-metallic substances; (2) SAE grades (formerly AISI grades) of series 2300 and above; (3) products made to ASTM A710 and A736 or their proprietary equivalents; (4) abrasion-resistant steels (*i.e.,* USS AR 400, USS AR 500); (5) products made to ASTM A202, A225, A514 grade S, A517 grade S, or their proprietary equivalents; (6) ball bearing steels; (7) tool steels; and (8) silicon manganese steel or silicon electric steel. The merchandise subject to the orders is currently classifiable in the HTSUS under subheadings: 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.40.3050, 7225.40.7000, 7225.50.6000, 7225.99.0090, 7226.91.5000, 7226.91.7000, 7226.91.8000, 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the orders is dispositive.

Determination

As a result of the determinations by the Department and the ITC that revocation of these AD and CVD orders would likely lead to continuation or recurrence of dumping or a countervailable subsidy, and of material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act, the Department hereby orders the continuation of the AD and CVD orders on CTL Plate from India, Indonesia, and Korea. U.S. Customs and Border Protection will continue to collect cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of the continuation of these orders is the date of publication in the **Federal Register** of this Notice of Continuation.

Pursuant to sections 751(c)(2) and 751(c)(6) of the Act, the Department intends to initiate the next five-year review of these orders not later than 30 days prior to the fifth anniversary of the effective date of continuation.

These five-year (sunset) reviews and notice are in accordance with section 751(c) of the Act and published pursuant to section 777(i)(1) of the Act.

Dated: December 27, 2011.

Susan Kuhbach,

Acting Assistant Secretary for Import Administration.

[FR Doc. 2011–33767 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Reviews

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

Background

Every five years, pursuant to section 751(c) of the Tariff Act of 1930, as amended (''the Act''), the Department of Commerce (''the Department'') and the International Trade Commission automatically initiate and conduct a review to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2012

The following Sunset Reviews are scheduled for initiation in February 2012 and will appear in that month's Notice of Initiation of Five-Year Sunset Reviews.

Antidumping duty proceedings	Department contact
Clad Steel Plate from Japan (A–588–838) (3rd Review)	David Goldberger, (202) 482–4136.
Pure Magnesium in Granular Form from the People's Republic of China (A–570–864) (2nd Review)	Jennifer Moats, (202) 482–5047.

Countervailing Duty Proceedings

No Sunset Review of countervailing duty orders is scheduled for initiation in February 2012.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in February 2012.

The Department's procedures for the conduct of Sunset Reviews are set forth in 19 CFR 351.218. Guidance on methodological or analytical issues relevant to the Department's conduct of Sunset Reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year (''Sunset'') Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin,* 63 FR 18871 (April 16, 1998). The Notice of Initiation of Five-Year (''Sunset'') Reviews provides further information regarding what is required of all parties to participate in Sunset Reviews.

Pursuant to 19 CFR 351.103(c), the Department will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact the Department in writing within 10 days of the publication of the Notice of Initiation.

Please note that if the Department receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue. Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 12, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33688 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–831]

Fresh Garlic From the People's Republic of China: Initiation of New Shipper Reviews

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

SUMMARY: The Department of Commerce (Department) has determined that two requests for a new shipper review (NSR) under the antidumping duty order on fresh garlic from the People's Republic of China (PRC), meet the statutory and regulatory requirements for initiation. The period of review (POR) is November 1, 2010, through October 31, 2011.

DATES: *Effective Date:* January 4, 2012.

FOR FURTHER INFORMATION CONTACT: Lingjun Wang and Scott Lindsay, AD/CVD Operations, Office 6, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2316 and (202) 482–0780.

SUPPLEMENTARY INFORMATION:

Background

The Department published the antidumping duty order on fresh garlic from the PRC in the **Federal Register** on November 16, 1994. *See Antidumping Duty Order: Fresh Garlic From the People's Republic of China,* 59 FR 59209 (November 16, 1994). On November 16, 2011, and November 30, 2011, the Department received timely NSR requests from Foshan Fuyi Food Co., Ltd. (Fuyi) and Qingdao May Carrier Import & Export Co., Ltd. (Maycarrier) in accordance with section 751(a)(2)(B)(i) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.214(c).

Pursuant to the requirements set forth in 19 CFR 351.214(b), Fuyi certified that it is the exporter and Jinxiang Shenglong Trade Co., Ltd. (Shenglong) certified that it is the producer of the fresh garlic exported by Fuyi; Maycarrier certified that it is the exporter and Yishui Hengshun Food Co., Ltd. (YHFC) certified that it is the producer of the fresh garlic exported by Maycarrier. Moreover, Fuyi, Shenglong, Maycarrier and YHFC each certified that: (1) They did not export fresh garlic for sale to the United States during the period of investigation (POI); (2) since the investigation was initiated, they have never been affiliated with any exporter or producer who exported the subject merchandise to the United States during the POI, including those not individually examined during the investigation; and (3) their export activities are not controlled by the

central government of the PRC. In addition, Fuyi and Maycarrier submitted documentation establishing the following: (1) The date on which fresh garlic was first entered; and (2) the volume of that and subsequent shipments; and (3) the date of the first sale to an unaffiliated customer in the United States.

The Department queried the database of U.S. Customs and Border Protection (CBP) in an attempt to confirm that shipments reported by Fuyi and Maycarrier had entered the United States for consumption and that liquidation had been properly suspended for antidumping duties. The information which the Department examined was consistent with that provided by Fuyi and Maycarrier in their requests. *See* Memorandum to The File from The Team, ''Fresh Garlic from People's Republic of China: Initiation of Antidumping New Shipper Review for Foshan Fuyi Food Co., Ltd.''; *see also* Memorandum to The File from The Team, ''Fresh Garlic from People's Republic of China: Initiation of Antidumping New Shipper Review for Qingdao Maycarrier Import & Export Co., Ltd.''

Period of Review

In accordance with 19 CFR 351.214(g)(1)(i)(A), the POR for an NSR initiated in the month immediately following the anniversary month will be the twelve-month period immediately preceding the anniversary month. Therefore, the POR for this NSR is November 1, 2010, through October 31, 2011. The sales and entries into the United States of subject merchandise exported by Fuyi and Maycarrier and produced by Shenglong and YHFC, respectively, occurred during this twelve-month POR.

Initiation of New Shipper Reviews

Pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b), and the information on the record, the Department finds that the requests submitted by Fuyi and Maycarrier meet the threshold requirements for initiation of an NSR of their shipments of fresh garlic from the PRC. The Department intends to issue the preliminary results within 180 days after the date on which these reviews are initiated, and final results within 90 days after the date on which preliminary results are published, in accordance with section 751(a)(2)(B)(iv) of the Act.

It is the Department's usual practice, in cases involving non-market economies, to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide evidence of *de jure* and *de facto* absence of government control over the company's export activities. Accordingly, we will issue questionnaires to Fuyi and Maycarrier which will include a separate rate section. The review of the exporter will proceed if the response provides sufficient indication that the exporter is not subject to either *de jure* or *de facto* government control with respect to the export of fresh garlic.

We will instruct CBP to allow, at the option of the importer, the posting, until the completion of the review, of a bond or security in lieu of a cash deposit for certain entries of the subject merchandise from Fuyi and Maycarrier in accordance with section 751(a)(2)(B)(iii) of the Act and 19 CFR 351.214(e). Specifically, the bonding privilege will only apply to entries of subject merchandise exported by Fuyi which have been produced by Shenglong, because it certified that the sale of subject merchandise documented in its NSR request was produced by Shenglong. Likewise, the bonding privilege will only apply to entries of subject merchandise exported by Maycarrier which have been produced by YHFC, because Maycarrier certified that the subject merchandise documented in its NSR request was produced by YHFC.

Interested parties requiring access to proprietary information in this NSR should submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a)(2)(B) of the Act and 19 CFR 351.214 and 351.221(c)(1)(i).

Dated: December 23, 2011.

Christian Marsh,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2011–33763 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA915

Marine Mammals; File No. 16621

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Alejandro Acevedo-Gutiérrez, Ph.D., Biology Department, Western Washington University, Bellingham, WA has applied in due form for a permit to conduct research on harbor seals (*Phoca vitulina*).

DATES: Written, telefaxed, or email comments must be received on or before February 3, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16621 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Northwest Region, NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0700; phone (206) 526–6150; fax (206) 526–6426.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Joselyd Garcia-Reyes, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the regulations governing the taking and importing of marine mammals (50 CFR part 216).

The applicant requests a five-year permit to address the interactions between humans and harbor seals in the Salish Sea, USA. They propose to estimate harbor seal response to (1) different kayak speeds in four haul-out sites to recommend management policies and (2) calls from bald eagles at two haul-out sites with different levels of boat traffic to estimate the effect of human activity on the response of seals to natural predators. The applicant

requests harassment of 13,600 harbor seals annually from ground surveys, and 50,000 annually from vessel surveys and playback experiments. The geographic locations of the proposed study are the Washington State inland waters of the Salish Sea: two haul-out sites in Puget Sound and four haul-out sites in the vicinity of Sucia Island, in the San Juan Islands.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 28, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33765 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA914

Marine Mammals; File No. 16998

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

ACTION: Notice; receipt of application.

SUMMARY: Notice is hereby given that Mr. Gregory Walker, University of Alaska Fairbanks, Fairbanks, AK has applied for a permit to conduct research on Steller sea lions (*Eumetopias jubatus*) in Alaska.

DATES: Written, telefaxed, or email comments must be received on or before February 3, 2012.

ADDRESSES: The application and related documents are available for review by selecting ''Records Open for Public Comment'' from the *Features* box on the Applications and Permits for Protected Species (APPS) home page, *https://apps.nmfs.noaa.gov,* and then selecting File No. 16998 from the list of available applications.

These documents are also available upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668; phone (907) 586–7221; fax (907) 586–7249.

Written comments on this application should be submitted to the Chief, Permits and Conservation Division, at the address listed above. Comments may also be submitted by facsimile to (301) 713–0376, or by email to *NMFS.Pr1Comments@noaa.gov.* Please include the File No. in the subject line of the email comment.

Those individuals requesting a public hearing should submit a written request to the Chief, Permits and Conservation Division at the address listed above. The request should set forth the specific reasons why a hearing on this application would be appropriate.

FOR FURTHER INFORMATION CONTACT: Tammy Adams or Laura Morse, (301) 427–8401.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The objective of the project is to demonstrate novel methods for imaging Steller sea lion terrestrial habitat in the Aleutian Islands with the accuracy and fidelity necessary for population surveys and at a cost low enough to allow frequent monitoring. Ship-based unmanned aircraft would be used for low-altitude (75 to 120 meters) aerial surveys of rookeries and haul outs between March and December 2012. A permit is requested for harassment of 13,000 Steller sea lions, 200 harbor seals (*Phoca vitulina*), 10 killer whales (*Orcinus orca*), 10 humpback whales (*Megaptera novaeangliae*), and 10 northern fur seals (*Callorhinus ursinus*). The permit is requested for a period of one year.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activities proposed are consistent with the Preferred Alternative in the Final Programmatic Environmental Impact Statement for Steller Sea Lion and Northern Fur Seal Research (NMFS 2007), and that issuance of the permit would not have a significant adverse impact on the human environment.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of the application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: December 28, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33766 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XA888

Marine Mammals; File No. 15682

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

ACTION: Notice; issuance of permit.

SUMMARY: Notice is hereby given that a permit has been issued to Mithriel MacKay, Texas A&M University at Galveston, Galveston, TX 75003 to conduct research on humpback whales (*Megaptera novaeangliae*).

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following offices:

Permits and Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301) 427–8401; fax (301) 713–0376; and

Southeast Region, NMFS, 263 13th Avenue South, Saint Petersburg, FL 33701; phone (727) 824–5312; fax (727) 824–5309.

FOR FURTHER INFORMATION CONTACT: Kristy Beard or Joselyd Garcia-Reyes, (301) 427–8401.

SUPPLEMENTARY INFORMATION: On April 4, 2011, notice was published in the **Federal Register** (76 FR 18533) that a request for a permit to conduct research on humpback whales off Puerto Rico had been submitted by the above-named applicant. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the regulations governing the taking and importing of marine mammals (50 CFR

part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226).

The permit authorizes up to 700 humpback whales to be harassed each year during vessel-based photo-identification, behavioral observation, and passive acoustic recording. The applicant requested that we remove the original request for divers to conduct underwater photography from the application. Whales will be harassed year-round, with efforts focused from October through July. The permit is valid for five years from the date of issuance.

An environmental assessment (EA) was prepared analyzing the effects of the permitted activities on the human environment in compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Based on the analyses in the EA, NMFS determined that issuance of the permit would not significantly impact the quality of the human environment and that preparation of an environmental impact statement was not required. That determination is documented in a Finding of No Significant Impact (FONSI), signed on December 16, 2011.

As required by the ESA, issuance of this permit was based on a finding that such permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of such endangered species; and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: December 29, 2011.

P. Michael Payne,

Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2011–33761 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Matters Related to Patent Appeals

ACTION: Proposed collection; comment request.

SUMMARY: The United States Patent and Trademark Office (USPTO), 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 this new information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before March 5, 2012.

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

- *Email: InformationCollection@uspto.gov.* Include ''0651–00xx Matters Related to Patent Appeals comment'' in the subject line of the message.
- *Mail:* Susan K. Fawcett, Records Officer, Office of the Chief Information Officer, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450.
- *Federal Rulemaking Portal: http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450; by telephone at (571) 272–7728; or by email to *Raul.Tamayo@uspto.gov.*

Additional information about this collection is also available at *http://www.reginfo.gov* under ''Information Collection Review.''

SUPPLEMENTARY INFORMATION:

I. Abstract

During its examination of an application for patent or for reissue of a patent, or during its reexamination of a patent, the United States Patent and Trademark Office (USPTO) makes many decisions of a substantive nature which the applicant or patent owner may feel deny him or her the patent protection to which he or she is entitled. Where the differences of opinion on such matters concern the denial of patent claims because of prior art or other patentability issues, the questions thereby raised are said to relate to the merits, and a procedure for appealing to the Board of Patent Appeals and Interferences has long been provided by statute (35 U.S.C. 134).

Applicants and patent owners initiate the appeal procedure by filing a Notice of Appeal. At the time of filing a Notice of Appeal, applicants and patent owners may request that a panel of examiners formally review the legal and factual basis of the rejections in their application prior to the filing of an Appeal Brief, by filing a Pre-Appeal Brief Request for Review. In addition, applicants and patent owners who desire an oral hearing before the Board may request the hearing by filing a Request for Oral Hearing Before the Board of Patent Appeals and Interferences.

Currently, Notices of Appeal, Requests for Oral Hearing, and Pre-appeal Brief Requests for Review are covered under 0651–0031 Patent Processing (Updating). The USPTO has determined that it would be beneficial to transfer these items out of 0651–0031 and into their own collection. Therefore, the USPTO is requesting the creation of a new collection which will transfer the three existing notices and requests out of the 0651–0031 inventory into a new collection of information titled ''Matters Related to Patent Appeals.'' For a complete listing of the items covered by this collection, please see the table in Section III of this notice.

The information in this collection can be submitted electronically through EFS–Web, the USPTO's Web-based electronic filing system, as well as on paper. The USPTO is taking this opportunity to account for the electronic submissions in this collection.

There are forms associated with the Notices of Appeal (PTO/SB/31), the Requests for Oral Hearing Before the Board of Patent Appeals and Interferences (PTO/SB/32), and the Pre-appeal Brief Requests for Review (PTO/SB/33). Therefore, after approval, this collection will have three forms.

II. Method of Collection

By mail, facsimile, or hand delivery to the USPTO when an applicant files the various notices or requests. The remaining papers can also be filed as attachments through EFS–Web.

III. Data

OMB Number: 0651–00xx.

Form Number(s): PTO/SB/31/32/33.

Type of Review: New information collection.

Affected Public: Businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 54,500 responses per year, with an estimated 10,940 submitted by small entities. Of the total responses, the USPTO expects that 50,700 will be submitted through EFS–Web.

Estimated Time per Response: The USPTO estimates that it will take the public approximately 12 minutes (0.20 hours) to complete the information in this collection, with the exception of the Pre-appeal Brief Requests for Review, which the USPTO estimates will take approximately 5 hours to complete. These estimated times include gathering the necessary information, creating the documents, and submitting the completed request to the USPTO. The USPTO calculates that, on balance, it takes the same amount of time to gather the necessary information, create the

document, and submit it to the USPTO, whether the applicant submits the information in paper form or electronically.

Estimated Total Annual Respondent Burden Hours: 86,740 hours.

Estimated Total Annual Respondent Cost Burden: $29,491,600. The USPTO estimates that attorneys will complete the items in this collection. Using the professional hourly rate of $340 for attorneys in private firms, the USPTO estimates $29,491,600 per year for the respondent cost burden for this collection.

Item	Estimated time for response	Estimated annual responses	Estimated annual burden hours
Notice of Appeal	12 minutes	2,600	520
Electronic Notice of Appeal	12 minutes	34,900	6,980
Request for Oral Hearing Before the Board of Patent Appeals and Interferences	12 minutes	100	20
Electronic Request for Oral Hearing Before the Board of Patent Appeals and Interferences	12 minutes	1,100	220
Pre-Appeal Brief Request for Review	5 hours	1,100	5,500
Electronic Pre-Appeal Brief Request for Review	5 hours	14,700	73,500
Totals		54,500	86,740

Estimated Total Annual Non-hour Respondent Cost Burden: $22,266,670. This collection has annual (non-hour) costs in the form of filing fees and postage costs.

The USPTO estimates that this collection will have a total annual cost of $22,264,200 in filing fees.

Item	Responses (a)	Filing fees (b)	Total cost (a) × (b) (c)
Notice of Appeal	2,100	$620.00	$1,302,000.00
Notice of Appeal (small entity)	500	310.00	155,000.00
Electronic Notice of Appeal	27,900	620.00	17,298,000.00
Electronic Notice of Appeal (small entity)	7,000	310.00	2,170,000.00
Request for an Oral Hearing	60	1,240.00	74,400.00
Request for an Oral Hearing (small entity)	40	620.00	24,800.00
Electronic Request for an Oral Hearing	900	1,240.00	1,116,000.00
Electronic Request for an Oral Hearing (small entity)	200	620.00	124,000.00
Pre-Appeal Brief Request for Review	900	None	0.00
Pre-Appeal Brief Request for Review (small entity)	200	None	0.00
Electronic Pre-Appeal Brief Request for Review	11,700	None	0.00
Electronic Pre-Appeal Brief Request for Review (small entity)	3,000	None	0.00
Totals	54,500		22,264,200.00

The public may submit the notices and requests in this collection to the USPTO by mail through the United States Postal Service. All correspondence may include a certificate of mailing for each piece of correspondence enclosed, stating the date of deposit or transmission to the USPTO in order to receive credit for timely filing. The USPTO has estimated that the vast majority of these submissions will weigh no more than two ounces. Therefore, the USPTO is conservatively estimating that these submissions will be mailed by first-class postage at 65 cents. Postage for the certificates of mailing themselves are not calculated into this estimate as they are included with the individual pieces of correspondence that are being deposited with the United States Postal Service.

The USPTO estimates that 3,800 responses will be mailed by first-class postage, for a total annual cost of $2,470 in postage costs.

Item	Responses (a)	Postage costs (b)	Total cost (a) × (b) (c)
Notice of Appeal	2,600	0.65	$1,690.00
Request for Oral Hearing Before the Board of Patent Appeals and Interferences	100	0.65	65.00
Pre-Appeal Brief Request for Review	1,100	0.65	715.00
Totals	3,800		2,470.00

The total annual (non-hour) respondent cost burden for this collection in the form of filing fees and postage costs is estimated to be $22,266,670 per year.

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, *e.g.,* the use of automated collection techniques or other forms of information technology.

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

Dated: December 29, 2011.

Susan K. Fawcett,

Records Officer, USPTO, Office of the Chief Information Officer.

[FR Doc. 2011–33726 Filed 1–3–12; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DOD–2011–OS–0149]

Privacy Act of 1974; System of Records

AGENCY: Defense Threat Reduction Agency, DoD.

ACTION: Notice to Alter a System of Records.

SUMMARY: The Defense Threat Reduction Agency proposes to alter a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action would be effective without further notice on February 3, 2012 unless comments are received which result in a contrary determination.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Juanita Gaines, Freedom of Information and Privacy Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201, or by phone at (703) 767–1771.

SUPPLEMENTARY INFORMATION: The Defense Threat Reduction Agency notices for systems of records 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 in **FOR FURTHER INFORMATION CONTACT**.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on December 21, 2011, to the House Committee on Oversight and Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, ''Federal Agency Responsibilities for Maintaining Records About Individuals,'' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: December 29, 2011.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

HDTRA 007

SYSTEM NAME:

Security Services (December 4, 2009, 74 FR 63734).

CHANGES:

* * * * *

SYSTEM LOCATION(S):

Delete entry and replace with ''Primary location: Security and Counterintelligence Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

SECONDARY LOCATIONS:

Security and Counterintelligence Office Albuquerque, Defense Threat Reduction Agency, 1680 Texas Street SE., Kirtland Air Force Base, Albuquerque, NM 87117–5669.

Security and Counterintelligence Field Office Travis, Defense Threat Reduction Agency, 510 Hickman Avenue, Travis Air Force Base, CA 94535–1801.

Security and Counterintelligence European Operations Division, Defense Threat Reduction Agency, Kleber Kaserne, Mannheimer Strasse, Building 3211, Room 104, Kaiserslautern, Germany.

Security and Counterintelligence Field Office Eglin, Defense Threat Reduction Agency, Eglin Air Force Base, 101 West Eglin Blvd., Building 13A, Suite 39, Eglin AFB, FL 32542–5650.''

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with ''Name; Social Security Number (SSN); home address, date and place of birth; height; weight; hair and eye color; citizenship; grade/rank; services; organization; security clearance; date of clearance; date of investigation; type of investigation; agency that conducted investigation; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and decal number; special intelligence access; expiration date, agency, billet number; list of badges/passes issued; safes and open storage locations/custodians; conference title/duties/location; special access/briefings; visit requests; conference rosters; clearance and special access rosters; picture identification; correspondence concerning adjudication/passing of clearances/accesses; information from DD 254 (contract security classification specification form) which identifies the type or level of classified material the specific contractor has access to; and security inquiries and insider threats.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with ''5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employment; E.O. 12065, National Security Information; The Atomic Energy Act of 1954, Section 145; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

Delete entry and replace with ''For use by officials and employees of the Defense Threat Reduction Agency in the performance of their official duties related to continuous review, insider threat and determining the eligibility of individuals for access to classified information and occupancy of a sensitive position, access to buildings and facilities, or to conferences over which DTRA has security responsibility.''

* * * * *

RETRIEVABILITY:

Delete entry and replace with ''By individual's last name and SSN.''

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with ''Computer records on individuals are

moved to historical area of database files upon termination of an individual's affiliation with DTRA; personnel security files are retained for two years at which point the Classified Information Non-disclosure Agreement forms (SF 312) for civilians are mailed to the Defense Logistics Agency Human Resources and all others are destroyed. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. All computer records are deleted with a separation date greater than 2 years except for those that have the following criteria: (a) Eligibilities of denied, revoked or pending reply to statement of reasons; (b) eligibilities of loss of jurisdiction, action pending, interim declination; and (c) suspend accesses that have not been debriefed. All records with a death date greater than a year are deleted. The following records are retained until there is clear guidance on record retention: (a) Eligibilities of denied, revoked or pending reply to statement of reasons; (b) eligibilities of loss of jurisdiction, action pending, interim declination; and (c) suspend accesses that have not been debriefed. Computer records are deleted and paper records are shredded.''

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with ''Chief, Security and Counterintelligence Office, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.''

NOTIFICATION PROCEDURE:

Delete entry and replace with ''Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Threat Reduction Agency, Freedom of Information/Privacy Act Office, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.

Written requests for information should contain the full name, home address, SSN, date and place of birth.

For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their SSN.''

RECORD ACCESS PROCEDURES:

Delete entry and replace with ''Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Threat Reduction Agency, Freedom of Information/Privacy Act Office, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.

Written requests for information should contain the full name, home address, SSN, date and place of birth.

For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their SSN.''

CONTESTING RECORD PROCEDURES:

Delete entry and replace with ''The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the system manager.''

* * * * *

HDTRA 007

SYSTEM NAME:

Security Services.

SYSTEM LOCATION(S):

Primary location: Security and Counterintelligence Office, Defense Threat Reduction Agency, 8725 John J. Kingman Road, Fort Belvoir, VA 22060–6201.

SECONDARY LOCATIONS:

Security and Counterintelligence Office Albuquerque, Defense Threat Reduction Agency, 1680 Texas Street SE., Kirtland Air Force Base, Albuquerque, NM 87117–5669.

Security and Counterintelligence Field Office Travis, Defense Threat Reduction Agency, 510 Hickman Avenue, Travis Air Force Base, CA 94535–1801.

Security and Counterintelligence European Operations Division, Defense Threat Reduction Agency, Kleber Kaserne, Mannheimer Strasse, Building 3211, Room 104, Kaiserslautern, Germany.

Security and Counterintelligence Field Office Eglin, Defense Threat Reduction Agency, Eglin Air Force Base, 101 West Eglin Blvd., Building 13A, Suite 39, Eglin AFB, FL 32542–5650.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to, or employed by Defense Threat Reduction Agency (DTRA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number (SSN); home address, date and place of birth; height; weight; hair and eye color; citizenship; grade/rank; services; organization; security clearance; date of clearance; date of investigation; type of investigation; agency that conducted investigation; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and decal number; special intelligence access; expiration date, agency, billet number; list of badges/passes issued; safes and open storage locations/custodians; conference title/duties/location; special access/briefings; visit requests; conference rosters; clearance and special access rosters; picture identification; correspondence concerning adjudication/passing of clearances/accesses; information from DD 254 (contract security classification specification form) which identifies the type or level of classified material the specific contractor has access to; and security inquiries and insider threats.''

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; E.O. 10450, Security Requirements for Government Employment; E.O. 12065, National Security Information; The Atomic Energy Act of 1954, Section 145; and E.O. 9397 (SSN), as amended.''

PURPOSE(S):

For use by officials and employees of the Defense Threat Reduction Agency in the performance of their official duties related to continuous review, insider threat and determining the eligibility of individuals for access to classified information and occupancy of a sensitive position, access to buildings and facilities, or to conferences over which DTRA has security responsibility.

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 of 1974, these records 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 officials and employees of Government contractors and other Government agencies in the performance of their official duties related to the screening and selection of individuals for security clearances and/or special authorizations, access to facilities or attendance at conferences.

The DoD ''Blanket Routine Uses'' published at the beginning of DTRA'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:

Electronic storage media and paper records.

RETRIEVABILITY:

By individual's last name and SSN.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons with an official need to know. Buildings are protected by security forces and an electronic security system.

RETENTION AND DISPOSAL:

Computer records on individuals are moved to historical area of database files upon termination of an individual's affiliation with DTRA; personnel security files are retained for two years at which point the Classified Information Non-disclosure Agreement forms (SF 312) for civilians are mailed to the Defense Logistics Agency Human Resources and all others are destroyed. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. All computer records are deleted with a separation date greater than 2 years except for those that have the following criteria: (a) Eligibilities of denied, revoked or pending reply to statement of reasons; (b) eligibilities of loss of jurisdiction, action pending, interim declination; and (c) suspend accesses that have not been debriefed. All records with a death date greater than a year are deleted. The following records are retained until there is clear guidance on record retention: (a) Eligibilities of denied, revoked or pending reply to statement of reasons; (b) eligibilities of loss of jurisdiction, action pending, interim declination; and (c) suspend accesses that have not been debriefed. Computer records are deleted and paper records are shredded.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Security and Counterintelligence Office, Defense Threat Reduction Agency, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Defense Threat Reduction Agency, Freedom of Information/Privacy Act Office, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.

Written requests for information should contain the full name, home address, SSN, date and place of birth.

For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their SSN.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Defense Threat Reduction Agency, Freedom of Information/Privacy Act Office, 8725 John J. Kingman Drive, Ft. Belvoir, VA 22060–6201.

Written requests for information should contain the full name, home address, SSN, date and place of birth.

For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their SSN.

CONTESTING RECORD PROCEDURES:

The DTRA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DTRA Instruction 5400.11; 32 CFR part 318; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, investigative files, and voluntarily submitted by the individual. Other Government agencies, law enforcement officials and contractors may provide the same data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318.

[FR Doc. 2011–33737 Filed 1–3–12; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1513–001.
Applicants: Wolverine Power Supply Cooperative, Inc.
Description: Market Power Update of Wolverine Power Supply Cooperative, Inc.
Filed Date: 12/21/11.
Accession Number: 20111221–5251.
Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER10–2671–004; ER10–1543–003; ER10–1544–003; ER10–2629–005; ER10–1549–003; ER10–2675–004.
Applicants: Choctaw Generation Limited Partnership, Hot Spring Power Company, LLC,GDF SUEZ Energy Marketing NA, Inc., IPA Trading, LLC, Choctaw Gas Generation, LLC, FirstLight Power Resources Management, L, ANP Funding I, LLC.
Description: Triennial Market Power Update for the Southeast Region of the GDF SUEZ Southeast MBR Sellers.
Filed Date: 12/22/11.
Accession Number: 20111222–5070.
Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER10–2895–003; ER11–2292–002; ER11–3942–001; ER11–2293–002; ER10–2917–003; ER11–2294–002; ER10–2918–004; ER10–2920–003; ER11–3941–001; ER10–2921–003; ER10–2922–003; ER10–3048–001; ER10–2966–003.
Applicants: Bear Swamp Power Company LLC, Brookfield Energy Marketing Inc, Brookfield Energy Marketing LP, Brookfield Energy Marketing US LLC, Brookfield Power Piney & Deep Creek LLC, Brookfield Renewable Energy Marketing US LLC, Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P, Granite Reliable Power, LLC, Great Lakes Hydro America, LLC, Hawks Nest Hydro LLC, Longview Fibre Paper and Packaging, Inc., Rumford Falls Hydro LLC.
Description: Notice of Non-Material Change in Status for Brookfield Energy Marketing LP, *et. al.*
Filed Date: 12/21/11.
Accession Number: 20111221–5262.
Comments Due: 5 p.m. ET 1/11/12.

Docket Numbers: ER11–2741–002.
Applicants: CPV Batesville, LLC.
Description: Market Power Update of CPV Batesville, LLC.
Filed Date: 12/21/11.
Accession Number: 20111221–5255.
Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER11–3812–002.
Applicants: LSP Energy Limited Partnership.
Description: Market Power Update of LSP Energy Limited Partnership.
Filed Date: 12/21/11.
Accession Number: 20111221–5259.
Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER12–662–000.
Applicants: Southern California Edison Company.
Description: SGIA WDAT SERV AG SCE–SEPV 8 LLC SEPV 8 Project to be effective 12/23/2011.
Filed Date: 12/22/11.

Accession Number: 20111222–5001.
Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–663–000
Applicants: Southwest Power Pool, Inc.
Description: Southwest Power Pool, Inc. Request for Waiver of Tariff Provision and Expedited Treatment under ER12–663.
Filed Date: 12/22/11.
Accession Number: 20111222–5069.
Comments Due: 5 p.m. ET 1/12/12.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF12–120–000.
Applicants: The Coca-Cola Company.
Description: Form 556—Notice of self-certification of qualifying cogeneration facility status of The Coca-Cola Company.
Filed Date: 12/21/2011.
Accession Number: 20111221–5164.
Comment Date: None Applicable.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 22, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33675 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #2

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2172–006; ER10–2174–006; ER10–2176–006; ER10–2180–006; ER10–2178–006; ER10–2192–006; ER10–2184–006; ER10–1734–003.
Applicants: Constellation Energy Commodities Group, Baltimore Gas and Electric Company, Constellation Power Source Generation LLC, Handsome Lake Energy, LLC, Constellation Energy Commodities Group Maine, LLC, CER Generation, LLC, Constellation NewEnergy, Inc., MXenergy Electric Inc.
Description: Constellation MBR Entities Triennial Market Power Analysis for the Southeast Region.
Filed Date: 12/27/11.
Accession Number: 20111227–5060.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER10–2179–007; ER10–2181–007; ER10–2182–007.
Applicants: R.E. Ginna Nuclear Power Plant, LLC, Nine Mile Point Nuclear Station, LLC, Calvert Cliffs Nuclear Power Plant, LLC.
Description: Constellation Nuclear Entities Triennial Market Power Analysis for the Southeast Region.
Filed Date: 12/27/11.
Accession Number: 20111227–5043.
Comments Due: 5 p.m. ET 2/27/12.

Docket Numbers: ER12–694–000.
Applicants: PacifiCorp.
Description: PacifiCorp's termination of SA 537 Maintenance Agreement with Tasco Engineering, Inc.
Filed Date: 12/27/11.
Accession Number: 20111227–5051.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: ER12–695–000.
Applicants: Northern Indiana Public Service Company.
Description: Filing to Bring Accepted WVPA Interconnection Agreement into eTariff to be effective 12/27/2011.
Filed Date: 12/27/11.
Accession Number: 20111227–5064.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: ER12–696–000.
Applicants: Northern Indiana Public Service Company.
Description: Supplement to Wabash Valley Power Association Interconnection Agreement to be effective 12/28/2011.
Filed Date: 12/27/11.
Accession Number: 20111227–5069.
Comments Due: 5 p.m. ET 1/17/12.

Docket Numbers: ER12–697–000.
Applicants: PJM Interconnection, L.L.C.
Description: PJM Interconnection, L.L.C. submits tariff filing per 35.13(a)(2)(iii: Original Service Agreement No. 3160; Queue No. X1–032 to be effective 12/1/2011.
Filed Date: 12/27/11.
Accession Number: 20111227–5074.
Comments Due: 5 p.m. ET 1/17/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33725 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG12–23–000.
Applicants: Erie Wind, LLC.
Description: Self-Certification of EWG Status of Erie Wind, LLC.
Filed Date: 12/23/11.
Accession Number: 20111223–5083.
Comments Due: 5 p.m. ET 1/13/12.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1144–001; ER11–2014–003; ER11–2013–003; ER11–2005–003.
Applicants: CR Clearing, LLC, Exelon Generation Company, LLC, Wind Capital Holdings, LLC, Cow Branch Wind Power, L.L.C.
Description: Updated Market Power Analysis of Exelon Generation Company, LLC, *et al.*
Filed Date: 12/23/11.
Accession Number: 20111223–5096.
Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER10–2743–001; ER10–1840–001; ER10–1842–002; ER10–2793–001; ER10–1854–002; ER10–2755–001; ER10–2739–002; ER11–27–003; ER10–3280–002; ER10–2751–001; ER10–2744–003; ER10–2740–003; ER10–2742–001; ER10–1631–002; ER10–2024–002.
Applicants: Blythe Energy, LLC, Bluegrass Generation Company, L.L.C.,

Renaissance Power, L.L.C, Las Vegas Power Company, LLC, DeSoto County Generating Company, LLC, Rocky Road Power, LLC, LS Power Marketing, LLC, Doswell Limited Partnership, University Park Energy, LLC, Tilton Energy LLC, Riverside Generating Company, L.L.C., LSP Safe Harbor Holdings, LLC, LSP University Park, LLC, Wallingford Energy LLC, Calhoun Power Company, LLC.

Description: Notification of Change in Status of Bluegrass Generation Company, L.L.C., *et al.*

Filed Date: 12/22/11.

Accession Number: 20111222–5251.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER10–3142–002; ER10–3145–002; ER10–3147–002; ER10–3148–002; ER10–3114–002; ER10–3116–002; ER10–3118–002; ER10–3120–002; ER10–3121–002; ER11–2036–002; ER10–3126–002; ER10–3128–002; ER10–3131–002; ER10–1800–002; ER10–3136–002; ER11–2701–003; ER10–1728–002; ER10–2491–002.

Applicants: Indianapolis Power & Light Company, AES Eastern Energy, LP, DPL Energy, LLC, The Dayton Power and Light Company, AES Energy Storage, LLC, AES Alamitos, LLC, AES Redondo Beach, L.L.C., Condon Wind Power, LLC, AES Huntington Beach, L.L.C., AES Creative Resources, L.P., AES Armenia Mountain Wind, LLC, AES ES Westover, LLC, AES Ironwood, L.L.C., AES Red Oak, L.L.C., Mountain View Power Partners, LLC, AEE2, L.L.C., Mountain View Power Partners IV, LLC, AES Laurel Mountain LLC.

Description: AES MBR Affiliates Market Power Analysis for the Central Region.

Filed Date: 12/23/11.

Accession Number: 20111223–5085.

Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER12–623–001; ER12–624–001; ER11–2670–002.

Applicants: Occidental Chemical Corporation, Occidental Power Services, Inc., Occidental Power Marketing, L.P.

Description: Updated Market Power Analysis for the Southeast Region of Occidental Chemical Corporation, *et al.*

Filed Date: 12/22/11.

Accession Number: 20111222–5250.

Comments Due: 5 p.m. ET 2/21/12.

Docket Numbers: ER12–668–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–22–11 ELMP Filing to be effective 12/31/9998.

Filed Date: 12/22/11.

Accession Number: 20111222–5154.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–669–000.

Applicants: Trans Bay Cable LLC.

Description: TRBAA Filing to be effective 1/1/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5155.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–669–001.

Applicants: Trans Bay Cable LLC.

Description: TRBAA Option B to be effective 1/1/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5179.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–669–002.

Applicants: Trans Bay Cable LLC.

Description: TRBAA Filing—Full Set of Exhibits to Option A to be effective 1/1/2012.

Filed Date: 12/23/11.

Accession Number: 20111223–5003.

Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–669–003.

Applicants: Trans Bay Cable LLC.

Description: TRBAA Filing Full Set of Exhibits to Option B to be effective 1/1/2012.

Filed Date: 12/23/11.

Accession Number: 20111223–5004.

Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–670–000.

Applicants: Rhode Island LFG Genco LLC.

Description: Rhode Island LFG Genco LLC MBR Tariff to be effective 2/20/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5163.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–671–000.

Applicants: Northern States Power Company, a Wisconsin corporation.

Description: 2011–12–22_NSPW Medford Intercon Agrmt-317 to be effective 1/1/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5174.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–672–000.

Applicants: Brea Power II LLC.

Description: Brea Power II LLC MBR Tariff to be effective 2/20/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5175.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–673–000.

Applicants: Brea Generation LLC.

Description: Brea Generation LLC MBR Tariff to be effective 2/20/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5176.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–674–000.

Applicants: Rhode Island Engine Genco LLC.

Description: Rhode Island Engine Genco LLC MBR Tariff to be effective 2/20/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5177.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–675–000.

Applicants: Pacific Gas and Electric Company.

Description: CCSF IA—2012 Annual Transmission Rate Adjustment to be effective 1/1/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5178.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–676–000.

Applicants: Perrin Ranch Wind, LLC.

Description: Perrin Ranch Wind, LLC Application for Market-Based Rates to be effective 1/1/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5180.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–677–000.

Applicants: ITC Midwest LLC.

Description: ITC Midwest—Storm Lake Power Partners 205 Filing to be effective 2/21/2012.

Filed Date: 12/22/11.

Accession Number: 20111222–5229.

Comments Due: 5 p.m. ET 1/12/12.

Docket Numbers: ER12–678–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–22–11 VLR RSG Cost Allocation to be effective 4/1/2012.

Filed Date: 12/23/11.

Accession Number: 20111223–5000.

Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–678–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: Supplemental filing of MISO to include the inadvertently omitted Tab D (Vannoy Affidavit).

Filed Date: 12/23/11.

Accession Number: 20111223–5067.

Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–679–000.

Applicants: Midwest Independent Transmission System Operator, Inc.

Description: 12–22–11 VLR Mitigation to be effective 4/1/2012.

Filed Date: 12/23/11.

Accession Number: 20111223–5001.

Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–680–000.

Applicants: Southern California Edison Company.

Description: LGIA Catalina Solar Project, Catalina Solar LLC to be effective 12/24/2011.

Filed Date: 12/23/11.

Accession Number: 20111223–5005.

Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–681–000.

Applicants: PJM Interconnection, L.L.C., Carolina Power & Light Company.

Description: Minor revisions to Articles 7.1.2, 13.3 & 14.5.4 of the PJM–Progress JOA to be effective 1/1/2012.

Filed Date: 12/23/11.
Accession Number: 20111223–5075.
Comments Due: 5 p.m. ET 1/13/12.

Docket Numbers: ER12–682–000.
Applicants: Erie Wind, LLC.
Description: MBR Application of Erie Wind, LLC to be effective 12/24/2011.
Filed Date: 12/23/11.
Accession Number: 20111223–5077.
Comments Due: 5 p.m. ET 1/13/12.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 23, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33676 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–1141–001; ER10–1139–001; ER10–1151–004; ER10–1103–001; ER10–1119–001; ER10–1123–001; ER10–3247–004
Applicants: Ameren Energy Marketing Company, Ameren Energy Generating Company, Electric Energy Inc., AmerenEnergy Medina Valley Cogen, L.L.C., AmerenEnergy Resources Generating Company, Ameren Illinois Company, Union Electric Company
Description: Triennial Market Power Update of the Ameren Companies.
Filed Date: 12/23/11
Accession Number: 20111223–5139
Comments Due: 5 p.m. ET 2/21/12

Docket Numbers: ER10–1819–001; ER10–1820–003; ER10–1818–001; ER10–1817–002
Applicants: Northern States Power Company, a Minnesota corporation, Northern States Power Company, a Wisconsin corporation, Public Service Company of Colorado, Southwestern Public Service Company
Description: Change-in-Status Report of Northern States Power Company, a Minnesota corporation, et al.
Filed Date: 12/23/11
Accession Number: 20111223–5143
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER10–1819–002; ER10–1820–004
Applicants: Northern States Power Company, a Minnesota corporation, Northern States, a Wisconsin corporation
Description: Market-Based Rate Authorization Triennial Market Power Analysis.
Filed Date: 12/23/11
Accession Number: 20111223–5144
Comments Due: 5 p.m. ET 2/21/12

Docket Numbers: ER10–3142–003; ER10–3145–003; ER10–3147–003; ER10–3148–003; ER10–3114–003; ER10–3116–003; ER10–3118–003, ER10–3120–003; ER10–3121–003; ER11–2036–003; ER10–3126–003; ER10–3128–003; ER10–3131–003; ER10–1800–003; ER10–3136–003; ER11–2701–004; ER10–1728–003; ER10–2491–003
Applicants: Mountain View Power Partners, LLC, Indianapolis Power & Light Company, AES Eastern Energy, LP, DPL Energy, LLC, The Dayton Power and Light Company, AES Alamitos, LLC, AES Redondo Beach, L.L.C., Condon Wind Power, LLC, AES Huntington Beach LLC, AES Armenia Mountain Wind, LLC, AES Creative Resources, L.P., AES Energy Storage, LLC, AES ES Westover, LLC, AES Ironwood, L.L.C., AES Red Oak, L.L.C., AES Laurel Mountain, LLC, AEE2, L.L.C., Mountain View Power Partners IV, LLC
Description: AES MBR Affiliates Notice of Change in Status.
Filed Date: 12/23/11
Accession Number: 20111223–5106
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–683–000
Applicants: Ameren Energy Generating Company
Description: Amendment to AEG Market Rate Tariff to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5097
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–684–000
Applicants: ITC Midwest LLC
Description: Great River Energy Agreements to be effective 2/22/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5098
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–685–000
Applicants: Pacific Gas and Electric Company
Description: City of Gridley WPA and NCPA IA to be effective 1/1/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5103
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–686–000
Applicants: Citizens Sunrise Transmission LLC
Description: Transmission Owner Tariff Baseline to be effective 12/23/2011.
Filed Date: 12/23/11
Accession Number: 20111223–5105
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–687–000
Applicants: AES Alamitos, LLC
Description: AES Alamitos Tariff Filing to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5118
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–688–000
Applicants: AES Creative Resources, L.P.
Description: AES Creative Resources Tariff Filing to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5124
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–689–000
Applicants: AES Eastern Energy, L.P.
Description: AES Eastern Energy Tariff Filing to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5126
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–690–000
Applicants: AES Huntington Beach, L.L.C.
Description: AES Huntington Beach Tariff Filing to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5128
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–691–000
Applicants: AES Redondo Beach, L.L.C.
Description: AES Redondo Beach Tariff Filing to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5130
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–692–000
Applicants: Condon Wind Power, LLC
Description: Condon Wind Power Tariff Filing to be effective 2/21/2012.
Filed Date: 12/23/11
Accession Number: 20111223–5131
Comments Due: 5 p.m. ET 1/13/12

Docket Numbers: ER12–693–000
Applicants: Mountain View Power Partners, LLC

Description: Mountain View Tariff Filing to be effective 2/21/2012.

Filed Date: 12/23/11

Accession Number: 20111223–5132

Comments Due: 5 p.m. ET 1/13/12

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 27, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33718 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP11–72–00]

Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P; Notice of Availability of the Environmental Assessment for the Proposed Sabine Pass Liquefaction Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) for the Sabine Pass Liquefaction Project (Project), proposed by Sabine Pass Liquefaction, LLC and Sabine Pass LNG, L.P. (collectively referred to as Sabine Pass) in the above-referenced docket. Sabine Pass requests authorization to construct and operate facilities to be used for the liquefaction and exportation of natural gas at the existing Sabine Pass LNG Import Terminal in Cameron Parish, Louisiana. The Project would be capable of processing an average of approximately 2.6 billion cubic feet per day of pipeline quality natural gas from the Creole Trail Pipeline, which interconnects with the SPLNG Terminal. Sabine Pass would liquefy the natural gas, store the liquefied natural gas (LNG), and export approximately 16 million metric tons per annum of LNG via LNG carriers.

The EA assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major federal action significantly affecting the quality of the human environment.

The Department of Energy, U.S. Army Corps of Engineers, and U.S. Department of Transportation participated as cooperating agencies in the preparation of the EA. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The proposed Project includes the following facilities:

- Four LNG liquefaction trains (each train contains gas treatment facilities, six gas turbine-driven refrigerant compressors, waste heat recovery systems, induced draft air coolers, fire and gas detection and safety systems, control systems, and associated infrastructure);
- Additional power generation (including up to two gas turbine-driven generators, transformers, and other electrical accessories to supplement existing onsite power generation);
- Other infrastructure and modifications (including storage tanks for propane and ethylene refrigerants and the amine make up, replacement of in-tank LNG pumps and piping modifications to increase flow capacity and facilitate loading of LNG carriers, impoundments for the liquefaction trains, flares, recycle boil-off gas compressors, potable water, service water, and demineralized water systems); and
- New and remodeled buildings.

The FERC staff mailed copies of the EA to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; newspapers and libraries in the project area; and parties to this proceeding. In addition, the EA is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426 (202) 502–8371.

Any person wishing to comment on the EA may do so. Your comments should focus on the potential environmental effects, reasonable alternatives, and measures to avoid or lessen environmental impacts. The more specific your comments, the more useful they will be. To ensure that your comments are properly recorded and considered prior to a Commission decision on the proposal, it is important that the FERC receives your comments in Washington, DC on or before January 27, 2011.

For your convenience, there are three methods you can use to submit your comments to the Commission. In all instances please reference the project docket number (CP11–72–000) with your submission. The Commission encourages electronic filing of comments and has expert staff available to assist you at (202) 502–8258 or *efiling@ferc.gov.*

(1) You can file your comments electronically using the eComment feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. This is an easy method for submitting brief, text-only comments on a project;

(2) You can file your comments electronically using the eFiling feature on the Commission's Web site (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You must select the type of filing you are making. If you are filing a comment on a particular project, please select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments by mailing them to the following address: Kimberly D. Bose, Secretary Federal Energy Regulatory Commission, 888 First Street NE., Room 1A, Washington, DC 20426.

Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision. The Commission grants affected landowners and others with environmental concerns intervenor status upon showing good cause by stating that they have a clear and direct

[1] See the previous discussion on the methods for filing comments.

interest in this proceeding which no other party can adequately represent. Simply filing environmental comments will not give you intervenor status, but you do not need intervenor status to have your comments considered.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number excluding the last three digits in the Docket Number field (i.e., CP11–72). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/esubscribenow.htm.*

Dated: December 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33734 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR09–11–003]

Southcross Mississippi Pipeline, L.P. Notice of Extension of Time

On December 13, 2011, Southcross Mississippi Pipeline, L.P. (Southcross) filed a request to extend the date for filing its next rate case pursuant to sections 284.224 and 284.123 (2011) of the Commission's regulations.[1] In support of this request, Southcross states that in Order No. 735 the Commission modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[2] Therefore, Southcross requests that the date for its next rate filing be extended to February 1, 2014, which is five years from the date of Southcross' most recent rate filing with this Commission.

Upon consideration, notice is hereby given that an extension of time for Southcross to file its section 284.123 rate petition is granted to and including February 1, 2014.

Dated: December 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33736 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 284.123 and 284.224 (2011).

[2] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR11–73–002]

Southcross CCNG Transmission Ltd.; Notice of Extension of Time

On December 13, 2011, Southcross CCNG Transmission Ltd. (Southcross CCNG) filed a request to extend the date for filing its next rate case pursuant to sections 284.224 and 284.123 (2011) of the Commission's regulations.[1] In support of this request, Southcross CCNG states that in Order No. 735 the Commission modified its policy concerning periodic reviews of rates charges by section 311 and Hinshaw pipelines to extend the cycle for such reviews from three to five years.[2] Therefore, Southcross CCNG requests that the date for its next rate filing be extended to April 20, 2015, which is five years from the date of Southcross CCNG's most recent rate filing with this Commission.

Upon consideration, notice is hereby given that an extension of time for Southcross CCNG to file its section 284.123 rate petition is granted to and including April 20, 2015.

Dated: December 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33733 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

[1] 18 CFR 284.123 and 284.224 (2011).

[2] *Contract Reporting Requirements of Intrastate Natural Gas Companies,* Order No. 735, 131 FERC ¶ 61,150 (May 20, 2010).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–672–000]

Brea Power II LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Brea Power II 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 17, 2012.

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 Street 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email

FERCOnlineSupport@ferc.gov or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33723 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–670–000]

Rhode Island LFG Genco LLC ; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Rhode Island LFG Genco 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 17, 2012.

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 Street 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33724 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–673–000]

Brea Generation LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Brea Generation 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 17, 2012.

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 Street 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33722 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–682–000]

Erie Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Erie Wind, 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 17, 2012.

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 Street 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33719 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–676–000]

Perrin Ranch Wind, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Perrin Ranch Wind, 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 17, 2012.

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 Street 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov.* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33720 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER12–674–000]

Rhode Island Engine Genco LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Rhode Island Engine Genco 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 17, 2012.

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 Street 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 email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: December 28, 2011.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2011–33721 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2090–008]

Green Mountain Power Corporation; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Types of Application:* Amendment of License.

b. *Project No.:* 2090–008.

c. *Date Filed:* November 16, 2011.

d. *Applicants:* Green Mountain Power Corporation.

e. *Name of Projects:* Waterbury Hydroelectric Project.

f. *Location:* Little River in Washington County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Mr. Jason Lisai, Green Mountain Power Corporation, 163 Acorn Lane, Colchester, Vermont 05446. Tel: (802) 655–8723.

i. *FERC Contact:* Mr. Vedula Sarma, (202) 502–6190, *vedula.sarma@ferc.gov.*

j. Deadline for filing comments, motions to intervene, and protests, is 30 days from the issuance date of this notice. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project numbers (P–2090–008) on any comments, motions, or recommendations filed.

k. *Description of Request:* The licensee in 2009 replaced the project's turbine runner with a more efficient runner identical in design to the original runner. The runner replacement has not changed the project's generating capacity but the hydraulic capacity of the unit increased by 14 percent from 586 cfs to 670 cfs.

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/docs-filing/elibrary.asp.* Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 1-(866) 208–3676 or email *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. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''Comments'', ''Protest'', or ''Motion to Intervene'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). All comments, motions to intervene, or protests should relate to project works which are the subject of the license surrender. Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. 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 all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: December 28, 2011.

Kimberly D. Bose,

Secretary.

[FR Doc. 2011–33735 Filed 1–3–12; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9615–7]

Proposed Consent Decree, Clean Air Act Citizen Suit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Proposed Consent Decree; Request for Public Comment.

SUMMARY: On December 2, 2011, EPA provided notice in accordance with section 113(g) of the Clean Air Act, as amended (''CAA'' or the ''Act''), 42 U.S.C. 7413(g), of a proposed consent decree to address a lawsuit filed by National Parks Conservation Association, Montana Environmental Information Center, Grand Canyon Trust, San Juan Citizens Alliance, Our Children's Earth Foundation, Plains Justice, Powder River Basin Resource Council, Sierra Club, and Environmental Defense Fund (collectively ''Plaintiffs'') in the United States District Court for the District of Columbia: *National Parks Conservation Association, et al.* v. *Jackson,* No. 1:11-cv-1548 (D. DC). The proposed consent decree establishes proposed and final promulgation deadlines for EPA to promulgate regional haze federal implementation plans (FIPs) or approve regional haze state implementation plans (SIPs) for 34 states, as required by section 110(c) of the CAA. In EPA's notice, we inadvertently failed to identify Arizona, Michigan, and New Mexico as states addressed by the proposed consent decree. Notice is hereby given that the proposed consent decree addresses these three states. We are extending the comment period to provide an opportunity to comment on

the proposed consent decree as it affects these three states only.

DATES: Written comments on the proposed consent decree as it affects Arizona, Michigan, and New Mexico must be received by *February 3, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–0929, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Lea Anderson, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202) 564–5571; fax number (202) 564–5603; email address: *anderson.lea@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Consent Decree

Under section 110(c) of the CAA, EPA has a mandatory duty to promulgate a federal implementation plan (''FIP'') within two years of a finding that a state has failed to make a required state implementation plan (''SIP'') submittal. EPA is not required to promulgate a FIP, however, if the state submits the required SIP and EPA approves the plan within the two years of EPA's finding. On January 15, 2009, EPA found that 37 states, the District of Columbia, and the U.S. Virgin Islands had failed to submit CAA SIPs for improving visibility in mandatory Federal Class I areas.

The proposed consent decree would resolve a deadline suit filed by Plaintiffs for EPA to take action on a number of regional haze SIPs. The proposed consent decree would address, *inter alia,* EPA's failure to promulgate regional haze FIPs or approve regional haze SIPs for 34 of the states that the Agency found on January 15, 2009 had failed to submit SIPs addressing the requirements of the regional haze program. EPA's prior notice inadvertently excluded Arizona, Michigan, and New Mexico from the list of the 34 states addressed by the consent decree. In addition, EPA erroneously identified California, Montana, and North Dakota as states addressed by the proposed consent decree. These states are not addressed by the proposed consent decree.

For a period of thirty (30) days following the date of publication of this supplemental notice, the Agency will accept written comments relating to the provisions in the proposed consent decree addressing Arizona, Michigan, and New Mexico from persons who were not named as parties or intervenors to the litigation in question. Other written comments on the proposed consent decree must be received by January 3, 2012. EPA or the Department of Justice may withdraw or withhold consent to the proposed consent decree if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines that consent to this consent decree should be withdrawn, the terms of the proposed consent decree will be affirmed.

Additional information about commenting on the proposed consent decree can be found in the notice published on December 2, 2011.

Dated: December 23, 2011.

Kevin McLean,

Acting Associate General Counsel.

[FR Doc. 2011–33759 Filed 1–3–12; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9615–8]

Proposed Settlement Agreement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Proposed Settlement Agreement; Request for Public Comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended (''Act''), 42 U.S.C. 7413(g), notice is hereby given of a proposed settlement agreement to address lawsuits filed by EnerNOC, Inc., EnergyConnect, Inc., CPower, Inc., and Innoventive Power, LLC (''Petitioners'') in the United States Court of Appeals for the District of Columbia Circuit: *EnerNOC, et al* v. *EPA,* No. 10–1090 (DC Cir.) and *EnerNOC, et al* v. *EPA,* No. 10–1336 (DC Cir.). Petitioners filed for review of two EPA rulemakings that revised the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (the RICE NESHAP). Under the terms of the proposed settlement agreement, by April 20, 2012, the Agency will sign a notice of proposed rulemaking that includes a proposal to revise the RICE NESHAP and the stationary internal combustion engine new source performance standards (ICE NSPS) to allow owners and operators of emergency stationary internal combustion engines to operate emergency stationary internal combustion engines in emergency conditions, as defined in those regulations, as part of an emergency demand response program for 60 hours per year or the minimum hours required by Independent System Operator tariff, whichever is less. The notice of proposed rulemaking may also allow for more hours of operation. In addition, under the terms of the proposed settlement agreement, by December 14, 2012, the Administrator of EPA will sign a final action on this proposal, which may include signature of a final rule by the Administrator. If EPA promulgates in final form an amendment to the RICE NESHAP and ICE NSPS that includes changes that are substantially the same substance as that set forth in the settlement agreement, then Petitioners shall promptly file a stipulation of dismissal of Nos. 10–1090 and 10–1336.

DATES: Written comments on the proposed settlement agreement must be received by *February 3, 2012.*

ADDRESSES: Submit your comments, identified by Docket ID number EPA–HQ–OGC–2011–1030, online at *www.regulations.gov* (EPA's preferred method); by email to *oei.docket@epa.gov;* by mail to EPA Docket Center, Environmental Protection Agency, Mailcode: 2822T, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; or by hand delivery or courier to EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC, between 8:30 a.m. and 4:30 p.m. Monday through Friday, excluding legal holidays. Comments on a disk or CD–ROM should be formatted in Word or ASCII file, avoiding the use of special characters and any form of encryption, and may be mailed to the mailing address above.

FOR FURTHER INFORMATION CONTACT: Michael Horowitz, Air and Radiation Law Office (2344A), Office of General Counsel, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460; telephone: (202)

564–5583; fax number (202) 564–5603; email address: *horowitz.michael@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Additional Information About the Proposed Settlement Agreement

This proposed settlement agreement would potentially resolve a petition for judicial review filed by Petitioners for review of two rulemakings revising the National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines (the RICE NESHAP), 75 FR 9648 (March 3, 2010) and 75 FR 51570 (August 20, 2010). The RICE NESHAP allows emergency engines to operate for 15 hours annually as part of a demand response program if the regional transmission organization or equivalent balancing authority and transmission operator has determined that there are emergency conditions that would lead to a potential electrical blackout, such as unusually low frequency, equipment overload, capacity or energy deficiency, or unacceptable voltage level. RICE would not meet the definition of emergency engine if they operated more than fifteen hours in such circumstances.

Petitioners filed petitions for review and reconsideration indicating that 15 hours is insufficient to ensure that emergency engines can be relied upon for dispatch under emergency demand response programs. The petition for reconsideration provided significant evidence that the NESHAP should be revised to allow owners and operator of emergency engines to operate for 60 hours per year or the minimum hours required by Independent System Operator tariff, whichever is less, as part of an emergency demand response program.

Under the terms of the proposed settlement agreement, EPA states that it anticipates that, by April 20, 2012, the Agency will sign a notice of proposed rulemaking that includes a proposal to revise the RICE NESHAP and, for consistency, the ICE NSPS to allow owners and operators of emergency stationary internal combustion engines to operate emergency stationary internal combustion engines in emergency conditions, as defined in those regulations, as part of an emergency demand response program for 60 hours per year or the minimum hours required by Independent System Operator tariff, whichever is less. The notice of proposed rulemaking may also allow for more hours of operation. In addition, under the terms of the proposed settlement agreement, by December 14, 2012, the Administrator of EPA will sign a final action on this proposal, which may include signature of a final rule by the Administrator. Under the proposed settlement agreement, if EPA fails to sign the proposal by April 20, 2012, or to take final action on the proposal by December 14, 2012, Petitioners may move the Court to lift the order staying proceedings and establish a briefing schedule. Petitioners shall have no further remedy under the agreement.

Under the proposed settlement agreement, if the relevant provisions of the final rule are in substantial conformance with the revisions in the proposed agreement, then Petitioners agree to dismiss the petition for review.

For a period of thirty (30) days following the date of publication of this notice, the Agency will accept written comments relating to the proposed settlement agreement from persons who were not named as parties or intervenors to the litigation in question. EPA or the Department of Justice may withdraw or withhold consent to the proposed settlement agreement if the comments disclose facts or considerations that indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Unless EPA or the Department of Justice determines, based on any comment submitted, that consent to this settlement agreement should be withdrawn, the terms of the agreement will be affirmed.

II. Additional Information About Commenting on the Proposed Settlement Agreement

A. How can I get a copy of the settlement agreement?

The official public docket for this action (identified by Docket ID No. EPA–HQ–OGC–2011–1030) contains a copy of the proposed settlement agreement. The official public docket is available for public viewing at the Office of Environmental Information (OEI) Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave. NW., Washington, DC. The EPA Docket Center Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OEI Docket is (202) 566–1752.

An electronic version of the public docket is available through *www.regulations.gov.* You may use the *www.regulations.gov* to submit or view public comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once in the system, key in the appropriate docket identification number then select ''search''.

It is important to note that EPA's policy is that public comments, whether submitted electronically or in paper, will be made available for public viewing online at *www.regulations.gov* without change, unless the comment contains copyrighted material, CBI, or other information whose disclosure is restricted by statute. Information claimed as CBI and other information whose disclosure is restricted by statute is not included in the official public docket or in the electronic public docket. EPA's policy is that copyrighted material, including copyrighted material contained in a public comment, will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the EPA Docket Center.

B. How and to whom do I submit comments?

You may submit comments as provided in the **ADDRESSES** section. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked ''late.'' EPA is not required to consider these late comments.

If you submit an electronic comment, EPA recommends that you include your name, mailing address, and an email address or other contact information in the body of your comment and with any disk or CD ROM you submit. This ensures that you can be identified as the submitter of the comment and allows EPA to contact you in case EPA cannot read your comment due to technical difficulties or needs further information on the substance of your comment. Any identifying or contact information provided in the body of a comment will be included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

Use of the *www.regulations.gov* Web site to submit comments to EPA electronically is EPA's preferred method for receiving comments. The electronic

public docket system is an ''anonymous access'' system, which means EPA will not know your identity, email address, or other contact information unless you provide it in the body of your comment. In contrast to EPA's electronic public docket, EPA's electronic mail (email) system is not an ''anonymous access'' system. If you send an email comment directly to the Docket without going through *www.regulations.gov,* your email address is automatically captured and included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Dated: December 28, 2011.

Kevin McLean,

Acting Associate General Counsel.

[FR Doc. 2011–33758 Filed 1–3–12; 8:45 am]

BILLING CODE 6560–50–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–0080]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB review and comments request.

Form Title: Co-Financing with Foreign Export Credit Agency (EIB11–04).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

This form will enable Ex-Im Bank to identify the specific details of the proposed co-financing transaction between a U.S. exporter, Ex-Im Bank, and a foreign export credit agency; the information collected includes vital facts such as the amount of U.S.-made content in the export, the amount of financing requested from Ex-Im Bank, and the proposed financing amount from the foreign export credit agency. These details are necessary for approving this unique transaction structure and coordinating our support with that of the foreign export credit agency to ultimately complete the transaction and support U.S. exports—and U.S. jobs.

The form can be viewed at: http://www.exim.gov/pub/pending/eib11–04.pdf.

DATES: Comments should be received on or before February 3, 2012 to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, attn: OMB 3048–0037.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB11–04 Co-Financing with Foreign Export Credit Agency.

OMB Number: 3048–0037.

Type of Review: New.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 60.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 15 hours.

Frequency of Reporting or Use: On occasion.

Total Cost to the Government: $585.60.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–33727 Filed 1–3–12; 8:45 am]

BILLING CODE 6690–01–P

EXPORT-IMPORT BANK OF THE U.S.

[Public Notice 2011–076]

Agency Information Collection Activities: Final Collection; Comment Request

AGENCY: Export-Import Bank of the U.S.

ACTION: Submission for OMB Review and Comments Request.

Form Title: Used Equipment Questionnaire (EIB 11–03).

SUMMARY: The Export-Import Bank of the United States (Ex-Im Bank), as a part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal Agencies to comment on the proposed information collection, as required by the Paperwork Reduction Act of 1995.

The collection will provide information needed to determine compliance and creditworthiness for transaction requests submitted to Ex-Im Bank under its insurance, guarantee, and direct loan programs. Information presented in this form will be considered in the overall evaluation of the transaction, including Export-Import Bank's determination of the appropriate term for the transaction.

The form can be viewed at: http://www.exim.gov/pub/pending/eib11–03.pdf.

DATES: Comments should be received on or before to be assured of consideration.

ADDRESSES: Comments may be submitted electronically on *http://www.regulations.gov* or by mail to Office of Information and Regulatory Affairs, 725 17th Street NW., Washington, DC 20038, attn: OMB 3048–NEW.

SUPPLEMENTARY INFORMATION:

Titles and Form Number: EIB 11–03 Used Equipment Questionnaire.

OMB Number: 3048–xxxx.

Type of Review: New.

Need and Use: The information collected will provide information needed to determine compliance and creditworthiness for transaction requests submitted to the Export-Import Bank under its insurance, guarantee, and direct loan programs.

Affected Public: This form affects entities involved in the export of U.S. goods and services.

Annual Number of Respondents: 1,000.

Estimated Time per Respondent: 15 minutes.

Government Annual Burden Hours: 250 hours.

Frequency of Reporting or Use: On occasion.

Total Cost to the Government: $9,760.00.

Sharon A. Whitt,

Agency Clearance Officer.

[FR Doc. 2011–33728 Filed 1–3–12; 8:45 am]

BILLING CODE 6690–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal

Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 18, 2012.

A. Federal Reserve Bank of Minneapolis (Jacqueline G. King, Community Affairs Officer) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. *Gladys E. Youse Trust and Madolyn Y. Babcock both of Minneapolis, Minnesota,* to acquire additional shares of Metro North Bancshares, Inc. and thereby indirectly acquire control of The Bank of Elk River, both of Elk River, Minnesota. Additionally, The Gladys E. Youse Trust, and its trustee, Madolyn Y. Babcock, propose to join the Babcock family shareholder group, which controls 25% or more of Metro North Bancshares, Inc.

Board of Governors of the Federal Reserve System, December 28, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33697 Filed 1–3–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 2012.

A. Federal Reserve Bank of Richmond (Adam M. Drimer, Assistant Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. *First Financial Holdings, Inc., Charleston, South Carolina,* to become a bank holding company upon the conversion of First Federal Savings and Loan Association, Charleston, South Carolina, to a state chartered commercial bank. In connection with this application, First Financial Holdings, Inc., Charleston, South Carolina has also applied to acquire First Federal Savings and Loan Association, Charleston, South Carolina and thereby engage in financial and investment activities and agency transactional services for customer investments.

Board of Governors of the Federal Reserve System, December 28, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33698 Filed 1–3–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies 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.

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 January 18, 2012.

A. Federal Reserve Bank of Dallas (E. Ann Worthy, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. *Triumph Consolidated Cos., LLC, Dallas, Texas,* to engage de novo through the establishment of Triumph CRA Holdings, LLC, Dallas, Texas, as a nonbanking subsidiary in lending activities and community development, pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33699 Filed 1–3–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in or To Acquire Companies 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.

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 January 18, 2012.

A. Federal Reserve Bank of St. Louis (Glenda Wilson, Community Affairs Officer), P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *First Arkansas BancShares, Inc., Jacksonville, Arkansas,* to acquire 20 percent of the voting shares of FAS

Capital, LLC, Atlanta, Georgia, and thereby indirectly acquire FAS Capital, LLC, Atlanta, Georgia, and thereby engage in engage in lending activities pursuant to section 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, December 28, 2011.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 2011–33700 Filed 1–3–12; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[CMS–2420–FN]

Medicaid Program: Initial Core Set of Health Care Quality Measures for Medicaid-Eligible Adults

AGENCY: Office of the Secretary, HHS.

ACTION: Final notice.

SUMMARY: This final notice announces the initial core set of health care quality measures for Medicaid-eligible adults, as required by section 2701 of the Affordable Care Act, for voluntary use by State programs administered under title XIX of the Social Security Act, health insurance issuers and managed care entities that enter into contracts with Medicaid, and providers of items and services under these programs.

FOR FURTHER INFORMATION CONTACT: Karen Llanos, Centers for Medicare & Medicaid Services, (410) 786–9071.

SUPPLEMENTARY INFORMATION:

I. Background

Section 2701 of the Patient Protection and Affordable Care Act (Affordable Care Act) (Pub. L. 111–148) added new section 1139B to the Social Security Act (the Act). Section 1139B(a) of the Act directs the Secretary of Health and Human Services (HHS) to identify and publish for public comment a recommended initial core set of health care quality measures for Medicaid-eligible adults, and section 1139B(b)(1) of the Act requires that an initial core set be published by January 1, 2012. Additionally, the statute requires the initial core set recommendation to consist of existing adult health care quality measures in use under public and privately sponsored health care coverage arrangements or that are part of reporting systems that measure both the presence and duration of health insurance coverage over time and that may be applicable to Medicaid-eligible adults.

Section 1139B of the Act also requires the Secretary to complete the following actions:

—By January 1, 2012:

• Establish a Medicaid Quality Measurement Program to fund development, testing, and validation of emerging and innovative evidence-based measures.

—By January 1, 2013:

• Develop a standardized reporting format for the core set of adult quality measures and procedures to encourage voluntary reporting by the States.

—By January 1, 2014:

• Annually publish recommended changes to the initial core set that shall reflect the results of the testing, validation, and consensus process for the development of adult health quality measures.

• Include in the report to Congress mandated under section 1139A(a)(6) of the Act on the quality of health care of children in Medicaid and the Children's Health Insurance Program (CHIP) similar information for adult health quality with respect to measures established under section 1139B of the Act. This report must be published every 3 years thereafter in accordance with the statute.

—By September 30, 2014:

• Collect, analyze, and make publicly available the information reported by the States as required in section 1139B(d)(1) of the Act.

Identification of the initial core set of measures for Medicaid-eligible adults is an important first step in an overall strategy to encourage and enhance quality improvement. States that chose to collect the initial core set will be better positioned to measure their performance and develop action plans to achieve the three part aims of better care, healthier people, and affordable care as identified in HHS' National Strategy for Quality Improvement in Health Care. Additional information about the National Quality Strategy can be found at: *http://www.ahrq.gov/workingforquality/nqs/.*

The initial core set of quality measures for voluntary annual reporting by States has been determined based on recommendations from the Agency for Healthcare Research and Quality's Subcommittee to the National Advisory Council for Healthcare Research and Quality, as well as public comments, before being finalized by the Secretary. These core set measures will support HHS and its State partners in developing a quality-driven, evidence-based, national system for measuring the quality of health care provided to Medicaid-eligible adults.

Over the next year, CMS will phase in components of the Medicaid Adult Quality Measures Program that will help to further identify measurement gap areas and begin testing the collection of some of the initial core measures. The Medicaid Adult Quality Measures Program will focus on developing and refining measures, where needed, so that future updates to the initial core set can meet a wider range of States' health care quality measurement needs. By September 2012, CMS will release technical specifications as a resource for States that seek to voluntarily collect and report the initial core set of health care quality measures for Medicaid-eligible adults. Additionally, as required in statute, by January 1, 2013, CMS will issue guidance for submitting the initial core set to CMS in a standardized format. Lastly, much like activities conducted under section 1139A of the Act for the initial core child health care quality measures, the Secretary will launch a Technical Assistance and Analytic Support Program to help States collect, report, and use the voluntary core set of adult measures.

II. Method for Determining the Initial Set of Health Care Quality Measures for Medicaid-Eligible Adults

The Affordable Care Act requires the development of a core set of health quality measures for adults eligible for benefits under Medicaid. The statute parallels the requirement under section 1139A of the Act to identify and publish a recommended initial core set of quality measures for children in Medicaid and the CHIP. HHS used a similar process to identify the initial set of health care quality measures for Medicaid-eligible adults.

The Centers for Medicare & Medicaid Services (CMS) partnered with the Agency for Healthcare Research and Quality (AHRQ) to collaborate on the identification of the initial core set of health care quality measures for adults. Working through its National Advisory Council for Healthcare Research and Quality, which provides advice and recommendations to the Director of AHRQ and to the Secretary of HHS on priorities for a national health services research agenda, AHRQ created a Subcommittee in the fall of 2010 to evaluate candidate measures for the initial core set. The Subcommittee consisted of State Medicaid representatives, health care quality experts, and representatives of health professional organizations and associations, and was charged with considering the health care quality needs of adults (ages 18 and older) enrolled in Medicaid in its

recommendation for an initial core set of measures to HHS. The Subcommittee reviewed and evaluated measures from nationally recognized sources, including measures endorsed by the National Quality Forum (NQF), measures submitted by Medicaid medical directors, measures currently in use by CMS, and measures suggested by the Co-chairs and members of the Subcommittee. Starting from approximately 1,000 measures, a total of 51 measures were recommended and posted for public comment. A report detailing the initial convening of the Subcommittee may be found on the AHRQ Web site: *http://www.ahrq.gov/about/nacqm/.*

The measures were posted for public comment through a **Federal Register** (75 FR 82397) notice published on December 30, 2010, with comments due by March 1, 2011. The public submitted 100 comments. Public comments suggested concern about the large size of the proposed set, with many requesting alignment to the extent possible with existing Federal initiatives. An additional 43 measures were suggested through public comment. See discussion in section III of this final notice for a more detailed discussion.

To be responsive to the public comments, the Subcommittee sought to identify measures that ensured comprehensive representation of variables affecting Medicaid-eligible adults while considering ways to decrease the number of measures in the set. AHRQ and CMS identified five criteria against which to evaluate the proposed core measures: importance; scientific evidence supporting the measure; scientific soundness of the measure; current use in and alignment with existing Federal programs; and feasibility for State reporting (a background report detailing the selection criteria and Subcommittee process can be found at: *http://www.ahrq.gov*). The criteria represented attributes desired of State-level measures that would represent Medicaid-eligible adults. In particular, those criteria regarding current use in and alignment with existing Federal programs and feasibility for State reporting were given particular emphasis, since those were attributes identified repeatedly in the public comments. Documented use of or alignment with existing Federal programs such as the National Quality Strategy's six priorities, the Medicare and Medicaid Electronic Health Record (EHR) Incentive Programs, and Physician Quality Reporting was taken into consideration as the Subcommittee reviewed each measure.

As in the initial meeting, the Subcommittee broke into workgroups focusing on four dimensions of health care related to adults in Medicaid: Adult Health, Maternal/Reproductive Health, Complex Health Care Needs, and Mental Health and Substance Use. Workgroups were assigned two sets of measures that related to their specific areas: originally recommended measures and measures proposed in public comment. To assess how each measure fared against the five criteria, the Subcommittee reviewed background information (including numerator, denominator, exclusions, prevalence, clinical guidelines, past performance rates, etc.) on each measure from the measure owners, developers, or stewards.

A. Adult Health

The workgroup prioritized 10 of the original measures to be included in the final set, dropping five measures that were duplicative of other measures. The workgroup brought forward one measure that was suggested in public comment, *Adult Body Mass Index (BMI) Assessment,* replacing a similar BMI measure that had been originally recommended for the core set, *Preventive Care and Screening: BMI Screening and Follow-Up.* The workgroup did not recommend including the remaining 16 newly suggested measures received from the public comment period.

B. Maternal/Reproductive Health

After evaluating the measures against the criteria, the Maternal/Reproductive Health workgroup recommended keeping each of the five measures originally posed for the core set, noting that these measures addressed areas of high importance to women and reproductive health, were feasible to report and aligned well with current programs (including the initial core set of children's health care quality measures [1]). The workgroup noted that, while future measures should tie screenings to outcomes and assess additional issues outside of pregnancy that affect women (for example, access to care, incontinence due to multiple pregnancies), the measures being recommended for the core set were an important first step of using performance measures for quality improvement. Of the measures newly suggested through public comment, the workgroup recommended bringing one measure forward to a Subcommittee vote: *Chlamydia Screening in Women.* The workgroup rated this measure high on each criterion and noted its alignment with the initial core set of children's health care quality measures (the initial core set of children's measures specified only the lower age group of this measure; adding the higher age range means the measure now would be reported in full).

C. Complex Health Care Needs

The Complex Health Care Needs workgroup recommended nine of the 18 measures originally posed for inclusion in the draft core set. Although the topic areas represented in the measures suggested through public comment were important to Medicaid, many of the measures scored low on multiple criteria (for example, scientific soundness and feasibility for State reporting) and thus were deemed not ready for wide-scale implementation. Further, although several of the proposed measures assessed the very important topic of care coordination for patients who are hospitalized or transferred across multiple facilities, the workgroup noted that many of these measures were challenged by complex requirements for data collection and excluded target populations (for example, dually eligible beneficiaries and individuals with long-term care services and supports needs). Many of the measures, for example, required medical record review across time or at more than one site (for example, *Change in Basic Mobility as Measured by the AM–PAC* and *Medication Reconciliation Post-Discharge*). The workgroup concluded that the remaining measures suggested in public comment, though relevant to people with complex health care needs, addressed very narrow clinical conditions, excluded key populations, were difficult to collect at the State level, or were duplicative of other, more highly-rated measures.

D. Mental Health and Substance Use

After discussing how well the 13 measures originally proposed fared against the selection criteria, the Mental Health and Substance Use workgroup recommended nine measures for inclusion in the draft core set and decided against bringing forward any of the additional measures suggested in public comment. In general, the workgroup prioritized measures that were broadly applicable to the Medicaid population or to primary care settings. For example, the workgroup included measures that assessed conditions that may be prevalent in a low-income population, including depression, schizophrenia, and substance use, in

[1] Initial Core Set of Children's Health Care Quality Measures *https://www.cms.gov/MedicaidCHIPQualPrac/Downloads/CHIPRACoreSetTechManual.pdf.*

addition to measures that assessed utilization of general mental health services. The workgroup did not recommend including any of the five measures suggested in public comment, as they concluded that these measures addressed similar content areas as other higher-rated measures or were rated very low in feasibility for State collection and reporting.

E. Summary

A total of 35 measures received a majority vote from the full Subcommittee. The measures voted upon by the Subcommittee included recommendations from each workgroup that were based on the original 51 measures as well as new measures identified through public comment that were brought forth by each workgroup. The Adult Health work group recommended eleven measures for inclusion in the initial core set. The Maternal/Reproductive Health work group recommended six measures. The Complex Health Care Needs work group recommended nine measures and the Mental Health and Substance Use recommended nine measures.

The Subcommittee discussed how these measures represented conditions and populations relevant to Medicaid, and examined each measure's data source and use in existing programs. In the final round of voting, 24 [2] measures ultimately received a majority vote by Subcommittee members. In order to ensure priority populations were fully represented and that the goals of planned initiatives could be monitored, we then added two measures originally proposed for the draft core set (*PC–01 Elective Delivery* and *Timely Transmission of Transition Record*). The Subcommittee deferred the decision to CMS and AHRQ on which of the two HIV-related measures under consideration (*HIV/AIDS Screening: Members at High Risk of HIV/AIDS* and *HIV/AIDS: Medical Visits*) would be included in the core set. Upon discussion with colleagues from the Centers for Disease Control and Prevention and the Health Resources and Services Administration, the decision was made to include the measure originally proposed for the core set, *HIV/AIDS: Medical Visit.* A total of 26 are included in the initial core set.

[2] The CAHPS Health Plan Survey v 4.0—Adult Questionnaire and the CAHPS Health Plan Survey v 4.0H—NCQA Supplemental Items for CAHPS are counted as one measure.

III. Analysis of and Responses to Public Comments on the Notice of Comment Period

In response to the publication of the December 30, 2010 notice with comment period, we received 100 timely public comments. The following are a summary of the public comments that we received related to that notice, and our responses to the comments:

Comment: About a third of the comments specifically noted that the draft core set published in the **Federal Register** on December 30, 2010, was too large or raised the burden of reporting by States as a concern. Commenters also suggested reducing the measures to two measures per category or considering a phase-in approach.

Response: To address these concerns, the size of the core set was reduced by almost half (from 51 measures in the draft core set to 26 measures in the initial core set). Although the numbers of measures was reduced, we believe that this initial core set still reflects the health care needs of Medicaid-eligible adults. In addition to reducing the size of the initial core set, to support States in collecting and reporting these measures, CMS will provide technical assistance as well as additional guidance and tools to increase the feasibility of voluntary reporting.

Comment: Numerous comments suggested avoiding measures for inclusion in the initial core set that require medical record review.

Response: To the degree possible, measures that require medical record review were excluded in large-scale from the initial core set. However, in order to address aspects of health care quality important to the adult Medicaid population and to align with existing measurement programs (for example, the Medicare & Medicaid EHR Incentive Programs) a few measures that require medical record review (for example, controlling high blood pressure) were included in the initial core set.

Comment: Many comments suggested aligning measures with existing reporting programs, such as the Medicare and Medicaid EHR Incentive Programs and the Inpatient Hospital Quality Reporting program, as a way to decrease burden.

Response: We agree with these comments. To the degree possible, the initial core set aligns with existing Federal reporting programs. Seventeen measures from the initial core set are used in other CMS programs (refer to table at the end of Notice). Alignment was a key criterion employed in the review, based in part, on the strength of related public comments. At the same time, the areas addressed by the measures in the initial core set, however, must reflect the requirements of the statute to provide an overall assessment of the quality of care received by adults in Medicaid. As such, the types of quality measures included in other reporting programs may not fully represent the health care measurement needs of Medicaid-eligible adults.

Comment: Several commenters suggested using only measures endorsed by the National Quality Forum or National Committee for Quality Assurance Health Employer Data and Information Set (HEDIS®) measures. Many comments also emphasized the importance of ensuring the initial core set measures met thresholds for evidence, validity, reliability and feasibility.

Response: A key priority used in selecting the initial core set measures was whether or not the measure was relevant to the Medicaid population. While NQF endorsement signifies that measures have been deemed as meeting certain criteria for scientific soundness, validity and reliability, requiring NQF endorsement would have eliminated inclusion of measures in the initial core set that are relevant for assessing important aspects of care for the Medicaid population. Similarly, selecting only HEDIS measures, which were originally developed for health plan use, would have limited the initial core set's ability to address the range of care settings and conditions relevant to the Medicaid population.

Comment: Public comments questioned the appropriateness of some proposed measures.

Response: These comments are appreciated and helped us narrow the list. Each measure included in the initial core set has been compared against five criteria—importance, scientific evidence, scientific soundness, alignment with existing programs and feasibility for State reporting. Public comments related to specific measures were also reviewed and considered. To aid in assessing each measure for inclusion in the initial core set, specific information was collected for each measure, including:

- Measure description, numerator, denominator and exclusions.
- Data sources (for example, claims, medical records, electronic health records).
- Description of health importance, prevalence, financial importance and opportunity for improvement, including what is known about gaps in care and health care disparities.

• Brief description of the scientific literature, including what is known about effectiveness of the intervention being addressed, and what is known about management and follow-up.

• Published clinical guidelines relevant to the measure.

• Validity and reliability of results, including a description of the study sample and methods used.

• Performance rates (most recent and two years prior).

Comment: Two comments requested clarification on whether the initial core measures would be applied to Medicaid fee-for-service, Medicaid managed care or both types of health care delivery systems. Other commenters requested clarification on the target Medicaid population, particularly since NCQA measures included in the draft measures list had varying age ranges.

Response: The initial core set will be used by States to assess the quality of health care provided in their Medicaid programs for adults (ages 18 years and older) and across all health care delivery systems (for example, fee-for-service, managed care, primary care case management). We understand that some of the measures are currently specified only for a particular delivery system (for example, managed care). However, additional guidance will be provided to States so that these measures can be used across delivery systems and Medicaid funded programs targeting adults, including long-term services and supports.

Comment: Multiple comments suggested including measures related to patient safety and rehabilitation services. Specifically, commenters noted the need for measures that address a range of disabilities present among Medicaid beneficiaries and those receiving home and community-based services. The need for outcome measures for management of chronic conditions and care coordination measures was also noted.

Response: The measurement topic areas identified in these public comments are ones that CMS recognizes as important to assessing the health care quality of all adults enrolled in Medicaid, and we agree on the importance of measurement for chronic conditions and care coordination as well as for those receiving home and community-based services. However, the Subcommittee did not identify any existing measures in these areas that met the criteria for scientific soundness. As such, these topics will be considered measurement gap areas and will be prioritized for new measure development as part of the Medicaid Adult Quality Measures Program required under this statute.

Comment: In addition to public comments received about each of the proposed measures, 43 measures were suggested by the public.

Response: We appreciate these suggestions. Forty-two of the 43 measures had been previously considered by the Subcommittee and CMS for inclusion in the draft core measures set. The one measure that had not been considered was a newly developed measure that had not appeared in the original inventory of candidate measures (Healthy Term Newborn). The Subcommittee reviewed all 43 of these measures again and evaluated them based on the established selection criteria. The Healthy Term Newborn measure did not rate highly when compared against the selection criteria and the Subcommittee felt the measure would be more effective if paired with a process of care measure.

For additional information on consideration of the public comments and the finalization of the initial core set of health care quality measures for Medicaid-eligible adults, a background report can be found at: *http://www.ahrq.gov/.*

IV. Collection of Information Requirements

This final notice announces the initial core set of health care quality measures for Medicaid-eligible adults for voluntary use by State Medicaid programs. As required in statute, by January 1, 2013, CMS will issue guidance for submitting the initial core set to CMS in a standardized format. States choosing to collect the initial core set of measures will use that reporting template to submit data to CMS. Voluntary reporting will not begin until December 2013.

The guidance, core measures, and template are subject to the Paperwork Reduction Act and will be submitted to the Office of Management and Budget (OMB) for their review and approval at a later time. No persons are required to respond to a collection of information (whether voluntary or mandatory) unless it displays a valid OMB control number issued by OMB.

V. Executive Order 12866

In accordance with the provisions of Executive Order 12866, this notice was reviewed by the Office of Management and Budget.

Authority: Sections XIX and XXI of the Social Security Act (42 U.S.C. 13206 through 9a).

Dated: November 16, 2011.

Marilyn B. Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

Approved: December 21, 2011.

Kathleen Sebelius,

Secretary, Health and Human Services.

Initial Core Set of Health Care Quality Measures for Medicaid-Eligible Adults

This table of the initial core set of health care quality measures for Medicaid-eligible adults includes National Quality Forum (NQF) identifying numbers for measures that have been endorsed, provides the measure stewards and indicates those measures which are used in various Federal and public sector programs including: Initial Core Set of Children's Health Care Quality Measures; the Medicare & Medicaid EHR Incentive Programs for eligible health care professionals and hospitals that adopt certified Electronic Health Record technology under the Final Rule published in the July 28, 2010 **Federal Register** (75 FR 44314); the Medicare Physician Quality Reporting System (PQRS); Health Employer Data and Information Set (HEDIS); National Committee for Quality Assurance Accreditation; The Joint Commission's ORYX® Performance Measurement Initiative and other national programs.

	NQF No. †	Measure Steward‡	Measure name	Programs in which the measure is currently used¥
Prevention & Health Promotion	0039	NCQA	Flu Shots for Adults Ages 50–64 (Collected as part of HEDIS CAHPS Supplemental Survey).	HEDIS®, NCQA Accreditation.
	N/A	NCQA	Adult BMI Assessment	HEDIS®, Health Homes Core.
	0031	NCQA	Breast Cancer Screening	MU1, HEDIS®, NCQA Accreditation, PQRS GPRO, Shared Savings Program.

	NQF No. †	Measure Steward‡	Measure name	Programs in which the measure is currently used¥
	0032	NCQA	Cervical Cancer Screening	MU1, HEDIS®, NCQA Accreditation.
	0027	NCQA	Medical Assistance With Smoking and Tobacco Use Cessation (Collected as part of HEDIS CAHPS Supplemental Survey).	MU1, HEDIS®, Medicare, NCQA Accreditation.
	0418	CMS	Screening for Clinical Depression and Follow-Up Plan.	PQRS, CMS QIP, Health Homes Core, Shared Savings Program.
	N/A	NCQA	Plan All-Cause Readmission	HEDIS®.
	0272	AHRQ	PQI 01: Diabetes, Short-Term Complications Admission Rate.	
	0275	AHRQ	PQI 05: Chronic Obstructive Pulmonary Disease (COPD) Admission Rate.	Shared Savings Program.
	0277	AHRQ	PQI 08: Congestive Heart Failure Admission Rate.	Shared Savings Program.
	0283	AHRQ	PQI 15: Adult Asthma Admission Rate.	
	0033	NCQA	Chlamydia Screening in Women Ages 21–24 (same as CHIPRA core measure, however, the State would report on the adult age group).	MU1, HEDIS®, NCQA Accreditation, CHIPRA Core.
Management of Acute Conditions	0576	NCQA	Follow-Up After Hospitalization for Mental Illness.	HEDIS®, NCQA Accreditation, CHIPRA Core, Health Home Core.
	0469	HCA, TJC	PC–01: Elective Delivery	HIP QDRP, TJC's ORYX Performance Measurement Program.
	0476	Prov/CWISH/NPIC/QAS/TJC.	PC–03 Antenatal Steroids	TJC's ORYX Performance Measurement Program.
Management of Chronic Conditions	0403	NCQA	Annual HIV/AIDS Medical Visit	
	0018	NCQA	Controlling High Blood Pressure	MU1, HEDIS®, NCQA Accreditation, PQRS GPRO, Shared Savings Program.
	0063	NCQA	Comprehensive Diabetes Care: LDL–C Screening.	MU1, HEDIS®, NCQA Accreditation, PQRS.
	0057	NCQA	Comprehensive Diabetes Care: Hemoglobin A1c Testing.	MU1, HEDIS®, NCQA Accreditation, PQRS.
	0105	NCQA	Antidepressant Medication Management.	MU1, HEDIS®, NCQA Accreditation.
	N/A	CMS–QMHAG.	Adherence to Antipsychotics for Individuals with Schizophrenia.	VHA.
	0021	NCQA	Annual Monitoring for Patients on Persistent Medications.	HEDIS®, NCQA Accreditation.
Family Experiences of Care	0006 & 0007	AHRQ & NCQA.	CAHPS Health Plan Survey v 4.0—Adult Questionnaire with CAHPS Health Plan Survey v 4.0H—NCQA Supplemental.	HEDIS®, NCQA Accreditation, Shared Savings Program (NQF#0006).
Care Coordination	648	AMA–PCPI	Care Transition—Transition Record Transmitted to Health Care Professional.	Health Homes Core.
Availability	0004	NCQA	Initiation and Engagement of Alcohol and Other Drug Dependence Treatment.	MU1, HEDIS®, Health Homes Core.
	1391	NCQA	Prenatal and Postpartum Care: Postpartum Care Rate (second component to CHIPRA core measure "Timeliness of Prenatal Care," State would now report 2/2 components instead of 1).	HEDIS®.

† NQF ID National Quality Forum identification numbers are used for measures that are NQF-endorsed; otherwise, NA is used.
‡ Measure Steward:
AHRQ—Agency for Healthcare Research and Quality.
CMS—Centers for Medicare & Medicaid Services.
CMS–QMHAG—Centers for Medicare & Medicaid Services, Quality Measurement and Health Assessment Group.
HCA, TJC—Hospital Corporation of America-Women's and Children's Clinical Services, The Joint Commission.
NCQA—National Committee for Quality Assurance.
Prov/CWISH/NPIC/QAS/TJC—Providence St. Vincent Medical Center/Council of Women's and Infant's Specialty Hospitals/National Perinatal Information Center/Quality Analytic Services/The Joint Commission.
TJC—The Joint Commission.
¥ Programs in which Measures are Currently in Use:
CHIPRA Core—Children's Health Insurance Program Reauthorization Act—Initial Core Set.
CMS QIP—CMS Quality Incentive Program.

HIP QDRP—Hospital Inpatient Quality Data Reporting Program.
Health Homes Core—CMS Health Homes Core Measures.
MU1—Meaningful Use Stage 1 of the Medicare & Medicaid Electronic Health Record Incentive Programs.
PQRS—Physician Quality Reporting Program Group Practice Reporting Option.
Shared Savings Program—Medicare Shared Savings Program.
VHA—Veterans Health Administration.

[FR Doc. 2011–33756 Filed 12–30–11; 4:15 pm]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns National HIV Behavioral Surveillance For Young Men Who Have Sex With Men, Funding Opportunity Announcement (FOA), PS11–0010201SUPP12, initial review.

Correction: The notice was published in the **Federal Register** on November 18, 2011, Volume 76, Number 223, Page 71568. The time and date should read as follows:

Time and Date: 1 p.m.–5 p.m., February 29, 2012 (Closed).

Contact Person For More Information: Amy Yang, Ph.D., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8836.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–33731 Filed 1–3–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Initial Review

The meeting announced below concerns Formative Research on Use of Mobile Applications (''app'') to Increase HIV Testing Behavior and HIV Prevention with Positive Persons, Funding Opportunity Announcement (FOA), PS12–001, initial review.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the aforementioned meeting:

Time and Date: 8 a.m.–5 p.m., February 28, 2012 (Closed).

Place: Sheraton Gateway Hotel Atlanta Airport, 1900 Sullivan Road, Atlanta, Georgia 30337, Telephone: (770) 997–1100.

Status: The meeting will be closed to the public in accordance with provisions set forth in Section 552b(c)(4) and (6), Title 5 U.S.C., and the Determination of the Director, Management Analysis and Services Office, CDC, pursuant to Public Law 92–463.

Matters To Be Discussed: The meeting will include the initial review, discussion, and evaluation of applications received in response to ''Formative Research on Use of Mobile Applications (''app'') to Increase HIV Testing Behavior and HIV Prevention with Positive Persons, FOA PS12–001.''

Contact Person for More Information: Gregory Anderson, M.S., M.P.H., Scientific Review Officer, CDC, 1600 Clifton Road NE., Mailstop E60, Atlanta, Georgia 30333, Telephone: (404) 718–8833.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: December 20, 2011.

Elaine L. Baker,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2011–33730 Filed 1–3–12; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–R–74 and CMS–10338]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS) is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Extension without change of a currently approved collection; *Title of Information Collection:* Income and Eligibility Verification System (IEVS) Reporting and Supporting Regulations Contained in 42 CFR 431.17, 431.306, 435.910, 435.920, and 435.940–960; *Use:* The information collected is used to verify the income and eligibility of Medicaid applicants and recipients, as required by Section 1137 of the Social Security Act. Final regulations to implement Section 1137 of the Act were published February 28, 1986. Subsequent final amendments to the regulations were published on February 27, 1987; March 2, 1989; October 7, 1992; and January 31, 1994. These regulations provide the standards States use to determine which recipient and applicant records to match, the frequency of the match, due process protections for individuals whose records are matched, and those

circumstances which permit exceptions from conducting verifications; *Form Number:* CMS–R–74 (OCN 0938–0467); *Frequency:* Monthly; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 50; *Total Annual Responses:* 8,520,000; *Total Annual Hours:* 124,054. (For policy questions regarding this collection contact Barbara Washington at (410) 786–9964. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Type of Information Collection Request: Extension of a currently approved collection; Title of Information Collection: Affordable Care Act Internal Claims and Appeals and External Review Procedures for Non-grandfathered Group Health Plans and Issuers and Individual Market Issuers; Use: The Patient Protection and Affordable Care Act, Public Law 111–148, (the Affordable Care Act) was enacted on March 23, 2010. As part of the Act, Congress added PHS Act section 2719, which provides rules relating to internal claims and appeals and external review processes. On July 23, 2010 (75 FR 43330), interim final regulations (IFR) set forth rules implementing PHS Act section 2719 for internal claims and appeals and external review processes. With respect to internal claims and appeals processes for group health coverage, PHS Act section 2719 and our regulations provide that group health plans and health insurance issuers offering group health insurance coverage must comply with the internal claims and appeals processes set forth in 29 CFR 2560.503–1 (the DOL claims procedure regulation) and update such processes in accordance with standards established by the Secretary of Labor. The DOL claims procedure regulation requires an employee benefit plan to provide third-party notices and disclosures participants and beneficiaries of the plan. In addition, our regulations add an additional requirement that non-grandfathered group health plans and issuers of non-grandfathered health policies provide to the claimant, free of charge, any new or additional evidence considered, or generated by the plan or issuer in connection with the claim.

The IFR also requires issuers offering coverage in the individual health insurance market to also generally comply with the DOL claims procedure regulation as updated by the Secretary of HHS in the IFR for their internal claims and appeals processes.

Furthermore, PHS Act section 2719 and the IFR provide that non-grandfathered group health plans, issuers offering group health insurance coverage, and self-insured nonfederal governmental plans (through the IFR amendment dated June 24, 2011) must comply either with a State external review process or a Federal review process. The IFR provides a basis for determining when such plans and issuers must comply with an applicable State external review process and when they must comply with the Federal external review process. Plans and issuers that are required to participate in the Federal external review process must electronically elect either the HHS-administered process or the private accredited IRO process by January 1, 2012. The election requirements associated with this ICR are articulated through guidance published June 22, 2011 at *http://cciio.cms.gov/resources/files/hhs_srg_elections_06222011.pdf.* The election requirements are necessary for the Federal external review process to provide an independent external review as requested by claimants. Form Number: CMS–10338 (OCN: 0938–1099); Frequency: Occasionally; Affected Public: State, Local, Tribal Governments; Business or other for-profit; Not-for-profit institutions. Number of Respondents: 46,773; Number of Responses: 218,657,161; Total Annual Hours: 930,267. (For policy questions regarding this collection, contact Colin McVeigh at (301) 492–4263. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

In commenting on the proposed information collections please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in one of the following ways by March 5, 2012:

1. *Electronically.* You may submit your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: December 23, 2011.

Martique Jones,

Director, Regulations Development Group, Division B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–33752 Filed 1–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier CMS–10142 and CMS–R–262]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare & Medicaid Services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the Agency's function; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Bid Pricing Tool (BPT) for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (MMA), and implementing regulations at 42 CFR, Medicare Advantage organizations (MAO) and Prescription Drug Plans (PDP) are required to submit an actuarial pricing ''bid'' for each plan offered to Medicare beneficiaries for approval by the Centers for Medicare & Medicaid Services (CMS).

MAOs and PDPs use the Bid Pricing Tool (BPT) software to develop their actuarial pricing bid. The information provided in the BPT is the basis for the plan's enrollee premiums and CMS payments for each contract year. The tool collects data such as medical expense development (from claims data and/or manual rating), administrative expenses, profit levels, and projected plan enrollment information. By statute, completed BPTs are due to CMS by the first Monday of June each year.

CMS reviews and analyzes the information provided on the Bid Pricing Tool. Ultimately, CMS decides whether to approve the plan pricing (i.e., payment and premium) proposed by each organization. CMS is requesting to continue its use of the BPT for the collection of information for CY2013 through CY2015. *Form Number:* CMS–10142 (OCN: 0938–0944); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 530; *Total Annual Responses:* 4,770; *Total Annual Hours:* 143,100. (For policy questions regarding this collection contact Diane Spitalnic at (410) 786–5745. For all other issues call (410) 786–1326.)

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Plan Benefit Package (PBP) and Formulary Submission for Medicare Advantage (MA) Plans and Prescription Drug Plans (PDP); *Use:* Under the Medicare Modernization Act (MMA), Medicare Advantage (MA) and Prescription Drug Plan (PDP) organizations are required to submit plan benefit packages for all Medicare beneficiaries residing in their service area. The plan benefit package submission consists of the Plan Benefit Package (PBP) software, formulary file, and supporting documentation, as necessary. MA and PDP organizations use the PBP software to describe their organization's plan benefit packages, including information on premiums, cost sharing, authorization rules, and supplemental benefits. They also generate a formulary to describe their list of drugs, including information on prior authorization, step therapy, tiering, and quantity limits. Additionally, CMS uses the PBP and formulary data to review and approve the plan benefit packages proposed by each MA and PDP organization.

CMS requires that MA and PDP organizations submit a completed PBP and formulary as part of the annual bidding process. During this process, organizations prepare their proposed plan benefit packages for the upcoming contract year and submit them to CMS for review and approval.

CMS is requesting to continue its use of the PBP software and formulary submission for the collection of benefits and related information for CY 2013 through CY 2015. CMS estimates that 571 MA organizations and 64 PDP organizations will be required to submit the plan benefit package information in CY 2013. Based on operational changes and policy clarifications to the Medicare program and continued input and feedback by the industry, CMS has made the necessary changes to the plan benefit package submission. *Form Number:* CMS–R–262 (OCN: 0938–0763); *Frequency:* Yearly; *Affected Public:* Private Sector—Business or other for-profits and not-for-profit institutions; *Number of Respondents:* 635; *Total Annual Responses:* 6,015; *Total Annual Hours:* 53,291. (For policy questions regarding this collection contact Kristy Holtje at (410) 786–2209. For all other issues call (410) 786–1326.)

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995,* or Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov,* or call the Reports Clearance Office on (410) 786–1326.

To be assured consideration, comments and recommendations for the proposed information collections must be received by the OMB desk officer at the address below, no later than 5 p.m. on *February 3, 2012.*

OMB, Office of Information and Regulatory Affairs, Attention: CMS Desk Officer, Fax Number: (202) 395–6974, Email: *OIRA_submission@omb.eop.gov.*

Dated: December 23, 2011.

Martique Jones,

Director, Regulations Development Group, Division-B, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2011–33750 Filed 1–3–12; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Cell Biology Integrated Review Group; Cellular Mechanisms in Aging and Development Study Section.

Date: February 1–2, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: John Burch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institute of Health, 6701 Rockledge Drive, Room 3213, MSC 7808, Bethesda, MD 20892, (301) 408–9519, *burchjb@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Cellular, Molecular, and Immunobiology Study Section.

Date: February 1–2, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Admiral Fell Inn, 888 South Broadway, Baltimore, MD 21231.

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2180, MSC 7818, Bethesda, MD 20892, (301) 435–0696, *barnasg@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Surgery, Anesthesiology and Trauma Study Section.

Date: February 1–2, 2012.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Fisherman's Wharf, 1300 Columbus Avenue, San Francisco, CA 94133.

Contact Person: Weihua Luo, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, (301) 435–1170, *luow@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group; Nanotechnology Study Section.

Date: February 2–3, 2012.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Fairmont Hotel San Francisco, 950 Mason Street, San Francisco, CA 94108.

Contact Person: James J Li, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5148, MSC 7849, Bethesda, MD 20892, (301) 806–8065, *lijames@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Immunity and Host Defense Study Section.

Date: February 2–3, 2012.

Time: 7:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Meeting Center, 701 W. Ocean Blvd., Long Beach, CA 90831.

Contact Person: Patrick K Lai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2215, MSC 7812, Bethesda, MD 20892, (301) 435–1052, *laip@csr.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Bioengineering, Technology and Surgical Sciences Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Khalid Masood, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5120, MSC 7854, Bethesda, MD 20892, (301) 435–2392, *masoodk@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Structure and Regeneration Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Daniel F. McDonald, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4110, MSC 7814, Bethesda, MD 20892, (301) 435–1215, *mcdonald@csr.nih.gov.*

Name of Committee: Endocrinology, Metabolism, Nutrition and Reproductive Sciences Integrated Review Group; Clinical and Integrative Diabetes and Obesity Study Section.

Date: February 2, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Nancy Sheard, SCD, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6046–E, MSC 7892, Bethesda, MD 20892, (301) 408–9901, *sheardn@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Skeletal Biology Development and Disease Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: The Palace Hotel, 2 Montgomery Street, San Francisco, CA 94105.

Contact Person: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group; Neural Basis of Psychopathology, Addictions and Sleep Disorders Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Boris P Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, (301) 408–9115, *bsokolov@csr.nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Lung Injury, Repair, and Remodeling Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ghenima Dirami, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4122, MSC 7814, Bethesda, MD 20892, (240) 498–7546, *diramig@csr.nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group; Neural Oxidative Metabolism and Death Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin Long Beach, 333 East Ocean Boulevard, Long Beach, CA 90802.

Contact Person: Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Cellular Signaling and Regulatory Systems Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Elena Smirnova, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5187, MSC 7840, Bethesda, MD 20892, (301) 357–9112, *smirnove@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Membrane Biology and Protein Processing Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Palomar, 2121 P Street NW., Washington, DC 20037.

Contact Person: Janet M Larkin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5142, MSC 7840, Bethesda, MD 20892, (301) 806–2765, *larkinja@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group; Nuclear and Cytoplasmic Structure/Function and Dynamics Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The St. Regis Washington DC, 923 16th Street NW., Washington, DC 20006.

Contact Person: David Balasundaram, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5189, MSC 7840, Bethesda, MD 20892, (301) 435–1022, *balasundaramd@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Behavioral Medicine, Interventions and Outcomes Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Marina del Rey Hotel, 13534 Bali Way, Marina del Rey, CA 90292.

Contact Person: Lee S Mann, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3186, MSC 7848, Bethesda, MD 20892, (301) 435–0677, *mannl@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group; Psychosocial Development, Risk and Prevention Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Renaissance Mayflower Hotel, 1127 Connecticut Avenue NW., Washington, DC 20036.

Contact Person: Anna L Riley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7759, Bethesda, MD 20892, (301) 435–2889, *rileyann@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—B Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda. 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Betty Hayden, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4206, MSC 7812, Bethesda, MD 20892, (301) 435–1223, *haydenb@csr.nih.gov.*

Name of Committee: Oncology 1–Basic Translational Integrated Review Group; Tumor Progression and Metastasis Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Ritz Carlton Hotel, 1150 22nd Street NW., Washington, DC 20037.

Contact Person: Rolf Jakobi, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6187, MSC 7806, Bethesda, MD 20892, (301) 495–1718, *jakobir@mail.nih.gov.*

Name of Committee: Surgical Sciences, Biomedical Imaging and Bioengineering Integrated Review Group; Biomedical Imaging Technology B Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dana on Mission Bay, 1710 West Mission Bay Drive, San Diego, CA 92109.

Contact Person: Lee Rosen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171, *rosenl@csr.nih.gov.*

Name of Committee: Interdisciplinary Molecular Sciences and Training Integrated Review Group; Enabling Bioanalytical and Imaging Technologies Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Hotel Monaco, 700 F Street NW., Washington, DC 20001.

Contact Person: Vonda K Smith, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7801, Bethesda, MD 20892, (301) 435–1789, *smithvo@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group; Cellular and Molecular Immunology—A Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Long Beach and Executive Meeting Center, 701 W. Ocean Blvd., Long Beach, CA 90831.

Contact Person: David B Winter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4204, MSC 7812, Bethesda, MD 20892, (301) 435–1152, *dwinter@mail.nih.gov.*

Name of Committee: Oncology 2—Translational Clinical Integrated Review Group; Drug Discovery and Molecular Pharmacology Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: The Dupont Hotel, 1500 New Hampshire Avenue NW., Washington, DC 20036.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, (301) 594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Musculoskeletal, Oral and Skin Sciences Integrated Review Group; Oral, Dental and Craniofacial Sciences Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, (301) 435–1781, *liuyh@csr.nih.gov.*

Name of Committee: Immunology Integrated Review Group, Transplantation, Tolerance, and Tumor Immunology Study Section.

Date: February 2–3, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Westin St. Francis, 335 Powell Street, San Francisco, CA 94102.

Contact Person: Jin Huang, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4199, MSC 7812, Bethesda, MD 20892, (301) 435–1230, *jh377p@nih.gov.*

Name of Committee: Population Sciences and Epidemiology Integrated Review Group; Epidemiology of Cancer Study Section.

Date: February 2–3, 2012.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Sir Frances Drake Hotel in San Francisco, 450 Powell Street, San Francisco, CA 94102.

Contact Person: Denise Wiesch, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3150, MSC 7770, Bethesda, MD 20892, (301) 435–0684, *wieschd@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33742 Filed 1–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Bacteriology.

Date: January 19–20, 2012.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Rolf Menzel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3196, MSC 7808, Bethesda, MD 20892, (301) 435–0952, *menzelro@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33753 Filed 1–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function A Study Section.
Date: February 2, 2012.
Time: 8 a.m. to 7 p.m.
Agenda: To review and evaluate grant applications.
Place: George Washington University Inn, 824 New Hampshire Avenue NW., Washington, DC 20037.
Contact Person: David R. Jollie, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7806, Bethesda, MD 20892, (301) 435–1722, *jollieda@csr.nih.gov.*

Name of Committee: Biological Chemistry and Macromolecular Biophysics Integrated Review Group, Macromolecular Structure and Function B Study Section.
Date: February 2, 2012.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arnold Revzin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7824, Bethesda, MD 20892, (301) 435–1153, *revzina@csr.nih.gov.*

Name of Committee: Digestive, Kidney and Urological Systems Integrated Review Group, Xenobiotic and Nutrient Disposition and Action Study Section.
Date: February 7–8, 2012.
Time: 7 p.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, 7400 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Patricia Greenwel, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2172, MSC 7818, Bethesda, MD 20892, (301) 435–1169, *greenwep@csr.nih.gov.*

Name of Committee: Cell Biology Integrated Review Group, Development—1 Study Section.
Date: February 8, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Renaissance Harborplace Hotel, 202 East Pratt Street, Baltimore, MD 21202.
Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Biodata Management and Analysis Study Section.
Date: February 8–9, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Sheraton Delfina Santa Monica Hotel, 530 West Pico Boulevard, Santa Monica, CA 90405.
Contact Person: Mark Caprara, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5156, MSC 7844, Bethesda, MD 20892, (301) 435–1042, *capraramg@mail.nih.gov.*

Name of Committee: Bioengineering Sciences & Technologies Integrated Review Group, Modeling and Analysis of Biological Systems Study Section.
Date: February 8–9, 2012.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Hyatt Regency Bellevue on Seattle, 900 Bellevue Way NE., Bellevue, WA 98004.
Contact Person: Raymond Jacobson, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5858, MSC 7849, Bethesda, MD 20892, (301) 996–7702, *jacobsonrh@csr.nih.gov.*

Name of Committee: Infectious Diseases and Microbiology Integrated Review Group, Vector Biology Study Section.
Date: February 8, 2012.
Time: 8:30 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Mayflower Park Hotel, 405 Olive Way, Seattle, WA 98101.
Contact Person: Liangbiao Zheng, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3214, MSC 7808, Bethesda, MD 20892, (301) 402–5671, *zhengli@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 29, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33833 Filed 1–3–12; 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 and Human Development Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App), 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 inform the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Child Health and Human Development Council NACHHD Subcommittee on Planning and Policy.
Date: January 13, 2012.
Time: 9 a.m. to 10:30 a.m.
Agenda: To review Subcommittee Planning and Policy.
Place: National Institutes of Health, 31 Center Drive, Building 31, Room 2A03, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Elizabeth Wehr, Senior Public Health Analyst, Office of Science Policy, Analysis and Communication, NICHD/NIH/DHHS, 31 Center Drive, Suite 2A–18, Bethesda, MD 20892, (301) 496–0805.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

In the interest of security, NIH has instituted stringent procedures for entrance onto the NIH campus. All visitor vehicles, including taxis, 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: *www.nichd.nih.gov/about/nachhd.htm*, where an agenda and any additional information for the meeting will be posted when available.

(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: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33744 Filed 1–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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: Center for Scientific Review Special Emphasis Panel, RFA Panel: Investigations on Primary Immunodeficiency Diseases.

Date: January 24, 2012.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, (301) 495–1506, *jakesse@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Kidney Pathobiology and Molecular Biology and Genitourinary Organ Development.

Date: January 25–26, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Bonnie L. Burgess-Beusse, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–1783, *beusseb@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel, Member Conflict: Airway smooth muscle, asthma and airway cell biology.

Date: January 25, 2012.

Time: 2:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Everett E Sinnett, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2178, MSC 7818, Bethesda, MD 20892, (301) 435–1016, *sinnett@nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Developmental Brain Disorders Study Section.

Date: January 26–27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Guest Suites Santa Monica, 1707 Fourth Street, Santa Monica, CA 90401.

Contact Person: Pat Manos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, (301) 408–9866, *manospa@csr.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group, Chronic Dysfunction and Integrative Neurodegeneration Study Section.

Date: January 26–27, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Latham Hotel, 3000 M Street NW., Washington, DC 20007.

Contact Person: Kevin Walton, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5200, MSC 7846, Bethesda, MD 20892, (301) 435–1785, *kevin.walton@nih.hhs.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group, Psychosocial Risk and Disease Prevention Study Section.

Date: January 26–27, 2012.

Time: 8 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Serrano Hotel, 405 Taylor Street, San Francisco, CA 94102.

Contact Person: Stacey FitzSimmons, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3114, MSC 7808, Bethesda, MD 20892, (301) 451–9956, *fitzsimmonss@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33743 Filed 1–3–12; 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. App.), 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, NIAID Investigator Initiated Program Project Applications (P01).

Date: February 6, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@niaid.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, NIAID Investigator Initiated Program Project Applications (P01).

Date: February 10, 2012.

Time: 10:30 a.m. to 1:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817 (Telephone Conference Call).

Contact Person: Paul A. Amstad, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, NIAID/NIH/DHHS, 6700B Rockledge Drive, MSC 7616, Bethesda, MD 20892–7616, (301) 402–7098, *pamstad@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: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33741 Filed 1–3–12; 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. App.), 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; NIAID Investigator Initiated Program Project Applications (PO1).

Date: January 23, 2012.

Time: 2 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Jay R. Radke, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive MDS–7616, Bethesda, MD 20892–7616, (301) 496–2550, *jay.radke@nih.gov.*

Name of Committee: Microbiology, Infectious Diseases and AIDS Initial Review Group; Microbiology and Infectious Diseases Research Committee.

Date: February 6–7, 2012.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Washington DC/Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Michelle M. Timmerman, Ph.D., Scientific Review Officer, Scientific Review Program, DEA/NIAID/NIH/DHHS, Room 2217, 6700B Rockledge Drive, MSC–7616, Bethesda, MD 20892–7616, (301) 451–4573, *timmermanm@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: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33755 Filed 1–3–12; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), 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 of Allergy and Infectious Diseases Special Emphasis Panel; NIAID Investigator Initiated Program Project Application (P01).

Date: January 23, 2012.

Time: 10 a.m. to 1 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6700B Rockledge Drive, Bethesda, MD 20817, (Telephone Conference Call).

Contact Person: Eleazar Cohen, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institutes of Health, NIAID, 6700 B Rockledge Drive, Room 3129, Bethesda, MD 20892, (301) 435–3564, *ec17w@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: December 28, 2011.

Jennifer S. Spaeth,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2011–33754 Filed 1–3–12; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N275; FXGO16710900000P5–123–FF09A30000]

Endangered Species Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before February 3, 2012.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1)

Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**.)

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment before final action on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Hahn Laboratory, University of Pennsylvania School of Medicine, Philadelphia, PA; PRT–57058A

The applicant requests a permit to import chimpanzee (*Pan troglodytes*) biological samples from Guinea for the purpose of enhancement to the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Hahn Laboratory, University of Pennsylvania School of Medicine, Philadelphia, PA; PRT–57058A

The applicant requests a permit to import chimpanzee (*Pan troglodytes*) biological samples from Guinea for the purpose of enhancement to the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Hatada Enterprises, Inc., Irving, TX; PRT–60276A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Family:
Bovidae
Species:
Grevy's zebra (*Equus grevyi*)
Barashingha (*Rucervus duvaucelii*)
Eld's deer (*Rucervus eldii*)

Applicant: Zoological Society of Buffalo, Inc., Buffalo, NY; PRT–675214

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genus and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Anatidae (does not include Hawaiian goose or Hawaiian duck)
Boidae (does not include Mona boa or Puerto Rico boa)
Bovidae
Callithricidae
Cathartidae
Cebidae
Cercopithecidae (includes *Colobus*)
Chinchillidae
Crocodylidae (does not include the American crocodile)
Equidae
Felidae (does not include jaguar, margay or ocelot)
Hominidae
Hyaenidae
Hylobatidae
Lemuridae
Macropodidae
Psittacidae (does not include thick-billed parrots)
Rhinocerotidae
Tapiridae
Tragopan spp.
Varanidae
Genus:
Podocnemis
Species:
Japanese giant salamander (*Andrias japonicus)*
Maned wolf (*Chrysocyon brachyurus)*
Brazilian three-toed sloth (*Bradypus torquatus).*

Applicant: Akron Zoological Park, Akron, OH; PRT–012505

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Callithricidae
Lemuridae
Felidae
Species:
Lesser slow loris (*Nycticebus pygmaeus*)
Andean condor (*Vultur gryphus*)
White-naped crane (*Grus vipio*)
Galapagos tortoise (*Chelonoidis nigra*)
Komodo Island monitor (*Varanus komodoensis*)
Rodrigues fruit bat (*Pteropus rodricensis*)

Applicant: Disney's Animal Kingdom, Lake Buena Vista, FL; PRT–812907

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families and species to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Callithricidae
Canidae
Cebidae
Cercopithecidae (includes *Colobus*)
Cervidae
Equidae
Felidae (does not include jaguar, margay or ocelot)
Hominidae
Hyaenidae
Lemuridae
Macropodidae
Mustelidae
Pteropodidae
Rhinocerotidae
Suidae
Tapiridae
Viverridae
Accipitridae
Anatidae (does not include Hawaiian goose or duck)
Cathartidae
Columbidae
Falconidae
Gruidae
Psittacidae (does not include thick-

billed parrot)
Sturnidae (does not include *Aplonis pelzelni*)
Threskiornithidae
Boidae (does not include Mona or Puerto Rican boa)
Crocodylidae (does not include American crocodile)
Gekkonidae
Iguanidae
Testudinidae
Varanidae
Genus:
Tragopan
Species:
Asian elephant (*Elephas maximus*).

Applicant: Topeka Zoological Park, Topeka, KS; PRT–52995A

The applicant requests amendment to their captive-bred wildlife registration under 50 CFR 17.21(g) to include the Andean condor (*Vultur gryphus*), Bali starling (*Leucopsar rothschildi*), black and white ruffed lemur (*Varecia variegata*), western lowland gorilla (*Gorilla gorilla*), Bornean orangutan (*Pongo pygmaeus*), leopard (*Panthera pardus*), Sumatran tiger (*Panthera tigris sumatrae*), and Asian elephant (*Elephas maximus*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Xiaobo Chu, San Jose, CA; PRT–62256A

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiata*) to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Feld Entertainment Inc., Vienna, VA; PRT–702230

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for leopard (*Panthera pardus*) and Asian elephant (*Elephas maximus*), to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Jeffrey Scott Anderson, Hastings, NE; PRT–59366A

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,
Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–33694 Filed 1–3–12; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R9–IA–2011–N274; FXGO16790000–123–FF09A30000]

Endangered Species; Marine Mammals; Issuance of Permits

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of permits.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have issued the following permits to conduct certain activities with endangered species, marine mammals, or both. We issue these permits under the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA).

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION: On the dates below, as authorized by the provisions of the ESA (16 U.S.C. 1531 *et seq.*), as amended, and/or the MMPA, as amended (16 U.S.C. 1361 *et seq.*), we issued requested permits subject to certain conditions set forth therein. For each permit for an endangered species, we found that (1) The application was filed in good faith, (2) The granted permit would not operate to the disadvantage of the endangered species, and (3) The granted permit would be consistent with the purposes and policy set forth in section 2 of the ESA.

Permit No.	Applicant	Receipt of application **Federal Register** notice	Permit issuance date
Endangered Species			
37444A	Feld Entertainment Inc.	76 FR 39432; July 06, 2011	November 9, 2011.
48306A	Ivan Schwab, University of California, Department of Ophthalmology.	76 FR 60862; September 30, 2011	November 14, 2011.
54893A	Joseph Hand	76 FR 65207; October 20, 2011	November 21, 2011.
56285A	Kenneth Cypress	76 FR 65207; October 20, 2011	November 28, 2011.
53794A	Wesley Bryant	76 FR 60862; September 30, 2011	November 28, 2011.
52827A	Los Angeles Zoo and Botanical Gardens	76 FR 60862; September 30, 2011	November 23, 2011.
56760A	Los Angeles Zoo and Botanical Gardens	76 FR 66954; October 28, 2011	December 1, 2011.
57442A	Matthew Bindon	76 FR 66954; October 28, 2011	December 5, 2011.
54123A	Maryland Zoo in Baltimore	76 FR 71069; November 16, 2011	December 20, 2011.
58185A	Daniel Sullivan	76 FR 71069; November 16, 2011	December 22, 2011.
Marine Mammals			
37808A	Sea to Shore Alliance	76 FR 48880; August 9, 2011	December 22, 2011.

Availability of Documents

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to: Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax

Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280.

Brenda Tapia,

Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2011–33693 Filed 1–3–12; 8:45 am]

BILLING CODE 4310–55–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–350 and 731–TA–616 and 618 (Third Review)]

Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea: Institution of Five-Year Reviews Concerning the Countervailing Duty Order on Corrosion-Resistant Carbon Steel Flat Products From Korea and the Antidumping Duty Orders on Corrosion-Resistant Carbon Steel Flat Products From Germany and Korea

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty order on corrosion-resistant carbon steel flat products from Korea and the antidumping duty orders on corrosion-resistant carbon steel flat products from Germany and Korea would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is February 2, 2012. Comments on the adequacy of responses may be filed with the Commission by March 19, 2012. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207), as most recently amended at 74 FR 2847 (January 16, 2009).

DATES: *Effective Date:* January 3, 2012.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202) 205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for these reviews may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background. On August 17, 1993, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of corrosion-resistant carbon steel flat products from Korea (58 FR 43752). On August 19, 1993, Commerce issued antidumping duty orders on imports of corrosion-resistant carbon steel flat products from Germany and Korea (58 FR 44159 and 44170). Following first five-year reviews by Commerce and the Commission, effective December 15, 2000, Commerce issued a continuation of the countervailing duty order on corrosion-resistant carbon steel flat products from Korea and the antidumping duty orders on corrosion-resistant carbon steel flat products from Germany and Korea (65 FR 78469). Following second five-year reviews by Commerce and the Commission, effective February 14, 2007, Commerce issued a continuation of the countervailing duty order on corrosion-resistant carbon steel flat products from Korea and the antidumping duty orders on corrosion-resistant carbon steel flat products from Germany and Korea (72 FR 7009). The Commission is now conducting third reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions. The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The *Subject Countries* in these reviews are Germany and Korea.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* Consistent with its original determinations, the Commission found in its full first and second five-year review determinations a *Domestic Like Product* consisting of corrosion-resistant steel (excluding clad plate). Microalloy products were not included in the *Domestic Like Product* in the original and full first and second five-year review determinations.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original investigations and its full first and second five-year review determinations, the Commission defined the *Domestic Industry* as the domestic producers of the *Domestic Like Product* of all corrosion-resistant steel (excluding clad plate).

(5) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation. The Commission's designated agency ethics

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 12–5–263, expiration date June 30, 2014. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

official has advised that a five-year review is not considered the ''same particular matter'' as the corresponding underlying original investigation for purposes of 18 U.S.C. 207, the post employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 73 FR 24609 (May 5, 2008). This advice was developed in consultation with the Office of Government Ethics. Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Carol McCue Verratti, Deputy Agency Ethics Official, at (202) 205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list. Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification. Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions. Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is February 2, 2012. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is March 19, 2012. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. Please be aware that the Commission's rules with respect to electronic filing have been amended. The amendments took effect on November 7, 2011. See 76 FR 61937 (Oct. 6, 2011) and the newly revised Commission's Handbook on E-Filing, available on the Commission's Web site at *http://edis.usitc.gov.* Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information. Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to this Notice of Institution: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries after 2005.

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2011, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the

information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) The quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) The quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) The value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country(ies),* provide the following information on your firm's(s') operations on that product during calendar year 2011 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Subject Merchandise* in each *Subject Country* (i.e., the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) The quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* after 2005, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (Optional) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: December 29, 2011.

By order of the Commission.

James R. Holbein,

Secretary to the Commission.

[FR Doc. 2011–33770 Filed 1–3–12; 3:20 pm]

BILLING CODE 7020–02–P

MARINE MAMMAL COMMISSION

Sunshine Act Notice

TIME AND DATE: The Marine Mammal Commission and its Committee of Scientific Advisors on Marine Mammals will meet in open session on Tuesday, 24 January 2012, from 1:45 p.m. to 5:45 p.m.; Wednesday, 25 January 2012, from 9 a.m. to 5:30 p.m.; Thursday, 26 January 2012, from 9 a.m. to 5 p.m.; and Friday, 27 January 2012 from 9 a.m. to 4 p.m. The Commission and the Committee will meet in executive session on Tuesday, 24 January 2012, from 10:30 to 12:30 p.m.

PLACE: Sheraton Anchorage Hotel, 401 E. 6th Avenue, Anchorage, AK 99501; telephone: (907) 276–8700; fax: (907) 343–3145.

STATUS: The executive session will be closed to the public in accordance with the provisions of the Government in the Sunshine Act (5 U.S.C. 552b) and applicable regulations. The session will be limited to discussions of internal agency processes, personnel, and the budget of the Commission. All other portions of the meeting will be open to the public. Public participation will be allowed as time permits and as determined to be desirable by the Chairman.

MATTERS TO BE CONSIDERED: The Commission and Committee will meet in public session to discuss a broad range of marine ecosystem and marine mammal matters with a focus on issues and species regarding Alaska. Although subject to change, major issues that the

Commission plans to consider at the meeting include co-management of marine mammals between Alaska Native organizations and federal agencies, research activities in the Arctic, the effects of climate disruption, the conservation of species of special concern, marine mammal health and diseases in Alaska, Arctic oil and gas exploration and development, and conservation and research needs related to marine mammals in the Arctic. The last day of the meeting will be devoted to discussing conservation and management priorities concerning federal marine mammal programs. A draft agenda for the meeting is available on the Commission's Web site (*http://www.mmc.gov*).

CONTACT PERSON FOR MORE INFORMATION: Darel E. Jordan, Staff Assistant, Marine Mammal Commission, 4340 East-West Highway, Room 700, Bethesda, MD 20814; (301) 504–0087; email: *djordan@mmc.gov.*

Dated: December 29, 2011.

Michael L. Gosliner,

General Counsel.

[FR Doc. 2011–33851 Filed 12–30–11; 4:15 pm]

BILLING CODE 6820–31–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act; Notice of Agency Meeting

TIME AND DATE: 10 a.m., Friday, January 6, 2012.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Consideration of Supervisory Activities. Closed pursuant to some or all of the following: exemptions (5), (7), (8), (9)(i)(B), and 9(ii).

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Secretary of the Board, *Telephone:* (703) 518–6304.

Linda Dent,

Acting Board Secretary.

[FR Doc. 2011–33822 Filed 12–30–11; 4:15 pm]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Federal Register Notice

AGENCY HOLDING THE MEETINGS: Nuclear Regulatory Commission.

DATES: Weeks of January 2, 9, 16, 23, 30, February 6, 2012.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of January 2, 2012

There are no meetings scheduled for the week of January 2, 2012.

Week of January 9, 2012—Tentative

Wednesday, January 11, 2012

1 p.m. Briefing on Proposed Rule To Revise the Environmental Review for Renewal of Nuclear Power Plant Operating Licenses (Part 51) (Public Meeting) (Contact: Jeremy Susco, (301) 415–2927).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

Week of January 16, 2012—Tentative

There are no meetings scheduled for the week of January 16, 2012.

Week of January 23, 2012—Tentative

There are no meetings scheduled for the week of January 23, 2012.

Week of January 30, 2012—Tentative

There are no meetings scheduled for the week of January 30, 2012.

Week of February 6, 2012—Tentative

Thursday, February 9, 2012

9 a.m. Briefing on Status of Outreach and Educational Efforts with External Stakeholders Related to the Safety Culture Policy Statement (Public Meeting) (Contact: Diane Sieracki, (301) 415–3297).

This meeting will be webcast live at the Web address—*http://www.nrc.gov.*

* * * * *

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings, call (recording)—(301) 415–1292. Contact person for more information: Rochelle Bavol, (301) 415–1651.

* * * * *

The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

* * * * *

The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* Braille, large print), please notify Bill Dosch, Chief, Work Life and Benefits Branch, at (301) 415–6200, TDD: (301) 415–2100, or by email at *william.dosch@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

This notice is distributed electronically to subscribers. If you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301) 415–1969, or send an email to *darlene.wright@nrc.gov.*

Dated: December 29, 2011.

Rochelle C. Bavol,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2011–33812 Filed 12–30–11; 4:15 pm]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–3 and CP2012–7; Order No. 1072]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add Priority Mail Contract 37 to the competitive product list. This notice addresses procedural steps associated with this filing.

DATES: *Comments are due:* January 6, 2012.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Commenters who cannot submit their views electronically should contact the person identified in **FOR FURTHER INFORMATION CONTACT** by telephone for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, *stephen.sharfman@prc.gov* or (202) 789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filing
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.*, the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 37 to the competitive product list.[1] Priority mail

[1] Request of the United States Postal Service to Add Priority Mail Contact 36 to Competitive

contracts enable the Postal Service to provide Priority Mail service to an individual customer at customized rates.[2] The Postal Service asserts that Priority Mail Contract 37 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. MC2012–3.

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–7.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment A—a redacted copy of Governors' Decision No. 09–6, authorizing certain Priority Mail contracts, and a certification of the Governors' vote;
- Attachment B—a redacted copy of the contract;
- Attachment C—proposed changes to the Mail Classification Schedule competitive product list that would add Priority Mail Contract 37 under Domestic Negotiated Service Agreements;
- Attachment D—a Statement of Supporting Justification as required by 39 CFR 3020.32;
- Attachment E—a certification of compliance with 39 U.S.C. 3633(a); and
- Attachment F—an application for non-public treatment of materials to maintain redacted portions of the contract, customer-identifying information, and related financial information under seal.

In the Statement of Supporting Justification, Dennis R. Nicoski, Manager, Field Sales Strategy and Contracts, asserts that the contract will cover its attributable costs, make a positive contribution to covering institutional costs, and increase contribution toward the requisite 5.5 percent of the Postal Service's total institutional costs. *Id.* Attachment D at 1. Mr. Nicoski contends that there will be no issue of market dominant products subsidizing competitive products as a result of this contract. *Id.*

Related contract. The Postal Service included a redacted version of the related contract with the Request. *Id.* Attachment B. The Postal Service will notify the customer of the effective date within 15 business days of receiving the signed contract from the customer. *Id.* at 2. The contract will expire 1 year from the effective date unless, among other things, either party terminates the agreement upon 30 days' written notice to the other party. *Id.* at 4. The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment D.

The Postal Service filed much of the supporting materials, including the related contract, under seal. *Id.* Attachment F. It maintains that the redacted portions of the contract, customer-identifying information, and related financial information, should remain confidential. *Id.* at 2–3. This information includes the price structure, underlying costs and assumptions, pricing formulas, information relevant to the customer's mailing profile, and cost coverage projections. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure indefinitely. *Id.* at 7.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–3 and CP2012–7 to consider the Request pertaining to the proposed Priority Mail Contract 37 product and the related contract, respectively.

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, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 6, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is Ordered:

1. The Commission establishes Docket Nos. MC2012–3 and CP2012–7 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward 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 are due no later than January 6, 2012.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–33681 Filed 1–3–12; 8:45 am]

BILLING CODE 7710–FW–P

Product List and Notice of Filing (Under Seal) of Contract and Supporting Data, December 20, 2011 (Request).

[2] Decision of the Governors of the United States Postal Service on Establishment of Rates and Classes Not of General Applicability for Priority Mail Contract Group, Docket No. MC2009–25, issued April 27, 2009, at 1 (Governors' Decision No. 09–6).

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2012–4 and CP2012–8; Order No. 1073]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recently-filed Postal Service request to add a Global Expedited Package Services contract to the competitive product list. This notice addresses procedural steps associated with the filing.

DATES: *Comments are due:* January 6, 2012.

ADDRESSES: Submit comments electronically by accessing the ''Filing Online'' link in the banner at the top of the Commission's Web site (*http://www.prc.gov*) or by directly accessing the Commission's Filing Online system at *https://www.prc.gov/prc-pages/filing-online/login.aspx.* Commenters who cannot submit their views electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section as the source for case-related information for advice on alternatives to electronic filing.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, at (202) 789–6820 (case-related information) or *DocketAdmins@prc.gov* (electronic filing assistance).

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Notice of Filings
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* and Order No. 630, the Postal Service filed a formal request and associated supporting information to add Global Expedited Package Services–Non-Published Rates 3 (GEPS–NPR 3) to the competitive product list.[1] The Postal

[1] Request of the United States Postal Service to Add Global Expedited Package Services—Non-Published Rates 3 (GEPS–NPR 3) to the Competitive Products List and Notice of Filing GEPS–NPR 3

Continued

Service states that the addition is necessary due to changes in the non-discounted published postage for Express Mail International (EMI), Priority Mail International (PMI), and Global Express Guaranteed (GXG), as well as a new GEPS–NPR 3 model contract and accompanying financial model that differ from the GEPS–NPR 2 model contract and financial model. Request at 2–3. The Request has been assigned Docket No. MC2012–4.

The Postal Service contemporaneously filed a redacted version of the GEPS–NPR 3 model contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B. The instant contract has been assigned Docket No. CP2012–8.

Request. To support its Request, the Postal Service filed six attachments as follows:

- Attachment 1—an application for non-public treatment of materials filed under seal;
- Attachment 2A—a redacted version of Governors' Decision No. 11–6;
- Attachment 2B—a revised version of MCS 2510.8 GEPS–NPR;
- Attachment 2C—a redacted version of Management's Analysis of the Prices and Methodology for Determining Prices For Negotiated Service Agreements Under Global Expedited Package Services—Non-Published Rates 3;
- Attachment 2D—a list of Maximum and Minimum Prices for EMI, PMI, and GXG under GEPS–NPR 3 Contracts;
- Attachment 2E—a certified statement concerning prices for applicable negotiated service agreements under GEPS–NPR 3 rates, as required by 39 CFR 3015(c)(2);
- Attachment 3—a Statement of Supporting Justification similar to the Statement of Supporting Justification used to support the classification of GEPS–NPR 1, and as required by 39 CFR 3020.32;
- Attachment 4—a redacted version of the GEPS–NPR 3 model contract.

In the Statement of Supporting Justification, Frank Cebello, Executive Director, Global Business Management, asserts that the product is designed to increase the efficiency of the Postal Service's process, as well as enhance its ability to compete in the marketplace. *Id.,* Attachment 3 at 1. Mr. Cebello states that the product is designed to enable the Postal Service's Global Business sales force to rapidly establish, based on various factors, whether a GEPS-type agreement will be profitable enough to justify establishing an incentive-based mailing plan with the customer for EMI, PMI, and GXG if the customer uses Global Shipping Software. *Id.,* Attachment 3 at 2. In order to accomplish this, the product revises the product designs for GEPS–NPR 1 and GEPS–NPR 2 to include actual rates that will cover their costs, and will eliminate the need for each customer agreement to be added to the competitive products list individually. *Id.* Attachment 3 at 2, 5. Mr. Cebello contends that the product is not subsidized by market dominant products, it covers costs attributable to it, and it does not cause competitive products as a whole to fail to make the appropriate contribution to institutional costs. *Id.* The Postal Service asserts that the model contract is supported by Governors' Decision No. 11–6, which authorizes management to prepare any necessary product description of non-published competitive services, including text for inclusion in the MCS, and to present the matter to the Commission for review. *Id.* at 3.

Related contract. The Postal Service included a redacted version of the related model contract with the Request. *Id.* Attachment 4. The Postal Service will notify the customer of the effective date no later than 30 days after receiving the signed agreement from the mailer. *Id,* Attachment 4 at 6. The contract will expire 1 year from the effective date unless terminated sooner. *Id.* The Postal Service represents that the contract is consistent with 39 U.S.C. 3633(a). *Id.* Attachment 4.

The Postal Service filed much of the supporting materials, including the related model contract, under seal. *Id.* Attachment 1. It maintains that the redacted portions of the materials should remain confidential as sensitive business information. *Id.* at 4. This information includes sensitive commercial information concerning the incentive discounts and their formulation, applicable cost-coverage, non-published rates, as well as some customer-identifying information. *Id.* The Postal Service asks the Commission to protect customer-identifying information from public disclosure for ten years after the date of filing with the Commission, unless an order is entered to extend the duration of that status. *Id.* at 9.

II. Notice of Filings

The Commission establishes Docket Nos. MC2012–4 and CP2012–8 to consider the Request pertaining to the proposed Priority Mail Contract 37 product and the related model contract, respectively.

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, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than January 6, 2012. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Natalie Rea Ward to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2012–4 and CP2012–8 to consider the matters raised in each docket.
2. Pursuant to 39 U.S.C. 505, Natalie Rea Ward 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 are due no later than January 6, 2012.
4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2011–33712 Filed 1–3–12; 8:45 am]

BILLING CODE 7710–FW–P

Model Contract and Application for Non-Public Treatment of Materials Filed Under Seal, December 20, 2011 (Request).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66052; File No. SR–CBOE–2011–123]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Related to FLEX Options

December 23, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 20, 2011, the Chicago Board Options Exchange, Incorporated (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

comments on the proposed rule change from interested persons.

Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt certain rules pertaining to the electronic auction trading of Flexible Exchange Options (''FLEX Options'') on the Exchange's FLEX Hybrid Trading System platform.[3] The text of the rule proposal is available on the Exchange's Web site (*http://www.cboe.org/legal*), at the Exchange's Office of the Secretary and at the Commission.

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 self-regulatory organization 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 those 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, Proposed Rule Change

1. Purpose

The Exchange is proposing to make modified versions of the Automated Improvement Mechanism (''AIM'') and Solicitation Auction Mechanism (''SAM'')—which are currently available for non-FLEX Options under Rules 6.74A and 6.74B, respectively—available for FLEX Options. The FLEX versions of the AIM and SAM mechanisms will operate substantially similar to the AIM and SAM mechanisms for non-FLEX Options. Significant distinctions are described below.[4]

Automated Improvement Mechanism

The Exchange is proposing to establish an AIM mechanism for FLEX Options, which mechanism will electronically auction certain orders for price improvement. Under the AIM process, a FLEX Trader[5] (referred to as an ''Initiating Trading Permit Holder'' or ''Initiating TPH'') that represents agency orders may submit an order it represents as agent (an ''Agency Order'') along with a second order (a principal order and/or solicited order(s) for the same amount as the Agency Order)[6] into the AIM Auction where other FLEX Trader participants could compete with the Initiating TPH's second order to execute against the Agency Order.

To be eligible, the Agency Order must be in a FLEX class designated as eligible for AIM Auctions and within the designated AIM Auction order eligibility size parameters. Such classes and size parameters will be determined by the Exchange and announced via circular to FLEX Traders. When submitting an Agency Order, an Initiating TPH must mark the Agency Order for AIM Auction processing and must also submit a contra-side second order for the same size as the Agency Order. This second order guarantees that the Agency Order will receive an execution (*i.e.,* it acts as a stop). In connection with the stop of the Agency Order, the Initiating TPH must stop the entire Agency Order with the second order at the better of the best bid or offer (''BBO'') or the Agency Order's limit price.[7] The Initiating TPH may enter the second order in one of two formats: (i) A specified single price at which it seeks to cross the Agency Order with the second order (a ''single-priced submission''), or (ii) a non-price specific commitment for the second order to automatically match the price and size of all auction responses that are received during the auction (an ''auto-match''), in which case the Agency Order will be stopped at the better of the BBO or the Agency Order's limit price. When using the auto-match feature, the Initiating TPH would have no control over the ultimate match price. Once the Initiating TPH has submitted an Agency Order for AIM processing, such submission cannot be cancelled by the Initiating TPH.

Upon receipt of an Agency Order (and second order), the Exchange would commence the AIM Auction by issuing a request for responses (''RFR''), detailing the side and size of the Agency Order.[8] The duration of the RFR response period (*i.e.,* the auction period) would be established by the Exchange on a class-by-class basis and shall not be less than three (3) seconds.[9] During that period, RFR responses may be submitted by FLEX Traders. These responses must specify price and size and may not cross the Exchange's BBO on the opposite side of the market. All RFR responses are ''blind,'' that is they are not visible to any other participants.[10] CBOE believes this aspect of the AIM Auction will encourage more aggressive quoting and superior price improvement. RFR responses may be modified or cancelled so long as they are modified or

[3] FLEX Options provide investors with the ability to customize basic option features including size, expiration date, exercise style, and certain exercise prices. FLEX Options can be FLEX Index Options or FLEX Equity Options. In addition, other products are permitted to be traded pursuant to the FLEX trading procedures. For example, credit options are eligible for trading as FLEX Options pursuant to the FLEX rules in Chapters XXIVA and XXIVB. *See* CBOE Rules 24A.1(e) and (f), 24A.4(b)(1) and (c)(1), 24B.1(f) and (g), 24B.4(b)(1) and (c)(1), and 28.17. The rules governing the trading of FLEX Options on the FLEX Request for Quote (''RFQ'') System platform are contained in Chapter XXIVA. The rules governing the trading of FLEX Options on the FLEX Hybrid Trading System platform (referred to as the ''FLEX System'' or the ''System'') are contained in Chapter XXIVB.

[4] These distinctions are noted as compared to the existing AIM and SAM auction processes for non-FLEX options under Rules 6.74A and 6.74B, respectively. The Exchange notes that it currently has two separate rule change filings pending that would make amendments to Rule 6.74A (AIM). *See* SR–CBOE–2011–116 and SR–CBOE–2011–117.

[5] A ''FLEX Trader'' means a FLEX-participating Trading Permit Holder who has been approved by the Exchange to trade on the System. *See* Rule 24B.1(l).

[6] Any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class. *See* proposed Rule 24B.5A.04.

[7] By comparison, the AIM Auction for non-FLEX Options currently provides for a stop of Agency Orders for 50 contracts or more at the better of the national best bid or offer (''NBBO'') or the Agency Order's limit price (if the order is a limit order), and a stop of Agency Orders for less than 50 contracts at the NBBO improved by one minimum price increment (which is determined by the Exchange and may not be smaller than $0.01) or the Agency Order's limit price (if the order is a limit). *See* Rule 6.74A(a)(2)—(3). The FLEX provision differs in that orders of any size would be treated the same for purposes of the stop (*i.e.,* there would be no small order provision), the stop is based on the BBO (FLEX options are generally not multiply-listed and are not subject to a consolidated quotation reporting program), and the FLEX AIM Auction will only process Agency Orders with limit prices (no market orders).

[8] Each RFR would be sent to those FLEX Traders electing to receive RFRs (*i.e.,* those FLEX Traders who have established the necessary systems connectivity to receive RFRs). Thus, such election to receive RFRs would not be on a case-by-case basis.

[9] The Exchange is proposing that the minimum RFR exposure period for AIM be three (3) seconds, which is consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures. *See* Rule 24B.5(b)(3)(iii). By comparison, for non-FLEX Options, the minimum RFR exposure period for non-FLEX Options is one (1) second. *See, e.g.,* Rule 6.45A.01 and .02, and Rule 6.74A(b)(1)(C).

[10] RFR responses will not be disseminated via the Options Price Reporting Authority (''OPRA''). This is consistent with the operation of AIM (and SAM) for non-FLEX Options. *See* Rules 6.74A(b)(1)(F) and 6.74B(b)(1)(D). In addition, it is consistent with the operation of FLEX generally. In that regard, the Exchange notes that the Exchange currently disseminates via OPRA information regarding executed FLEX transactions. However, the Exchange currently does not disseminate via OPRA information respecting pending electronic and open outcry RFQs, or information on resting orders in the FLEX electronic book.

cancelled before the conclusion of the RFR response period. Lastly, the minimum price increment for RFR responses and for an Initiating TPH's single price submission shall be set by the Exchange at no less than one cent.

Normally, an AIM Auction ends at the conclusion of the RFR response period (which will be no less than 3 seconds). However, the proposal provides that the AIM Auction would end prior to the conclusion of the RFR response period any time an RFR response matches the BBO on the opposite side of the market from the RFR responses.[11]

At the conclusion of the AIM Auction, the Agency Order would be allocated at the best price(s) and contra-side interest will be ranked and matched based on price-time priority,[12] subject to the following: First, such best prices may include non-AIM Auction FLEX Orders (to the extent the Exchange has determined to make available an electronic book).[13] Second, public customers and non-Trading Permit Holder broker-dealers RFR responses and FLEX Orders would have priority.[14] Third, no FLEX Appointed Market-Maker participation entitlement[15] would apply with respect to the AIM Auction. Fourth, if the best price equals the Initiating TPH's single-price submission, the Initiating TPH's single-price submission shall be allocated the greater of one contract or a certain percentage of the order, which percentage would be determined by the Exchange and may not be larger than 40%. However, if only one other FLEX Trader matches the Initiating TPH's single price submission, then the Initiating TPH may be allocated up to 50% of the order. Fifth, if the Initiating TPH selected the auto-match option of the AIM Auction, the Initiating TPH shall be allocated its full size at each price point until a price point is reached where the balance of the order can be fully executed. At such price point, the Initiating TPH shall be allocated the greater of one contract or a certain percentage of the remainder of the Agency Order, which percentage would be determined by the Exchange and may not be larger than 40%. Sixth, any remaining RFR responses and FLEX Orders will be allocated based on time priority.[16] The Initiating TPH would not participate on any such balance unless the Agency Order would otherwise go unfilled. Finally, seventh, if the final AIM Auction price locks a public customer or non-Trading Permit Holder broker-dealer order in the electronic book on the same side of the market as the Agency Order, then, unless there is sufficient size in the AIM Auction responses to execute both the Agency Order and the booked public customer or non-Trading Permit Holder broker-dealer order (in which case they will both execute at the final AIM Auction price), the Agency Order will execute against RFR responses at one minimum RFR response increment worse than the final AIM Auction price against the AIM Auction participants that submitted the final AIM Auction price and any balance shall trade against the public customer or non-Trading Permit Holder broker-dealer order in the book at such order's limit price.[17]

Lastly, the Exchange proposes certain interpretation and policy provisions applicable to the AIM Auction mechanism. First, the AIM Auction may only be used where there is a genuine intention to execute a bona fide transaction. Second, it would be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 to engage in a patter [sic] of conduct where the Initiating TPH breaks-up an Agency Order into separate orders for two (2) or few contracts for the purpose of gaining a higher allocation percentage than the Initiating TPH would have otherwise received in accordance with the allocation procedures.[18] Third, initially,

[11] This early termination provision for FLEX Options is consistent with the operation of AIM (and SAM) for non-FLEX Options. *See* Rules 6.74A(b)(2)(D) and 6.74B(b)(2). The Exchange notes that, for non-FLEX Options, additional early termination provisions apply that would not be applicable to FLEX Options. In particular, for non-FLEX Options an auction may terminate early: (i) Upon receipt by the Hybrid System of an unrelated order (in the same series as the Agency Order) that is marketable against either Exchange's disseminated quote (when such quote is the NBBO) or the RFR responses; (ii) upon receipt by the Hybrid System of an unrelated limit order (in the same series as the Agency Order and on the opposite side of the market as the Agency Order) that improves the RFR responses; (iii) pursuant to a pilot program, any time there is a quote lock on the Exchange pursuant to Rule 6.45A(d) and .06. Provisions (i) and (ii) above would not be applicable to FLEX Options because unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM Auction. *See* proposed Rule 24B.5A(b). Provision (iii) above (and related pilot program data reporting requirements) would not be applicable to FLEX Options because there is no quote lock provision for FLEX Options that is similar to the quote lock provision applicable to non-FLEX Options under Rule 6.45A(d).

[12] The FLEX version of the AIM Auction would only utilize a price-time priority allocation algorithm, subject to the conditions noted above. By comparison, the allocation algorithm for the non-FLEX version of the AIM Auction is the algorithm that is in effect for the option class, subject to certain conditions. *See* Rule 6.74A(b)(3).

[13] The Exchange may determine in a class-by-class basis to make an electronic book available in the FLEX System. *See* Rule 24B.5(b). The term ''FLEX Order'' refers to (i) FLEX bids and offers entered by FLEX Market-Makers and (ii) orders to purchase and orders to sell FLEX Options entered by FLEX Traders, in each case into the electronic book. *See* Rule 24B.1(j).

[14] For the non-FLEX Option version of AIM, only public customers have priority. *See* Rule 6.74A(b)(3)(B). The Exchange is proposing to provide both public customers and non-Trading Permit Holder broker-dealers with the same priority for the FLEX AIM Auction for simplicity to be consistent with how other FLEX allocation algorithms currently operate. *See, e.g.,* Rule 24B.5(a)(1)(iii)(C) and (D). In the future, the Exchange may determine to modify the FLEX Option version of AIM so that only public customers have priority. Such a modification would be the subject of a separate rule filing.

[15] The Exchange may establish from time to time a participation entitlement formula that is applicable to FLEX Appointed Market Makers on a class-by-class basis with respect to open outcry RFQs, electronic RFQs and/or electronic book transactions. Any such FLEX Appointed Market-Maker participation entitlement shall: (i) Be divided equally by the number of FLEX Appointed Market-Makers quoting at the BBO or BBO clearing price, as applicable; (ii) collectively be no more than: 50% of the amount remaining in the order when there is one other FLEX Market-Maker also quoting at the same price, 40% when there are two other FLEX Market-Makers also quoting at the same price; and 30% when there are three or more FLEX Market-Makers also quoting at the same price; and (iii) when combined with any crossing participation entitlement, shall not exceed 40% of the original order. *See* Rule 24B.5(d)(2)(ii).

[16] For the non-FLEX Option version of AIM, the allocation is based on the algorithm in effect for the option class. *See* note 12, *supra.*

[17] For the non-FLEX Option version of AIM, this book locking provision is only applicable to public customer orders resting in the book. The Exchange is proposing to provide both public customers and non-Trading Permit Holder broker-dealers with the same priority for the FLEX AIM Auction for simplicity to be consistent with how other FLEX allocation algorithms currently operate. *See* note 12, *supra.* The Exchange notes that, for non-FLEX Options, additional conditions apply that will not be applicable to FLEX Options. Those conditions relate to scenarios involving the following: (i) Unrelated orders that cause early terminations of AIM Auctions; and (ii) auctions that do not result in price improvement over the Exchange's disseminated price at the time the Auction began (in which case resting unchanged quotes or orders that were disseminated at the best price before the auction began have priority after any public customer order priority and the Initiating TPH's priority (40%) have been satisfied; any unexecuted balance on the Agency Order is allocated to RFR responses provided those RFR responses will be capped to the size of the unexecuted balance and the Initiating TPH may not participate on any such balance unless the Agency Order would otherwise go unfilled). *See* Rule 6.74A(b)(3)(D), (E) and (H). Provision (i) above would not be applicable to FLEX Options because unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM Auction. *See* proposed Rule 24B.5A(b). Provision (ii) above is not necessary for FLEX Options because FLEX Options will utilize a price-time allocation algorithm (and, as a result, resting FLEX Orders that are disseminated at the best price before an AIM Auction begins will have priority after public customer and non-Trading Permit Holder broker-dealer priority and the Initiating TPH's priority (40%) have been satisfied by virtue of the resting FLEX Orders having time priority).

[18] The non-FLEX version of AIM contains the same prohibition. In addition, the non-FLEX version of AIM provides that a pattern or practice of submitting unrelated orders that cause an auction to conclude before the end of the RFR period will be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule

and for at least a pilot period expiring on July 18, 2012, there will be no minimum size requirement for orders to be eligible for the AIM Auction. During this Pilot Period, the Exchange will submit certain data, periodically as required by the Commission, to provide supporting evidence that, among other things, there is a meaningful competition for all size orders and that there is an active and liquid market functioning on the Exchange outside of the AIM Auction. Any data which is submitted to the Commission will be provided on a confidential basis.[19] Fourth, any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class.[20] Fifth, the Exchange may determine on a class-by-class basis to make the AIM Auction available for complex orders. In such classes, complex orders may be executed through the AIM Auction at a net debit or net credit price provided the AIM Auction eligibility requirements are satisfied and the Agency Order is eligible for the AIM Auction considering its complex order type, order origin code (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange), class, and marketability as determined by the Exchange. Complex orders will only be eligible to trade with other complex orders through the AIM Auction. To the extent the Exchange determines to make an electronic book available for resting FLEX Orders, there will be no ''legging'' of complex orders with FLEX Orders that may be represented in the individual series legs represented in the electronic book.[21] Order allocation shall be the same as would be applicable for simple orders. In addition, the individual series legs of a complex order would not trade through equivalent bids (offers) in the individual series legs represented in the electronic book and at least one leg must better the corresponding bid (offer) of public customers and non-Trading Permit Holder broker-dealers in the electronic book. Sixth, any determinations made by the Exchange pursuant to the proposed rule, such as eligible classes, order size parameters and the minimum price increment, would be communicated in a circular.[22]

Solicitation Auction Mechanism

The Exchange is also proposing to establish a SAM mechanism for FLEX Options, which is another mechanism that will electronically auction certain orders for price improvement. Under the SAM process, an Initiating TPH that represents agency orders may submit an Agency Order along with a second order (a solicited order(s) for the same amount as the Agency Order)[23] into the SAM Auction where other FLEX Trader participants could compete with the Initiating TPH's second order to execute against the Agency Order. As explained in more detail below, the SAM mechanism is to be used for larger-sized Agency Orders that are to be executed against solicited orders.

To be eligible, the Agency Order must be in a FLEX class designated as eligible for SAM Auctions and within the designated SAM Auction order eligibility size parameters determined by the Exchange (however, the eligible order size would not be less than 500 contracts). Such classes and size parameters will be determined by the Exchange and announced via circular to FLEX Traders. As explained in more detail below, each order entered into the SAM Auction would also be designated in the System as all-or-none (*i.e.,* an order will be executed in its entirety or not at all). In addition, the second order may only be entered in a single-priced submission format (*i.e.,* unlike AIM Auctions, there is no ''auto-match'' feature for SAM Auctions). Once the Initiating TPH has submitted an Agency Order for SAM processing, such submission cannot be cancelled by the Initiating TPH.

Upon receipt of an Agency Order (and second order), the Exchange would commence the SAM Auction by issuing an RFR, detailing the price and size [sic] the Agency Order.[24] The duration of the RFR response period (*i.e.,* the auction period) would be established by the Exchange on a class-by-class basis and shall not be less than three (3) seconds.[25] During that period, RFR responses may be submitted by FLEX Traders. These responses must specify price and size. Responses may not be entered for the account of an options Market-Maker from another options exchange. As with AIM Auctions, for SAM Auctions all RFR responses are ''blind.''[26] CBOE believes this aspect of the SAM Auction will encourage more aggressive quoting and superior price improvement. RFR responses may be modified or cancelled so long as they are modified or cancelled before the conclusion of the RFR response period. Lastly, the minimum price increment for RFR responses and for an Initiating TPH's single price submission shall be set by the Exchange at no less than one cent.

Normally, a SAM Auction ends at the conclusion of the RFR response period (which will be no less than 3 seconds). However, as with AIM Auctions, the proposal provides that the SAM Auction would end prior to the conclusion of the RFR response period any time an RFR response matches the BBO on the opposite side of the market from the RFR responses.[27]

At the conclusion of the SAM Auction, the Agency Order would be executed against the second/solicited order unless there is sufficient size to execute the entire Agency Order at a price (or prices) that improves the proposed crossing price. In the case where there is one or more public customers or non-Trading Permit Holder broker-dealers at the proposed execution price on the opposite side of the Agency Order, the second/solicited order would be cancelled and the Agency Order would be executed

4.1. *See* Rule 6.74A.02. This ''unrelated orders'' provision would not be applicable to FLEX Options because unrelated FLEX Orders may not be submitted to the electronic book for the duration of an AIM Auction. *See* proposed Rule 24B.5A(b).

[19] This proposed pilot is modeled after an existing pilot for non-FLEX Options. The July 18, 2012 date is proposed so that the FLEX pilot will coincide with an existing pilot for non-FLEX Options. *See* Rule 6.74A.03.

[20] *See* note 6, *supra.*

[21] By comparison, for complex orders in non-FLEX Options classes, the AIM (and SAM) mechanisms permit complex orders to trade with the individuals series legs in the electronic book. *See* Rules 6.74A.07 and 6.74B.01.

[22] The non-FLEX Option version of AIM also contains a provision for the automated customer-to-customer immediate crosses. *See* Rule 6.74A.08. The Exchange does not intend to make this automated crossing functionality available at this time for FLEX Options. If in the future the Exchange would determine to do so, it would be the subject of a separate rule filing.

[23] Any solicited orders submitted by the Initiating TPH to trade against the Agency Order may not be for the account of a FLEX Market-Maker assigned to the option class. *See* proposed Rule 24B.5B.03.

[24] As with AIM Auctions, for SAM Auctions each RFR would be sent to those FLEX Traders electing to receive RFRs (*i.e.,* those FLEX Traders who have established the necessary systems connectivity to receive RFRs). Thus, such election to receive RFRs would not be on a case-by-case basis.

[25] As with AIM Auctions, the Exchange is proposing that the minimum RFR exposure period for SAM be three (3) seconds, which is also consistent with the existing minimum exposure period for FLEX Option crossing pursuant to the existing FLEX crossing procedures. *See* Rule 24B.5(b)(3)(iii). By comparison, for non-FLEX Options, the minimum RFR exposure period for non-FLEX Options is one (1) second. *See, e.g.,* Rule 6.45A.02, and Rule 6.74B(b)(1)(C).

[26] *See* note 10, *supra.*

[27] This early termination provision for FLEX Options is consistent with the operation of AIM and SAM for non-FLEX Options. As noted above, for non-FLEX Options, additional early termination provisions apply that would not be applicable to FLEX Options. *See* note 11, *supra.*

against other bids (offers) if there is sufficient size at the bid (offer) to execute the entire size of the Agency Order (size would be measured considering RFR responses and resting FLEX Orders, to the extent the Exchange has determined to make available an electronic book)). If there is not sufficient size to execute the entire Agency Order, the proposed cross would not be executed and both the Agency Order and second/solicited order would be cancelled. Additionally, the proposed cross would not be executed and both the Agency Order and second/solicited order would be cancelled if the execution price would be inferior to the BBO.

In the event the Agency Order is executed at an improved price(s) or at the proposed execution price against RFR responses and FLEX Orders, the allocation at a given price would be as follows: (i) RFR responses and FLEX Orders for the account of public customers and non-Trading Permit Holder broker-dealers will participate in the execution based on time priority; (ii) any RFR responses and FLEX Orders that are subject to a FLEX Appointed Market-Maker participation entitlement will participate in the execution based on a participation entitlement formula specified in Rule 24B.5(d)(2)(ii);[28] then (iii) all other RFR responses and FLEX Orders will participate in the execution based on time priority.

Lastly, the Exchange proposes certain interpretation and policy provisions applicable to the SAM Auction mechanism. First, the Exchange is also proposing to apply the SAM Auction mechanism to complex orders. As proposed, the Exchange may determine on a class-by-class basis to make the SAM Auction available for complex orders. In such classes, complex orders may be executed through the SAM Auction at a net debit or net credit price provided the SAM Auction eligibility requirements are satisfied and the Agency Order is eligible for the SAM Auction considering its complex order type, order origin code (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange), class, and marketability as determined by the Exchange. Complex orders will only be eligible to trade with other complex orders through the SAM Auction. To the extent the Exchange determines to make an electronic book available for resting FLEX Orders, there will be no ''legging'' of complex orders with FLEX Orders that may be represented in the individual series legs represented in the electronic book.[29] Order allocation shall be the same as would be applicable for simple orders. In addition, the individual series legs of a complex order would not trade through equivalent bids (offers) in the individual series legs represented in the electronic book and at least one leg must better the corresponding bid (offer) of public customers and non-Trading Permit Holder broker-dealers in the electronic book. Second, the proposed rule would also require Trading Permit Holders to deliver to customers a written document describing the terms and conditions of the SAM Auction mechanism prior to executing Agency Orders using the SAM Auction mechanism. Such written document would be required to be in a form approved by the Exchange.[30] Third, the proposed rule would also specify that Trading Permit Holders may not use the SAM Auction mechanism to circumvent the Exchange's rules limiting principal order transactions.[31] Additionally, the Exchange notes that for purposes of paragraph (e) to Rule 6.9, which paragraph prohibits anticipatory hedging activities prior to the entry of an order on the Exchange, the terms of an order would be considered ''disclosed'' to the trading crowd on the Exchange when the order is entered into the SAM Auction mechanism. Finally, fourth, any determinations made by the Exchange pursuant to the proposed SAM Auction rule, such as eligible classes, order size parameters and the minimum price increment, would be communicated in a circular.

Section 11(a)(1) of the Act

Finally, the Exchange believes the proposed AIM and SAM Auctions for FLEX Options are consistent with Section 11(a)(1) of the Act[32] and the rules promulgated thereunder. Generally, Section 11(a)(1) of the Act restricts any member of a national securities exchange from effecting any transaction on such exchange for (i) the member's own account, (ii) the account of a person associated with the member, or (iii) an account over which the member or a person associated with the member exercises discretion, unless a specific exemption is available. Examples of common exemptions include the exemption for transactions by broker dealers acting in the capacity of a market maker under Section 11(a)(1)(A),[33] the ''G'' exemption for yielding priority to non-members under Section 11(a)(1)(G) of the Act and Rule 11a1–1(T) thereunder,[34] and ''Effect vs. Execute'' exemption under Rule 11a2–2(T) under the Act.[35] In this regard, we note that, Trading Permit Holders effecting transactions through the AIM and SAM Auctions and relying on the G exemption would yield priority to any public customer and non-TPH broker-dealer interest pursuant to the applicable allocation algorithms.

The Exchange also believes the proposed AIM and SAM Auctions meet the requirements of the Effect vs. Execution exemption under Rule 11A2–2(T). Rule 11a2–2(T) permits an exchange member, subject to certain conditions, to effect transactions for covered accounts by arranging for an unaffiliated member to execute the transactions directly on the exchange floor. To comply with the rule's conditions, a member (i) must transmit the order from off the exchange floor, (ii) may not participate in the execution of the transaction once it has been transmitted to the member performing the execution,[36] (iii) may not be affiliated with the executing member, and (iv) with respect to an account over which the member or an associated person has investment discretion, neither the member nor its associated person may retain any compensation in connection with effecting the transaction without express written consent from the person authorized to transact business for the account in accordance with the rule.

Off-Floor Transmission: The requirement in Rule 11a2–2(T) for orders to be transmitted from off the exchange floor reflects Congress' intent that Section 11(a) should operate to put member money managers and non-member money managers on the same footing for purposes of their transactions for covered accounts. In considering other automated systems, the Commission and the staff have stated that the off-floor transmission requirement would be met if a covered account order is transmitted from off the

[28] *See* note 15, *supra.*

[29] *See* note 21, *supra.*

[30] This provision is the same as a provision in the SAM rule for non-FLEX Options. *See* Rule 6.74B.02. The Exchange proposes that the same notification used for Rule 6.74B may be used to satisfy the notification required under proposed Rule 24B.5B.02.

[31] *See* Rule 24B.5.

[32] 15 U.S.C. 78k(a). Section 11(a)(1) prohibits a member of a national securities exchange from effecting transactions on that exchange for its own account, the account of an associated person, or an account over which it or its associated person exercises discretion unless an exception applies.

[33] 15 U.S.C. 78k(a)(1)(A).

[34] 15 U.S.C. 78k(a)(1)(G) and 17 CFR 240.11a1–1(T).

[35] 17 CFR 240.11a2–2(T).

[36] The member may, however, participate in clearing and settling the transaction.

floor directly to the exchange floor by electronic means.[37] To the extent that orders and responses to AIM and SAM Auctions will be electronically submitted directly to the FLEX System from remote terminals, the Exchange believes the orders and responses transmitted for execution through AIM and SAM Auctions satisfy the off-floor transmission requirement.

Non-Participation in Order Execution and Execution Through Unaffiliated Member: Rule 11a2–2(T) further provides that the exchange member and its associated persons may not participate in the execution of a transaction once the order has been transmitted to the exchange floor. This requirement was included to prevent members with their own brokers on the exchange floor from using those persons to influence or guide their orders' execution. This requirement does not preclude members from canceling or modifying orders, or from modifying the instructions for executing orders, after they have been transmitted to the floor. Such cancellations or modifications, however, also must be transmitted from off the exchange floor.[38]

In a release discussing both the COMEX and the PACE systems, the Commission noted that a member relinquishes any ability to influence or guide the execution of its order at the time the order is transmitted into the systems and, although the execution is automatic, the design of these systems insures that members do not posses any special or unique trading advantages in handling orders after transmission to the trading floor.[39] Similarly, orders and responses submitted to AIM and SAM Auctions will enter the FLEX System and be executed based on an established matching algorithm. To the extent that users of the AIM and SAM Auctions will relinquish control of their orders and responses upon transmission to the FLEX System, and will not be able to influence or guide the execution of their orders, the Exchange believes that this requirement is met with respect to orders and responses that are executed automatically through the AIM and SAM Auctions.

Furthermore, although Rule 11a2–2(T) contemplates having an order executed by an exchange member who is unaffiliated with the member initiating the order, the Commission has recognized that this requirement is not applicable when automated exchange facilities are used. For example, in considering the operation of COMEX and PACE, the Commission noted that while there is no independent executing exchange member, the execution of an order is automatic once it has been transmitted into the systems. Because the design of these systems ensures that members do not possess any special or unique trading advantages in handling their orders after transmitting them to the exchange floors, the Commission has stated that executions obtained through these systems satisfy the independent execution requirement of Rule 11a2–2(T).[40] Similarly, to the extent that the design of the AIM and SAM Auctions ensure that members do not possess any special or unique trading advantages in the handling of their orders after transmission, a member effecting a transaction through the AIM and SAM Auctions satisfies the requirement for execution through an unaffiliated member.

Non-Retention of Compensation for Discretionary Accounts: The Exchange notes that members who intend to rely on Rule 11a2–2(T) in connection with transactions using the AIM and SAM Auctions must comply with the requirements of Section (a)(2)(iv) of the rule.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[41] in general, and furthers the objectives of Section 6(b)(5) of the Act,[42] in particular, in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest. In particular, the Exchange believes that the use of FLEX Options provide CBOE Trading Permit Holders and investors with additional tools to trade customized options in an exchange environment[43] and greater opportunities to manage risk. The Exchange believes that making modified versions of the AIM and SAM mechanisms available for FLEX Options should serve to further those objectives and encourage use of FLEX Options by enhancing the existing processes for auctioning FLEX Orders, which should make the system more efficient and effective for the FLEX Option investor community.

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 solicited nor received comments on the proposal.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 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 self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such 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

[37] *See, e.g.,* Securities Exchange Act Release Nos. 29237 (May 31, 1991) (regarding NYSE's Off-Hours Trading Facility); Securities Exchange Act Release No. 15533 (January 29, 1979) (regarding the Amex Post Execution Reporting System, the Amex Switching System, the Intermarket Trading System, the Multiple Dealer Trading Facility of the Cincinnati Stock Exchange, the PCX's Communications and Execution System, and the Phlx's Automated Communications and Execution System) and 14563 (March 14, 1978) (regarding the NYSE's Designated Order Turnaround System); see also Letter from Larry E. Bergmann, Senior Associate Director, Division of Market Regulation, SEC, to Edith Hallahan, Associate General Counsel, Phlx (March 24, 1999) (regarding Phlx's VWAP Trading System); Letter from Catherine McGuire, Chief Counsel, Division of Market Regulation, SEC, to David E. Rosedahl, PCX (November 30, 1998) (regarding OptiMark); Letter from Brandon Becker, Director, Division of Market Regulation, SEC, to George T. Simon, Foley & Lardner (November 30, 1994) (regarding Chicago Match).

[38] Securities Exchange Act Release No. 14563 (March 14, 1978).

[39] Securities Exchange Act Release No. 15533 (January 29, 1979) at n. 25.

[40] *Id.*

[41] 15 U.S.C. 78f(b).

[42] 15 U.S.C. 78f(b)(5).

[43] FLEX Options provide Trading Permit Holders and investors with an improved but comparable alternative to the over-the-counter (''OTC'') market in customized options, which can take on contract characteristics similar to FLEX Options but are not subject to the same restrictions. The Exchange believes that making these changes will make the FLEX Hybrid Trading System an even more attractive alternative when market participants consider whether to execute their customized options in an exchange environment or in the OTC market. CBOE believes market participants benefit from being able to trade customized options in an exchange environment in several ways, including, but not limited to the following: (1) Enhanced efficiency in initiating and closing out positions; (2) increased market transparency; and (3) heightened contra-party creditworthiness due to the role of The Options Clearing Corporation as issuer and guarantor of FLEX Options.

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 email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2011–123 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–CBOE–2011–123. This file number should be included on the subject line if email 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 Web site viewing and printing 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 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 Number SR–CBOE–2011–123 and should be submitted on or before January 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[44]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2011–33713 Filed 1–3–12; 8:45 am]

BILLING CODE P

[44] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66061; File No. SR–CHX–2011–34]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing of Proposed Rule Change Regarding Suspension of a Participant's Trading Privileges on the Exchange

December 28, 2011.

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 16, 2011, the Chicago Stock Exchange, Inc. (''CHX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II 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

CHX proposes to add Interpretation and Policy .01 to Article 13, Rule 2 (Emergency Suspension) regarding the suspension of a Participant's trading privileges on the Exchange. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add Interpretation and Policy .01 to Article 13, Rule 2 (Emergency Suspension) thereunder (''Rule 2'') regarding the suspension of a Participant's trading privileges on the Exchange. Currently, this Rule authorizes the Exchange's Chief Regulatory Officer (''CRO'') to suspend a Participant's membership with the Exchange or place other limitations on its activities if various circumstances occur, such as insolvency, failure to perform its contracts or obligations, expulsion or suspension by another self-regulatory organization or where it reasonably appears that the Participant is violating and will continue to violate any provision of the Rules of the Exchange or the federal securities laws (or rules promulgated thereunder). The Exchange proposes to permit any Officer of the Exchange designated by the CRO to suspend the trading privileges of a Participant on the Exchange's facilities pursuant to the provisions of Rule 2 if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The CRO must approve any such suspensions within two (2) days of the action. If the Chief Regulatory Officer does not approve the action taken, the suspension shall be immediately lifted as of the time of his or her decision or after the expiration of two days, whichever is earlier. Suspensions pursuant to these provisions, including the appeal thereof, would otherwise be governed by the provisions of Article 13, Rule 2.

The recent actions taken with respect to MF Global, Inc. (''MF Global'') illustrate the need for a limited expansion of the emergency suspension authority of Rule 2 in the situation where the Qualified Clearing Agency is considering whether to continue to act for a Participant in the clearance and settlement of trades.[3] On October 31, 2011, there were public news reports that MF Global was in financial difficulties and might be insolvent. On that day, NSCC stated that it would continue to honor the transactions of MF Global presented to it for clearance and settlement. After the close of trading that day, however, NSCC stated that it would cease to act for MF Global and the Exchange's CRO suspended the trading privileges of the firm pursuant to Article 13, Rule 2 effective November 1, 2011.[4]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Currently, there is only one Qualified Clearing Agency, the National Securities Clearing Corp. (''NSCC''), for cash equities securities.

[4] *See* CHX Market Regulation Department Information Memorandum MR–11–19 (Nov. 1, 2011), available on CHX public Web site, *http://www.chx.com. See also* NSCC Notice A#7314, Re: MF Global, Inc. (Nov. 1, 2011), available on its public Web site at *http://www.dtcc.com/downloads/legal/imp_notices/2011/nscc/a7314.pdf.*

While this situation was adequately addressed under the current rule structure, the Exchange is concerned that there may be situations in which the CRO may be unavailable to issue the suspension order if NSCC signals its intention to cease to act for a CHX Participant. This concern is particularly true if the Qualified Clearing Agency were to cease to act on an intraday basis.[5] The Exchange therefore proposes that any Officer of the Exchange designated by the CRO may suspend the trading privileges on the Exchange of a Participant in the limited circumstance in which a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The proposal requires that the CRO approve this action within two (2) days. Any such suspensions of trading privileges would be otherwise governed by the provisions of Rule 2.

The Exchange also proposes to eliminate a reference to the Chief Executive Officer in Section (c) of Rule 2 and replace it with a reference to the CRO regarding appeals of suspensions under Rule 2. Before it was amended in 2006, emergency suspensions were authorized by the Chief Executive Officer.[6] The Exchange believes that the continued reference to the Chief Executive Officer in Rule 2(c) represents a simple oversight in the 2006 amendments and seeks to correct it as part of this proposal.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act in general,[7] and furthers the objectives of Section 6(b)(5) in particular,[8] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest by allowing CHX to amend its rules to permit any Officer of the Exchange designated by the Chief Regulatory Officer to suspend the trading privileges of a Participant on the Exchange's facilities if a Qualified Clearing Agency refuses to act to clear and settle the trades of that Participant. The Exchange believes that this measure serves the public interest by giving the CHX more flexibility to prevent the execution of trades on our facilities which could not ultimately be cleared and settled if the Qualified Clearing Agency refuses to act.

B. Self-Regulatory Organization's Statement of 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 Regarding the Proposed Rule Changes Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within 45 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 self-regulatory organization consents, the Commission will:

A. By order approve or disapprove such 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 email to *rule-comments@sec.gov.* Please include File Number SR–CHX–2011–34 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–CHX–2011–34. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CHX–2011–34 and should be submitted on or before January 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M Murphy,

Secretary.

[FR Doc. 2011–33714 Filed 1–3–12; 8:45 am]

BILLING CODE 8011–01–P

[5] Historically, NSCC has normally ceased to act for one of its Participants only after the close of trading. The Exchange understands, however, that NSCC reserves the right to act on an intraday basis if necessary and appropriate.

[6] *See* Securities Exchange Act Release No. 54437 (Sept. 13, 2006), 71 FR 55037 (Sept. 20, 2006) (SR–CHX–2005–06).

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66062; File No. SR–NYSEArca–2011–98]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Deleting NYSE Arca Equities Rule 7.31(w)(1) to Remove the PNP Plus Order Type

December 28, 2011.

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 21, 2011, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 proposes to delete NYSE Arca Equities Rule 7.31(w)(1) to remove the PNP Plus Order type. The text of the proposed rule change is available at the Exchange, the Commission's Public Reference Room, and *www.nyse.com.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization 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 those 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delete NYSE Arca Equities Rule 7.31(w)(1) to remove the PNP (Post No Preference) Plus order type.

By its terms, a PNP Order is a limit order to buy or sell that is to be executed in whole or in part on the Exchange, and the portion that is not executed is ranked on the Exchange's order book without routing any portion of the order to another market center.[3] Pursuant to NYSE Arca Equities Rule 7.31(w)(1), for any portion of a PNP Order designated as a PNP Plus Order that remains unexecuted and would otherwise lock or cross the best protected bid or offer (''PBBO''), Exchange systems would automatically re-price the PNP Plus Order to a penny better than the Best Protected Bid (for sell orders) or a penny lower than the Best Protected Offer (for buy orders). Exchange systems would continue to re-price a PNP Plus Order with each change of the PBBO until such time that the PBBO has moved to a price where the original price of the PNP Plus Order would no longer result in a locked or crossed market, at which time the PNP Plus Order would revert to the original price of the order.

The Exchange proposes to delete Rule 7.31(w)(1) and all references to the PNP Plus Order type. The rule was adopted, in part, to provide ETP Holders with an additional processing capability for PNP Orders.[4] However, since it was adopted, the PNP Plus Order type has not been used by ETP Holders. In addition, the functionality associated with PNP Plus Orders causes system instability, and as a result, the system functionality has not been operable.

In reviewing this system functionality, the Exchange has also identified that the operation of the PNP Plus Order may conflict with the proposed Plan pursuant to Rule 608 of Regulation NMS to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan'' or ''Plan''), which the equities exchanges and the Financial Industry Regulatory Authority, Inc., filed with the Securities and Exchange Commission in April 2011.[5] The Limit Up-Limit Down Plan is designed to prevent trades from occurring outside of specified price bands. The Exchange believes that if the best protected bid (offer) is below (above) the Lower (Upper) Price Band, as defined in the Plan, the automatic re-pricing of PNP Plus Orders may result in an offer (bid) being repriced either at the Lower (Upper) Price Band, potentially causing the market to enter a Limit State, as defined in the Plan, or below (above) the Lower (Upper) Price Band, in violation of the Plan. Accordingly, as part of the Exchange's system development efforts for the Limit Up-Limit Down Plan, the Exchange has determined to remove the PNP Plus Order functionality.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Securities Exchange Act of 1934 (the ''Act''),[6] which requires the rules of an exchange to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[7] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets. The Exchange believes that the proposed rule change will perfect the mechanism of a free and open market because it removes an order type that is not used by ETP Holders and that causes system function instability. In addition, the Exchange believes it is appropriate and desireable to remove the PNP Plus Order type because it would further the Exchange's system development effort in support of the proposed Limit Up-Limit Down Plan. By eliminating this order type and the system functionality that supports it, the Exchange will be better positioned to meet the target implementation date for the Plan, and assure that the Exchange's systems will operate in a manner that effectively and efficiently implements the Limit Up-Limit-Down Rule. As such, this proposed rule change furthers the goal of a free and open market and national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[8] and Rule 19b–4(f)(6) thereunder.[9] Because the proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)

[3] *See* NYSE Arca Equities Rule 7.31(w).

[4] *See* Securities Exchange Act Release No.49942 (June 29, 2004), 69 FR 41005 (July 7, 2004) (SR–PCX–2004–12).

[5] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011) (File No. 4–631).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1).

[8] 15 U.S.C. 78s(b)(3)(A)(iii).

[9] 17 CFR 240.19b–4(f)(6).

of the Act [10] and Rule 19b–4(f)(6) [11] thereunder.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend 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. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or 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 email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2011–98 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–NYSEArca–2011–98. This file number should be included on the subject line if email 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 Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2011–98 and should be submitted on or before January 25, 2011.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–33715 Filed 1–3–12; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66063; File No. SR–DTC–2011–13]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change to Revise Fees for Equity and Debt Derivatives

December 28, 2011.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4[2] thereunder, notice is hereby given that on December 15, 2011, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II, which Items have been prepared primarily by DTC. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(f)(2) thereunder so that the proposed rule change was effective upon filing with the Commission.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii) and 17 CFR 240.19b–4(f)(2).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise fees for equity and debt derivatives.

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 such statements.[4]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

There are certain types of equity and debt derivatives, as they are classified at DTC, that represent debt of an issuer whose coupon and yield are derived from the performance of an underlying stock, basket of stock, commodity or other index. Due to the unique nature of equity and debt derivatives, as opposed to the typical common stock or corporate bond (which are considered ''Basic'' at DTC), DTC currently assesses Participants a ''Complex Eligibility Fee'' as part of the DTC eligibility process.[5] As more fully described below, the purpose of this rule change is to provide a reduction in the complex eligibility processing fee on equity and debt derivatives based on volume.

Recent demand has changed the dynamics of the market for equity and debt derivatives. The asset servicing set-up is becoming more standardized as issuers are limiting the corporate action variations in order to realize operational efficiencies through economies of scale. For example, some issuers are choosing two or three basic payment structures with similar call features for all the equity or debt derivatives they issue. The ability to issue these products under a ''program-like'' structure has created a variation of a debt and equity derivative that requires an eligibility review more similar to that of products currently considered ''Basic'' at DTC.

[4] The Commission has modified the text of the summaries prepared by DTC.

[5] DTC's eligibility process typically involves a legal review of registration exemptions and evaluation of asset servicing requirements that are not standardized.

This is because the legal requirements of the subsequent issuances remain unchanged from the base prospectus and the asset servicing requirements generally follow a few basic structures. As such, DTC has proposed to adjust its Fee Schedule to reflect the following tiered pricing:

(i) A Participant closing 15 or more equity or debt derivatives in a day will be assessed the current ''Complex Eligibility Fee'' ($750) for the first 14 issuances.

(ii) Beginning with the 15th issuance, the fee will be reduced to the current ''Basic Eligibility Fee'' ($350 or $500 depending on single versus multi CUSIP).

Issuances that contain the option to receive the underlying stock at maturity will not qualify for the tiered pricing and will continue to be assessed the ''Complex Eligibility Fee'' because they still require a manually intensive set-up process.

The proposed fee revisions are consistent with DTC's overall pricing philosophy to align service fees with underlying costs, discourage manual and exception processing, and encourage immobilization and dematerialization of securities. DTC intends for these fee adjustments to be effective January 2, 2012.

DTC believes the proposed rule change is consistent with the requirements of Section 17A of the Act [6] and the rules and regulations thereunder applicable to DTC because it would clarify and update DTC's fee schedule to facilitate the equitable allocation of reasonable dues, fees, and other charges among DTC's participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC 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

Written comments relating to the proposed rule change have not yet been solicited or 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 19(b)(3)(A)(ii) of the Act [7] and Rule 19b–4(f)(2) [8] thereunder because it is establishing or changing a due, fee, or other charge applicable only to a member. At any time within sixty days of the filing of such rule change, the Commission summarily may temporarily suspend 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 email to *rule-comments@sec.gov.* Please include File Number SR–DTC–2011–13 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–2011–13. This file number should be included on the subject line if email 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 Web site viewing and printing 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 DTC's principal office and on DTC's Web site at *http://www.dtcc.com/downloads/legal/rule_filings/2011/dtc/SR-DTC-2011-13.pdf.* 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–2011–13 and should be submitted on or before January 25, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–33716 Filed 1–3–12; 8:45 am]

BILLING CODE 8011–01–P

[6] 15 U.S.C. 78q–1.

[7] 15 U.S.C. 78s(b)(3)(A)(ii).

[8] 17 CFR 240.19b–4(f)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–66065; File Nos. SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129]

Self-Regulatory Organizations; BATS Exchange, Inc.; BATS Y–Exchange, Inc.; NASDAQ OMX BX, Inc.; Chicago Board Options Exchange, Incorporated; C2 Options Exchange, Incorporated; Chicago Stock Exchange, Inc.; EDGA Exchange, Inc.; EDGX Exchange, Inc.; Financial Industry Regulatory Authority, Inc.; International Securities Exchange LLC; The NASDAQ Stock Market LLC; New York Stock Exchange LLC; NYSE Amex LLC; NYSE Arca, Inc.; National Stock Exchange, Inc.; NASDAQ OMX PHLX LLC; Order Instituting Proceedings To Determine Whether To Disapprove Proposed Rule Changes Relating to Trading Halts Due to Extraordinary Market Volatility

December 28, 2011.

I. Introduction

On September 27, 2011, each of BATS Exchange, Inc. (''BATS''), BATS Y–Exchange, Inc. (''BYX''), NASDAQ OMX BX, Inc. (''BX''), Chicago Board Options Exchange, Incorporated (''CBOE''), C2 Options Exchange, Incorporated (''C2''), Chicago Stock Exchange, Inc. (''CHX''), EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities

Exchange LLC (''ISE''), The NASDAQ Stock Market LLC (''Nasdaq''), National Stock Exchange, Inc. (''NSX''), New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), NYSE Arca, Inc. (''NYSE Arca''), and NASDAQ OMX PHLX LLC (''Phlx'') (collectively, the ''SROs'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] proposed rule changes (the ''SRO Proposals'') to amend certain of their respective rules relating to trading halts due to extraordinary market volatility. The SRO Proposals were published for comment in the **Federal Register** on October 4, 2011.[3] The Commission received seven comment letters on the SRO Proposals.[4]

On November 17, 2011, the Commission extended the time period in which to either approve the SRO Proposals, disapprove the SRO Proposals, or to institute proceedings to determine whether to disapprove the SRO Proposals, to December 30, 2011.[5] This order institutes proceedings under Section 19(b)(2)(B) of the Act to determine whether to disapprove the SRO Proposals.

II. Description of the Proposals

In the SRO Proposals, the exchanges and FINRA propose to revise the existing market-wide circuit breakers, which halt trading in all NMS securities in the event of extraordinary market volatility, in order to make them more meaningful in today's high-speed electronic markets. In so doing, the exchanges and FINRA took into account the events of May 6, 2010, where the markets experienced excessive volatility in a short period of time, as well as the recommendations of the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues.

The existing market-wide circuit breakers provide for specified trading halts following certain ''Level 1,'' ''Level 2,'' and ''Level 3'' market declines.[6] The values of Levels 1, 2 and 3 are calculated at the beginning of each calendar quarter, using 10%, 20% and 30%, respectively, of the average closing value of the Dow Jones Industrial Average (''DJIA'') for the month prior to the beginning of the quarter.[7] The existing Level 1, Level 2, and Level 3 circuit breakers operate as follows:

Level 1 Halt

Before 2 p.m.—one hour;

At or after 2 p.m. but before 2:30 p.m.—30 minutes;

At or after 2:30 p.m.—trading shall continue, unless there is a Level 2 Halt.

Level 2 Halt

Before 1 p.m.—two hours;

At or after 1 p.m. but before 2 p.m.—one hour;

At or after 2 p.m.—trading shall halt and not resume for the rest of the day.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

As described in detail in the Notices, the SRO Proposals, among other things, would: (i) Replace the DJIA with the S&P 500® Index (''S&P 500'') as the reference index; (ii) recalculate the values of the triggers daily instead of each calendar quarter; (iii) reduce the 10%, 20%, and 30% market decline trigger percentages to 7%, 13%, and 20%; (iv) shorten the length of the trading halts associated with each market decline level; and (v) modify the times when a trading halt may be triggered. The proposed Level 1, Level 2, and Level 3 circuit breakers would operate as follows:

Level 1 Halt

Before 3:25 p.m.—15 minutes;

At or after 3:25 p.m.—trading shall continue, unless there is a Level 3 halt.

Level 2 Halt

Before 3:25 p.m.—15 minutes;

At or after 3:25 p.m.—trading shall continue, unless there is a Level 3 halt.

Level 3 Halt

At any time—trading shall halt and not resume for the rest of the day.

III. Limit Up-Limit Down Plan

Separately, there currently is pending before the Commission a proposal by the equities exchanges and FINRA to establish a new mechanism to address extraordinary market volatility in individual securities, pursuant to a national market system plan under Rule 608 of Regulation NMS to address extraordinary market volatility (the National Market System Plan to Address Extraordinary Market Volatility, or, the ''Limit Up-Limit Down Plan'').[8] The new Limit Up-Limit Down Plan, which would replace the existing single-stock circuit breaker mechanism,[9] would prevent trades in individual securities from occurring outside of a specified price band, and would be coupled with a trading pause mechanism to accommodate more fundamental price moves. In essence, a security would enter a ''limit state'' if its price moves a certain percentage—generally 5%, 10% or 20%, depending on the stock and the time of day—over a 5-minute period. If the market does not naturally exit the limit state within 15 seconds, there would be a five-minute trading pause. The Commission currently is reviewing the comments received.[10]

As discussed below, the Commission, in the Notices for the SRO Proposals, specifically requested comment on how the proposed changes to the market-wide circuit breakers would interact

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release Nos. 65437 (September 28, 2011), 76 FR 61466 (October 4, 2011); 65428 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65429 (September 28, 2011), 76 FR 61432 (October 4, 2011); 65433 (September 28, 2011), 76 FR 61453 (October 4, 2011); 65438 (September 28, 2011), 76 FR 61447 (October 4, 2011); 65426 (September 28, 2011), 76 FR 61460 (October 4, 2011); 65431 (September 28, 2011), 76 FR 61425 (May 12, 2011); 65440 (September 28, 2011), 76 FR 61444 (October 4, 2011); 65430 (September 28, 2011), 76 FR 61429 (October 4, 2011); 65425 (September 28, 2011), 76 FR 61438 (October 4, 2011); 65435 (May 6, 2011), 76 FR 61416 (October 4, 2011); 65436 (September 28, 2011), 76 FR 61450 (October 4, 2011); 65427 (September 28, 2011), 76 FR 61457 (October 4, 2011); 65432 (September 28, 2011), 76 FR 61422 (October 4, 2011); 65439 (September 28, 2011), 76 FR 61463 (October 4, 2011); 65434 (September 28, 2011), 76 FR 61419 (October 4, 2011) (collectively, the ''Notices'').

[4] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Ann L. Vlcek, Managing Director and Associate General Counsel, the Securities Industry and Financial Markets Association, dated October 27, 2011 (''SIFMA Letter''); Letter to Commission, from James J. Angel, Ph.D., CFA, Associate Professor of Finance, Georgetown University, McDonough School of Business, dated October 25, 2011 (''Angel Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Craig S. Donohue, CME Group, Inc., dated October 25, 2011 (''CME Group Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Commissioner Bart Chilton, Commodity Futures Trading Commission, dated October 25, 2011 (''Commissioner Chilton Letter''); Letter to Elizabeth M. Murphy, Secretary, Commission, from Richard H. Baker, President and CEO, Managed Funds Association, dated October 25, 2011 (''MFA Letter''); Letter from Suzanne H. Shatto, dated October 20, 2011; Letter from Mark Roszak, dated October 4, 2011.

[5] *See* Securities Exchange Act Release No. 65770, 76 FR 72492 (November 23, 2011).

[6] *See* NYSE Rule 80B.

[7] Each percentage calculation is rounded to the nearest 50 points, and remains in effect until the next quarterly calculation.

[8] *See* Securities Exchange Act Release No. 64547 (May 25, 2011), 76 FR 31647 (June 1, 2011).

[9] *See* Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (order approving the current single-stock circuit breaker mechanism). The single-stock circuit breaker mechanism, which was approved as a pilot program, is currently scheduled to expire on January 31, 2012. *See, e.g.,* Securities Exchange Act Release No. 65090 (August 10, 2011), 76 FR 50790 (August 16, 2011) (SR–NYSE–2011–40).

[10] The final date for Commission action on the Limit Up-Limit Down Plan is February 29, 2012 unless the Participants consent to a further extension. *See* Letter from Janet M. McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated November 18, 2011.

with the limit up/limit down mechanism for individual securities, if approved, and several commenters expressed views on this issue.[11]

IV. Comment Letters

The Commission received seven comment letters on the SRO Proposals.[12] Several commenters expressed concern that the Level II circuit breaker would not apply after 3:25 p.m.[13] As explained in the Notices, the SROs adopted this approach to avoid disrupting the normal 4 p.m. market close. The Commission, however, specifically solicited comment on whether some provision should be made to end the regular trading session if a market decline suddenly occurs after 3:25 p.m., even if the decline is less than 20%. These commenters believed that the proposal would potentially leave the market vulnerable to a severe decline that occurs late in the trading day, and instead suggested that a Level II circuit breaker triggered at or after 3:25 p.m. halt trading for the remainder of the trading session.[14]

The Commission also specifically requested comment on how the proposed changes would interact with the single-stock circuit breaker pilot program or, if approved, the proposed limit up/limit down mechanism for individual securities. The Commission further asked whether the market-wide circuit breaker should be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered. One commenter believed that the market-wide circuit breaker should be triggered if a sufficient number of single-stock circuit breakers or price limits are triggered, given the potential difficulties of accurately calculating the value of the S&P 500 Index in such circumstances.[15] Two other commenters also expressed concern about the interaction of market-wide circuit breakers and single-stock circuit breakers, and the impact that might have on index calculations, particularly in macro-market events.[16]

Two commenters also expressed views on how market centers should treat pending orders in the event a market-wide circuit breaker is triggered. One commenter believed that orders pending with a market center at the time of a Level I or Level II circuit breaker should remain queued by the market center during the halt and be eligible for execution after the halt.[17] However, in the event of a Level III circuit breaker, that commenter was of the view that all pending orders should be cancelled, since trading will cease for the remainder of the day. Another commenter generally took the position that the SROs should not cancel pending orders during a trading halt, in order to preserve the queue priority of market participants.[18]

The Commission sought comment on whether a provision should be made for a closing auction in the event of a Level III circuit breaker decline. One commenter responded that allowing a closing auction under these extreme circumstances would risk greater market dislocations, and therefore was unadvisable,[19] but another believed there should be a normal closing process so that, among other things, mutual fund prices are properly determined.[20] The Commission also sought comment on whether the primary market should have a longer period (*e.g.* 30 minutes) to re-open trading following a Level II circuit breaker decline. One commenter responded that trading halts should be as short as operationally practicable, and was of the view that the 15-minute trading halt remained appropriate in this circumstance.[21] Finally, one commenter questioned whether the Level 1 circuit breaker should be narrowed from 10% to 7%.[22]

V. Proceedings To Determine Whether To Disapprove SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act to determine whether the SRO Proposals should be disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the SRO Proposals that are discussed below. Institution of disapproval proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described in greater detail below, the Commission seeks and encourages interested persons to provide additional comment on the SRO Proposals.

Pursuant to Section 19(b)(2)(B), the Commission is providing notice of the grounds for disapproval under consideration. In particular, Sections 6(b)(5) and 15A(b)(6) of the Act[23] require that the rules of an exchange and FINRA, respectively, be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The SRO Proposals would update the market-wide circuit breakers by, among other things, reducing the market decline percentage thresholds necessary to trigger a circuit breaker, shortening the duration of the resulting trading halts, and changing the reference index used to measure a market decline. The market-wide circuit breakers were not triggered during the severe market disruption of May 6, 2010, which led the exchanges and FINRA in consultation with Commission staff to assess whether the circuit breakers needed to be modified or updated in light of today's market structure. In addition, the Joint CFTC–SEC Advisory Committee on Emerging Regulatory Issues recommended that the SEC and CFTC review the current operation of the market-wide circuit breakers, and consider appropriate modifications.[24]

As discussed above, there is currently pending before the Commission a proposal by the equities exchanges and FINRA to establish the Limit Up-Limit Down Plan, which would create a new mechanism to address extraordinary market volatility in individual securities. Several commenters on the SRO Proposals stressed the need to consider the SRO Proposals together with the proposed Limit Up-Limit Down Plan, given the potential interaction between the mechanisms for moderating volatility in individual securities and those for moderating volatility market-wide. In addition, commenters

[11] *See* Commissioner Chilton Letter, CME Group Letter, SIFMA Letter.

[12] *See supra* note 4.

[13] *See* CME Group Letter, Commissioner Chilton Letter, and MFA Letter.

[14] *Id.*

[15] *See* SIFMA Letter. SIFMA also believed it was critical to coordinate the market-wide circuit breakers with the options and futures markets.

[16] *See* CME Group Letter and Commissioner Chilton Letter.

[17] *See* SIFMA Letter.

[18] *See* CME Group Letter.

[19] *Id.*

[20] *See* Angel Letter.

[21] *See* CME Letter.

[22] *See* Angel Letter.

[23] 15 U.S.C. 78f(b)(5).

[24] *See Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues,* ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010 at 6.

expressed some concerns with the details of the SRO Proposals, including whether only the Level III circuit breaker should halt trading after 3:25 p.m. and whether the market-wide circuit breakers should be triggered if a significant number of volatility moderators for individual securities are triggered.

The Commission shares the desire of the exchanges and FINRA to appropriately update the market-wide circuit breakers in light of the current market structure and the lessons learned from the events of May 6, 2010. Because of the importance of both the market-wide and individual security volatility moderators to the maintenance of fair and orderly markets and the protection of investors, however, the Commission believes the SRO Proposals should be considered together with the proposed Limit Up-Limit Down Plan, to help assure these mechanisms interact appropriately with one another, and that details of the market-wide circuit breakers are fully evaluated. Accordingly, in light of the pending proposal to establish the Limit Up-Limit Down Plan, and the concerns raised by commenters, the Commission believes that questions remain as to whether the SRO Proposals are consistent with the requirements of Sections 6(b)(5) and 15A(b)(6) of the Act, including whether the proposed market-wide circuit breakers would remove impediments to and perfect the mechanism of a national market system, or protect investors and the public interest.

VI. Solicitation of Comments

The Commission requests that interested persons provide written submissions of their views, data and arguments with respect to the concerns identified above, as well as any others they may have with the SRO Proposals. In particular, the Commission invites the written views of interested persons concerning whether the SRO Proposals are inconsistent with Section 6(b)(5), Section 15A(b)(6), or any other provision of the Act, or the rules and regulation thereunder. Although there do not appear to be any issues relevant to approval or disapproval which would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[25]

Interested persons are invited to submit written data, views and arguments regarding whether the SRO Proposals should be disapproved by January 25, 2012. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by February 8, 2012.

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 email to *rule-comments@sec.gov.* Please include File Numbers SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129 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 Numbers SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129. These file numbers should be included on the subject line if email 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 SRO Proposals that are filed with the Commission, and all written communications relating to the SRO Proposals 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 Web site viewing and printing 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 filings also will be available for inspection and copying at the principal office of the Exchanges and FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Numbers SR–BATS–2011–038; SR–BYX–2011–025; SR–BX–2011–068; SR–CBOE–2011–087; SR–C2–2011–024; SR–CHX–2011–30; SR–EDGA–2011–31; SR–EDGX–2011–30; SR–FINRA–2011–054; SR–ISE–2011–61; SR–NASDAQ–2011–131; SR–NSX–2011–11; SR–NYSE–2011–48; SR–NYSEAmex–2011–73; SR–NYSEArca–2011–68; SR–Phlx–2011–129 and should be submitted on or before January 25, 2012. Rebuttal comments should be submitted by February 8, 2012.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[26]

Elizabeth M. Murphy,

Secretary.

[FR Doc. 2011–33746 Filed 1–3–12; 8:45 am]

BILLING CODE 8011–01–P

[25] Section 19(b)(2) of the Act, as amended by the Securities Act Amendments of 1975, Public Law 94–29 (June 4, 1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Act Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[26] 17 CFR 200.30–3(a)(57).

DEPARTMENT OF STATE

[Public Notice 7748]

Culturally Significant Objects Imported for Exhibition Determinations: ''Put Your Freedom in the Corner, Save it for a Rainy Day'' by Martin Kippenberger

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the object ''Put Your Freedom in the Corner, Save it for a Rainy Day'' by Martin Kippenberger, imported from abroad for temporary exhibition within the United States, is of cultural significance. The object is imported pursuant to a loan agreement with the foreign owners or custodians. I also determine that the exhibition or

display of the exhibit object at the Museum of Contemporary Art, Chicago, IL in its exhibition ''This Will Have Been: Art, Love, & Politics in the 1980s'' from on or about February 11, 2012, until on or about June 3, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, contact Ona M. Hahs, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6473). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 22, 2011.

J. Adam Ereli,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–33745 Filed 1–3–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 7749]

Culturally Significant Objects Imported for Exhibition Determinations: ''Gauguin and Polynesia: An Elusive Paradise''

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000 (and, as appropriate, Delegation of Authority No. 257 of April 15, 2003), I hereby determine that the objects to be included in the exhibition ''Gauguin and Polynesia: An Elusive Paradise,'' imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to loan agreements with the foreign owners or custodians. I also determine that the exhibition or display of the exhibit objects at the Seattle Art Museum, Seattle, WA, from on or about February 9, 2012, until on or about April 29, 2012, and at possible additional exhibitions or venues yet to be determined, is in the national interest. I have ordered that Public Notice of these Determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact Julie Simpson, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: (202) 632–6467). The mailing address is U.S. Department of State, SA–5, L/PD, Fifth Floor (Suite 5H03), Washington, DC 20522–0505.

Dated: December 28, 2011.

Lee Satterfield,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2011–33747 Filed 1–3–12; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[Docket No. FHWA–2011–0134]

Agency Information Collection Activities: Notice of Request for Approval of a New Information Collection

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of request for approval of a new information collection.

SUMMARY: The FHWA invites public comments about our intention to request the Office of Management and Budget's (OMB) approval of a new information collection that is summarized below under **SUPPLEMENTARY INFORMATION**. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995.

DATES: Please submit comments by March 5, 2012.

ADDRESSES: You may submit comments identified by DOT Docket ID Number 2011–0134 by any of the following methods:

Web Site: For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Fax: 1 (202) 493–2251.

Mail: Docket Management Facility, U.S. Department of Transportation, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

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

FOR FURTHER INFORMATION CONTACT: Keith Williams, (202) 366–9212, Highway Safety Specialist, Program Planning Team, Office of Safety Programs, Federal Highway Administration, Department of Transportation, 545 John Knox Road Suite 200, 1200 New Jersey Avenue SE., Room E73–405, Washington, DC 20590, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Compendium of State Performance Management Practices and Methodologies for Setting a National Safety Performance Target.

Type of request: New information collection requirement.

Background: This information collection effort is part of a larger project to document the methodologies currently used by the States to develop highway safety performance measures and targets. The research project includes a literature review of current guidance and practices, a technical report on performance management and target setting in comparable non-highway safety environments, a peer exchange to explore methodologies and establish promising practices and finally, alternative methodologies for setting a national highway safety performance target.

This information collection will specifically support a compendium and evaluation of how baseline information is used in individual States, the District of Columbia, Metropolitan Planning Organizations (MPOs), local and tribal agencies to select, set and evaluate performance based highway safety measures and how they affect the overall State's highway safety programs. FHWA proposes to conduct a Web-based survey to evaluate the methodologies used by State Departments of Transportation, State Governor's Highway Safety Offices, select Metropolitan Planning Organizations and local departments of transportation to identify methodologies for selecting highway safety performance measures and methodologies for setting performance targets based on those measures. Sample size will be approximately 150 to 160 persons, representing each of the State Departments of Transportation; each of the Governor's Highway Safety Offices, the District of Columbia, and select MPOs and local departments of transportation. Interview length will be approximately 30 minutes.

The surveys will be conducted by emailing a URL link to the appropriate representative within each organization. A standardized questionnaire will be

used to collect the information from the representatives. This information collection will not require complex statistical analysis and will not be published for general public consumption. The collection will be used to support further research in developing and evaluating a methodology to set and support National and State highway safety performance measures and targets.

Respondents: State DOT's the District of Columbia, and select MPOs and local departments of transportation (160 total).

Frequency: Annually.

Estimated Average Burden per Response: It will take approximately 30 minutes per participant.

Estimated Total Annual Burden Hours: Approximately 30 hours annually.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection of information is necessary for the U.S. DOT's performance, including whether the information will have practical utility; (2) the accuracy of the U.S. DOT's estimate of the burden of the proposed information collection; (3) ways to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized, including the use of electronic technology, without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: December 28, 2011.

Michael Howell,

Acting Chief, Management Programs and Analysis Division.

[FR Doc. 2011–33749 Filed 1–3–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–2011–0125]

Section 4(f) Policy Paper

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; Request for comments.

SUMMARY: This is a notice and request for comments on a draft Section 4(f) Policy Paper that will provide guidance on the procedures the FHWA will follow when approving the use of land from publicly owned public parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects.

DATES: Comments must be received on or before February 3, 2012.

ADDRESSES: Mail or hand deliver comments to the U.S. Department of Transportation, Dockets Management Facility, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590, or fax comments to (202) 493–2251. Alternatively, comments may be submitted to the Federal eRulemaking portal at *http://www.regulations.gov.* All comments must include the docket number that appears in the heading of this document. All comments received will be available for examination and copying at the above address from 9 a.m. to 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard or you may print the acknowledgment page that appears after submitting comments electronically. Anyone is able to search the electronic form of all comments in any one of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, or labor union). Anyone may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70, Pages 19477–78), or you may visit *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions about the notice discussed herein, contact Ms. MaryAnn Naber, Federal Preservation Officer, FHWA Office of Planning, Environment, and Realty, (202) 366–2060, or via email at *MaryAnn.Naber@dot.gov.* For legal questions, please contact Ms. Diane Mobley, Attorney Advisor, FHWA Office of the Chief Counsel, (202) 366–1366, or via email at *Diane.Mobley@dot.gov.* Business hours for the FHWA are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

You may submit or retrieve comments online through the Federal eRulemaking portal at: *http://www.regulations.gov.* The Web site is available 24 hours each day, 365 days each year. Electronic submission and retrieval help and guidelines are available under the help section of the Web site.

An electronic copy of this document may also be downloaded from Office of the Federal Register's home page at: *http://www.archives.gov/federal_register* and the Government Printing Office's Web page at: *http://www.fdsys.gov.* Late comments will be considered to the extent practicable.

Background

A copy of the proposed Section 4(f) Policy Paper is available for download and public inspection under the docket number noted above at the Federal eRulemaking portal at: *http://www.regulations.gov.* The FHWA invites comments on the proposed policy paper. The FHWA requests that commenters cite the page number of the policy paper for which each specific comment to the docket is concerned, to help make the FHWA's docket comment review process more efficient.

The Section 4(f) Policy Paper was written primarily to aid FHWA personnel with administering Section 4(f) in a consistent manner across the country and is intended to supplement the FHWA's regulations governing Section 4(f). Section 4(f) concerns the use of land from publicly owned parks, recreation areas, wildlife and waterfowl refuges, and public or private historic sites for Federal highway projects. Although these requirements are now codified at 23 U.S.C. 138 and 49 U.S.C. 303, the subject matter remains commonly referred to as ''Section 4(f)'' because the requirements originated in Section 4(f) of the Department of Transportation Act of 1966 (Pub. L. 89–670, 80 Stat. 931). The FHWA's Section 4(f) regulations, entitled ''Parks, Recreation Areas, Wildlife and Waterfowl Refuges, and Historic Sites,'' were promulgated in 2008 and are codified at 23 CFR Part 774. When finalized, this draft Section 4(f) Policy Paper will replace the previous Section 4(f) Policy Paper that was issued by FHWA in 2005. Congress amended Section 4(f) in Section 6009 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) (Pub. L. 109–59, Aug. 10, 2005, 119 Stat. 1144). This draft Section 4(f) Policy Paper incorporates the changes required by Section 6009 of SAFETEA–LU and the 2008 regulations.

Comments on the draft Section 4(f) Policy Paper are welcome from any interested party, including highway project applicants; Federal, State, and local resource agencies; industry trade groups; environmental organizations; and the general public. The FHWA will consider all comments received during the comment period prior to finalizing the Section 4(f) Policy Paper.

Authority: 23 U.S.C. 101, 109, 138 and 139; 23 CFR 1.32 and 774; 49 U.S.C. 303; and, 49 CFR 1.48(b).

Issued on: December 21, 2011.

Victor M. Mendez,

Administrator.

[FR Doc. 2011–33732 Filed 1–3–12; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Notice of Limitation on Claims Against Proposed Public Transportation Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Notice of limitation on claims.

SUMMARY: This notice announces final environmental actions taken by the Federal Transit Administration (FTA) for projects in the following locations: New York, NY; Charlotte, NC; Savannah, GA; and Irving and Grapevine, TX. The purpose of this notice is to announce publicly the environmental decisions by FTA on the subject projects and to activate the limitation on any claims that may challenge these final environmental actions.

DATES: By this notice, FTA is advising the public of final agency actions subject to Section 139(l) of Title 23, United States Code (U.S.C.). A claim seeking judicial review of the FTA actions announced herein for the listed public transportation project will be barred unless the claim is filed on or before July 2, 2012.

FOR FURTHER INFORMATION CONTACT: Nancy-Ellen Zusman, Assistant Chief Counsel, Office of Chief Counsel, (312) 353–2577 or Terence Plaskon, Environmental Protection Specialist, Office of Human and Natural Environment, (202) 366–0442. FTA is located at 1200 New Jersey Avenue SE., Washington, DC 20590. Office hours are from 9 a.m. to 5:30 p.m., EST, Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FTA has taken final agency actions by issuing certain approvals for the public transportation projects listed below. The actions on these projects, as well as the laws under which such actions were taken, are described in the documentation issued in connection with the project to comply with the National Environmental Policy Act (NEPA) and in other documents in the FTA administrative record for the projects. Interested parties may contact either the project sponsor or the relevant FTA Regional Office for more information on the project. Contact information for FTA's Regional Offices may be found at *http://www.fta.dot.gov.*

This notice applies to all FTA decisions on the listed projects as of the issuance date of this notice and all laws under which such actions were taken, including, but not limited to, NEPA [42 U.S.C. 4321–4375], Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303], Section 106 of the National Historic Preservation Act [16 U.S.C. 470f], and the Clean Air Act [42 U.S.C. 7401–7671q]. This notice does not, however, alter or extend the limitation period of 180 days for challenges of project decisions subject to previous notices published in the **Federal Register**. The projects and actions that are the subject of this notice are:

1. *Project name and location:* East Side Access, New York, NY. *Project sponsor:* Metropolitan Transportation Authority. *Project description:* The East Side Access Project will connect the Long Island Rail Road's (LIRR) Main and Port Washington Lines in Queens to a new LIRR terminal beneath Grand Central Terminal in Manhattan. Various project changes have been evaluated in five technical memoranda. *Final agency actions:* FTA determination that neither a supplemental environmental impact statement nor a supplemental environmental assessment is necessary. *Supporting documentation:* Technical Memorandum No. 6, assessing design changes to the 48th Street Entrance, dated November 2011.

2. *Project name and location:* LYNX Blue Line Extension Northeast Corridor Light Rail Project, Charlotte, NC. *Project sponsor:* Charlotte Area Transit System. *Project description:* The project will add approximately 9.4 miles of light rail line and 11 new stations to the existing light rail system. This will extend service from Ninth Street in Center City through the North Davidson and University areas to UNC Charlotte. *Final agency actions:* Section 4(f) *de minimis* impact determination; Section 106 finding of no adverse effect; project-level air quality conformity; and Record of Decision, dated December 2011. *Supporting documentation:* LYNX Blue Line Extension Northeast Corridor Light Rail Project Final Environmental Impact Statement, August 2011.

3. *Project name and location:* Chatham Area Transit Downtown Intermodal Terminal, Savannah, GA. *Project sponsor:* Chatham Area Transit Authority (CAT). *Project description:* The proposed change in the project consists of the construction of a Downtown Intermodal Terminal for bus operations in Savannah, GA. The facility will be constructed in an existing transportation building that currently is used by the Greyhound Bus Service. The building will be renovated to allow for joint operations of both the local transit system operated by CAT as well as the intercity transit system operated by Greyhound. *Final agency actions:* Section 4(f) *de minimis* impact determination; a Section 106 Memorandum of Agreement; project-level air quality conformity; and Revised Finding of No Significant Impact (Revised FONSI), dated December 2011. *Supporting documentation:* Chatham Area Transit Environmental Assessment, dated September 2008.

4. *Project name and location:* Dallas Area Rapid Transit Orange Line Dallas/Fort Worth (DFW) Airport Extension (Irving-3), Irving and Grapevine, TX. *Project sponsor:* Dallas Area Rapid Transit (DART). *Project description:* The project consists of a 5.17-mile light rail transit (LRT), double track alignment that extends northwest from the Belt Line Station (current terminus of the Orange Line) before turning south along International Parkway to end near Terminal A. The alignment is primarily at-grade but also consists of portions of retained earth and aerial structures. A storage yard, the DFW Airport LRT Station and its pedestrian linkages are included as part of the project. *Final agency actions:* no use of Section 4(f) resources; Section 106 finding of no adverse effect; project-level air quality conformity; and Finding of No Significant Impact (FONSI), dated October 2011. *Supporting documentation:* Orange Line DFW Airport Extension (Irving-3) Environmental Assessment, September 2011.

Issued on: December 29, 2011.

Lucy Garliauskas,

Associate Administrator for Planning and Environment, Washington, DC.

[FR Doc. 2011–33748 Filed 1–3–12; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

Release of Waybill Data

The Surface Transportation Board has received a request from Michael Behe representing FRN, LLC (WB604–10—12/14/11) for permission to use certain data from the Board's 2010 Carload Waybill Sample. A copy of this request may be obtained from the Office of Economics.

The waybill sample contains confidential railroad and shipper data; therefore, if any parties object to these requests, they should file their objections with the Director of the Board's Office of Economics within 14 calendar days of the date of this notice. The rules for release of waybill data are codified at 49 CFR 1244.9.

Contact: Scott Decker, (202) 245–0330.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2011–33690 Filed 1–3–12; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0132]

Agency Information Collection (Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant) Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0132'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, fax (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0132.''

SUPPLEMENTARY INFORMATION:

Title: Application in Acquiring Specially Adapted Housing or Special Home Adaptation Grant, VA Form 26–4555.

OMB Control Number: 2900–0132.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans with service-connected disability complete VA Form 26–4555 to apply for assistance in acquiring specially adapted housing or the special home adaptation grant. VA will use the data collected to determine the veteran's eligibility.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 12, 2011, at pages 63354–63355.

Affected Public: Individuals or households.

Estimated Annual Burden: 693 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 4,158.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33702 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0034]

Agency Information Collection (Trainee Request for Leave): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0034'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0034.''

SUPPLEMENTARY INFORMATION:

Title: Trainee Request for Leave—Chapter 31, Title 38, U. S. C., VA Form 28–1905h.

OMB Control Number: 2900–0034.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 28–1905h to request leave from their Vocational Rehabilitation and Employment Program training. The trainer or authorized school official must verify that the absence will or will not interfere with claimant's progress in the program. Claimants will continue to receive subsistence allowance and other program services during the leave period as if he or she were attending training. Disapproval of the request may result in loss of subsistence allowance for the leave period.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 12, 2011, at page 63354.

Affected Public: Individuals or households.

Estimated Annual Burden: 7,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 30,000.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33703 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0049]

Agency Information Collection (Approval of School Attendance): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503, (202) 395–7316. Please refer to ''OMB Control No. 2900–0049'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0049.''

SUPPLEMENTARY INFORMATION:

Titles:

a. Request for Approval of School Attendance, VA Form 21–674 and 21–674c.

b. School Attendance Report, VA Form 21–674b.

OMB Control Number: 2900–0049.

Type of Review: Extension of a currently approved collection.

Abstract: Recipients of disability compensation, dependency and indemnity compensation, disability pension, and death pension are entitled to benefits for eligible children between the ages of 18 and 23 who are attending school. VA Forms 21–674, 21–674c and 21–674b are used to confirm school attendance of children for whom VA compensation or pension benefits are being paid and to report any changes in entitlement factors, including marriages, a change in course of instruction and termination of school attendance.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2011, at pages 61148–61149.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Forms 21–674 and 674c—34,500 hours.

b. VA Form 21–674b—3,292 hours.

Estimated Average Burden per Respondent:

a. VA Forms 21–674 and 674c—15 minutes

b. VA Form 21–674b—5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents:

a. VA Forms 21–674 and 674c—138,000 hours.

b. VA Form 21–674b—39,500 hours.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33704 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0110]

Proposed Information Collection (Application for Assumption Approval and/or Release From Personal Liability to the Government on a Home Loan) Activity: Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to approve a claimant's request to be released from personal liability on a Government home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 5, 2012.

ADDRESSES: Submit written comments on the collection of information through the Federal Docket Management System (FDMS) at *www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0110'' in any correspondence. During the comment period, comments may be viewed online through at FDMS.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—21), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Application for Assumption Approval and/or Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381.

OMB Control Number: 2900–0110.

Type of Review: Extension of a currently approved collection.

Abstract: Veteran-borrows complete VA Form 26–6381 to sell their home by assumption rather than requiring the purchaser to obtain their own financing to pay off the VA guaranteed home loan. In order for the veteran-borrower to be release from personal liability, the loan must be current and the purchaser must assume all of the veteran's liability to the Government and to the mortgage holder and meet the credit and income requirements.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 42 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 250.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33705 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0679]

Proposed Information Collection (Certification of Change or Correction of Name, Government Life Insurance); Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to this notice. This notice solicits comments on information needed to change or correct an insured claimant's name.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before March 5, 2012.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov;* or to Nancy J. Kessinger, Veterans Benefits Administration (20M35), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420 or email *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0679 in any correspondence. During the comment period, comments may be viewed online through FDMS at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 461–9769 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501—3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Certification of Change or Correction of Name, Government Life Insurance, VA Form 29–586.

OMB Control Number: 2900–0679.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants complete VA Form 29–586 to certify a change or correction to their name on Government Life Insurance policies.

Affected Public: Individuals or households.

Estimated Annual Burden: 20 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 120.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33706 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0636]

Agency Information Collection (Accelerated Payment Verification of Completion Letter): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0636'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0636.''

SUPPLEMENTARY INFORMATION:

Title: Accelerated Payment Verification of Completion Letter, VA Form 22–0840.

OMB Control Number: 2900–0636.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants electing to receive an accelerate payment for educational assistance allowance must certify they received such payment and how the payment was used. The data collected is used to determine the claimant's entitlement to accelerated payment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2011, at pages 60132–60133.

Affected Public: Individuals or households.

Estimated Annual Burden: 44 hours.

Estimated Average Burden per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 349.

Estimated Annual Responses: 524.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33707 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0005]

Agency Information Collection (Application for Dependency and Indemnity Compensation By Parent(s), (Including Accrued Benefits and Death Compensation)): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2011.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0005'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0005.''

SUPPLEMENTARY INFORMATION:

Title: Application for Dependency and Indemnity Compensation by Parent(s), (Including Accrued Benefits and Death Compensation), VA Form 21–535.

OMB Control Number: 2900–0005.

Type of Review: Extension of a currently approved collection.

Abstract: Surviving parent(s) of veterans whose death was service connected complete VA Form 21–535 to apply for dependency and indemnity compensation, death compensation, and/or accrued benefits. The information collected is used to determine the claimant's eligibility for death benefits sought.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2011, at page 60132.

Affected Public: Individuals or households.

Estimated Annual Burden: 4,320 hours.

Estimated Average Burden per Respondent: 1 hour 12 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 3,600.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33708 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Agency Information Collection (State Application for Interment Allowance): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0565'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov*. Please refer to ''OMB Control No. 2900–0565.''

SUPPLEMENTARY INFORMATION:

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Extension of a currently approved collection.

Abstract: Data collected on VA Form 21–530a is used to determine a State's eligibility for burial allowance for eligible veterans interred in a State Veteran's Cemetery.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on September 28, 2011, at pages 60131–60132.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 1,550 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,100.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33709 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0013]

Agency Information Collection (Application for United States Flag for Burial Purposes): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0013'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0013.''

SUPPLEMENTARY INFORMATION:

Title: Application for United States Flag for Burial Purposes, VA Form 21–2008.

OMB Control Number: 2900–0013.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–2008 is used to determine a family member or friend of a deceased veteran eligibility for issuance of a burial flag.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2011, at page 61148.

Affected Public: Individuals or households.

Estimated Annual Burden: 162,500 hours.

Estimated Average Burden per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 650,000.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33710 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0670]

Agency Information Collection (Fiduciary Statement in Support of Appointment): Activity Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before February 3, 2012.

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov* or to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to ''OMB Control No. 2900–0670'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Enterprise Records Service (005R1B), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 632–7479, FAX (202) 273–0487 or email *denise.mclamb@va.gov.* Please refer to ''OMB Control No. 2900–0670.''

SUPPLEMENTARY INFORMATION:

Title: Fiduciary Statement in Support of Appointment, VA Form 21–0792.

OMB Control Number: 2900–0670.

Type of Review: Extension of a currently approved collection.

Abstract: Individuals seeking appointment as a fiduciary of VA beneficiaries complete VA Form 21–0792. VA uses the data collected to determine the individual's qualification as a fiduciary and to inquire about his or her credit and criminal background.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on October 3, 2011, at pages 61147–61148.

Affected Public: Individuals or households

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 7,500.

Dated: December 28, 2011.

By direction of the Secretary.

Denise McLamb,

Program Analyst, Enterprise Records Service.

[FR Doc. 2011–33711 Filed 1–3–12; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 2 January 4, 2012

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Parts 117, 119, and 121

Flightcrew Member Duty and Rest Requirements; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 117, 119, and 121

[Docket No. FAA–2009–1093; Amdt. Nos. 117–1, 119–16, 121–357]

RIN 2120–AJ58

Flightcrew Member Duty and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the FAA's existing flight, duty and rest regulations applicable to certificate holders and their flightcrew members operating under the domestic, flag, and supplemental operations rules. The rule recognizes the universality of factors that lead to fatigue in most individuals and regulates these factors to ensure that flightcrew members in passenger operations do not accumulate dangerous amounts of fatigue. Fatigue threatens aviation safety because it increases the risk of pilot error that could lead to an accident. This risk is heightened in passenger operations because of the additional number of potentially impacted individuals. The new requirements eliminate the current distinctions between domestic, flag and supplemental passenger operations. The rule provides different requirements based on the time of day, whether an individual is acclimated to a new time zone, and the likelihood of being able to sleep under different circumstances.

DATES: Effective January 14, 2014.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: For technical issues: Dale E. Roberts, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–5749; email: *dale.e.roberts@faa.gov.* For legal issues: Rebecca MacPherson, Office of the Chief Counsel, Regulations Division (AGC–200), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email: *rebecca.macpherson@faa.gov.*

SUPPLEMENTARY INFORMATION:

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 safety standards for other practices, methods, and procedures necessary for safety in air commerce and national security. This rulemaking is also promulgated under the authority described in 49 U.S.C. 44701(a)(4), which requires the Administrator to promulgate regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers.

Table of Contents

I. Overview of Final Rule
II. Background
  A. Statement of the Problem
  B. National Transportation Safety Board (NTSB) Recommendations
  C. Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee
  D. Congressional Mandate
  E. Notice of Proposed Rulemaking
III. Discussion of Public Comments and Final Rule
  A. Applicability
  B. Definitions
  C. Fitness for Duty
  D. Fatigue Education and Training
  E. Fatigue Risk Management System
  F. Flight Duty Period—Unaugmented
  G. Flight Time Limitations
  H. Flight Duty Period—Augmented
  I. Schedule Reliability
  J. Extensions of Flight Duty Periods
  K. Split Duty
  L. Consecutive Nights
  M. Reserve
  N. Cumulative Limits
  O. Rest
  P. Deadhead Transportation
  Q. Emergency and Government Sponsored Operations
  R. Miscellaneous Issues
IV. Regulatory Notices and Analyses
  A. Regulatory Evaluation
  B. Final Regulatory Flexibility Analysis
  C. International Trade Impact Assessment
  D. Unfunded Mandates Assessment
  E. Paperwork Reduction Act
  F. International Compatibility
  G. Environmental Analysis
V. Executive Order Determinations
  A. Executive Order 12866
  B. Executive Order 13132, Federalism
  C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use
VI. How To Obtain Additional Information
  A. Rulemaking Documents
  B. Comments Submitted to the Docket
  C. Small Business Regulatory Enforcement Fairness Act

I. Overview of Final Rule

The FAA is issuing this final rule to address the risk that fatigue poses to passenger operations conducted under 14 CFR part 121. Part 121 applies to the majority of flights flown by the American public. As such, changes to the existing flight, duty and rest rules in part 121 will directly affect the flying public. This rule applies to all part 121 passenger operations, including traditional scheduled service and large charter operations. The FAA has removed the existing distinctions between domestic, supplemental and flag passenger operations because the factors leading to fatigue are universal and addressing the risk to the flying public should be consistent across the different types of operations.

This final rule addresses fatigue risk in several ways. The underlying philosophy of the rule is that no single element of the rule mitigates the risk of fatigue to an acceptable level; rather, the FAA has adopted a system approach, whereby both the carrier and the pilot accept responsibility for mitigating fatigue. The carrier provides an environment that permits sufficient sleep and recovery periods, and the crewmembers take advantage of that environment. Both parties must meet their respective responsibilities in order to adequately protect the flying public.

The final rule recognizes the natural circadian rhythms experienced by most people that causes them to be naturally more tired at night than during the day. Under the final rule, flightcrew members will be able to work longer hours during the day than during the night. Significant changes in time zones, a situation unique to aviation, are accounted for to reduce the risk to the flying public posed by ''jetlag''.

The FAA has decided against adopting various provisions proposed in the NPRM. The final rule does not apply to all-cargo operations, although those carriers have the ability to fly under the new rules if they so choose. The proposal that carriers meet certain schedule reliability requirements has been dropped, as has the proposed requirement that carriers evaluate flightcrew members for fatigue. The FAA has determined that these provisions were either overly costly or impractical to implement.

1. Fitness for Duty

This rule places a joint responsibility on the certificate holder and each flightcrew member. In order for the flightcrew member to report for an FDP properly rested, the certificate holder must provide the flightcrew member

with a meaningful rest opportunity that will allow the flightcrew member to get the proper amount of sleep. Likewise, the flightcrew member bears the responsibility of actually sleeping during the rest opportunity provided by the certificate holder instead of using that time to do other things. The consequence of a flightcrew member reporting for duty without being properly rested is that he or she is prohibited from beginning or continuing an FDP until he or she is properly rested.

2. Fatigue Education and Training

Part 121 air carriers are currently statutorily-required to annually provide, as part of their Fatigue Risk Management Plan, fatigue-related education and training to increase the trainees' awareness of: (1) Fatigue; (2) ''the effects of fatigue on pilots;'' and (3) ''fatigue countermeasures.'' Today's rule adopts the same standard of training as required by the statute. In addition, today's rule adopts a mandatory update of the carriers' education and training program every two years, as part of the update to their FRMP. Both of these regulatory provisions merely place the existing statutory requirements in the new flight and duty regulations for the ease and convenience of the regulated parties and the FAA.

3. Fatigue Risk Management System

The FAA proposed a Fatigue Risk Management System (FRMS) as an alternative regulatory approach to provide a means of monitoring and mitigating fatigue. Under an FRMS, a certificate holder develops processes that manage and mitigate fatigue and meet an equivalent level of safety. The FAA is adopting that proposal largely as proposed. The FAA has also decided to extend the voluntary FRMS program to all-cargo operations, which are not required to operate under part 117. Under the FRMS provisions that this rule adds to subparts Q, R, and S of part 121, an all-cargo operator that does not wish to operate under part 117 can nevertheless utilize an FRMS as long as it has the pertinent FAA approval.

4. Unaugmented Operations

One of the regulatory concepts that this rule introduces is the restriction on flightcrew members' maximum Flight Duty Period (FDP). In creating a maximum FDP limit, the FAA attempted to address three concerns. First, flightcrew members' circadian rhythms needed to be addressed because studies have shown that flightcrew members who fly during their window of circadian low (WOCL) can experience severe performance degradation. Second, the amount of time spent at work needed to be taken into consideration because longer shifts increase fatigue. Third, the number of flight segments in a duty period needed to be taken into account because flying more segments requires more takeoffs and landings, which are both the most task-intensive and the most safety-critical stages of flight. To address these concerns, the FAA is adopting as part of the regulatory text a table limiting maximum FDP based on the time of day and the number of segments flown during the FDP period. Under today's rule an FDP begins when a flightcrew member is required to report for duty that includes a flight and ends when the aircraft is parked after the last flight and there is no plan for further aircraft movement by the same flightcrew member. The maximum FDP limit is reduced during nighttime hours to account for being awake during the WOCL; when an FDP period consists of multiple flight segments in order to account for the additional time on task; and if a flightcrew member is unacclimated to account for the fact that the unacclimated flightcrew member's circadian rhythm is not in sync with the theater in which he or she is operating. Actual time at the controls (flight time) is limited to 8 or 9 hours, depending on the time of day that the FDP commences.

5. Augmented Operations

In order to accommodate common operational practices, the final rule allows longer duty periods in instances where the carrier provides additional crew and adequate on-board rest facilities. The extended FDPs are laid out in a table and provide maximum credit when an operator employs a 4-man crew and provides the highest quality on-board rest facility.

6. Extensions of Flight Duty Periods

This rule sets forth the limits on the number of FDPs that may be extended; implements reporting requirements for affected FDPs; and distinguishes extended FDPs due to unforeseen operational circumstances that occur prior to takeoff from those unforeseen operational circumstances that arise after takeoff. The FAA agrees that an extension must be based on exceeding the maximum FDP permitted in the regulatory tables rather than on the times that the air carrier had originally intended for an FDP, which may be considerably less than the tables allow. It is unreasonable to limit extensions on FDPs that are less than what the certificate holder can legally schedule. In addition, there is a 30-minute buffer attached to each FDP to provide certificate holders with the flexibility to deal with delays that are minimal.

7. Split Duty

Split duty rest breaks provide carriers with nighttime operations with additional flexibility. Typically split duty rest would benefit carriers who conduct late night and early morning operations where the flightcrew members would typically be afforded some opportunity to sleep, but would not receive a legal rest period. Under today's rule split duty rest must be at least 3 hours long and must be scheduled in advance. The actual split duty rest breaks may not be shorter than the scheduled split duty rest breaks. The rationale for this is that flightcrew members must, at the beginning of their FDP, evaluate their ability to safely complete their entire assigned FDP. In order to do so, they must not only know the length of the FDP, but any scheduled split duty rest breaks that they will receive during the FDP.

8. Consecutive Night Operations

In formulating this rule, the FAA was particularly concerned about cumulative fatigue caused by repeatedly flying at night. Modeling shows substantially deteriorating performance after the third consecutive nighttime FDP for flightcrew members who worked nightshifts during their WOCL and obtained sleep during the day. However, if a sleep opportunity is provided during each nighttime FDP, that sleep opportunity may sustain flightcrew member performance for five consecutive nights. Based on modeling results, the FAA has determined that a 2-hour nighttime sleep opportunity each night improves pilot performance sufficient to allow up to 5 nights of consecutive nighttime operations.

9. Reserve

The FAA has decided to rely on the expertise represented in the ARC to address the issue of reserve duty. The adopted regulatory provisions addressing reserve and unaugmented operations provide that the total number of hours a flightcrew member may spend in a flight duty period and reserve availability period may not exceed 16 hours or the maximum applicable flight duty period table plus four hours, whichever is less. This will allow most FDPs to be accommodated by a flightcrew member on short-call reserve. This rule adopts the proposal that limits the short-call reserve availability period, in which the

flightcrew member is not called to report to work, to 14 hours.

10. Cumulative Limits

The FAA is adopting cumulative limits for FDP and flight-time limits. The FAA has decided to retain both of these cumulative limits because (1) the FDP limits restrict the amount of cumulative fatigue that a flightcrew member accumulates before and during flights; and (2) the flight-time limits allow the FAA to provide air carriers with more scheduling flexibility by setting higher cumulative FDP limits in this rule. This additional scheduling flexibility justifies the added restrictions on cumulative flight time, which can easily be tracked by scheduling programs currently in use throughout the industry. The FAA has decided to eliminate the cumulative duty-period limits, which should greatly simplify compliance with this section.

11. Rest

Carriers will be required to provide their crew with a 10-hour rest opportunity prior to commencing a duty period that includes flying. While the 10-hour rest period may include the amount of time it takes to get to or from a flightcrew member's house or hotel room, the actual amount of time required for a sleep opportunity may not be reduced below 8 hours. In addition, the length of continuous time off during a 7-day period has been extended from 24 hours under the existing rules to 30 hours. Additional time off is required for individuals whose internal clock may be off because of flipping back and forth between different time zones.

12. Emergency and Government Sponsored Operations

This rulemaking also addresses operations that require flying into or out of hostile areas, and politically sensitive, remote areas that do not have rest facilities. These operations range from an emergency situation to moving armed troops for the U.S. military, conducting humanitarian relief, repatriation, Air Mobility Command (AMC), and State Department missions. The applicability provision of this section now specifically articulates the two categories of operations that are affected. This section applies to operations conducted pursuant to contracts with the U.S. Government department and agencies. This section also applies to operations conducted pursuant to a deviation issued by the Administrator under § 119.57 that authorizes an air carrier to deviate from the requirements of parts 121 and 135 to perform emergency operations. This authority is issued on a case-by-case basis during an emergency situation as determined by the Administrator. The FAA concludes that these two categories are the only types of operations that warrant separate consideration because of the unique operating circumstances that otherwise limit a certificate holder's flexibility to deal with unusual circumstances.

Costs and Benefits

We have analyzed the benefits and the costs associated with the requirements contained in this final rule. We provide a range of estimates for our quantitative benefits. Our base case estimate is $376 million ($247 million present value at 7% and $311 million at 3%) and our high case estimate is $716 million ($470 million present value at 7% and $593 million at 3%). The FAA believes there are also not-quantified benefits to the rule that, when added to the base case estimate, make the rule cost beneficial. The total estimated cost of the final rule is $390 million ($297 million present value at 7% and $338 million at 3%).

SUMMARY OVER A 10 YEAR PERIOD

Total quantified benefits			
Estimate	Nominal (millions)	PV at 7% (millions)	PV at 3% (millions)
Base	$376	$247	$311
High	716	470	593
Total quantified costs			
Component	Nominal (millions)	PV at 7% (millions)	PV at 3% (millions)
Flight Operations	$236	$157	$191
Rest Facilities	138	129	134
Training	16	11	13
Total	390	297	338

The FAA has made significant changes to the final rule since the NPRM. The training requirement has been substantially reduced because the FAA has determined that pilots are already receiving the requisite training as part of the statutorily required Fatigue Risk Management Plans. The FAA also has removed all-cargo operations from the applicability section of the new part 117 because their compliance costs significantly exceed the quantified societal benefits.[1] All-cargo carriers may choose to comply with the new part 117 but are not required to do so. Since the carrier would decide voluntarily to comply with the new requirements, those costs are not attributed to the costs of this rule. The costs associated with the rest facilities occur in the two years after the rule is published. The other costs of the rule and the benefits are then estimated over the next ten years.

[1] The projected cost for all-cargo operations is $306 million ($214 million present value at 7% and $252 million at 3%). The projected benefit of avoiding one fatal all-cargo accident ranges between $20.35 million and $32.55 million, depending on the number of crewmembers on board the aircraft.

II. Background

On September 14, 2010, the FAA published a Flightcrew Member Duty and Rest Requirements notice of proposed rulemaking (NPRM) setting out proposed flight, duty, and rest regulations intended to limit flightcrew member fatigue in part 121 operations. These proposed regulations applied to all operations conducted pursuant to part 121, and the regulations would

have imposed, among other things, the following limits/requirements: (1) A requirement that a flightcrew member must notify the certificate holder (air carrier) when he or she is not fit for duty and that a certificate holder must also independently evaluate its flightcrew members for fitness for duty; (2) a limit on daily flight duty period (FDP) and flight-time hours that varies depending on the time of day that the FDP begins; (3) cumulative limits on FDPs, flight times, and duty periods; (4) a schedule reliability requirement, which stated that a certificate holder's scheduled FDPs must be at least 95% consistent with actual FDPs; (5) a requirement that a flightcrew member be provided with at least 9 consecutive hours of rest between FDPs, as measured from the time the flightcrew member reaches a suitable accommodation; and (6) credit for employing fatigue-mitigating measures such as split-duty rest and augmentation.

The FAA received over 8,000 comments in response to the NPRM. In response to the comments, the FAA has made a number of changes to the regulatory provisions proposed in the NPRM. These changes include the following:

- The mandatory provisions of the NPRM do not apply to all-cargo operations. Instead, this rule permits all-cargo operations to voluntarily opt into the new flight, duty, and rest limitations imposed by this rule.
- Certificate holders are no longer required to independently verify whether flightcrew members are fit for duty.
- Most of the daily FDP limits have been increased to provide certificate holders with more scheduling flexibility. One of the daily flight-time limits has been decreased to address safety considerations.
- The cumulative duty-period limit has been removed from this rule.
- The schedule-reliability requirement has been largely removed from the final rule. The remaining parts of the schedule-reliability process have been changed to only apply to instances in which a flightcrew member exceeds the FDP and/or flight-time limits imposed by this rule.
- The flightcrew member must now be provided with 10 hours of rest between FDP periods, but that rest is measured from the time that the flightcrew member is released from duty. The rest must provide for an 8-hour sleep opportunity.
- The amount of credit provided for split-duty rest and augmentation has been increased, and changes to the final rule make these credits easier to obtain.

The changes listed above are just some of the amendments that were made to the NPRM in response to the comments. The Discussion of Public Comments and Final Rule section of this preamble contains a discussion of the changes that were made to the NPRM in response to issues raised by the commenters.

A. Statement of the Problem

Fatigue is characterized by a general lack of alertness and degradation in mental and physical performance. Fatigue manifests in the aviation context not only when pilots fall asleep in the cockpit in flight, but perhaps more importantly, when they are insufficiently alert during take-off and landing. Reported fatigue-related events have included procedural errors, unstable approaches, lining up with the wrong runway, and landing without clearances.

There are three types of fatigue: Transient, cumulative, and circadian. Transient fatigue is acute fatigue brought on by extreme sleep restriction or extended hours awake within 1 or 2 days. Cumulative fatigue is fatigue brought on by repeated mild sleep restriction or extended hours awake across a series of days. Circadian fatigue refers to the reduced performance during nighttime hours, particularly during an individual's WOCL (typically between 2 a.m. and 6 a.m.).

Common symptoms of fatigue include:

- Measurable reduction in speed and accuracy of performance,
- Lapses of attention and vigilance,
- Delayed reactions,
- Impaired logical reasoning and decision-making, including a reduced ability to assess risk or appreciate consequences of actions,
- Reduced situational awareness, and
- Low motivation to perform optional activities.

A variety of factors contribute to whether an individual experiences fatigue as well as the severity of that fatigue. The major factors affecting fatigue include:

- *Time of day.* Fatigue is, in part, a function of circadian rhythms. All other factors being equal, fatigue is most likely, and, when present, most severe, between the hours of 2 a.m. and 6 a.m.
- *Amount of recent sleep.* If a person has had significantly less than 8 hours of sleep in the past 24 hours, he or she is more likely to be fatigued.
- *Time awake.* A person who has been continually awake for a long period of time since his or her last major sleep period is more likely to be fatigued.
- *Cumulative sleep debt.* For the average person, cumulative sleep debt is the difference between the amount of sleep a person has received over the past several days, and the amount of sleep he or she would have received with 8 hours of sleep a night.
- *Time on task.* The longer a person has continuously been doing a job without a break, the more likely he or she is to be fatigued.
- *Individual variation.* Individuals respond to fatigue factors differently and may become fatigued at different times, and to different degrees of severity, under the same circumstances.

Scientific research and experimentation have consistently demonstrated that adequate sleep sustains performance. For most people, 8 hours of sleep in each 24-hour period sustains performance indefinitely. Sleep opportunities during the WOCL are preferable because sleep that occurs during the WOCL provides the most recuperative value. Within limits, shortened periods of nighttime sleep may be nearly as beneficial as a consolidated sleep period when augmented by additional sleep periods, such as naps before evening departures, during flights with augmented flightcrews, and during layovers. Sleep should not be fragmented with interruptions. In addition, environmental conditions, such as temperature, noise, and turbulence, impact how beneficial sleep is and how performance is restored.

When a person has accumulated a sleep debt, recovery sleep is necessary to fully restore the person's ''sleep reservoir.'' Recovery sleep should include at least one physiological night, that is, one sleep period during nighttime hours in the time zone in which the individual is acclimated. The average person requires in excess of 9 hours of sleep a night to recover from a sleep debt. [2]

Several aviation-specific work schedule factors [3] can affect sleep and subsequent alertness. These include early start times, extended work periods, insufficient time off between work periods, insufficient recovery time off between consecutive work periods, amount of work time within a shift or duty period, number of consecutive work periods, night work through one's window of circadian low, daytime sleep

[2] Recovery sleep does not require additional sleep equal to the cumulative sleep debt; that is, an 8-hour sleep debt does not require 8 additional hours of sleep.

[3] Rosekind MR. *Managing work schedules: an alertness and safety perspective.* In: Kryger MH, Roth T, Dement WC, editors. *Principles and Practice of Sleep Medicine;* 2005:682.

periods, and day-to-night or night-to-day transitions.

The FAA believes that its current regulations do not adequately address the risk of fatigue. The impact of this risk is greater in passenger operations due to the number of persons placed at risk. Presently, flightcrew members are effectively allowed to work up to 16 hours a day (regardless of the time of day), with all of that time spent on tasks directly related to aircraft operations. The regulatory requirement for 9 hours of rest is regularly reduced, with flightcrew members spending rest time traveling to or from hotels and being provided with little to no time to decompress. Additionally, certificate holders regularly exceed the allowable duty periods by conducting flights under part 91 instead of part 121, where the applicable flight, duty and rest requirements are housed. As the National Transportation Safety Board repeatedly notes, the FAA's regulations do not account for the impact of circadian rhythms on alertness. The entire set of regulations is overly complicated, with a different set of regulations for domestic operations, flag operations, and supplemental operations. In addition, these regulations do not consider other factors that can lead to varying degrees of fatigue. Instead, each set of operational rules (*i.e.* those applicable to domestic, flag, or supplemental operations) sets forth a singular approach toward addressing fatigue, regardless of the operational circumstances that may be more or less fatiguing.[4]

B. National Transportation Safety Board (NTSB) Recommendations

The NTSB has long been concerned about the effects of fatigue in the aviation industry. The first aviation safety recommendations, issued in 1972, involved human fatigue, and aviation safety investigations continue to identify serious concerns about the effects of fatigue, sleep, and circadian rhythm disruption. Currently, the NTSB's list of Most Wanted Transportation Safety Improvements includes safety recommendations regarding pilot fatigue. These recommendations are based on two accident investigations and an NTSB safety study on commuter airline safety.[5]

In February 2006 the NTSB issued safety recommendations after a BAE–J3201 operated under part 121 by Corporate Airlines struck trees on final approach and crashed short of the runway at Kirksville Regional Airport, Kirksville, Missouri. The captain, first officer, and 11 of the 13 passengers died. The NTSB determined the probable cause of the October 19, 2004 accident was the pilots' failure to follow established procedures and properly conduct a non-precision instrument approach at night in instrument meteorological conditions. The NTSB concluded that fatigue likely contributed to the pilots' performance and decision-making ability. This conclusion was based on the less than optimal overnight rest time available to the pilots, the early report time for duty, the number of flight legs, and the demanding conditions encountered during the long duty day.

As a result of the accident, the NTSB issued the following safety recommendations related to flight and duty time limitations: (1) Modify and simplify the flightcrew hours-of-service regulations to consider factors such as length of duty day, starting time, workload, and other factors shown by recent research, scientific evidence, and current industry experience to affect crew alertness (recommendation No. A–06–10); and (2) require all part 121 and part 135 certificate holders to incorporate fatigue-related information similar to the information being developed by the DOT Operator Fatigue Management Program into initial and recurrent pilot training programs. The recommendation notes that this training should address the detrimental effects of fatigue and include strategies for avoiding fatigue and countering its effects (recommendation No. A–06–10).

The NTSB's list of Most Wanted Transportation Safety Improvements also includes a safety recommendation on pilot fatigue and ferry flights conducted under 14 CFR part 91. Three flightcrew members died after a Douglas DC–8–63 operated by Air Transport International was destroyed by ground impact and fire during an attempted three-engine takeoff at Kansas City International Airport in Kansas City, Missouri. The NTSB noted that the flightcrew conducted the flight as a maintenance ferry flight under part 91 after a shortened rest break following a demanding round trip flight to Europe that crossed multiple time zones. The NTSB further noted that the international flight, conducted under part 121, involved multiple legs flown at night following daytime rest periods that caused the flightcrew to experience circadian rhythm disruption. In addition, the NTSB found the captain's last rest period before the accident was repeatedly interrupted by the certificate holder.

In issuing its 1995 recommendations, the NTSB stated that the flight time limits and rest requirements under part 121 that applied to the flightcrew before the ferry flight did not apply to the ferry flight operated under part 91. As a result, the regulations permitted a substantially reduced flightcrew rest period for the nonrevenue ferry flight. As a result of the investigation, the NTSB reiterated earlier recommendations to (1) finalize the review of current flight and duty time limitations to ensure the limitations consider research findings in fatigue and sleep issues and (2) prohibit certificate holders from assigning a flightcrew to flights conducted under part 91 unless the flightcrew met the flight and duty time limits under part 121 or other applicable regulations (recommendation No. A–95–113).

In addition to recommending a comprehensive approach to fatigue with flight duty limits based on fatigue research, circadian rhythms, and sleep and rest requirements, the NTSB has also stated that a Fatigue Risk Management System (FRMS) may hold promise as an approach to dealing with fatigue in the aviation environment. However, the NTSB noted that it considers fatigue management plans to be a complement to, not a substitute for, regulations to address fatigue.

C. Flight and Duty Time Limitations and Rest Requirements Aviation Rulemaking Committee

As part of this rulemaking action, the FAA chartered an aviation rulemaking committee (ARC) on June 24, 2009. The FAA brought together pilots, airlines, and scientific experts to collaborate and develop options for an FAA-proposed rulemaking to help mitigate pilot fatigue. The ARC provided a forum for the U.S. aviation community to discuss current approaches to mitigate fatigue found in international standards (*e.g.,* the International Civil Aviation Organization (ICAO) standard, the United Kingdom Civil Aviation Publication (CAP) 371, and the European Aviation Safety Agency

[4] While several of the commenters have claimed that the NPRM proposed a ''one-size-fits-all'' regulatory structure, the FAA believes this suggestion is misleading. In the NPRM, and in the final rule with regard to passenger-carrying operations, the FAA has eliminated distinctions between domestic, flag, and supplemental operations, but in all of these operations, the rule imposes differing requirements based on the operating environment.

[5] On February 2, 2010, the NTSB released a press release summarizing the results of its investigation into the Colgan Air crash of February 12, 2009, which resulted in the death of 50 people. The NTSB did not state that fatigue was causal factor to the crash; however, it did recommend that the FAA take steps to address pilot fatigue.

Notice of Proposed Amendment). The ARC provided its report, a copy of which is in this rulemaking docket, to the agency on September 9, 2009.

D. Congressional Mandate

On August 1, 2010, the President signed the Airline Safety and Federal Aviation Administration Extension Act of 2010 (Pub. L. 111–216). Section 212 of Public Law 111–216 required ''the FAA Administrator to issue regulations to limit the number of flight and duty time hours allowed for pilots to address pilot fatigue.'' This section, in subsection 212(a)(3), set a deadline of 180 days for the FAA to publish an NPRM and 1 year for the FAA to issue a final rule.

E. Notice of Proposed Rulemaking

On September 14, 2010, the FAA published in the **Federal Register** the Flightcrew Member Duty and Rest Requirements NPRM.[6] The NPRM proposed to amend the FAA's existing flight, duty, and rest regulations applicable to certificate holders and their flightcrew members. The proposal recognized the factors that lead to fatigue in most individuals, and it proposed to regulate these factors to ensure that flightcrew members do not accumulate dangerous amounts of fatigue. Because the proposed rule addressed fatigue factors that apply universally, the proposed requirements eliminated the existing distinctions between domestic, flag and supplemental operations. The proposal also provided different requirements based on the time of day, whether an individual is acclimated to a new time zone, and the likelihood of being able to sleep under different circumstances.

The NPRM provided for a 60-day comment period, which ended on November 15, 2010. Following publication of the NPRM, the FAA received a number of requests to extend the comment period and to clarify various sections of the preamble, regulatory text, and the Regulatory Impact Analysis (RIA). In response, the agency published two actions in the **Federal Register**.

The first action was a ''Notice of procedures for submission of clarifying questions.''[7] Persons asking for clarifications were advised to file their questions to the rulemaking docket by October 15, 2010. The FAA said it would respond by October 22, 2010. On October 22, 2010, the agency filed two response documents to the rulemaking docket: ''Response to Clarifying Questions to the RIA'' and ''Response to Clarifying Questions to the NPRM.''

The second action was a ''Response to requests for a comment period extension.''[8] The FAA provided notice that the comment period would not be extended. The agency's rationale for this decision is outlined in the October 15, 2010 action.

The FAA received more than 8,000 comment submissions, containing multiple comments on various sections of the preamble and the rule. Many comment submissions also included specific recommendations for changes and clarifications.

III. Discussion of Public Comments and Final Rule

A. Applicability

In the NPRM, the FAA stated that fatigue factors are ''universal.''[9] The FAA noted that sleep science, while still evolving, was clear in several important respects:

> Most people need eight hours of sleep to function effectively, most people find it more difficult to sleep during the day than during the night, resulting in greater fatigue if working at night; the longer one has been awake and the longer one spends on task, the greater the likelihood of fatigue; and fatigue leads to an increased risk of making a mistake.

Id. In light of its determination concerning the universal applicability of factors underlying fatigue, the FAA proposed a single set of flight, duty, and rest regulations that would regulate these factors. The proposed regulations would have been applicable to all part 121 domestic, flag, and supplemental operations. The proposed regulations would also have applied to all part 91 flights conducted by part 121 certificate holders, including flights, such as ferry flights, that have historically been conducted under part 91. The NPRM also stated that ''the part 135 community should expect to see an NPRM addressing its operations that looks very similar to, if not exactly like, the final rule the agency anticipates issuing as part of its rulemaking initiative.'' *Id.* The comments received in response to the proposed applicability of this rule and the corresponding FAA responses are included below.

The National Air Carrier Association (NACA) and a number of air carriers operating non-scheduled flights objected to the proposed rule applying to supplemental operations. These industry commenters stated that non-scheduled operations require additional scheduling flexibility because they are fundamentally different from scheduled operations. The industry commenters stated that, unlike scheduled operations, non-scheduled operations provide on-demand operations on behalf of private and government consumers on a timetable that is determined by the consumer. According to the industry commenters, non-scheduled carriers do not have regularly-set schedules that they know months in advance, but are instead called to fly with little advance notice, making it more difficult to plan flightcrew member flight times and rest periods. The industry commenters emphasized that this difficulty is exacerbated by the fact that non-scheduled operations' flight times (especially departure times) are controlled largely by the consumer and not the air carrier.

The non-scheduled industry commenters also asserted that non-scheduled carriers serve remote, sometimes hostile locations, with no established crew bases. Thus, they do not have the same extensive infrastructure that scheduled operations have access to and must deadhead flightcrew members into remote locations in order to be able to swap out flightcrew members during an operation. These commenters emphasized that the certificate holders running non-scheduled operations are largely small businesses that will have difficulty adjusting to the burdens imposed by this rule.

Based on the differences between non-scheduled and scheduled operations, the industry commenters stated that a ''one-size-fits-all'' approach does not work for non-scheduled operations. The industry commenters stated that the existing regulations governing supplemental operations have existed for over 60 years, and that changing these regulations will adversely affect air security and national defense missions conducted through the use of non-scheduled operations. The commenters emphasized that the existing supplemental flight, duty, and rest regulations ensure aviation safety by containing additional rest requirements that are not a part of this rule. In conclusion, the industry commenters suggested that the FAA either: (1) Retain the existing flight, duty, and rest regulations governing supplemental operations, and/or (2) adopt the alternative proposal put forward by the industry commenters.

In addition to the concerns expressed by non-scheduled air carriers, the Cargo Airline Association (CAA) and a number of air carriers operating all-cargo flights have also objected to the

[6] 75 FR 55852; September 14, 2010.

[7] 75 FR 62486; October 12, 2010.

[8] 75 FR 63424; October 15, 2010.

[9] 75 FR 55852, 55857 (Sep. 14, 2010).

proposed rule applying to supplemental operations. These industry commenters asserted that, while a passenger-operation accident can result in numerous fatalities, an all-cargo accident would consist primarily of property damage.

The commenters also stated that the cargo industry is composed of both scheduled and on-demand operators, and that it specializes in express delivery services. To effectuate these express delivery services, some all-cargo carriers do not maintain U.S. domicile bases and regularly operate long-haul flights and point-to-point operations outside the United States, traveling across multiple time zones at all hours of the day and night. The industry commenters also stated that all-cargo carriers regularly operate around the world in all directions with extended overseas routings, not with quick overnight turns at foreign destinations. This results in a lower aircraft utilization rate than domestic passenger operations. According to the industry commenters, these types of nighttime and around-the-world operations are the norm for all-cargo carriers.

The all-cargo industry commenters added that, similar to non-scheduled operations, some all-cargo operations also fly to remote, undeveloped, and sometimes hostile locations. According to the industry commenters, these types of operations are driven by the same considerations as similar non-scheduled operations: (1) The schedule is determined primarily by the customer, and (2) there is a lack of infrastructure, which necessitates deadheading in flightcrew members. The industry commenters emphasized that many all-cargo carriers currently provide their flightcrew members with split duty rest while cargo is being sorted at sorting facilities, and that the carriers have invested millions of dollars in high-quality rest facilities. The industry commenters also stated that flightcrew members working in all-cargo operations fly fewer total hours than their passenger-transporting counterparts. The industry commenters concluded by asking the FAA to either: (1) Retain the existing flight, duty, and rest regulations that govern supplemental operations, or (2) adopt the alternative proposal that they have included in their comments.

Conversely, a number of labor groups submitted comments approving of a single flight, duty, and rest standard. These groups stated that they were ''pleased that the FAA has acknowledged the current science and recognizes that pilot fatigue does not differ whether the pilot is operating domestically, internationally or in supplemental operations.'' The NTSB also expressed support for a single flight, duty, and rest standard, commending the proposed rule for recognizing that ''human fatigue factors are the same across [domestic, flag, and supplemental] operations and science cannot support the notion of allowing longer duty hours for certain subgroups.'' Numerous individual commenters have also stated that the existing 16-hour duty periods utilized by supplemental operations result in an unsafe amount of fatigue.

In addition to the concerns expressed by the preceding comments, United Air Lines (United) objected to the applicability of this rule to flightcrew members who conduct only part 91 operations on behalf of part 121 certificate holders. United stated that the original reason for the applicability of this rule to part 91 operations on behalf of part 121 certificate holders was to ensure that flightcrew members operating under part 121 did not use part 91 to avoid their flight, duty, and rest requirements under part 121. Because flightcrew members who only conduct part 91 operations cannot conduct part 121 flights, United argued that these flightcrew members should not be subject to this rule.

The FAA also received a number of other questions and concerns about the applicability of this rule. The NetJets Association of Shared Aircraft Pilots (NJASAP) asked how this rule would apply to certificate holders who operate under several different parts of the regulation (*e.g.,* Part 121, Part 135, Subpart 91K). The Regional Airline Association (RAA) asked the FAA to amend this section in order to clarify that this rule applies to ''operations directed by the certificate holder under part 91 of this chapter.'' In addition, a number of part 135 certificate holders objected to having their operations included in the proposed flight, duty, and rest requirements. These commenters asserted that part 135 operations are fundamentally different from part 121 operations, and thus, these operations should not be subject to the same requirements.

In response to concerns expressed by part 135 certificate holders, the FAA emphasizes that this rule does not apply to part 135 operations. If, in the future, the FAA initiates a rulemaking to change the existing part 135 flight, duty, and rest regulations, the FAA will solicit comments from the affected stakeholders and respond to part-135-specific concerns at that time.

Turning to concerns expressed by United, this rule applies to some part 91 operations because many flightcrew members involved in part 121 operations have routinely used part 91 as a way of exceeding the limits imposed by the part 121 flight, duty, and rest requirements. However, the FAA agrees with United that there is no reason to require flightcrew members who do not fly any part 121 operations to comply with part 121 flight, duty, and rest requirements. Accordingly, the FAA has amended this rule so that it applies to flightcrew members operating under part 91 only if at least one their flight segments is operated under part 117. Flightcrew members operating under part 91 and who do not have any flight segments subject to part 117 (*e.g.* pilots flying only part 91 operations) are not subject to the provisions of this rule.

Turning to concerns expressed by air carriers conducting all-cargo operations, as discussed in the regulatory evaluation, the FAA has determined that this rule would create far smaller benefits for all-cargo operations than it does for passenger operations. Consequently, the FAA is unable to justify imposing the cost of this rule on all-cargo operations. The FAA notes that in the past it has excluded all-cargo operations from certain mandatory requirements due to the different cost-benefit comparison that applies to all-cargo operations. For example, in 2007, the FAA excluded all-cargo operations of airplanes with more than two engines from many of the requirements of the extended range operations (ETOPS) rule because the cost of these provisions for all-cargo operations relative to the potential societal benefit was simply too high.[10]

Based on the cost-benefit analysis of this rule and its past precedent, the FAA has amended this rule to make compliance with part 117 voluntary for all-cargo operations and to allow those operations to continue operating under the existing part 121 flight, duty, and rest regulations if they choose to do so. As such, this rule now allows all-cargo operations to voluntarily determine, as part of their collective bargaining and business decisions, whether they wish to operate under part 117.

In order to prevent manipulation of this voluntary provision, certificate holders who wish to operate their all-cargo operations under part 117 cannot pick and choose specific flights to operate under this rule. Instead, the certificate holders can only elect to operate under part 117: (1) All of their all-cargo operations conducted under contract to a U.S. government agency; and (2) all of their all-cargo operations

[10] 72 FR 1808, 1816 (2007).

not conducted under contract to a U.S. Government agency.

Turning to the objections expressed by non-scheduled passenger operations, the FAA notes that existing regulations set out different flight, duty, and rest standards for part 121 domestic, flag, and supplemental operations. Under these regulations, supplemental operations consist of non-scheduled, all-cargo, and public-charter flights. The existing regulations provide supplemental operations with significant scheduling flexibility because they allow air carriers conducting supplemental operations to schedule unaugmented flightcrew members for 16-hour FDPs [11] and augmented flightcrew members for 30-hour FDPs [12] regardless of the time of day.[13]

The FAA acknowledges that this rule will significantly impact supplemental passenger operations because it reduces the existing 16- and 30-hour across-the-board limits. This section discusses these reductions and why they are justified in light of the flexibility concerns of non-scheduled passenger operations. The other changes made by this rule that affect supplemental operations are discussed in the other parts of this preamble.

The FAA has decided to impose the same FDP limits on supplemental passenger operations as other part 121 operations because it has determined that the 16-hour unaugmented FDP and the 30-hour augmented FDP permitted by existing supplemental flight, duty, and rest regulations are almost always unsafe for passenger operations.[14] As discussed in other parts of this preamble, a series of studies analyzing the national accident rate as a function of the amount of hours worked have shown that after a person works for about eight or nine hours, the risk of an accident increases exponentially for each additional hour worked.[15] According to these studies, the risk of an accident in the 12th hour of a work shift is ''more than double'' the risk of an accident in the 8th hour of a work shift.[16] Based on this exponential increase in the accident rate, the FAA has determined that the risk of an accident in the 16th hour of an unaugmented FDP rises to unacceptable levels for passenger operations, especially for shifts that take place during the WOCL. The FAA has also determined, based on the above data, that a 30-hour FDP likewise poses an unacceptably high risk of an accident for passenger operations even with the fatigue-mitigation benefits provided by augmentation.

In determining that a 16-hour unaugmented and a 30-hour augmented FDP is unsafe for passenger operations, the FAA has also taken into account the fact that aviation-specific data shows that FDPs of this length significantly increase the risk of an accident. A study published in 2003 analyzed the accident rate of pilots as a function of the amount of time that the pilots spent on duty.[17] The study found that:

> [T]he proportion of accidents associated with pilots having longer duty periods is higher than the proportion of longer duty periods for all pilots. For 10–12 hours of duty time, the proportion of accident pilots with this length of duty period is 1.7 times as large as for all pilots. For pilots with 13 or more hours of duty, the proportion of accident pilot duty periods is over five and a half times as high.[18]

Because studies examining the national accident rate and aviation-specific accidents have both shown that working over 13 hours significantly increases the risk of an accident, the FAA has decided to disallow the 16-hour unaugmented and 30-hour augmented FDPs currently permitted in supplemental passenger operations by subjecting supplemental passenger operations to the same FDP limits as other part 121 passenger operations. The effect that other provisions of this rule will have on supplemental passenger operations and the reasons why the FAA has chosen to adopt these provisions are discussed in the corresponding portions of this preamble.

The FAA understands that including supplemental passenger operations in this rule will take away a portion of the scheduling flexibility currently enjoyed by non-scheduled passenger operations. However, this rule contains a number of provisions that ease the burden of current rules on non-scheduled operations in a way that does not decrease safety.

The most significant way in which this rule eases the burden of existing rules on supplemental passenger operations is the elimination of compensatory rest requirements. Under the existing rules, a pilot who flies an aircraft for over 8 hours in a supplemental operation must receive a compensatory rest period that is 16 hours or longer (depending on whether the flight was augmented) at the conclusion of his or her duty day. This compensatory rest requirement imposed a significant burden on supplemental passenger operations because pilots had to be provided with at least 16 hours of rest simply for flying for 9 hours. In addition, the FAA found that by focusing on flight time and not on FDP, the existing supplemental flight, duty, and rest regulations led to counterintuitive results in which long 16- and 30-hour FDPs were permitted with only a 9-hour required rest period, but a 9-hour flight time with a relatively-short FDP resulted in a 16- to 18-hour required rest period.

In order to address the concerns discussed in the preceding paragraph and because there was an absence of scientific data showing that rest periods providing for more than 8 hours of sleep were always necessary to combat transient fatigue, this rule eliminates the existing compensatory rest requirements for supplemental passenger operations. The removal of this additional rest requirement will allow certificate holders conducting non-scheduled passenger operations to fly augmented international operations, including those that are under contract with the United States Government, without having to provide flightcrew members with an additional 6 hours of rest at the end of the operation. In addition, to ensure that certificate holders

[11] 14 CFR 121.505(b). The existing regulations do not regulate FDPs, but instead, regulate the length of duty time. The FAA believes that duty time, as used in the existing regulations, is roughly equivalent to the concept of an FDP because flightcrew members typically begin and end their duty periods at about the same times as an FDP, as defined by this rule, would begin and end.

[12] 14 CFR 121.523(c).

[13] An unaugmented flight contains the minimum number of flightcrew members necessary to safely pilot an aircraft. An augmented flight contains additional flightcrew members and at least one onboard rest facility, which allows flightcrew members to work in shifts and sleep during the flight.

[14] The FAA notes that this rule technically allows an unaugmented flightcrew member to work on a 16-hour FDP if a 14-hour FDP is extended through the use of a 2-hour FDP extension. However, a 14-hour unaugmented FDP is only permitted during periods of peak circadian alertness, and the 2-hour FDP extension is subject to additional safeguards. A 30-hour FDP is never permitted, although a carrier could potentially develop an FRMS that allowed a 30-hour FDP in augmented operations.

[15] *See* Simon Folkard & Philip Tucker, *Shift work, safety and productivity,* Occupational Medicine, Feb. 1, 2003, at 98 (analyzing three studies that reported a trend in risk over successive hours on duty).

[16] *Id.* The FAA notes that the Federal Motor Carrier Safety Administration, another DOT agency, has examined studies comparing crash risk to hours worked in certain truck operations. Similar to the Folkard & Tucker study, these studies found a steady rise in crash risk with additional work hours; however, they did not show an increase as rapid as the results reported by Folkard and Tucker. (*See,* for example, Blanco, M., Hanowski, R., Olson, R., Morgan, J., Soccolich, S., Wu, S.C., and Guo, F., ''The Impact of Driving, Non-Driving Work, and Rest Breaks on Driving Performance in Commercial Motor vehicle Operations,'' FMCSA, April 2011).

[17] Jeffrey H. Goode, *Are pilots at risk of accidents due to fatigue?,* Journal of Safety Research 34 (2003) 309–13.

[18] *Id.* at 311.

conducting supplemental operations are able to provide critical services in support of government operations, this rule also contains an Emergency and Government Sponsored Operations section that allows operations performed in accordance with a government contract to exceed this rule's flight, duty, and rest limits in certain situations.

Another example of a provision in this rule that benefits supplemental passenger operations is the increase of the flight-time limits for augmented and unaugmented flights. This increase will allow certificate holders conducting supplemental operations to schedule unaugmented flightcrew members for 9 hours of flight time during peak circadian times after providing them with only 10 hours of rest. The existing regulations would require certificate holders conducting supplemental operations to provide their flightcrew members with 18 hours of rest after an operation involving 9 hours of unaugmented flight time.

In addition to including provisions that ease the burden of the maximum-FDP-limit reduction on supplemental operations, the FAA has also made adjustments to this rulemaking in response to concerns raised by air carriers (certificate holders) conducting non-scheduled passenger operations. Thus, the FAA has: (1) Increased the unaugmented and augmented FDP limits in Tables B and C, (2) increased the amount of the split-duty credit and made that credit easier to obtain, and (3) largely eliminated the scheduling reliability requirements that were proposed in the NPRM. All of these adjustments were made, at least in part, in response to the concerns raised by certificate holders conducting non-scheduled operations, and they should significantly ease the burden of this rule on these types of operations. In making these adjustments, the FAA has, where possible, incorporated into this rule portions of the alternative proposal put forward by the industry commenters who conduct non-scheduled passenger operations.

While air-carrier business models for passenger operations may differ, the factors that give rise to unsafe levels of fatigue are the same for each flightcrew member involved in these operations. A flightcrew member working a 16 or 30-hour FDP as part of a supplemental passenger operation will not be less tired simply because he or she is working in a supplemental type of operation instead of a domestic type operation. To account for this fact and ensure that fatigue is limited to safe levels, the FAA has decided to set a single flight, duty, and rest standard for all part 121 certificate holders conducting passenger operations. The FAA is sympathetic to the fact that supplemental passenger operations require additional flexibility that is not required by other business models and as a result, may bear a disproportionate cost of this rule. To ameliorate the cost of this rulemaking on supplemental operations, this rule contains supplemental-friendly provisions and adjustments that do not have an adverse effect on safety. However, the flexibility and cost-savings required by supplemental passenger operations can no longer be used to justify 16 and 30-hour FDPs for these operations because scientific studies have shown that FDPs of this length significantly increase the risk of an aviation accident that could injure passengers onboard an aircraft.

In response to NJASAP's question, the FAA notes that this rule applies to all part 121 certificate holder passenger operations and all part 121 and part 91 operations where an FDP includes at least one flight segment conducted under part 117. Thus, if a flightcrew member flies one or more segments of an FDP in passenger-carrying operations, but also flies a part 91 positioning flight as part of that FDP, the part 91 flight would have to be conducted under part 117. Parts 135 and 91K have their own set of flight, duty, and rest requirements that will continue to apply to those operations.

B. Definitions

The NPRM included definitions specific to this part. The definitions adopted in this rule are in addition to those in §§ 1.1 and 110.2. In the event that terms conflict, the definitions in part 117 control for purposes of the flight and duty regulations adopted in this rule. The section below provides a discussion of the specific definitions used in the final rule.

1. Acclimated

The FAA proposed to define ''acclimated'' as a condition in which a flightcrew member has been in a theater for 72 hours or has been given at least 36 consecutive hours free from duty.

The Airline Pilots Association (ALPA), the Allied Pilots Association (APA), the Coalition of Airline Pilots Associations (CAPA), and the Independent Pilots Association (IPA) stated that acclimated should mean a condition in which a flightcrew member has been in a new theater for the first 72 hours since arriving and has been given at least 36 consecutive hours free from duty during the 72 hour period. Also, the Flight Time Aviation Regulation Committee and Flightcrew Representatives (representing labor) (Flight Time ARC) supported the suggested, revised definition. These commenters noted that according to established science, three consecutive local nights' rest is required to become acclimated. They also noted that Cap 371 provides for three consecutive local nights rest to become acclimated.

NACA, North American Airlines (NAA), World Airways, and Atlas Air Worldwide Holdings, Inc. (Atlas) contended that the proposed definition should be revised to allow 30 consecutive hours free from duty instead of 36 hours.

NACA and NAA said that it is important in regulations controlling both schedules and operations that the extended rest periods be consistent across domestic and international operations. NACA, NAA, and World Airways said that the FAA's proposed acclimation time should be changed to reflect the agency's proposed 168-hour look-back rest period of 30 hours. (See § 117.25(b)). These commenters believed that 30 hours is appropriate because any further time to acclimate may preclude flightcrew members from returning to their home base as flightcrew members, which becomes important in commercial operations where flight hours are guaranteed.

World Airways said that its recommendation of 30 hours free from duty is within the range the ARC discussed as sufficient for acclimation to occur. Atlas said that there is no scientific justification for selecting 36 as the minimum number of consecutive hours. Atlas further commented that subsequent to publication of the NPRM, the FAA clarified its definition of acclimated, stating that the computation is based on actual, not scheduled, operations. Atlas believed that this clarification needs to be incorporated into the definition as follows: ''Time in theater begins upon block in at an airport more than four time zones from the previous acclimated location.''

In response to the above comments, the FAA is not persuaded by the argument that acclimation only can occur when the flightcrew member is in a new theater for 72 hours and has been given 36 consecutive hours free from duty during that period. The Flight Time ARC did receive information from the sleep specialists that an individual attempting to acclimate to a new time zone will adjust his or her clock approximately one hour per day for each hour of time zone difference. 75 FR 55852, 55861 (Sep. 14, 2010). The ARC, however, concluded that, based on its collective experience, acclimation can

occur more quickly if the flightcrew member manages the sleep opportunity appropriately. The ARC also concluded that a flightcrew member can become acclimated by either receiving three consecutive physiological nights' rest or a layover rest period of 30 to 36 consecutive hours. The ARC universally rejected the premise that, because the United Kingdom is 5 time zones away from the eastern coast of the United States, it would take between five and nine days to acclimate to a European time zone. The commenters did not present new information that was not considered during the ARC. There is no compelling information or argument that refutes the body of experience represented in the ARC and the FAA declines to amend this definition as suggested.

The FAA also declines to accept the suggestion that a 30 hour rest period is adequate to acclimate compared to the 36 hour period proposed in the NPRM. The ARC recommended a 30 to 36 hour layover rest period. The FAA decided to propose the 36-hour rest period because it provides for one physiological night's rest and then opportunity for a shorter rest period. The agency finds that the more conservative approach is appropriate to provide the more meaningful opportunity for rest.

United Parcel Service Co. (UPS) commented that administrative duties should be exempted or removed from the scope of flight duty when determining flightcrew member acclimation. UPS further commented that if flightcrew members revised company manuals or navigation charts during a duty free period (layover) or prior to report time, it is possible that the flightcrew members would not satisfy the definition of being acclimated or could drive different FDP limits based on when they claim their duties started.

In response to UPS' concern, to acclimate a flightcrew member under this rule, the certificate holder must provide the required rest and cannot assign any duties during the rest period. Similarly, it is the flightcrew member's responsibility to take advantage of the period and rest accordingly. If a flightcrew member independently decides to perform administrative type duties during this time period, as described by the commenter, the flightcrew member is considered acclimated regardless of whether he or she actually rested during this time period.

2. Acclimated Local Time

While the FAA did not propose this term, ALPA, CAPA, Flight Time ARC, and the Southwest Airlines Pilots Association (SWAPA) suggested including this term. They suggested that acclimated local time means the local time at the location where the pilot last had greater than 36 hours free from duty in the first 72 hours in theater. IPA recommended the same definition, except it replaced the term ''pilot'' with ''flightcrew member.'' In support of their recommendation, ALPA, CAPA, and Flight Time ARC said this new definition would provide an unambiguous time for applying the definition of ''nighttime duty period'' and for entering the FDP and flight time limit tables. They further said that the wording in the NPRM concerning acclimated or home base time left many questions of interpretation. For example, a USA-based pilot who acclimates in Europe and then subsequently flies to Japan would, under the current NPRM wording, enter the tables at home-base time instead of Europe time. The commenters also stated that the exact location of acclimation must be known to determine future loss of acclimation. Under their proposal, the commenters contended that both the tables and the definition of nighttime flight duty period would use the new term, ''acclimated local time.''

The FAA has accommodated these concerns by changing the heading of Tables A, B, and C to reflect acclimated time. In addition, the FAA clarifies that a flightcrew member is considered acclimated based on which rest he or she was given first. If the flightcrew member completes 36 consecutive hours of rest prior to being in theater for 72 hours, then the flightcrew member is acclimated at the time that the 36-hour period ends and he or she is acclimated at the location that the rest occurred.

3. Airport/Standby Reserve

According to the proposed definition, ''Airport/standby reserve'' means a defined duty period during which a flightcrew member is required by a certificate holder to be at, or in close proximity to, an airport for a possible assignment.

UPS said that the FAA's definition of airport/standby reserve is too vague and is open to interpretation. It recommended revising the definition to mean an assignment that requires a flightcrew member to be in a position to begin preflight activities following notification of an assignment without requiring additional travel time to arrive for the operation.

NACA and NAA did not believe that the definition is necessary because airport/standby reserve is an assignment within an FDP. If the term is adopted, NACA and NAA recommended that the term be defined as a duty period during which a flightcrew member is required by a certificate holder to be at, or in close proximity to, an airport for a possible assignment, and to show at the departure gate or aircraft within one hour.

Atlas contended that the FAA did not clarify the relationship of airport/standby reserve and short-call reserve in its clarification document published after the NPRM. This commenter noted that according to the FAA's clarification, airport/standby reserve and short-call reserve are mutually exclusive. Atlas said that the distinction was explained as whether or not the flightcrew member is ''at the airport or in close proximity to the airport.'' If at or in close proximity to the airport, a flightcrew member is deemed to be on airport/standby reserve, this suggests that a flightcrew member on short-call reserve in a hotel room near an airport could be deemed to be on airport/standby reserve. Atlas believed the distinction is important because it determines if the reserve is counted as part of the FDP. Atlas argued that airport/standby reserve means a defined duty period at an on-airport facility to which a flightcrew member has been required to report by a certificate holder immediately following assignment (usually within one hour) and at which no rest facilities are available or no rest is scheduled.

The FAA agrees that the proposed terminology could be confusing and has modified the term to mean a duty period during which a flightcrew member is required by a certificate holder to be at an airport for possible assignment.

4. Augmented Flightcrew

The NPRM defined ''augmented flightcrew'' as a flightcrew that has more than the minimum number of flightcrew members required by the airplane type certificate to operate the aircraft to allow a flightcrew member to be replaced by another qualified flightcrew member for in-flight rest.

A number of industry commenters objected to the fact that the proposed augmented flightcrew definition did not allow a flight engineer to augment a pilot. These commenters stated that adding a flight engineer to a flightcrew has a number of safety benefits. The commenters added that their inability to augment with a flight engineer would result in three-seat aircraft being retired prematurely, which would raise the costs of this rule.

This rule does not allow augmentation with a flight engineer for

safety reasons. As discussed more fully in other parts of this preamble, an augmented flight provides fatigue-mitigation benefits because it contains more than the minimum number of pilots, and the additional pilots allow the flightcrew to obtain in-flight rest by working in shifts and replacing each other at the aircraft controls. However, a flight engineer is not qualified to manipulate the flight controls and pilot an aircraft and is generally prohibited from occupying a pilot duty station. Because a flight engineer who is not qualified as a pilot cannot occupy a pilot duty station, an engineer cannot replace a pilot at the aircraft controls. As such, this rule does not allow a pilot to be augmented with a flight engineer.

With regard to three-seat aircraft, even though this rule does not give augmentation credit for a flight engineer to augment a pilot, it does not prohibit flight engineers from working on three-seat aircraft. All this rule states is that, without additional pilots, a flightcrew that has a flight engineer would not be considered augmented. Because a flight engineer could still work on a three-seat aircraft under the terms of this rule, the FAA does not believe that the above limitation on augmentation would lead to the premature retirement of three-seat aircraft.

5. Calendar Day

The NPRM proposed that a ''calendar day'' means a 24-hour period from 0000 through 2359.

Alaska Airlines said that while the FAA contends in its clarifying document that the calendar day for the flightcrew member's home base should be sufficient, calendar day as defined in the NPRM does not provide this clarification. Alaska Airlines instead recommended that a calendar day means a 24-hour period from 0000 through 2359 local time at the flightcrew member's home base.

Boeing Commercial Airplanes (Boeing) suggested a similar definition to address frequent transitions between time zones. Boeing further stated that rules such as the ones proposed in the NPRM are implemented in computerized optimization systems for crew scheduling, and as a result, ambiguities in the rules can lead to different interpretations.

The FAA has amended this term to include reference to Coordinated Universal Time or local time. This is consistent with the definition of calendar day in section 121.467(a) (Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations).

6. Consecutive Night Duty Period

The FAA did not propose a definition for this term; ALPA, CAPA, SWAPA, Flight Time ARC, and Federal Express Air Line Pilots Association, International (FedEx ALPA) said that the proposed § 117.27 limits consecutive nighttime flight duty periods to three periods. To avoid confusion in applying § 117.27, the commenters believed that the term ''consecutive night duty period'' should be defined. They recommended that consecutive night duty period mean two or more night flight duty periods that are not separated by at least a part § 117.25 rest between the duty periods that encompasses a physiological night's sleep (1 a.m. to 7 a.m. at home base or acclimated local time). IPA suggested the adoption of a similar definition.

The FAA declines defining the term consecutive night flight duty period and instead includes a provision in § 117.27 to address the commenters' concerns. Section 117.27 now specifies that the consecutive-night provisions apply to consecutive flight duty periods that infringe on the WOCL. The WOCL is defined later in this section.

7. Deadhead Transportation

As proposed, ''deadhead transportation'' means transportation of a flightcrew member as a passenger, by air or surface transportation, as required by a certificate holder, excluding transportation to or from a suitable accommodation.

Air Transport Association of America, Inc. (ATA) suggested removing the word ''passenger'' from the definition because the FAA should not assume that deadhead transportation should be limited to flightcrew members characterized as passengers when not all carriers carry passengers. Similarly, UPS commented that the proposed definition fails to address deadhead transportation on aircraft not configured for passenger operations (*i.e.*, all-cargo aircraft). UPS suggested that the FAA revise the definition as follows: ''Deadhead transportation means transportation of a flightcrew member as a passenger, non-assigned flight deck occupant, or other additional flightcrew member by air or surface transportation, as required by the certificate holder, excluding transportation to or from a suitable accommodation.''

The FAA agrees with the above commenters and has modified the term to apply to the transportation of a flightcrew member as a passenger or a non-operating flightcrew member. The FAA has also added two clarifying statements to the definition. The first is that all time spent in deadhead transportation is duty and is not rest. This provision was copied from proposed § 117.29 Deadhead transportation. Secondly, the FAA includes in this definition that deadhead transportation is not considered a segment for purposes of determining the maximum flight duty period in Table B.

8. Duty

The NPRM defines ''duty'' to mean any task, other than long-call reserve, that a flightcrew member performs on behalf of the certificate holder, including but not limited to airport/standby reserve, short-call reserve, flight duty, pre-and post-flight duties, administrative work, training, deadhead transportation, aircraft positioning on the ground, aircraft loading, and aircraft servicing.

Industry commenters largely rejected the proposition that short-call reserve be considered duty. They argued that this classification is inappropriate and unrelated to effective fatigue mitigation. They also stated that the only requirement or company task a pilot has on short call reserve is to be available to be contacted. Otherwise, the pilot is free to do what he or she wants and plans the day to take advantage of rest opportunities or any other activities as he or she desires, just as a lineholder would. Industry also largely objected to the classification of short-call reserve as duty. ALPA, CAPA, FedEx ALPA, SWAPA and APA all commented favorably on short call reserve being considered duty.

As stated in the NPRM, the FAA's rationale for this proposal was that while on short-call reserve, the flightcrew member can expect that he or she will not receive an opportunity to rest prior to commencing an FDP. Additionally, the flightcrew member is required to limit his or her action sufficiently so that he or she can report to the duty station within a fairly short timeframe. The FAA believed that this time should be accounted for under the cumulative limitations and therefore proposed that short-call reserve be considered duty.

However, the commenters argued that a flightcrew member on short-call reserve has the same predictable rest and sleep opportunities as a regularly-scheduled lineholder and that being on reserve cannot entail significant workload and thereby be fatiguing. The FAA accepts that while reserve cannot be categorized as ''rest'' it does not necessarily fit squarely with being considered duty either. As the commenters correctly pointed out, time

spent on short-call reserve is simply not as fatiguing as time spent on an FDP. Therefore, this rule no longer includes short-call reserve as duty.

ATA, NACA, UPS, United, Continental Airlines, Inc. (Continental), Alaska Airlines, NAA, Delta Air Lines (Delta), and World Airways stated that the proposed definition of duty is too broad, operationally unworkable, and not clear regarding accountability. They objected to the inclusion of the terms ''any task,'' ''on behalf of the certificate holder,'' and ''administrative work'' in the definition. ATA provided the example of a professional pilot who routinely performs tasks such as refreshing outdated publications, watching videos for recurrent training, and reading and responding to emails. Because a flightcrew member can perform these tasks at a time and place of his or her choosing, the commenters argued that a certificate holder has no way of knowing or controlling the pertinent flightcrew member conduct.

ATA asserted that the inclusion of administrative but not labor-related work in the definition does not make sense because no material distinction exists between administrative tasks performed on behalf of management and similar tasks performed on behalf of labor.

Alaska Airlines said that the FAA in its clarifying document noted that the term ''administrative work'' is readily understandable; however, the commenter noted that the term's role in fatigue and in the context of the regulation is vague. The commenter believed that the term needs further clarification and should only include work associated with flight operations.

Continental and United said that the definition of duty considers administrative work in the same way that it assesses flight duty. They contend that this is inappropriate when applied to the cumulative duty restrictions discussed in proposed § 117.23.

Alaska Airlines suggested that the FAA make clear in the final rule that duty only includes activities that the carrier can directly control. ATA recommended clarifying the definition by replacing the phrase ''on behalf of the certificate holder'' with ''directed by a certificate holder on company property.'' NACA, UPS, Delta, and World Airways suggested revising the definition of duty to mean ''any task, other than long-call and short-call reserve, that is directed by the certificate holder * * *'' NAA believed the term ''on behalf of the certificate holder'' should be replaced with ''is assigned by the certificate holder.''

UPS contended that the FAA must address the issue of management pilot duty and suggested that management pilot duty include all time spent during company business-related meetings and other business-related activity conducted on company property. UPS argued that if this is not addressed, management pilots will effectively become non-flying pilots.

NACA, World Airways, and NAA recommend deleting the term ''administrative work'' because it is too vague and inclusive of issues that have nothing to do with direction by the certificate holder or FDP fatigue mitigation. Continental and United recommended that the FAA remove administrative activity from the definition and add a provision to the regulation that applies administrative duty to specific FDPs. ATA and Delta request that if the term is kept in the definition, the FAA should clarify that the definition treats management and labor-related administrative work in the same way.

In response to the above comments, the definition of duty has been further modified by replacing ''on behalf'' of the certificate holder with ''as required'' by the certificate holder. This addresses the certificate holders' concern that the administrative work accomplished by the flightcrew member is work that he or she is required to do, and appropriately included as duty. Lastly, the FAA agrees that performance of administrative management work is not distinguishable from any other type of administrative work, and therefore administrative management work is included in the term ''administrative work'' under this definition.

9. Duty Period

As proposed, ''duty period'' means a period that begins when a certificate holder requires a flightcrew member to report for duty and ends when that crew member is free from all duties.

UPS said that defining the end of the duty period as ''* * * free from all duties'' is too ambiguous and uncertain since a certificate holder cannot control voluntary duties that a flightcrew member may decide to accomplish at the end of his or her FDP. UPS suggested that the definition be changed so that the end of the duty period occurs when the flightcrew member is ''* * * released from all company directed duties.'' In light of the changes that have been made to this rule, the FAA has determined that it is no longer necessary to define this term, and therefore the proposed definition is withdrawn.

10. Early Start Duty

The NPRM did not propose a definition for this term, however, APA recommended including the term, which would mean an FDP that commences in the period 0500 to 0659 home base time or where acclimated. The FAA does not agree that adopting this term is necessary or useful.

11. Fatigue

Fatigue as proposed means physiological state of reduced mental or physical performance capability resulting from lack of sleep or increased physical activity that can reduce a flightcrew member's alertness and ability to safely operate an aircraft or perform safety-related duties.

ATA commented that the proposed definition of fatigue is inconsistent with ICAO's proposed definition. ATA noted that ICAO proposes to define fatigue as ''a physiological state of reduced mental or physical performance capability resulting from sleep loss or extended wakefulness, circadian phase, or workload (mental and/or physical activity) that can impair a crew member's alertness and ability to safely operate an aircraft or perform safety related duties.'' ATA recommended adopting the ICAO definition because it captures the fatigue-inducing effects of the interaction of sleep loss, circadian phase, and workload, and provides a scientific basis for fatigue risk management.

In response to ATA's comments, the FAA notes that ICAO has not finalized its definition of fatigue, and the proposed definition may be subject to change. At this point, it is not prudent for the FAA to include a term that ultimately may be changed or not even adopted. Therefore, the FAA is adopting the definition of fatigue that was proposed.

12. Fit for Duty

As proposed, the definition of ''fit for duty'' means physiologically and mentally prepared and capable of performing assigned duties in flight with the highest degree of safety.

UPS commented that including ''* * * duties in flight with the highest degree of safety'' in the definition of ''fit for duty'' is not practical and too subjective. UPS further stated that it is unrealistic for any human to be at their ''highest'' level of performance during every possible FDP and suggests replacing ''* * * highest degree of safety'' with ''* * * capable of performing duties that assure flight safety.''

The FAA does not agree with UPS because every flightcrew member on

every flight should be prepared and capable of performing the assigned duties at the highest degree of safety. Accordingly, the FAA has adopted the proposed definition in the final rule.

13. Flight Duty Period

The NPRM defines ''flight duty period'' to mean a period that begins when a flightcrew member is required to report for duty with the intention of conducting a flight, a series of flights, or positioning or ferrying flights, and ends when the aircraft is parked after the last flight and there is no intention for further aircraft movement by the same flightcrew member. A flight duty period would include deadhead transportation before a flight segment without an intervening required rest period, training conducted in an aircraft, flight simulator or flight training device, and airport/standby reserve.

ATA, UPS, World Airways, NAA, NACA, Delta, and Alaska Airlines objected to including all flight training in a flight simulator or training device in the definition of FDP. ATA, Delta, and Alaska Airlines commented that there is no scientific basis for such inclusion, and all seven commenters said there is no inherent safety basis for this decision. Alaska Airlines and Delta added that with simulator time included in the FDP, pursuant to section 117.27, flightcrew members would be unable to participate in simulator training on more than three consecutive nights. ATA further commented that there is no basis for including travel to a training site in the FDP unless the travel occurs before flight time.

ATA, Delta, and Alaska Airlines recommended that the FAA revise the proposed definition to state that only training and flight simulator time conducted before a flight without an intervening rest period is counted as part of the FDP. UPS said that it supports counting time spent in a simulator or flight training device as part of an FDP only if this time immediately precedes flight duty without an intervening rest period. UPS believed that there is an unintended consequence of treating simulator and flight training device training as part of an FDP, regardless of when the training occurs. That is, the practice of providing additional training to a flightcrew member who requests that training will be discontinued; thereby, affecting flight safety.

NACA, NAA and World Airways commented that an FDP ''must involve a flight, or at a minimum, movement of an aircraft where the public is at risk where an aircraft accident potential immediately exists.'' They suggested revising the proposed definition to add the following phrases: ''but not limited to'' and ''whenever these duties are performed in conjunction with duties involving flight without an intervening rest period.'' This would result in a definition that reads: ''* * * A flight duty period includes, but is not limited to, deadhead transportation * * * and airport/standby reserve whenever these duties are performed in conjunction with duties involving flight without an intervening rest period.''

The FAA clarifies that an FDP begins when the flightcrew member reports for duty and will include the duties performed by the flightcrew member on behalf of the certificate holder that occur before a flight segment or between flight segments without a required intervening rest period. The FDP ends when the aircraft is parked after the last flight and there is no intention for further aircraft movement by the same flightcrew member. Included in the FDP are any of the following actions if they occur before a flight segment or between flight segments without an intervening rest period: deadhead transportation, training conducted in an aircraft or flight simulator, and airport/standby reserve. Time spent in a flight training device that takes place after the aircraft has been parked after the last flight has been eliminated from this definition. For purposes of calculating the pertinent part 121 flight, duty, and rest limits, the FAA considers time spent on an FDP to be duty.

14. Flight Time

The NPRM did not propose a definition for this term; however, APA, ALPA, CAPA, FedEx ALPA, SWAPA, and Flight Time ARC recommended adding a definition for flight time to begin when the aircraft first moves with the intention of flight. These commenters argued that this term in § 1.1 is defined as the moment the aircraft first moves under its own power. However, the pilot in command (PIC) and required flight deck flightcrew members are always responsible and must perform their duties when the aircraft is moved by a tug or sits on a hardstand and that time should count, according to the commenters, as flight time if the movement is with the intention for flight. They also state that this definition would be consistent with Annex II, Subpart Q to the Commission of the European Communities Regulation No. 3922/91, as Amended (EU OPS subpart Q) which defines flight time as the time between an airplane first moving from its parking place for the purpose of taking off until it comes to rest on the designated parking position and all engines or propellers are stopped.

IPA suggested that the proposed definition be revised as follows: ''Flight time means when the aircraft first moves with the intention of flight until it comes to rest on the designated parking position.''

The FAA declines the commenters' recommendations. Numerous other regulations are based on the definition of flight time that is set out in § 1.1. Changing this term solely in the context of the flight and duty regulations would make this rule more complicated than necessary and create confusion between this rule and other regulations.

15. Late Finish Duty

The NPRM did not propose a definition for this term; however, APA said a definition of ''late finish duty'' is needed to provide for fatigue mitigation caused by consecutive early starts and late finishes. APA suggested that the term be defined as an FDP that ends during the period of 0000–0159, home base time or where acclimated. The FAA does not find that it is necessary or useful to adopt this term.

16. Night and Nighttime

The FAA did not propose definitions for either of these terms; however, NACA and NAA said that the FAA's intent for using the term ''night'' in the NPRM should be defined. If it is not defined, the commenters said that the FAA should always use the term ''physiological night'' in all text in the preamble and in the final rule. They recommended defining night to mean ''the period between 0100 and 0700 at the flightcrew member's designated home base or acclimated location.'' The commenters noted that this would make the term compatible with the definition of ''physiological night's rest.''

Atlas said that the final rule should contain a definition of the terms ''night'' and ''nighttime,'' so as to make the meanings comparable to references in proposed § 117.27, as well as to the definition of ''physiological night's rest.'' It noted that while ''physiological night's rest'' refers to the hours of 0100 and 0700, the term ''nighttime'' referenced in proposed § 117.27 is interpreted to refer to operations that commence between 2200 and 0500, according to page 22 of the FAA's clarification document. Both definitions, the commenter said, differ from the definition of ''night'' in 14 CFR. § 1.1, which is the time between the end of evening civil twilight and the beginning of morning civil twilight, as published in the American Air Almanac, converted to local time.

The FAA declines to adopt these terms. The FAA uses the word ''physiological night's rest'' when it is appropriate. In addition, please refer to the FAA's response to the term ''Consecutive Night Duty Period.''

17. Nighttime Flight Duty Period

The FAA did not propose a definition for this term; however, APA, ALPA, CAPA, FedEx ALPA, SWAPA, and Flight Time ARC said that to avoid confusion when conducting consecutive nighttime operations under § 117.27, the FAA should define ''nighttime flight duty.'' They suggested that this term be defined to mean a duty period during which any part of the duty period falls within the home base or acclimated local time period of 0200 to 0459.

IPA suggested a definition of ''nighttime flight duty'' as follows: ''a duty period during which any part of the duty period falls within the home base or acclimated local time period of 0200 to 0459.''

Please see response to ''6. Consecutive Night Duty Period.'' The FAA does not find it necessary to define the term as suggested.

18. Nighttime Operations

ATA said that the FAA should add a new definition of nighttime operations for purposes of part 117 to be consistent with the agency's document that responds to clarifying questions to the NPRM. The commenter believed that the definition should include operations that commence between 10 p.m. and 5 a.m. The FAA has clarified the pertinent provisions of section 117.27, and as such, it finds that a separate definition for nighttime operations is unnecessary.

19. Report Time

The NPRM defined ''report time'' as the time that the certificate holder requires a flightcrew member to report for a duty period. The FAA did not receive any comments with regard to this definition, and as such, this rule adopts the proposed definition.

20. Reserve Availability Period

The NPRM defined ''reserve availability period'' to mean a duty period during which a certificate holder requires a reserve flightcrew member on short call reserve to be available to receive an assignment for a flight duty period.

NACA objected to the premise that short call reserve is duty. It noted that ARC discussions were clear that short call reserve, which is a period of time when the only responsibility the crew member has is to answer the phone, is not a fatiguing event, and thus, it should not constitute duty for cumulative-duty purposes. NACA suggested revising the proposed definition so that it reads ''reserve availability period means a period of time during which a certificate holder requires a reserve flightcrew member on short call reserve to be available to receive an assignment for a flight duty period.''

As discussed in other portions of this preamble, cumulative-duty-period limits have been removed from this rule. This removal addresses the concern expressed in NACA's comment as short-call reserve is no longer subject to the cumulative-duty-period limits.

21. Reserve Duty Period

The NPRM defined ''reserve duty period'' as the time, applicable only to short call reserve, from the beginning of the reserve availability period to the end of an assigned flight duty period. In light of the changes that were made to the reserve status section, this definition is no longer necessary, and it has been removed from the final rule.

22. Reserve Flightcrew Member

The NPRM defined ''reserve flightcrew member'' as a flightcrew member who a certificate holder requires to be available to receive an assignment for duty. The FAA did not receive any comments with regard to this definition, and as such, this rule adopts the proposed definition.

23. Rest Facility

The NPRM defines ''rest facility'' as a bunk, seat, room or other accommodation that provides a flightcrew member with a sleep opportunity. In determining what constitutes each specific type of rest facility, the FAA took note of a comprehensive evaluation of available onboard rest facilities, which was conducted by the Dutch government in 2007. Simons M, Spencer M., *Extension of Flying Duty Period By In-Flight Relief*. Report TNO–DV2007C362. TNO, Soesterberg, Netherlands, 2007 (TNO Report). The TNO Report was created in order to provide science-based advice on the maximum permissible extension of the FDP related to the quality of the available onboard rest facility and the augmentation of the flightcrew with one or two pilots.

As defined in the NPRM, ''Class 1 rest facility'' means a bunk or other surface that allows for a flat sleeping position and is located separate from both the flight deck and passenger cabin in an area that is temperature-controlled, allows the flightcrew member to control light, and provides isolation from noise and disturbance. ''Class 2 rest facility'' means a seat in an aircraft cabin that allows for a flat or near flat sleeping position; is separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation; and is reasonably free from disturbance by passengers or flightcrew members. ''Class 3 rest facility'' means a seat in an aircraft cabin or flight deck that reclines at least 40 degrees and provides leg and foot support.

ATA stated that the proposed rule was overly restrictive with respect to the facilities it deemed sufficient for conferring credit for in-flight rest on augmented flights. ATA, NACA, and UPS criticized the proposal for over-relying on the TNO Report. ATA and UPS emphasized that the TNO Report is only a single study that has not been adopted by any regulatory body. NACA asserted that ''the TNO report is more than 10 years old and was proposed by a limited number of scientists and based upon limited studies.'' NACA added that ''[i]n the ARC discussions, Dr. Hursh stated that his [SAFTE/FAST] models value sleep on a bunk at approximately 66 to 80 percent of normal sleep.'' APA stated that the TNO Report has not been validated in the aviation context.

ATA stated that the proposed rule's adoption of the TNO report would have substantial adverse impacts on U.S. carriers because it would deviate from the less-restrictive criteria for rest facilities that the FAA set out in Advisory Circular (AC) 121–31. This is because, ATA asserted, many air carriers have invested a substantial amount of money developing rest facilities that comply with the guidelines set out in AC 121–31, and these facilities would not satisfy the more stringent criteria for rest facilities set out in the TNO Report. ATA noted that although it supports the concept of credit for in-flight rest, it does not support rest facility criteria derived from the TNO Report. It further noted that ''the FAA should continue to accept AC 121–31 standards for all aircraft built prior to the imposition of the new rule, the use of current business class seats as Class 2 facilities and for credit being afforded to all-cargo aircraft that provide a 'horizontal sleep opportunity' to flightcrew members. Rest facilities in use today built to AC 121–31 standards are operationally validated as a means of fatigue mitigation that FAA has accepted and there is no evidence that such facilities should not be used in the future.'' To minimize costs, ATA recommended that ''[a]t a minimum, the guidance in AC 121–31 should remain in effect for all aircraft built prior to the implementation date of the NPRM and

a significant period allowed for newer aircraft to conform to any new standards.''

UPS added that most air-cargo carriers would be unable to install rest facilities needed for the augmentation credit because air-cargo aircraft do not have passenger cabins. UPS asserted that it would be unable to install the rest facilities required by this rule in approximately 18% of its total fleet.

The existing advisory circular that provides guidance for onboard rest facilities (AC 121–31) was written in 1994 based on the science that existed at that time. The TNO Report, on the other hand, was written in 2007, and it provides the most comprehensive evaluation available to date of onboard rest facilities. This report may not yet have been adopted by other regulatory bodies because it is only four years old, and significant regulatory changes usually take place over a longer period of time. When drafting this rule, the FAA found the TNO Report to be more persuasive than AC 121–31 because the TNO Report performed a comprehensive evaluation of rest facilities, and because it was based on more recent scientific data than AC 121–31.

The FAA understands that the TNO Report provides more conservative conclusions than the pertinent SAFTE/FAST data concerning onboard rest facilities. However, in response to comments discussed above, the FAA has increased the augmented FDP limits in Table C. This increase should more accurately reflect the results of the SAFTE/FAST modeling for augmented operations.

The FAA has considered the fact that basing the definition of rest facilities on the TNO Report may pose hardships for air carriers who currently rely on AC 121–31 for guidance about onboard rest facilities. To mitigate this hardship, as well as for a number of other considerations, the FAA has decided to make the effective date of this rule two years from publication. This two-year window will provide air carriers with time to phase out their current onboard rest facilities and install/upgrade onboard rest facilities that comply with the provisions of this rule.

APA, FedEx ALPA, SWAPA, CAPA, and Flight Time ARC said that the definition of ''rest facility'' should include the following clarification: ''A rest facility on an aircraft shall only be used for in-flight rest opportunities.'' The commenters said this statement will eliminate any temptation to have crews obtaining their part § 117.25 or part § 117.17 rest on the aircraft when it is on the ramp. Several of these commenters noted that a bunk or seat on an aircraft is not a suitable rest facility on the ground. APA further recommended that the FAA separate the definitions of an ''in-flight, onboard rest facility'' and a ''ground-based rest facility'' and clearly differentiate between a ground-based rest facility and a suitable accommodation.

The FAA agrees with the above commenters that rest in a rest facility should take place while an aircraft is in-flight. That is why the augmented FDP section, section 117.17, to which the rest-facilities definition applies, mandates that the required minimum augmentation rest take place in-flight. Because section 117.17 already requires that the minimum augmentation rest take place in-flight, there is no need to further amend the pertinent regulatory text.

Turning to APA's request for clarification concerning the distinction between onboard and ground-based rest facilities, the FAA notes that a rest facility is a facility that is installed in an aircraft. A suitable accommodation, on the other hand, is a ground-based facility. The FAA has amended the pertinent definitions to clarify this distinction between a suitable accommodation and a rest facility.

APA also stated that detailed minimum standards should be spelled out in regulatory requirements. At a minimum, the language in the Class 1 facility definition should be improved to indicate that other surfaces that allow for a flat sleeping position should be suitably padded and reasonably comfortable and suitable for sleeping. APA noted that the ARC's discussions described ground-based facilities primarily as bunkrooms and the like used by cargo carriers to provide rest during a package sort operation. APA urged the FAA to adopt the detailed recommendations regarding onboard rest facility requirements set out in the appendix included in its comment submission. APA added that it remains concerned that if such specifications are left to Advisory Circulars, and if important details are not followed, in-flight rest could be seriously compromised. Additionally, it noted that several studies have commented on sleep problems caused by low humidity or an improper temperature, but the FAA did not mention these factors nor list any requirement for them. APA suggested that a Class 1 rest facility should account for low humidity and improper temperatures.

Delta expressed concern with the following description of a Class 2 facility that, it said, is contained both in the preface and in Advisory Circular 121–31A: A Class 2 rest facility is ''a seat in an aircraft cabin that allows for a flat or near flat sleeping position (around 80 degrees from the seat's vertical centerline).'' Delta said that many U.S. carriers currently providing on board rest facilities on routes for which Class 2 seats would be used are using a passenger business class type seat, some of which have been slightly modified or enhanced. The commenter further noted that these types of facilities have been in use for many years mostly on flights governed by 14 CFR 121.483. According to Delta, the ARC discussed this issue and acknowledged that these existing seats have worked very well. Delta asserted that most of these seats do not recline to the 80 degree range nor is it known yet if it is feasible to modify them for this capability. Delta believed that business class type seats currently being used are more than adequate to allow for in-flight rest.

UPS and NACA said that the definition of a Class 2 rest facility fails to address rest facilities on aircraft configured without a passenger cabin (*i.e.,* all-cargo aircraft). UPS suggested that the definition should read: ''In an aircraft configured with a passenger cabin, Class 2 rest facility means a seat that allows for a flat or near flat sleeping position and is separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation, and is reasonably free from disturbance by passengers or in-flight flightcrew members. In an aircraft not configured with a passenger cabin, Class 2 rest facility means a seat that allows for a flat or near flat sleeping position.''

In response to these comments, the FAA notes that, as discussed above, the specific requirements for rest facilities were derived from the TNO Report, which analyzed how much rest would be obtained from each rest facility that complied with those requirements. Because various air carriers currently utilize different types of rest facilities, the FAA has determined that adding to the TNO Report's minimum rest-facility requirements would require more air carriers to replace their existing rest facilities without a demonstrated safety benefit to justify this cost. Accordingly, the FAA declines to add additional requirements to the rest-facility requirements set out in the NPRM.

The FAA has also decided not to expand the definition of a Class 2 rest facility beyond the recommendations of the TNO Report. The FAA is open to the possibility of expanding the definition of a Class 2 rest facility if additional data is provided as part of an FRMS, and if expanding this definition would not adversely affect safety. In response

to UPS and NACA's concerns, the FAA has changed the phrase ''passenger cabin'' to ''aircraft cabin'' in the rest-facility definition in order to include rest facilities on aircraft without a passenger cabin.

A number of industry groups and air carriers also objected to the fact that the NPRM did not consider economy-class seats to be a rest facility. These commenters stated that, in their operational experience, economy-class seats provided flightcrew members with significant amounts of restful sleep. The commenters cited a number of studies that, they claimed, indicate that an economy-class seat can provide restful sleep.

The decision to not consider an economy-class seat to be a rest facility was based on the TNO Report, which determined that ''the probability of obtaining recuperative sleep in such a seat would be minimal.'' [19] The TNO Report's determination was based on the following considerations: (1) An economy-class seat does not recline more than 40 degrees ''and has no opportunities for adequate foot and leg rest, which diminishes the probability of recuperative sleep;'' (2) ''space around the seat is not sufficient to create an adequate separation from the passengers (jostle in economy class), or guarantee any privacy;'' and (3) ''a majority of passengers are unable to sleep at all in an economy seat. With the help of sleeping aids or alcohol, some passengers succeed in obtaining some sleep, but they often feel a general malaise after sleeping in a cramped position.'' [20] The FAA agrees with the TNO Report's analysis of economy-class seats, and based on this analysis, which states that economy-class seats provide minimal amounts of recuperative sleep, the FAA has determined that economy-class seats should not be considered a rest facility in this rule.

Delta stated that it is unclear why the FAA is concerned with keeping crew rest facilities out of the coach or economy section of the aircraft. Delta believes that if the seat meets the NPRM definition requirements and the specifications provided in AC 121–3A (now AC 117–1), the geographical location of the rest facility on the aircraft should be immaterial. Delta further noted that it attempted to locate a scientific or an operational basis for the exclusionary requirement and has been unable to find any; therefore, Delta believes this is an unjustified constraint and should be removed.

As discussed in the preceding response, one of the reasons why an economy-class seat does not provide restful sleep is that space around the seat is not sufficient to create an adequate separation from the passengers (economy jostling). Because there are substantially more passengers in the economy section of an aircraft, that section is generally noisier and has more densely-packed people than the other sections of the aircraft. In addition, the FAA notes that economy cabins are generally located behind the aircraft engines, and thus, have to deal with louder engine noise. Due to all of these considerations, locating a rest facility in the economy section would reduce the restfulness of the sleep obtained by a flightcrew member.

Boeing stated it has concerns about the use of the phrase ''sleep opportunity'' in the definition. It noted that it considers a ''sleep opportunity'' to be a period of time during which sleep or rest can feasibly occur. Boeing suggested that the definition be revised to read: ''Rest facility means a bunk, seat, room, or other accommodation that provides a flightcrew member with comfort and quiet so as to maximize sleep and rest within a sleep opportunity period.''

Boeing's suggested definition of rest facilities has already been largely incorporated into the definitions for the Class 1 and 2 rest facilities. The FAA declines to incorporate the suggested definition for a Class 3 rest facility because there is no recommendation in the TNO Report that a Class 3 facility provide sound mitigation.

Boeing also said that it finds the new crew rest definitions to be overly prescriptive, and may drive design and configuration decisions that would run counter to the intent of the proposed rule. For example, all three classes of rest facility are defined by their location: Class 1 must be located ''separate from both the flight deck and passenger cabin;'' Class 2 must be in the passenger cabin; and Class 3 must be in the cabin or flight deck. Boeing notes that while these definitions may encompass most or many of the current airplane configurations, they preclude new and novel designs that might better match the intent of the rule. The commenter recommended that the FAA consider including a provision in the rule that would allow new or alternative designs to be qualified as ''equivalent'' to Class 1, 2, or 3, based on scientific data, such as: ''Rest facilities may be qualified to a higher Class if the quantity of sleep achieved in the facility can be demonstrated to be equal to or greater than the level achieved by that Class.''

Boeing's recommendation for recognizing new rest facilities that provide a sleep opportunity that is equivalent to the rest facilities defined by this rule is addressed by the FRMS and exemption processes. If an air carrier can show that its rest facility provides the same benefits as a Class 1, 2, or 3 rest facility, the FAA may approve an FRMS or an exemption recognizing the rest facility in question as providing the same fatigue mitigation as the rest facilities regulated by this rule.

Atlas said that the proposed rule's definition of rest facility is unworkably vague and leaves a number of uncertainties, which the FAA declined to clarify in response to questions. In particular, NACA and Atlas stated that the definition of Class 1 rest facility needs to be revised, as it is impossible to provide complete ''isolation from noise and disturbance'' on an aircraft. Atlas said that it supports changing the definition of a Class 3 rest facility to include a common coach class seat or non-crew seat on the flight deck of an all-cargo aircraft.

The definition for a Class 1 rest facility does not require that the isolation from noise and disturbance be complete. The FAA will accept a Class 1 rest facility that minimizes noise and disturbance without eliminating it completely, as complete elimination of noise and disturbance onboard an aircraft is virtually impossible. As discussed above, the FAA has declined to accept an economy-class seat as a rest facility because the TNO Report has determined that these types of seat provide a minimal amount of restful sleep.

24. Rest Period

The NPRM defined ''rest period'' as a continuous period determined prospectively during which the flightcrew member is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise. None of the comments raised any significant issues with regard to this definition, and as such, this rule adopts the proposed definition.

25. Scheduled

The NPRM stated that ''scheduled'' means times assigned by a certificate holder when a flightcrew member is required to report for duty.

UPS commented that the definition does not address reschedules that occur during an FDP but only schedules assigned when the flightcrew member

[19] TNO Report at 17.

[20] *Id.* at 18.

reported for duty. UPS suggested revising the definition as follows: ''Scheduled means times assigned by a certificate holder when a flightcrew member is required to report for duty or has been given a re-schedule during the FDP that fully complies with the requirements of this part.''

The FAA agrees with UPS that the proposed definition was ambiguous. The pertinent definition has been amended for clarification purposes.

26. Schedule Reliability

The NPRM defines ''schedule reliability'' to mean the accuracy of the length of a scheduled flight duty period as compared to the actual flight duty period.

FedEx ALPA, ALPA, CAPA, SWAPA, IPA, and Flight Time ARC proposed the following revised definition for schedule reliability: ''Schedule reliability means the accuracy of the length of both a scheduled flight duty period and a scheduled flight segment as compared to the actual flight duty period and segment.'' SWAPA offered the following rationale for the revised definition: ''To achieve schedule reliability, the individual flight segments must be considered. If a given segment within a pairing causes the pairing to exceed the limits, the certificate holder can merely leave the offending segment and change the pairing mix to bring it within limits. The segment would never be corrected. We believe that a scheduling metric must be included in § 117.9. Certificate holders now provide on-time reports to the DOT on an individual flight segment so this should not be a burdensome requirement.''

UPS said that defining schedule reliability as a comparison of an actual FDP to a scheduled FDP has no fatigue or safety implications. It recommended revising the definition as follows to match the preamble description: ''Schedule reliability means the accuracy of the length of a scheduled flight duty period as compared to the maximum FDP listed in either Tables B or C (as applicable).''

As discussed in other parts of this preamble, the FAA has largely removed the proposed schedule-reliability requirements from the final rule. As such, there is no longer a need to define schedule reliability, and that definition has been removed from this rule.

27. Short-Call Reserve

The NPRM stated that ''short-call reserve'' means a period of time in which a flightcrew member does not receive a required rest period following notification by the certificate holder to report for a flight duty period.

NACA said that the only task assigned during short-call reserve is answering the phone. Otherwise, flightcrew members are free to conduct their lives as if they were in a rest period. NACA recommended clarifying the definition by specifying that short-call reserve is not duty.

NACA, Atlas, and NAA asked the FAA to more clearly distinguish short-call reserve from airport/standby reserve. Atlas recommended revising the definition of short-call reserve to mean ''a short, designated period of time (usually three hours or less), either at home or in a hotel, during which a flightcrew member is on reserve call-up for an assignment. Because the flightcrew member has not reported for assignment and rest is available, the time on short-call reserve is not to be considered part of FDP or duty.'' NAA recommended the following revision to the definition to address its concerns: ''Short-call reserve means a period of duty time in which a flightcrew member does not receive a required rest period following notification by the certificate holder to report for a flight duty period, but is provided more than one hour notice of the required reporting time.''

In response to the above comments, the FAA notes that the distinctive feature of short-call reserve is that the flightcrew member on short-call reserve is assigned a reserve availability period. Accordingly, the definition of short-call reserve has been amended to clarify that this definition only applies to a flightcrew member who is assigned to a reserve availability period. As discussed in the pertinent portions of this preamble, the FAA has removed the cumulative-duty-period limits from this rule, in part, in response to concerns raised by commenters about the way that this cumulative limit impacted short-call reserve.

28. Split Duty

The NPRM defines ''split duty'' as a flight duty period that has a scheduled break in duty that is less than a required rest period.

NACA said that the definition of split duty should make clear that the term ''scheduled'' is used only where it is clearly applicable to the situation intended. For non-scheduled operations, NACA believed that a schedule begins when the flightcrew member shows up for an FDP. As such, NACA argued that split-duty credit should be provided for a break in nonscheduled operations that was not foreseen. Additionally, according to NACA, a scheduled split duty break should not be strictly enforced because it may be intended in a nonscheduled FDP at the time the flightcrew member shows up for the FDP but not used for real-time operational reasons.

NACA further said that the fatigue-mitigating rest must be provided in the FDP in which the split-duty credit is actually used. According to NACA, the split-duty rest can only be used if the split duty rest opportunity is actually provided. NACA recommended that the definition be revised as follows, to include the phrase ''an actual'' to address its concerns: ''split duty means a flight duty period that has an actual scheduled break in duty that is less than a required rest period.'' Atlas added that, for clarity and to strengthen split duty as a fatigue mitigation vehicle, the phrase ''a scheduled break'' in the split duty definition should be changed to ''an actual break.''

RAA said that the definition should be revised as follows: ''split duty means a flight duty period that has a scheduled break in duty in a suitable accommodation that is less than a required rest period.''

The FAA agrees with the above commenters that split duty should be based on actual and not just scheduled rest. In light of the commenters' concerns, the split duty section has been amended to clarify that actual split-duty rest may not be less than the amount of split-duty rest that was scheduled. With regard to NACA's concerns about the term ''scheduled,'' as discussed in the split-duty section of this preamble, air carriers are required to schedule split-duty before the beginning of a split-duty FDP so that flightcrew members can accurately self-assess their ability to safely complete the FDP before the FDP begins.

29. Suitable Accommodation

The NPRM defines ''suitable accommodation'' to mean a temperature-controlled facility with sound mitigation that provides a flightcrew member with the ability to sleep in a bed and to control light.

APA, ALPA, CAPA, SWAPA, FedEx ALPA, and Flight Time ARC said that operational experience has demonstrated that a single-occupancy room is required. Otherwise, disruptions such as the other person's reading, watching television, snoring, *etc.,* will disrupt the roommate's rest. To address these concerns, the commenters recommend revising the definition as follows so that it only applies to single occupancy: ''Suitable accommodation means single occupancy facility with sound mitigation that provides a flightcrew member with the ability to

sleep in a bed and to control light.'' APA recommended the following revised definition: ''suitable accommodation means a single-occupancy hotel room or equivalent with a bed, sound mitigation and light and temperature controls that is reasonably free from disturbances.''

In response to the above commenters, the FAA notes that it is unaware of any scientific data showing that single-occupancy rooms are essential for split-duty rest. Until there is more data showing the safety benefits of single-occupancy rooms, the FAA will not impose the cost of obtaining these types of rooms on air carriers. In addition, upon reevaluation of the definition of suitable accommodation, the FAA has determined that a chair that allows for a flat or near flat sleeping position would also provide significant recuperative split-duty rest. Therefore, the definition of suitable accommodation has been amended accordingly.

In addition, as discussed further in the definition of ''rest facilities,'' a suitable accommodation only applies to ground facilities and does not apply to rest facilities onboard aircraft because the use of onboard rest facilities as a suitable accommodation raises concerns regarding flightcrew member safety. The use of onboard rest facilities requires that the aircraft's environmental systems be turned on and that someone monitor the continuing operation of these systems. However, if an onboard rest facility is used as a suitable accommodation while the aircraft is on the ground, there would be no one awake to monitor the continuing safe operation of these environmental systems. Consequently, the use of onboard rest facilities for ground-based sleep poses a safety risk, which is also discussed in the aircraft flight manual, and as such, this rule does not consider onboard rest facilities to be a suitable accommodation.

30. Theater

The NPRM states that ''theater'' means a geographical area where local time at the flightcrew member's flight duty period departure point and arrival point differ by no more than 4 hours.

Flight Time ARC, ALPA, CAPA, IPA, and FedEx ALPA said that the definition should provide for instances where countries such as China have just one time zone. These commenters recommended amending the definition as follows to address such instances: ''Theater means a geographical area where local time at the flightcrew member's flight duty period departure point and arrival point differ by no more than 4 time zones or 60 degrees of longitude.'' APA and SWAPA commented similarly, except they recommended referencing three time zones instead of four so that the definition reads: ''Theater means a geographical area where local time at the flightcrew member's flight duty period departure point and arrival point differ by no more than three time zones or sixty (60) degrees of longitude whichever is most restrictive.''

In support of its recommendation, APA and SWAPA said that they believe the intent of the NPRM is to define a theater as an area four time zones in width. Thus, this would be a difference of three time zones from the flightcrew member's point of origin. APA further commented that it recommended three time zones because while the United States is four time zones wide, the difference between the east and west coast is three hours or three time zones. APA believed that specifying more than this amount would be contrary to most scientific recommendations about theater and acclimation. APA also believed that its revised definition addresses the irregularities of daylight savings time.

Theater is now defined as ''a geographical area where the flightcrew member's flight duty period departure point and arrival point differ by more than 60 degrees longitude.'' The FAA has chosen to eliminate the reference to time zones in this definition because, as the commenters correctly pointed out, time zones do not provide a uniform method of measurement, as they tend to vary in different geographic regions.

31. Unacclimated

The FAA did not propose a definition for this term; however, several commenters recommended that such a definition be included in the final rule.

Flight Time ARC, ALPA, CAPA, SWAPA, IPA, APA and FedEx ALPA said that the FAA should define this term because it is used throughout the NPRM. Each of these commenters (except APA and SWAPA) defined the term as follows: ''A pilot becomes unacclimated if he has traveled to a location more than 4 time zones or more than 60 degrees of longitude from the location at which he was last acclimated.'' APA suggested the same definition except it referenced three time zones instead of four. SWAPA defined the term as follows: ''A pilot becomes unacclimated if he has a legal rest period less than 36 consecutive hours within a 72 hour period at a location more than 60 degrees of longitude from the location at which he last acclimated and has not spent 72 consecutive hours in that theater.''

The commenters believed that defining acclimated in terms of time zones is subject to the whim of government policy. For example, China has one time zone but spans five normal time zones in width. Also, 60 degrees of longitude is equivalent to four normal time zones and should be included as a supplement to the time zone metric. APA added that a location more than three time zones away is in fact in the fourth time zone or further.

In response to the above comments, the FAA notes that this rule defines ''acclimated,'' and under that definition, it lists the conditions that are necessary for a flightcrew member to be considered acclimated. If a flightcrew member does not meet those conditions, it logically follows that the flightcrew member is unacclimated. Accordingly, it is unnecessary to provide a separate definition for ''unacclimated.''

32. Unforeseen Operational Circumstance

The NPRM defines ''unforeseen operational circumstance'' as an unplanned event beyond the control of a certificate holder of insufficient duration to allow for adjustments to schedules, including unforeseen weather, equipment malfunction, or air traffic delay.

Alaska Airlines commented that it disagrees with the following explanation from the FAA's Response to Clarifying Questions document:

> To the extent the NPRM uses the term ''unforeseen circumstances,'' the agency intended the term to have the same meaning as ''unforeseen operational circumstances.'' This term does not differ significantly from the current application of ''beyond the control of the certificate holder'' in § 121.471(g) except that in the NPRM the FAA is clear that even if a situation is beyond the certificate holder's control, it may not extend beyond the general limits if the circumstances were reasonably foreseeable.

The commenter said that it disagrees with the FAA's clarification because there is a major difference between the proposed definition and the current authorization in section 121.471(g). Alaska Airlines stated that the proposed definition was extremely vague because it did not definitively state whether situations such as bad weather would always constitute unforeseen circumstances.

UPS expressed concern that the definition is not used consistently. It notes that in proposed §§ 117.15 and 117.19, the term ''unforeseen circumstance'' is used, but the related wording does not match what is used in

the defined term. To address its concern, UPS suggested maintaining the current definition of ''beyond the control of the certificate holder.''

The FAA agrees with the above commenters that the proposed definition of ''unforeseen operational circumstances'' is unclear. To make the definition more definitive, ''beyond the control of the certificate holder'' was removed from the definition. As such, under the provisions of the final rule, an event constitutes an unforeseen operational circumstance as long as it was unplanned and long enough in duration that the issues associated with that event could not be resolved through minor schedule adjustments. The ''beyond the control of the certificate holder'' safeguard was moved into the reporting requirement for various FDP extensions where it is easier to understand, and it is discussed in more detail in the pertinent portions of this preamble.

Atlas, World Airways, NAA, and NACA said that while the FAA's definition works well for scheduled service, it does not work for nonscheduled service. These commenters noted that nonscheduled service includes significant unforeseen circumstances where customers determine departure airports, arrival airports, and departure times. They also included instances where ground service providers typically give low priority to low frequency ad hoc or non-scheduled operations even though service contracts are assured before aircraft arrival. NAA and NACA added that the proposed definition also does not include other operational irregularities like Minimum Equipment List issues.

To address their concerns, Atlas, World Airways, NAA, and NACA recommended the following revised definition: ''Unforeseen operational circumstance means an unplanned event beyond the control of a certificate holder of insufficient duration to allow for adjustments to schedules, including, but not limited to, un-forecast weather, equipment malfunction, or air traffic delay, charter customers' failure to present passengers and/or cargo at the scheduled time and place; and ground service providers that fail to provide services at the scheduled time.''

In response to the concerns expressed above, the FAA emphasizes that the examples provided in the definition of ''unforeseen operational circumstances'' are not intended to be exclusive. As discussed in the preceding response, an event constitutes an unforeseen operational circumstance as long as it was unplanned and long enough that the issues associated with that event could not be resolved through minor schedule adjustments. This definition includes unplanned events that are specific to supplemental operations.

Alaska Airlines stated that the impact of all weather is unforeseeable, and the duration is always unknown and beyond the control of the certificate holder. It also stated that while many weather events are foreseeable, all are beyond the carriers' control. The commenter suggested eliminating the phrase ''insufficient duration to allow for adjustments to schedules,'' and revising the definition as follows: ''Unforeseen operational circumstance means an event beyond the control of a certificate holder, including unforecast weather, equipment malfunction, or air traffic delay.''

In response to Alaska Airlines, the FAA notes that the phrase ''insufficient duration to allow for adjustments to schedules'' is intended to exclude unplanned events of relatively short duration. For example, the FAA would not consider a five-minute air traffic delay as an unforeseen operational circumstance that justifies the need for a two-hour FDP extension. Because relatively short unplanned events should not be used as a basis for extending an FDP, the FAA has decided to retain ''insufficient duration to allow for adjustments to schedules'' in the definition of unforeseen operational circumstances.

33. Window of Circadian Low

The NPRM defined window of circadian low as a period of maximum sleepiness that occurs between 0200 and 0559 during a physiological night. The FAA did not receive any comments with regard to this definition, and as such, this rule adopts the proposed definition.

C. Fitness for Duty

The goal of proposed section 117.5 was to address situations in which a flightcrew member complies with the other provisions of this proposal, but still shows up for an FDP too fatigued to safely perform his or her assigned flight duties. The proposed section 117.5 would have made fatigue mitigation the ''joint responsibility of the certificate holder and the flightcrew member.'' 75 FR 5587. This section sought to discourage certificate holders from pushing the envelope with fatigue-inducing practices such as ''scheduling right up to the maximum duty limits, assigning flightcrew members who have reached their flight time limits additional flight duties under part 91, and exceeding the maximum flight and duty limits by claiming reasonably foreseeable circumstances are beyond their control.'' *Id.* The proposed section 117.5 also sought to discourage flightcrew-member practices such as ''pick[ing] up extra hours, moonlight[ing], report[ing] to work when sick, commut[ing] irresponsibly, or simply not tak[ing] advantage of the required rest periods.'' *Id.*

To discourage the above practices, the proposed section 117.5 contained a number of restrictions. First, this section would have prohibited flightcrew members from accepting an assignment that would consist of an FDP if they were too tired to fly safely. Second, this section would have prohibited flightcrew members from continuing subsequent flight segments if they were too fatigued to fly safely. Third, the proposed section would have required the certificate holder to assess a flightcrew member's state when he or she reported for work, and, if the flightcrew member was showing signs of fatigue, this section prohibited the certificate holder from allowing that flightcrew member to fly. Fourth, this section would have required flightcrew members to report to management about other flightcrew members who they believed were too tired to fly, and in those instances, it required management to perform an evaluation to determine whether the flightcrew member in question was indeed too tired to fly safely. Fifth, this section would have required certificate holders to develop and implement an internal evaluation and audit program to monitor whether flightcrew members were reporting to work fatigued.

The FAA received numerous comments regarding the proposed section 117.5. For the sake of clarity, the FAA will analyze the substantive issues raised by the comments as those issues pertain to each of the proposed provisions of 117.5.

Proposed § 117.5(a)

Each flightcrew member must report for any flight duty period rested and prepared to perform his or her assigned duties.

Two commenters stressed the importance of pilots being fit for duty. IPA, ALPA, Flight Time ARC, and one other commenter supported the proposed provision, and emphasized that this provision does not create a policing environment in which certificate holders track or monitor flightcrew members' off-duty activities. Fifteen pilots requested the removal of the above provision, arguing that this provision unfairly places the burden of showing up fit for duty solely on the flightcrew member. Multiple commenters also emphasized that

tracking fitness for duty must be the joint responsibility of the certificate holder and the flightcrew member.

Several commenters included suggestions and requests for clarification. NJASAP sought clarification regarding the repercussions of a flightcrew member reporting for duty without being properly rested. NAA and UPS recommended including the statement that flightcrew members need to be prepared to work ''up to the prescribed FDP limits in Tables B or C'' when they begin an FDP.

Section 117.5(a) does not place the burden of showing up fit for duty solely on the flightcrew member. Section 117.5(a), in conjunction with the other provisions of this rule, places a joint responsibility on the certificate holder and each flightcrew member. In order for the flightcrew member to report for an FDP properly rested as required by this section, the certificate holder must provide the flightcrew member with a meaningful rest opportunity that will allow the flightcrew member to get the proper amount of sleep. Likewise, the flightcrew member bears the responsibility of actually sleeping during the rest opportunity provided by the certificate holder instead of using that time to do other things. The consequences of a flightcrew member reporting for duty without being properly rested are addressed by subsections (b) and/or (c) of this section, which prohibit the flightcrew member from beginning or continuing an FDP until he or she is properly rested.

Turning to NAA and UPS' suggestion, the FAA has declined to add the proposed language to subsection 117.5(a). The adopted language of subsection 117.5(a) requires each flightcrew member to report for an FDP ''rested and prepared to perform his or her assigned duties.'' These assigned duties will not always extend to the outer limits prescribed in tables B and C of this rule. Indeed, a certificate holder will find it difficult to comply with the cumulative limits specified in section 117.23 if it always assigns duties at the outer limits of tables B and C. Therefore, the text of this subsection reflects the fact that a flightcrew member needs to be rested and prepared to safely perform the duties that are actually assigned to him or her.

Proposed § 117.5(b)

No certificate holder may assign and no flightcrew member may accept assignment to a flight duty period if the flightcrew member has reported for a flight duty period too fatigued to safely perform his or her assigned duties or if the certificate holder believes that the flightcrew member is too fatigued to safely perform his or her assigned duties.

Peninsula Airways, Pinnacle Airlines, and Southern Air stated that the flightcrew is the best source of determining fatigue, and as such, an air carrier should not be responsible for monitoring fatigue symptoms and assessing fatigue. ATA, CAA, NACA, and a number of other commenters stated that the proposed subsection would be impossible to implement because it places the burden of determining flightcrew member fatigue on air carriers without providing the air carriers with an objective scientific standard for measuring fatigue. ATA and Delta added that when a flightcrew member reports for duty at the beginning of an FDP, it is impossible for an airline to determine whether that flightcrew member will be fatigued toward the end of the FDP.

The NTSB supported enabling flightcrew members to self-report fatigue. NJASAP and Boeing stated that flightcrew members cannot subjectively self-assess whether they are too fatigued to safely carry out their assigned FDPs. NJASAP based its assertion on NASA fatigue research showing that when a person is fatigued, he or she suffers from impaired judgment, and may lack the ability to self-assess his or her level of alertness. Boeing asked the FAA to include non-subjective factors in the fatigue determination requirement, such as time of day and the amount of sleep received in a 24-hour period. Alaska Airlines asked that the phrase ''too fatigued'' be defined more clearly. Boeing was also concerned about flightcrew members who self-assess at the beginning of an FDP improperly assessing their competency to actually complete the FDP.

CAPA, SWAPA, and APA recommended that the FAA add a non-retaliation provision to the proposed subsection in order to prevent disciplinary action against flightcrew members who self-report fatigue. One commenter stated that fatigue reporting should be voluntary. Two commenters argued that the entire crew should be assessed to determine fitness for duty.

The FAA agrees with the commenters who stated that at this time sleep science cannot support a general regulatory standard under which air carriers would be required to monitor the exact level of flightcrew member fatigue. As these commenters correctly pointed out, there does not currently exist an objective standard for determining fatigue levels. As such, requiring air carriers to suspend flightcrew members who they ''believe'' are too fatigued would create a vague and difficult-to-apply regulatory standard. To address this concern, the FAA has eliminated the following provision from the proposed subsection: ''or if the certificate holder believes that the flightcrew member is too fatigued to safely perform his or her assigned duties.'' The remaining language in this subsection places a limited burden on the certificate holder—it prohibits the certificate holder from assigning an FDP to a flightcrew member who has informed the certificate holder that he or she is too fatigued to safely perform his or her assigned duties.

The discussion in the preceding paragraph should not be construed to imply that air carriers cannot identify flightcrew member fatigue. As the proposed AC 120–FIT (finalized as AC 117–3) pointed out, there are objective signs that could be used to identify flightcrew member fatigue. The FAA has simply chosen not to impose a mandatory regulatory requirement because the signs used to identify fatigue cannot be synthesized into a general objective standard. However, the FAA encourages air carriers to voluntarily evaluate flightcrew members who are showing signs of fatigue.

NJASAP and Boeing's concerns about the subjective nature of flightcrew member self-assessment and self-reporting are mitigated by the fact that, pursuant to statutorily-mandated Fatigue Risk Management Plans (FRMP), flightcrew members will undergo fatigue education and training. The information that the flightcrew members learn during this training will increase each flightcrew member's ability to self-assess his or her fatigue levels.

In response to the comment that fatigue reporting should be made voluntary, the FAA has decided to make fatigue reporting mandatory because allowing a flightcrew member to accept an assignment to an FDP when that flightcrew member knows that he or she is too tired to fly safely poses an unacceptable safety risk. However, the FAA cannot, at this time, impose an objective requirement on self-reporting fatigue because, as the other commenters pointed out, there is no objective science-based standard that could be used to measure fatigue levels. The FAA also cannot further define the phrase ''too fatigued'' because defining this phrase requires the creation of an objective fatigue-measurement standard, which does not exist at this time. Instead of creating a single objective fatigue-measurement standard, the above subsection requires each flightcrew member to utilize the information provided during his or her statutorily-mandated fatigue training to self-assess whether he or she feels well-rested enough to safely complete his or

her assigned FDP. The FAA also emphasizes that flightcrew members who feel alert at the beginning of an FDP can immediately terminate the FDP, under subsection (c) of section 117.5, if they feel themselves becoming too fatigued to safely continue their assigned duties.

The FAA also considered the possibility of adding a non-retaliation provision to the above text, but ultimately decided against adding such a provision. As the NPRM pointed out, ''[c]arriers are entitled to investigate the causes for an employee's fatigue.'' 75 FR 55858. ''If a carrier determines that the flightcrew member was responsible for becoming fatigued, it has every right to take steps to address that behavior.'' *Id.* However, if the flightcrew member's fatigue is a result of the carrier not following the regulatory requirements of this rule, the FAA may initiate enforcement action against the carrier.

Turning to concerns about fatigue affecting other air carrier employees, as discussed in the NPRM, the FAA ''has decided to take incremental steps in addressing fatigue.'' 75 FR 55857. In accordance with this decision, the NPRM proposed a flight, duty, and rest rule that was only applicable to flightcrew members. Because the proposed rule was not applicable to other flight crewmembers, such as flight attendants, expanding the rule to those flight crewmembers at this point in time would exceed the scope of this rulemaking. However, the FAA emphasizes that its incremental approach contemplates ''future rulemaking initiatives [that] may address fatigue concerns related to flight attendants, maintenance personnel, and dispatchers.'' *Id.*

Proposed § 117.5(c)

No certificate holder may permit a flightcrew member to continue a flight duty period if the flightcrew member has reported himself too fatigued to continue the assigned flight duty period.

The FAA did not receive any comments that were specific to this subsection. To the extent any of the comments discussed in the preceding subsection are applicable to this subsection, the FAA's response to those comments can be found above.

Proposed § 117.5(d)

Any person who suspects a flightcrew member of being too fatigued to perform his or her duties during flight must immediately report that information to the certificate holder.

ATA, NACA, Delta, Alaska Airlines, and UPS stated that requiring persons to report other people who they believe to be fatigued could result in persons with no training or with ill will making erroneous reports. Multiple commenters emphasized that there is no objective scientific standard to guide personnel about when they need to make a report about another flightcrew member's fatigue. ATA stated that the proposed subsection will shift liability to airlines and impose significant costs in the form of training and retraining tens of thousands of employees.

The FAA agrees with the commenters who stated that, because there is no objective scientific standard to guide personnel about when they need to report other flightcrew members' fatigue, having a mandatory reporting requirement could lead to a multitude of erroneous reports. To address this concern, the FAA has eliminated the above subsection from the final rule. However, even though the FAA has decided not to impose a mandatory reporting requirement, each flightcrew member and covered employee is encouraged to voluntarily inform their employer when they observe a fatigued flightcrew member.

Proposed § 117.5(e)

Once notified of possible flightcrew member fatigue, the certificate holder must evaluate the flightcrew member for fitness for duty. The evaluation must be conducted by a person trained in accordance with § 117.11 and must be completed before the flightcrew member begins or continues an FDP.

Numerous commenters stated that there is no objective scientific standard under which a certificate holder could evaluate a flightcrew member's fitness for duty. The commenters also emphasized that the proposed subsection would create difficulties at remote airports where the certificate holder lacks personnel qualified to conduct a fitness-for-duty evaluation.

The FAA agrees with the commenters that there is no objective scientific standard that an air carrier could use to evaluate a flightcrew member's continued fitness for duty. Accordingly, the FAA has eliminated the above subsection from the final rule.

Proposed § 117.5(f)

As part of the dispatch or flight release, as applicable, each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight.

RAA stated that there was no benefit to requiring each flightcrew member to sign a document stating that he or she is fit for duty. Instead, RAA suggested that the PIC sign the fitness for duty affirmation on behalf of the entire crew. NJASAP asked (1) how the flightcrew members would affirm fitness for duty via the flight release, and (2) whether this requirement would apply to each flight segment.

As the FAA and other commenters pointed out elsewhere, there is no objective scientific test that the PIC could use to measure the fatigue levels of other flightcrew members. Because the PIC has no way to objectively measure other flightcrew members' fatigue, the FAA has determined that each flightcrew member should be required to monitor his or her own fatigue level. As such, each flightcrew member must either make a written affirmation that he/she is fit for duty or terminate the assigned FDP pursuant to subsection 117.5(c).

The requirement that flightcrew members make a written affirmation about their continued fitness for duty applies to each flight segment of the assigned FDP. This is because a flightcrew member who is alert at the beginning of an FDP may become dangerously fatigued once the FDP is underway. Requiring a written fitness for duty affirmation before each flight segment will help ensure that flightcrew members continuously monitor their fatigue levels during the course of an FDP. If, during the course of this monitoring, flightcrew members determine that they cannot safely continue their assigned duties, section 117.5(c) would require them to terminate their assigned FDP prior to the beginning of the next flight segment.

The affirmation on the dispatch or flight release simply needs to state that the undersigned flightcrew members affirm that they are fit for duty. The dispatch or flight release containing the affirmation must be signed by each flightcrew member. This requirement applies to each flight segment and each air carrier should inform its flightcrew members about the significance of signing a fitness-for-duty affirmation.

Proposed § 117.5(g)

Each certificate holder must develop and implement an internal evaluation and audit program approved by the Administrator that will monitor whether flightcrew members are reporting for FDPs fit for duty and correct any deficiencies.

Alaska Airlines stated that the audit requirement is duplicative of the current FRMP process. Delta added that the audit requirement is unclear about how a carrier is supposed to monitor which flightcrew members are showing up fit for duty. ATA asserted that the evaluation and audit requirement is unworkable and impossible to implement because there are no objective scientific standards that a certificate holder could apply to ''monitor'' which flightcrew members

are reporting for an FDP fit for duty. ATA added that the proposed subsection is unclear about what constitutes a ''deficiency'' and how a certificate holder is supposed to correct a ''deficiency.''

The FAA agrees with Delta and ATA that the proposed subsection does not provide a workable standard for the internal evaluation and audit program. Therefore, the FAA has removed the above subsection from the final rule.

D. Fatigue Education and Training

As part of the NPRM, the FAA proposed a fatigue education and training program. Studies have shown that fatigue degrades all aspects of human performance and impedes the exercise of sound judgment.[21] Studies have also shown that, depending on the operating environment, it can be difficult for an individual to recognize that he or she is fatigued and that his or her judgment may be compromised.[22] Given the impact that fatigue has on the performance of flight-related duties, the FAA was concerned that the existing regulatory structure did not properly educate air carrier personnel about fatigue and its impact flight safety.[23]

In order to raise awareness of fatigue-related issues and provide training on fatigue mitigation strategies, the FAA proposed that certain air carrier personnel be required to undergo a fatigue education and training program. First, the proposed fatigue education and training provisions would have required fatigue education and training for each person involved with scheduling aircraft and crews, as well as all flightcrew members and individuals who conduct management oversight over covered personnel. Second, the proposed section would have required an initial 5-hour-long training session for all newly-hired covered employees and a 2-hour-long annual recurrent training session for all other covered employees. Third, this section set out a training curriculum that would have informed covered personnel about fatigue and fatigue countermeasures. Fourth, the proposed fatigue education and training section would have required certificate holders to make changes to their fatigue education and training programs after being notified of the need to do so by the Administrator.

Alaska Airlines suggested that the FAA eliminate the proposed fatigue education and training section and instead rely on the FRMP to provide the necessary fatigue-related information to airline personnel. The FAA agrees with Alaska Airlines that the fatigue education and training program proposed in the NPRM was unnecessarily cumulative.

Part 121 air carriers are currently statutorily-required to annually provide, as part of their FRMP, fatigue-related education and training to increase the trainees' awareness of: (1) Fatigue; (2) ''the effects of fatigue on pilots;'' and (3) ''fatigue countermeasures.'' *See* Public Law 111–216 sec. 212(b)(2)(B). Today's rule adopts the same standard of training as required by the statute. In addition, today's rule adopts a mandatory update of the carriers' education and training program every two years, as part of the update to their FRMP. See Public Law 111–216 sec. 212(b)(4)(A) and (B). Both of these regulatory provisions merely place the existing statutory requirements in the new flight and duty regulations for the ease and convenience of the regulated parties and the FAA.

The statute does not limit the required training to flightcrew members; however, the FRMPs developed by carriers and accepted by the FAA have generally been so limited. Today's rule would require an expansion of the training portion of the FRMPs to all employees responsible for administering the provisions of the new rule, including flightcrew members, dispatchers, individuals directly involved in the scheduling of flightcrew members, individuals directly involved in operational control, and any employee providing direct management oversight of those areas.[24] As discussed below, the FAA continues to believe that personnel responsible for crew scheduling and who play a role in assuring the carrier has operational control need to understand the causes of fatigue as well as the risk that pilot fatigue poses to safe operations.

In response to comments from ATA, Atlas Air and NAA, among others, the FAA has amended the regulatory text to clarify that the fatigue education and training requirement only applies to individuals who are directly involved in flightcrew scheduling and/or operational control and their direct supervisors. The reason for designating such a broad category of covered personnel is to ensure that each individual who has the power to alter a flightcrew member's schedule and/or change the manner in which operational control is exercised is fully aware of how his or her actions will affect flightcrew fatigue and flight safety. Direct management personnel were ultimately included in this category because a manager could order his or her immediate subordinate(s) to change flightcrew member schedules and/or change the manner in which operational control is exercised.

The FAA has decided not to limit the scope of covered personnel to specific enumerated positions because air carriers may employ individuals who exercise significant control over flightcrew scheduling and/or operational control while not occupying one of the positions commonly associated with this type of authority. To ensure that these individuals receive the appropriate fatigue-related education and training, the FAA has retained the requirement that all individuals directly involved in flightcrew scheduling and/or operational control, as well as their direct supervisors, receive the training required under this section.

In response to a question by ATA and Alaska Airlines about whether an air carrier's CEO would be required to undergo fatigue education and training, that CEO would have to undergo fatigue education and training only if he or she is either (1) directly involved in scheduling flightcrew members/exercising operational control, or (2) directly manages someone who is directly involved in scheduling flightcrew members/exercising operational control. Business decisions made by the CEO that only indirectly affect flightcrew scheduling/operational control would not trigger the fatigue education and training requirements of this section.

Alaska Airlines and Delta asserted that they already have fatigue education and training programs. Alaska Airlines asked whether the proposed education and training requirements are

[21] *See, e.g.,* NASA, *Crew Factors in Flight Operations X: Alertness Management in Flight Operations,* at 16 (Apr. 1999), http://human-factors.arc.nasa.gov/zteam/PDF_pubs/ETM.TM8_99rev.pdf (''Sleepiness can degrade essentially every aspect of human performance'').

[22] The NASA fatigue report stated that:

The level of underlying physiological sleepiness can be concealed by an environment in which an individual is physically active, has consumed caffeine, or is engaged in a lively conversation. Whereas these factors may affect the self-reported rating of sleepiness (usually individuals will report greater alertness than is warranted), they do not affect the underlying sleep need expressed by the level of physiological sleepiness.

Id. at 17.

[23] The National Institute for Occupational Safety and Health (NIOSH) provides one example of the unacceptable effects that the current lack of fatigue education has on flight safety. In its comment, NIOSH points out that ''[i]n a survey of pilots working for large operators in Alaska, 22% responded that they made a decision to fly fatigued either weekly or monthly.'' NIOSH Comments to DOT at 2.

[24] Because the statute requires FRMPs to be updated every two years, the FAA anticipates that carriers will simply expand the group of employees subject to training in their next update, scheduled for the summer of 2013.

cumulative with regard to the existing Advanced Qualification Program (AQP).[25] UPS suggested that the FAA rely on the AQP and FRMS to provide fatigue-related information to airline personnel.

Delta requested that it be permitted to include material from its existing training program in the program now required by this section and that it be given credit for the training that its employees have already received. ATA and Alaska Airlines asked whether, in the case of an employee that changes employers, training received from a prior employer would count towards the requirements of this section. These commenters asserted that because the proposed training subject areas are generic and untethered to a specific airline's operations, fatigue training from a prior employer should count toward fulfilling the requirements of this section.

The FAA has determined that the problem with simply relying on AQP and FRMS to carry out the goals of the proposed fatigue education and training section is that both AQP and FRMS are programs that have been designed as alternatives to general requirements imposed on part 121 certificate holders. An air carrier can opt into an AQP program as an alternative to general training requirements that it would otherwise be subject to. *See* 14 CFR 121.901(a). Likewise, under section 117.7(a) of this rule, an air carrier can opt into an FRMS program as an alternative to some of the restrictions imposed by this rule. If the FAA was to rely on AQP and FRMS to take the place of the proposed fatigue education and training section, it would have to change AQP and FRMS to make them mandatory non-alternative programs in order to ensure that air carriers who currently choose not to participate in these programs have properly-trained personnel. This would destroy the alternative nature that is at the core of these programs, and as such, the FAA has decided against this approach.

It should be emphasized, however, that air carriers that had fatigue education and training programs prior to development of their FRMP did not necessarily need to design a new separate program to accommodate the statutory requirement for training and may not need to do so in order to provide education and training to all personnel covered by today's rule. Instead, these carriers may have simply supplemented their existing programs to meet the additional requirements imposed by the statute. For example, an existing fatigue education and training program that was offered as part of an air carrier's AQP could have been amended so that it also met the requirements for an FRMP. That program would then satisfy the statute and the requirement adopted today, as well as the air carrier's AQP-related fatigue education and training obligations.

The FAA agrees with ATA and Alaska Airlines that, when changing employers, covered personnel do not need to repeat non-operation-specific fatigue training that they received from their previous employer if that training meets the requirements of this section.

RAA objected to the proposed method of Administrator-required revisions to the fatigue education and training program. RAA argued that the proposed language ''would open the door for changes directed at an airline's fatigue training program from any number of individuals in [FAA] field offices, without standardization and coordination among those directives and at the risk of creating confusion in the important fatigue risk mitigation programs, messages and strategies that are sought though this regulation.'' RAA suggested that the FAA update fatigue education and training programs by either: (1) Initiating a new rulemaking each time that the programs need to be updated, or (2) using its OpSpec authority under 14 CFR 119.51 to require changes to the fatigue education and training programs.

Since the regulatory requirements adopted today will be administered through the carrier's FRMP, the FAA has adopted the same language as the statute, to wit, the education and training programs must be updated every two years and the FAA will either approve or reject the updates within 12 months of submission. If an update is rejected, the FAA will provide suggested modifications for resubmission of the update.

RAA asked that this section be renamed ''Fatigue Training Program'' because the word ''education'' does not have a well-understood regulatory meaning. NJASAP asked whether distance learning would be permitted to satisfy the fatigue education and training requirements or whether the training must be conducted in person. With regard to NJASAP's question about distance learning, this section does not prohibit distance learning.

The FAA has also decided to retain the word ''education'' in the name of this program. The Merriam-Webster Dictionary defines ''educate'' as: (1) To train by formal instruction and supervised practice, or (2) to provide with information. Because covered personnel will receive formal instruction and be provided with information, the term ''education'' aptly describes the program that is required by this section. To further clarify the goals of this program, the FAA has amended the program's name to the ''Fatigue Education and Awareness Training Program.''

E. Fatigue Risk Management System

The FAA proposed a Fatigue Risk Management System (FRMS) as an alternative regulatory approach to provide a means of monitoring and mitigating fatigue. Under an FRMS, a certificate holder develops processes that manage and mitigate fatigue and meet an equivalent level of safety.

Under proposed § 117.7, an FAA-approved FRMS would include: (1) A fatigue risk management policy; (2) an education and awareness training program; (3) a fatigue reporting system; (4) a system for monitoring flightcrew fatigue; (5) an incident reporting process; and (6) a performance evaluation. In addition, if the Administrator determines that revisions were necessary to a carrier's FRMS, the certificate holder must make the requested changes upon notification.

Most commenters generally supported the concept of an FRMS as a way to manage fatigue and incorporate risk mitigation. Commenters questioned the scope and implementation of FRMS, and whether FRMS is a mature process that can be used effectively. There were few commenters, including Southern Air, who flatly disagreed that the FRMS would be effective.

Commenters were split between two approaches: those who endorsed the concept of FRMS as an alternative approach to the regulatory provisions adopted in this rule; and those who argued that FRMS should not permit certificate holders to deviate from the prescriptive measures, but rather supplement the regulatory requirements.

ATA contended that the FAA should wait for ICAO and international standards because the ambiguities presented in the proposal, as well as possible certificate holder reliance on future FAA determinations, could

[25] AQP is a systematic methodology for developing the content of training programs for air carrier flightcrew members and dispatchers. It replaces programmed hours with proficiency-based training and evaluation derived from a detailed job task analysis that includes crew resource management. The AQP provides an alternate method of qualifying and certifying, if required, pilots, flight engineers, flight attendants, aircraft dispatchers, instructors, evaluators, and other operations personnel subject to the training and evaluation requirements of 14 CFR parts 121 and 135.

competitively disadvantage U.S. carriers. Furthermore, ATA commented that the timing and approval of an FRMS is critical as operators that want to use an FRMS should be able to do so immediately once these rules are in place. UPS argued that the FRMS approval process must be available for least 12 months prior to the implementation of any final rule so that carriers can transition to an FRMS on the day that the requirements are effective. Lynden Air Cargo (Lynden) believed that the FRMP and FRMS processes are redundant and sought further explanation on the necessity of the two processes.

ALPA, IPA, FedEx ALPA, APA, SWAPA and the Flight Time ARC specifically stated that the FRMS needs to be an equal partnership that includes the FAA, the certificate holder, and the pilot body. APA further commented that successful safety programs such as Aviation Safety Action Program (ASAP) [26] and the Flight Operational Quality Assurance (FOQA) [27] are based on a three-way partnership and that FRMS should be treated the same way. ATA, however, argued for a collaborative approach, similar to that of an AQP as a relationship between the carrier and FAA with no other parties involved. The Flight Time ARC argued that pilot representatives must have the right to suspend or terminate participation in the FRMS if they determine that the program's safety purpose is not being met. Multiple entities commented that the FRMS should provide for an open reporting system and non-punitive environment.

A number of commenters questioned the process by which an FRMS is to be amended and which FAA office would provide this oversight. ATA commented that the process of the FRMS should be centrally located at the headquarters level, to provide a uniform approval scheme. RAA, however, interpreted the proposed language as enabling FAA field offices to require certificate holders to makes changes to their FRMS, which creates standardization and coordination problems and possibly confusion. NACA commented that industry must have a clear understanding of the parameters and implementation of FRMS so that competitive advantages cannot be gamed through differing interpretations and implementation of FRMS.

Some commenters, including RAA, believed that the approval of FRMS programs can best be accomplished via the same Operations Specifications authority that was established for each airline's recently filed FRMP under § 119.51. Additionally, RAA stated that generally the process for incorporating new science or advances regarding a program such as FRMS is through Advisory Circular process, where it can be presented as a new best practice. RAA further stated that if the FAA finds that future FRMS changes cannot be accommodated through the Advisory Circular process, then the agency should undertake appropriate rulemaking action and not simply skip the rulemaking process. ATA commented that the proposed regulatory text and draft AC120–103 do not provide the criteria used to approve a submitted FRMS.

APA and ALPA argued that FRMS should be limited to specific certificate holders' data and scheduled city pairs or substantially similar city pairs in terms of FDP length, start time and block, which must be scientifically and operationally validated by all stakeholders. ATA commented that in the NPRM, the FAA appears to suggest that FRMS will disfavor a system-wide approach.

Some commenters sought stronger regulatory text describing the FRMS as active, data-driven and scientifically based.

In response to the above comments, the FAA notes that, as stated in the NPRM, the option of an FRMS provides flexibility for certificate holders to conduct operations using a process that has been approved by the FAA based upon an equivalent level of safety for monitoring and mitigating fatigue for certain identified operations. A certificate holder may decide to use FRMS as a supplement to the requirements adopted in the rule, or it may use the FRMS to meet certain elements of this rule for which the adopted regulatory standard is not optimal.

The FAA has decided to adopt subsections (a) and (b) of the regulatory text as proposed. Subsection (a) provides for a certificate holder to use an approved FRMS as an alternative means of compliance with the flight duty regulations provided that the FRMS provides at least an equivalent level of protection against fatigue-related accidents or incidents. Subsection (b) specifies the components of an FMRS.

The FAA has also decided to extend the voluntary FRMS program to all-cargo operations, which are not required to operate under part 117. Under the FRMS provisions that this rule adds to subparts Q, R, and S of part 121, an all-cargo operator that does not wish to operate under part 117 can nevertheless utilize an FRMS as long as it has the pertinent FAA approval.

The implementing guidance in AC 120–103 details each component, the minimum necessary tools for a complete and effective FRMS, the steps in the FRMS process and the roles and responsibilities of all the participants. An FRMS is a data-driven and scientifically based process that allows for continuous monitoring and management of safety risks associated with fatigue-related error. See AC 120–103 at p.3. Furthermore, an FRMS is an effective mitigation strategy when the organization bases it on valid scientific principles. *Id.*

ICAO requires member states to implement some alternative means of compliance with existing rules and has recently issued Standards and Recommended Practices (SARPs) (effective December 15, 2011) that authorize the use of FRMS. In addition, ICAO, IATA and the International Federation of Air Line Pilots' Association (IFALPA) jointly issued the *Implementation Guide for Operators, 1st Edition,* in July, 2011 to provide carriers with information on implementing an FRMS that is consistent with the ICAO SARPs. The FAA concludes that incorporating an FRMS element is critical to implementing a comprehensive regulatory schedule addressing fatigue. Therefore, this rule incorporates the ability of a certificate holder to use an FRMS. The provisions adopted in this rule are consistent with the ICAO standards and AC 120–103 provides a means by which the operator may comply with these provisions.

The FAA agrees that certificate holders should be able to use an approved FRMS on the effective date of these regulations. The FAA understands that this rule may impact collective bargaining agreements and that time is needed for those changes to be adopted and for certificate holders to submit and receive approval for an FRMS.

[26] The objective of the ASAP is to encourage air carriers and repair station employees to voluntarily report safety information that may be critical to identifying potential precursors to accidents. Under an ASAP, safety issues are resolved though corrective action rather than through punishment or discipline. The ASAP provides for the collection, analysis, and retention of the safety data that is obtained. An ASAP is based on a safety partnership that will include the FAA and the certificate holder, and may include a third party, such as the employee's labor organization.

[27] FOQA is a voluntary safety program that is designed to make commercial aviation safer by allowing commercial airlines and pilots to share de-identified aggregate information with the FAA so that the FAA can monitor national trends in aircraft operations and target its resources to address operational risk issues. The fundamental objective of this new FAA/pilot/carrier partnership is to allow all three parties to identify and reduce or eliminate safety risks, as well as minimize deviations from the regulations.

Therefore, the effective date of this rule is two years after publication date. This should allow adequate time for certificate holders to take the necessary steps prior to the effective date.

The FAA indicated in the NPRM that it anticipates that all the FRMS proposals would be evaluated and approved at headquarters by individuals within Air Transportation Division, Flight Standards Service (AFS–200), who are dedicated to ensuring the continued quality of FRMS. The FAA has determined that the above course of action remains the best process to ensure consistency in the approval process.

The process of evaluating FRMS proposals will generally proceed as follows. The certificate holder will request a meeting with AFS–200 to express its interest in pursuing an FRMS authorization. During this meeting, the certificate holder will outline its plans for an FRMS. AFS–200 will then review the certificate holder's plans for an FRMS. Based upon the requirements for data collection identified by the certificate holder, the certificate holder, working in concert with AFS–200, will identify the applicable limitations from which the certificate holder may need a limited exemption for the sole purpose of data collection.

Once the certificate holder has petitioned for this exemption, AFS–200 will review the petition providing an analysis and developing applicable limitations and conditions for the exemption based upon the certificate holder's data collection plan. If AFS–200 grants the requested exemption, the resulting exemption will be limited in duration and scope for the purpose of the necessary data collection. Once the data has been collected, the data will be submitted to AFS–200 for data validation and evaluation of FRMS policies and procedures and FRMS training requirements. The FAA will publish guidance for review and approval of an FRMS authorization.

A successful FRMS will require a shared responsibility among management and the flightcrew members. In particular, developing mitigation strategies and schedule adjustments is going to be the result of a collaborative management process that includes all the stakeholders. In FAA Advisory Circular No. 120–103 Fatigue Risk Management Systems for Aviation Safety, the FAA identified four basic tools for a complete, workable, effective, and accountable FRMS: (1) Fatigue-related data; (2) fatigue analysis methods; (3) identification and management of fatigue drivers; and (4) application of fatigue mitigation procedures. As flightcrew member input is critical to implementing these tools, the FAA finds that the FRMS philosophy is consistent with the approach of the identified voluntary programs, such as ASAP and FOQA and requires participation by more than just the FAA and the certificate holder.

The FAA does not agree with the Flight Time ARC on imposing a requirement that the FRMS must be terminated or suspended if pilot representatives disagree with the program's purpose. This issue is beyond the scope of the NPRM and pilot representatives independently may raise their issues with the certificate holder.

In managing fatigue risk, the FAA has identified two types of operational evidence that are available to operators. (See AC No. 120–103, para (6)(1) and (2).) The first is monitoring flightcrew member duty schedules, which provides indirect evidence of potential fatigue resulting from inadequate or poorly timed opportunities to sleep. The second type of operational evidence is a non-punitive reporting system. Flightcrew members and other employees will be more encouraged to report subjective fatigue and to request relief from duties as necessary because of chronic fatigue. This reported information can be critical, in conjunction with other information about the conditions that contributed to fatigue, such as the work schedule for the week prior to the report.

The FAA agrees with the commenters and has deleted the proposed paragraph in § 117.7 that would have required a certificate holder to make necessary changes to its FRMS upon notification by the Administrator. Once approved by the FAA, an FRMS will be incorporated into the certificate holder's operations specifications and as contemplated in the NPRM, the FAA will use the process outlined in § 119.51 to amend operations specifications, if changes are necessary to a certificate holder's FRMS.

The FAA agrees with RAA that the use of advisory circulars is appropriate to incorporate new science or advances regarding fatigue as it relates to aviation operations. The regulations adopted in this rulemaking provide the baseline requirements for mitigating fatigue and instituting rest requirements. In the future, if the FAA concludes that the baseline regulations for flight and duty need to be revised, a rulemaking will be initiated. An approved FRMS can take advantage of the gains in science and experience, and if approved by the FAA, can permit certificate holders to exceed the baseline requirements.

The regulatory text provides the mechanism for a certificate holder to use an FRMS and the elements that must be addressed in the FRMS. The implementing guidance addresses how the certificate holder may proceed with documentation and scientific analyses to support its request to deviate from the standards adopted in this rule. The analyses and supporting documentation needed for approval are driven by how the certificate holder intends to use the FRMS and the elements of the flight and duty regulations that the FRMS is intended to supplement.

The FAA clarifies that a certificate holder may use an FRMS for any of the elements of the flight and duty requirements provided under this rule. While the FAA did state in its response to clarifying questions that ''validating an FRMS will be costly and likely to be used only on a 'route specific' basis,'' the agency was not attempting to discourage the use of an FRMS. The FAA encourages the use of an FRMS for certificate holders that can optimize their operations by doing so.

The FAA has updated its guidance in AC No. 120–103, Fatigue Risk Management Systems for Aviation Safety,[28] as a result of this rule. This AC is available at *www.faa.gov.* The FAA fully expects that as the program matures, certain carriers may apply the system to more than specific operations.

In accordance with Public Law 111–216, each part 121 air carrier had to submit to the FAA an FRMP. An FRMP is statutorily required for each part 121 air carrier; whereas, an FRMS is an optional approach to fatigue mitigation. The FRMP outlines the certificate holder's policies and procedures for managing and mitigating day-to-day fatigue from within a regulatory structure. This plan addresses the carrier's flightcrew members. The FRMP consists of three elements with respect to managing pilot fatigue: (1) Current flight time and duty period limitations; (2) a rest scheme that enables the management of fatigue and includes annual training to increase awareness of fatigue and fatigue countermeasures; and (3) the development and use of a methodology that continually assesses the effectiveness of the program.

While this plan is required under the statute, the simple adherence to this plan would not permit for any allowances by the certificate holder outside the adopted flight and duty regulations. An FRMS requires a process to apply to other individuals responsible for flightcrew fatigue other than pilots. As stated previously, there is a variety of positions held by individuals who are responsible for

[28] AC No. 120–103 was issued on August 3, 2010.

addressing fatigue other than pilots. The FRMS requires the process to include all applicable individuals. Furthermore, the FRMS is a means to permit a carrier to meet the requirements of this rule through an alternative measure. The FRMP does not contain adequate elements to allow the FAA to authorize operations or specific operations to be conducted outside the regulatory baseline requirements. Therefore, it is necessary to retain both the FRMS section and the FRMP requirement. These two processes, while sharing similar information, pose two distinct purposes.

F. Flight Duty Period—Unaugmented

One of the regulatory concepts that this rule introduces is the restriction on flightcrew members' maximum FDP. In creating a maximum FDP limit, the FAA attempted to address three concerns: (1) Flightcrew members' circadian rhythms, (2) the amount of time spent at work, and (3) the number of flight segments that a flightcrew member is scheduled to fly during his or her FDP.

First, flightcrew members' circadian rhythms needed to be addressed because studies have shown that flightcrew members who fly during their window of circadian low experience severe performance degradation.[29] Second, the amount of time spent at work needed to be taken into consideration because longer shifts increase fatigue.[30] Third, the number of flight segments in a duty period needed to be taken into account because flying more segments requires more takeoffs and landings, which are both the most task-intensive and the most safety-critical stages of flight. These takeoffs and landings require more time on task, and as pilots generally appear to agree, ''flying several legs during a single duty period could be more fatiguing.'' 75 FR 5858.

To address the concerns listed above, the FAA proposed a table limiting maximum FDP based on the time of day and the number of segments flown during the FDP period. This table was based on the conservative proposal articulated by the Flight Time ARC members representing labor, which in turn was based on the approach used by foreign flight, duty, and rest regulations such as United Kingdom Civil Aviation Authority Publication 371 (CAP–371) and European Aviation Safety Agency (EASA) Notice of Proposed Amendment No. 2009–02A. Under the FAA's proposal an FDP would begin when a flightcrew member is required to report for duty that includes a flight and would end when the aircraft is parked after the last flight and there is no plan for further aircraft movement by the same flightcrew member. Under the proposal, the maximum FDP limit would be reduced: (1) During nighttime hours to account for being awake during the WOCL; (2) when an FDP period consists of multiple flight segments in order to account for the additional time on task; and (3) if a flightcrew member is unacclimated to account for the fact that the unacclimated flightcrew member's circadian rhythm is not in sync with the theater in which he or she is operating.

In filed comments, Drs. Belenky and Graeber stated that ''there is no scientific basis'' for the different FDP limits assigned during different departure times. NACA and Atlas Air also stated that the different FDP limits are too complex and not based on science. Conversely, the National Institute of Occupational Safety and Health (NIOSH), Delta, APA, NJASAP, and three individual commenters endorsed the FAA's approach of varying FDP limits based on the time of day. In support, NIOSH pointed out that studies have shown that long night shifts significantly increase the risk of an accident, as compared to day shifts. Delta stated that its pilot working agreement has used a time-of-day-based approach ''to mitigate fatigue for many years.''

ATA, UPS, and Southwest Airlines also asserted that the reduction of the daily FDP limit to account for additional segments flown during the FDP is not supported by science or any other evidence. ATA argued that anecdotal evidence was not sufficient to support reducing the FDP limit in response to multiple flight segments assigned during the FDP. The SkyWest Airlines Pilot Association also stated that reducing FDP based on the number of flight segments disproportionately affected regional air carriers. Southwest stated that an FDP reduction based on the number of flight segments would also significantly raise the operational costs of its point-to-point business model.

Conversely, RAA stated that ''[i]t is also intuitive that there is likely correlation between the number of flight segments flown during an FDP and the level of fatigue that a flightcrew member will experience, although the exact science for that relationship remains under research.'' FedEx ALPA agreed, stating that ''[w]e also know that additional flight segments significantly increase fatigue and workload.'' APA's comment pointed to a number of scientific studies indicating that flying multiple segments is more fatiguing than flying a single segment. APA argued that Table B should reduce FDPs after the first segment instead of after the first 2–4 segments. The Families of Continental Connection Flight 3407,[31] as well as three individual commenters, also stated that flying additional flight segments, with the corresponding additional takeoffs and landings, adds to fatigue.

ATA, CAA, Capital Cargo, and UPS also argued that some of the limits set out in Table B are unreasonable and overly restrictive. These commenters asserted that the 9-hour limit is unscientific, and significantly lower than the 11-hour nighttime limit established by CAP–371 and EU Rules Subpart Q. UPS emphasized that the 9-hour FDP limit constitutes a 44% reduction from the current regulations. CAA also argued that the Campbell-Hill report indicates that regulation of FDPs under 15 hours is unnecessary because the FAA's regulatory impact analysis indicates that the rate of accidents begins to increase only after 15 hours on duty.

CAA submitted an alternative proposal in which nighttime FDPs are limited to 11 hours. Capital Cargo emphasized that, if this rule built in additional rest requirements, the longer FDPs in the CAA proposal could be implemented without decreasing safety. ATA added that the 9-hour limit for night operations is unreasonable because air carriers that regularly operate nighttime operations provide mitigation to their crews that would allow those crews to exceed the 9-hour limit. Grand Canyon Airlines argued that the 9-hour nighttime limit is unreasonable because flightcrew members who repeatedly fly at night will acclimate to working during their WOCL. SkyWest Airlines asked that the FAA increase the nighttime FDP limit to 14 hours to accommodate overnight continuous duty operations. SkyWest asserted that these types of operations are safe because ''most all [continuous duty operation] pairings provide at least 5 hours of sleep between the periods of 11:30 p.m.–4:30 a.m., spanning a 12–13-hour duty period.''

NIOSH, on the other hand, suggested that the FDP limit for night shifts be decreased to 8 hours. In support of its suggestion, NIOSH pointed out that, in general, studies have shown that ''[r]isk for worker errors and injuries are 15% higher for evening shifts and 28%

[29] *See, e.g.,* NASA, *supra* note 22, at 19–34.

[30] Folkard, *supra* note 15, at 98 (analyzing three studies that reported a trend in risk over successive hours on duty).

[31] Continental Connection Flight 3407 was operated by Colgan Air.

higher for night shifts, as compared to day shift[s].'' NIOSH also stated that ''[w]hen compared with 8-hour shifts, 10-hour shifts increased the risk by 13% and 12-hour shifts increased risk by 28%.'' NIOSH thus concluded that permitting night shifts consisting of long hours could result in risk ranging from 41% to 55%, as compared to 40-hour-week day shifts. NJASAP stated that ''it is prudent to keep the FDP at 9 hours or less when the FDP touches the [window of circadian low].''

A number of individual commenters wrote in suggesting maximum FDP limits ranging from 10 to 16 hours. Washington State University (WSU), at the behest of RAA, examined the parts of the FAA-proposed FDP limits that were different from the FDP limits proposed by the Flight Time ARC members representing industry. As part of its examination, WSU ran the different limits through its own unvalidated model, as well as the SAFTE model. Both the WSU and SAFTE models showed that, in the 0400–1759 timeframe, the FAA-proposed FDP limits were more restrictive than necessary as compared to the industry ARC members' proposed FDP limits. As a result of WSU's findings, RAA suggested: (1) That the Table B limits in the 0400 through 1059 timeframe be adjusted upward to reflect the industry ARC members' proposal, and (2) that the Table B limits for a 5-flight-segment FDP in the 1700 through 2159 timeframe be adjusted downward to reflect the industry ARC members' proposal. Continental also urged the FAA to adopt the industry ARC members' FDP-limit proposal.

In addition, ATA argued that the limits for the 0500–0559 and 0600–0659 blocks are unreasonable. ATA stated that these block times would involve flying mostly during daytime hours, and that they would involve flightcrew members who received most of their sleep during the window of circadian low. ATA emphasized that the costs associated with these limits cannot be justified in light of the fact that there is no scientific basis for the specific daily FDP limits proposed by the FAA.

Conversely, APA argued that the FDP limits for early morning and late evening duty periods should be reduced because flightcrew members on those FDPs will either (1) receive truncated window-of-circadian-low sleep, or (2) have been awake for an extended period of time. NJASAP added that the FDP limits proposed by labor ARC members promote a higher level of safety than the FDP limits proposed by industry ARC members.

In response to the above comments, the FAA finds that, as NIOSH correctly pointed out, studies have shown that human performance varies significantly depending on the time of day. Thus, for example, a NASA report on fatigue in flight operations found that ''75% of night workers experience sleepiness on every shift, and 20% report falling asleep.'' [32] To account for these time-of-day-based variations of human performance, Table B sets FDP limits that are higher for FDPs taking place during peak circadian times and lower for FDPs taking place during the WOCL.

Studies have also shown that after a person works for approximately eight or nine hours, the risk of an accident increases exponentially for each additional hour worked.[33] According to a series of studies that examined the national rate of accidents as a function of the amount of hours worked, the risk of an accident in the 12th hour of a work shift is ''more than double'' the risk of an accident in the 8th hour of a work shift.[34] To account for this data, the flight time limits in Table A restrict a flightcrew member's time on task to either 8 or 9 hours. Because Table A does not allow a flightcrew member's time on task to exceed 9 hours, the maximum FDP limits in Table B permit an FDP that is up to 14 hours, depending on the time of day.

Turning to the complex nature of the FDP limits, the reason for Table B's complexity is to avoid regulating to the lowest common denominator. As an alternative to the different FDP limits listed in Table B, the FAA could have set an across-the-board FDP limit of 9 hours. This limit would have been simple to understand, and it would have provided the necessary protection for multi-segment FDPs that take place during the WOCL. However, this limit also would have effectively reduced flight times, since with a 9-hour FDP, a flightcrew member would never reach a full 9-hour flight time. Such an approach would also fail to recognize the flexibility required for multi-segment operations, which incorporate some ''down-time'' into intermittent time-on-task. Thus, in order to provide air carriers with additional scheduling flexibility and avoid unnecessarily restricting all FDPs to the lowest common denominator, the FAA ultimately decided to utilize the somewhat more complex FDP limits listed in Table B.

Turning to the comments concerning flight segments, each flight segment that is flown by a flightcrew member includes a takeoff and a landing, which are the most task and safety-intensive parts of the flight. A flightcrew member whose FDP consists of a single flight segment only has to perform one takeoff and landing, while a flightcrew member whose FDP consists of six flight segments will have to perform six sets of takeoffs and landings. Because takeoffs and landings are extremely task-intensive, it logically follows that a flightcrew member who has performed six sets of takeoffs and landings will be more fatigued than the flightcrew member who has performed only one takeoff and landing.

While there are no studies measuring the objective performance of pilots who have flown multiple flight segments, there are studies that are based on subjective pilot reporting of fatigue that support a link between fatigue and the number of flight segments. For instance, a 2008 study of fatigue in two-pilot operations found that ''the most important influences on pilot fatigue were the number of sectors and the length of the duty period.'' [35] A 2007 study of pilot fatigue in short-haul operations found that ''[d]uty length and the number of sectors increased fatigue in a linear fashion.'' [36] A 2003 study of perceived fatigue for long and short-haul flights found that ''time pressure, number of legs per day, and consecutive days on duty contributed to increased fatigue.'' [37] Based on these studies, its operational experience, and the logical connection between fatigue and additional flight segments, the FAA has decided to retain, in Table B, the FDP-decreases caused by FDPs with multiple flight segments.

However, while there is a link between FDP and multiple flight segments, it is unclear exactly how much fatigue is caused by each flight segment. As such, Table B does not utilize the method employed by other civil aviation authorities of a linear FDP-limit decrease after the first flight segment. Instead, Table B generally does not decrease FDP limits until a flightcrew member is assigned an FDP that has five or more flight segments.

[32] *See* NASA, *supra* note 22, at 28.

[33] *See, e.g.,* Folkard, *supra* note 15, at 98.

[34] *Id.*

[35] David Powell, *et al., Fatigue in Two-Pilot Operations: Implications for Flight and Duty Time Limitations,* Aviation, Space, and Environmental Medicine, Vol. 79, No. 11, Nov. 2008, at 1047.

[36] David Powell, *et al., Pilot Fatigue in Short-Haul Operations: Effects of Number of Sectors, Duty Length, and Time of Day,* Aviation, Space, and Environmental Medicine, Vol. 78, No. 7, Jul. 2007, at 701.

[37] Samira Bourgeois-Bougrine, *et al., Perceived Fatigue for Short- and Long-Haul Flights: A Survey of 739 Airline Pilots,* Aviation, Space, and Environmental Medicine, Vol. 74, No. 3, Oct. 2003, at 1076.

For several FDP limits that are unusually high and/or that take place during critical circadian times, Table B decreases FDP limits after the first two flight segments to account for the additional fatigue caused by those FDPs.

The FAA understands that an FDP-limit decrease linked to multiple flight segments will disproportionately affect regional air carriers and point-to-point operations, such as the one employed by Southwest. That is why, given the lack of information on the specific amount of fatigue caused by each flight segment, Table B does not follow the approach taken by CAP–371 and the EU OPS subpart Q of reducing FDP after the first flight segment. However, as discussed above, there appears to be a link between fatigue and the number of flight segments, and the flightcrew members working for Southwest and regional carriers are as susceptible to multiple-flight-segment-caused fatigue as other flightcrew members. Because a flight duty and rest rule must take into account the increased fatigue caused by performing multiple takeoffs and landings in a single FDP, Southwest and regional air carriers cannot be exempted from this portion of Table B.

The FAA also agrees with NIOSH that long duty periods that take place during the WOCL substantially increase the risk of an accident. As discussed above, studies have found that human beings who work during the WOCL experience substantial degradation in their ability to safely perform their assigned duties.[38] Studies have also found that each additional hour worked after approximately 8 or 9 hours exponentially increases the risk of an accident.[39] Given this data, the FAA has restricted nighttime FDPs to 9 hours. Because a 9-hour FDP is relatively safe, the FAA has decided not to reduce the nighttime FDP limit any further. However, given the significantly increased risk of an accident posed by long nighttime FDPs, the FAA has also decided not to raise the nighttime FDP limit above 9 hours, even though this means that in many instances the flightcrew member would not reach the allowable flight limit.

In addition, the FAA has determined that there is little evidence that a flightcrew member who repeatedly works on nightshifts will experience substantial safety-relevant changes to his or her circadian rhythm through acclimation. Acclimation consists of changes to a person's circadian rhythm that are made in response to external environmental factors, such as receiving sunlight at a time when one's body is used to experiencing nighttime darkness. While people who continuously work at night may experience some acclimation, that acclimation is neither complete nor long-lasting. The nightshift acclimation also generally disappears after only a few days off.

Similarly, it does not appear likely at this time that a longer rest period would necessarily decrease the substantial risk associated with longer nighttime FDPs. This is because daytime sleep is less restful than nighttime sleep, and the additional rest provided to a nightshift flightcrew member would be taken during the day. However, the FAA is open to the possibility of allowing air carriers to exceed the 9-hour nighttime FDP limit if they can establish through an FRMS that additional daytime sleep would allow their flightcrew members to safely work on longer nighttime FDPs.

The FAA has also considered CAA's argument concerning the Campbell-Hill report's analysis, which states that the accident rate only statistically increases in the 15th hour of duty and beyond. The FAA finds the peer-reviewed studies analyzing the national accident rate to be more persuasive.[40] This is because the national-accident-rate analyses are based on the overall national accident rate, which provides a far larger sample than the number of aviation incidents on which the Campbell-Hill analysis is based. As discussed above, according to the peer-reviewed national-accident-rate studies, the risk of an accident increases exponentially for each hour worked after 8 hours.[41] Even CAA, which submitted the Campbell-Hill report, appears to have implicitly recognized that report's limitations because the alternative proposal that CAA submitted to the FAA did not use the 15-hour FDP limit suggested by Campbell-Hill. Instead, CAA's proposal limited nighttime FDPs to 11 hours and daytime FDPs to 13 hours.[42]

The FAA has also recognized that CAP–371 and EU OPS subpart Q permit higher nighttime FDP limits in some situations. However, these foreign regulators are able to safely allow higher nighttime FDP limits because their operating environment allows them to mitigate the risk associated with nighttime FDPs in other ways. For example, CAP–371 sets general nighttime FDP limits to 11 hours for one-segment nighttime FDPs. However, if a flightcrew member is scheduled for nighttime duty on five consecutive nights, CAP–371 reduces that flightcrew member's nighttime FDP limit to eight hours and imposes substantial additional rest requirements.[43] CAP–371 also imposes a mandatory split duty rest period for flightcrew members who have a nighttime FDP for at least two consecutive nights.[44] This rule, on the other hand, only requires a mid-duty rest period if a flightcrew member has a nighttime FDP for at least four consecutive nights.

Similarly, EU OPS subpart Q also appears to set slightly higher FDP limits for nighttime operations.[45] However, in exchange for these higher limits, Subpart Q limits FDP extensions to 1 hour and requires a minimum of 12 hours' rest between FDP periods.[46] This rule, on the other hand, permits FDP extensions of 2 hours and only requires 10 hours' rest between FDP periods. As these examples illustrate, some of the key provisions of this rule are fundamentally different from the provisions of its international counterparts. These differences are a result of the different operating environments in which these rules regulate, and, by themselves, these differences are insufficient to justify increasing the nighttime limits of Table B.

With regard to comments about nightshift carriers providing mitigation to their crews and continuous duty operations that employ mitigation measures, this rule takes nighttime mitigation into account through the split duty and augmentation credits. If an air carrier employs mitigation measures not addressed by this rule, that air carrier may submit its mitigation measures for FAA evaluation as part of an FRMS program.

The FAA agrees with RAA that SAFTE modeling shows that the proposed FDP limits in the 0400 through 1059 timeframe were excessive and did not increase the degree of safety as compared to the industry-ARC-members' proposal. As such, these limits have been adjusted upward to reflect the industry-ARC-members' suggested FDP limits for these timeframes. The FAA also agrees with ATA that the proposed limits for the 0500–0659 timeframe were set unreasonably low. This is because

[38] *See, e.g.,* NASA, *supra* note 22, at 19–34.

[39] *See* Folkard, *supra* note 15, at 98.

[40] *See id.*

[41] *Id.*

[42] *See* Comments of the Cargo Airline Association, Attachment C at 5 (Nov. 15, 2010).

[43] CAP–371 section 7.3.1.

[44] *Id.* section 7.3.

[45] EU Rules, Subpart Q, OPS 1.1105, sections 1.3 and 1.5.

[46] *Id.* OPS 1.1105, section 2.1; OPS 1.1110, section 1.1.

flightcrew members who fly during those times obtain most of their sleep at night and sleep through most of their WOCL. The upward adjustment that the FAA made in response to RAA's SAFTE modeling increases the FDP limits in this timeframe to a reasonable level, and should address ATA's concerns in this area.

The FAA declines to make a downward adjustment to the five-segment FDP limit in the 1700–2159 timeframe.[47] This is because the flight time limits contained in Table A substantially restrict a flightcrew member's time on task. The time-on-task restriction allows the FAA to safely impose a higher FDP limit for a five-segment FDP in this timeframe. As such, the FAA has not made downward adjustments to this limit.

In addition, the FAA declines APA's suggestion of decreasing FDP limits for early morning and late evening FDPs. The primary time-of-day safety concern on which Table B is based is that flightcrew members who fly during the WOCL suffer a severe degradation of performance. FDPs that begin in the early morning or end late in the evening do not infringe on the WOCL, and thus, do not trigger this concern. Also, as ATA correctly pointed out, flightcrew members assigned to these FDPs are able to obtain most of their sleep at night, and nighttime sleep is the most restful type of sleep. Moreover, as discussed above, RAA's SAFTE modeling showed that a slight upward adjustment to early morning FDPs would not decrease safety. For all these reasons, the FAA has decided not to decrease the FDP limits for FDPs that begin early in the morning or end late in the evening.

UPS stated that because the FDP limits are determined by actual pilot reporting time and not the pilot's scheduled reporting time, air carriers are put in an untenable position of having to track the fluctuating and unpredictable FDPs of individual pilots. The Aerospace Medical Association (AMA) asserted that the different FDP limits were inefficient and would crowd departure times at busy airports. AMA suggested that, instead of changing FDP limits based on reporting time, duty time that takes place during the window of circadian low be counted as time-and-a-half or double time. APA suggested that FDP limits not be associated with specific reporting times, but that they instead be determined through a linear function, which could then be utilized by modern scheduling software. This approach, APA argued, would be better than the FAA-suggested approach in which a 1-minute reporting difference can result in a 1-hour FDP limit difference.

The FAA has determined that an approach to daily FDP limits that requires a linear function or mathematical computations in order to determine the applicable limit would be unduly complex. Under the FAA's approach to Table B, a flightcrew member can determine his or her FDP limit simply by finding the cell in Table B that applies to his or her scheduled FDP. Given that some commenters find even this approach to be unduly complex, the FAA has decided not to add any more complexity to this section.

In response to UPS' concern, the FAA clarifies that FDP limits are determined by scheduled reporting time and not by actual reporting time. Thus, an air carrier can determine a flightcrew member's maximum FDP limit simply by looking at that flightcrew member's schedule. The labels for Tables B and C are amended to clarify that the applicable limits are based on scheduled start time.

The FAA also emphasizes that FDP is defined as beginning at the time that a flightcrew member is ''required'' to report for duty. Thus, if a flightcrew member is late for an FDP, the FDP begins to run at the time that the flightcrew member was scheduled to report for an FDP, not the time that he or she actually reported for the FDP.

Aloha Air Cargo (AAC) recommended upward modifications to the proposed maximum FDPs. At AAC, flightcrews report for night flight duty between 1935 and 2142 local time and end at 0700 each morning. To support flightcrew rest periods occurring at the same time each day, AAC schedules its crews to assure that flightcrews complete their duty by 0700 each morning. This system naturally reduces the FDP for later report times without artificially constricting earlier report times. AAC has evaluated this fatigue mitigation process for over nine months through daily reviews of FRMP crew data, and through selective crew debriefs when FRMP data results flagged elevated fatigue risk. AAC asserted that this method has proven to be more reliable in mitigating fatigue risk within AAC's flight operation than the FAA's current proposal. Therefore, AAC recommended that the FAA consider the table below as an alternative to the proposed table, and that the FAA include ''Time of Completion'' (the end of the FDP) as an additional criterion to support adequate rest in consideration of the flightcrew's circadian rhythms.

Time of start (home base or acclimated)	Maximum flight duty period (hours) for lineholders based on number of flight segments						
	1	2	3	4	5	6	7+
1300–1659	12	12	12	12	11.5	11	10.5
1700–2159	*12	*12	*11	*11	*10.5	*10	*10
2200–2259	*11.5	*11.5	*10.5	*10.5	*10	*10	*9.5
2300–2359	*10.5	*10.5	*10	*10	*9.5	*9.5	*9

* Proposed changes.

The FAA has declined to adopt AAC's suggestion of requiring FDPs to terminate at a certain time. This rule applies to many different air carriers with differing business models, and the approach taken by AAC may not work for an air carrier conducting supplemental operations whose schedule is subject to the demands of its clients. In order to take into account the diverse business models subject to this rule, the FAA has chosen not to include a ''Time of Completion'' as part of its FDP restrictions. The FAA notes that, because Table B sets higher FDP limits for FDPs that begin earlier in the evening, AAC will be able to retain its existing business model if it opts to operate its all-cargo operations under part 117 so long as each scheduled FDP

[47] The FAA has actually increased the FDP limit in question to account for concerns expressed by supplemental carriers. The increases based on supplemental-carrier comments are discussed more fully below.

complies with the limits set out in Table B.

Turning to the specific FDP limits proposed by AAC, the FAA has chosen not to make further upward adjustments to FDPs in the 1700 to 2359 timeframe. FDPs that begin during this timeframe will infringe on the WOCL, and, as discussed above, this infringement raises significant safety concerns.

NACA and a number of other commenters stated that the limits in the proposed Table B unduly focus on domestic scheduled service and do not recognize the needs of non-scheduled operations currently flown under Subpart S. These commenters suggested the following alternative to the FAA-proposed Table B:

Time of start	Acclimated segments			
	1–4	5	6	7+
0000–0559	12	11	10	9
0600–1159	14	13	12	11
1200–1259	13	12	11	10
1300–2359	12	11	10	9

The SkyWest Airlines Pilot Association similarly asked the FAA to increase the FDP limits to avoid disproportionately impacting regional air carrier pilots. SkyWest Airlines stated that the proposed FDP limits would significantly increase its operating expenses, as well as the amount of time that its flightcrew members spend resting away from home. SkyWest, NAA, and Northern Air Cargo suggested that the FAA permit air carriers to schedule FDPs that are either 12 or 14 hours, depending on whether they infringe on the window of circadian low. Allegiant also supported permitting a 14-hour FDP for FDPs that included two or less flight segments.

Conversely, American Airlines and American Eagle Airlines supported the FDP limits set out in Table B. The Families of Continental Connection Flight 3407 also endorsed the maximum 13-hour FDP limit, asserting that it effectively limits the fatigue exposure of regional airline pilots. APA supported the 13-hour maximum FDP limit, citing studies showing a higher likelihood of an accident for each additional hour worked, a conclusion supported by the crash of American Airlines Flight 1420, in which fatigue was a causal factor, and which occurred at the 13:06 point in the flightcrew members' FDP. APA added that duty days that exceed 13 hours could result in flightcrew members being awake for 16 to 17 hours before the beginning of their FDP. APA cited a study showing that a person who has been awake for 17 hours exhibits the same level of performance as a person who is legally drunk. NJASAP expressed concern over increasing the maximum FDP limits, citing a NASA study in which a poll of corporate pilots revealed fatigue concerns for duty time over 8 and 10 hours.

Due to the WOCL considerations discussed above, the FAA has declined the suggestion by air carriers conducting supplemental operations to increase nighttime FDP limits to 12 hours. However, the FAA notes that these concerns do not apply to daytime FDPs that begin in the morning, especially since flightcrew members' time on task is restricted by the flight time limits of Table A. As such, and in response to the comments made by regional carriers, and those conducting only supplemental passenger operations, the FAA has made upward adjustments to some of the FDP limits in Table B.

First, the FAA has increased the one- and two-segment FDP limits in the 0600 to 0659 timeframe from 12 to 13. However, the FAA did not further increase the FDP limits for FDPs with four or less segments in this timeframe to 14 hours (as the supplemental carriers suggested) because an early morning FDP that starts between 0600 and 0659 does not start during peak circadian alertness. As such, without additional FRMS-provided data, the FAA cannot justify permitting longer multi-segment early morning FDPs.

Second, the FAA has increased most of the FDP limits in the 0700 to 1659 timeframe to reflect the limits suggested by NACA's proposal. The reason for this increase is that the FDPs in this timeframe mostly take place during the day and do not infringe on the WOCL. Given the 8 and 9-hour flight time restrictions contained in Table A, the FAA has determined that an increase to the FDP limits in the 0700 to 1659 timeframe would not have a detrimental effect on safety.

It should also be noted that, in the 0700 to 1159 timeframe, the FAA has only allowed one- and two-segment FDPs to go to 14 hours. The reason that the FAA did not follow NACA's suggestion of allowing three- and four-segment FDPs to be 14 hours long is because, as discussed above, additional flight segments increase fatigue. Since a 14-hour FDP is a very long FDP, the FAA has chosen to disallow 14-hour-long multi-segment FDPs without additional data showing that a multi-segment FDP greater than 2 segments of this duration does not decrease safety. The FAA has also chosen not to increase the FDP limit to 14 hours for FDPs that begin after 1159 because this type of increase would result in more FDPs infringing on the WOCL.

Third, the FAA has reevaluated the FDP limits in the 1700 to 2359 timeframe and has made slight upward adjustments to those limits to reflect the safety mitigation provided by the time on task restrictions of Table A. These adjustments are not as high as the supplemental air carriers recommended because FDPs that begin during these times infringe on the WOCL.

The FAA has considered the concern raised by APA, NJASAP, and the Families of Continental Connection Flight 3407 about raising the maximum FDP limit above 13 hours. However, there are a number of reasons why the FAA considers a 14-hour FDP limit for FDPs that begin in the morning to be safe. First, most of the 14-hour FDP would take place during the day after a flightcrew member has had a full night's sleep and thus, this type of FDP does not raise any circadian-rhythm concerns.

Second, the flight time restrictions in Table A have been adjusted downward to 9 hours in order to restrict the amount of time on task that a flightcrew member can be subjected to in a 14-hour FDP. Thus, a flightcrew member in a 14-hour FDP can only be asked to fly an aircraft for 9 of those hours, and the remaining 5 hours must be spent on non-flight activities. The FAA notes that the studies cited by APA in support of a 13-hour-maximum FDP limit did not impose any time-on-task (flight-time) restrictions. The FAA agrees with APA that a 14-hour unaugmented FDP in which a flightcrew member spends the entire 14 hours flying an aircraft would be unsafe, which is why, as discussed more fully

elsewhere, the FAA has decided to retain the flight-time limits set out in Table A.

Finally, the cumulative limits in this rule limit the frequency at which an air carrier can assign long FDPs to its flightcrew members. For example, under the 60-hour weekly FDP limit set out in section 117.23(c)(1), if an air carrier insists on repeatedly assigning a 14-hour FDP to its flightcrew members, those flightcrew members will reach their weekly FDP limit after slightly more than four days of work, and will be unable to accept an FDP for the remainder of the week. Under the 190-hour monthly FDP limit set out in section 117.23(c)(2), if an air carrier regularly assigns 14-hour FDPs, its flightcrew members will reach their monthly limits after slightly over 13 days, and will be unable to accept an FDP for the remainder of the month. Thus, the cumulative FDP limits contained in section 117.23(c) severely limit the frequency at which air carriers can assign the longer FDPs permitted by Table B. Given these numerous safeguards, a 14-hour FDP that consists of only one or two flight segments and takes place during peak circadian times does not raise significant safety concerns.

UPS objected to basing the FDP limits for an unacclimated flightcrew member on the time at that flightcrew member's home base. UPS stated that, under this approach, an unacclimated flightcrew member could be assigned a long FDP during a local night. UPS added that the FAA's acclimation approach does not take into account flightcrew members who change their acclimation status mid-pairing. UPS provided an example of an international flight arriving early and, as a result, the flightcrew on that flight having enough time in a new theater to unexpectedly become acclimated. Because this unexpected acclimation could lead to a reduced FDP limit for the return trip, UPS argued that this type of scenario was ''patently absurd'' because in this scenario a flightcrew that unexpectedly received additional rest would be subjected to a lower FDP limit.

In response, the FAA notes that this section does not determine unacclimated flightcrew members' FDP limits based on local time. This is because the circadian rhythm of flightcrew members who are unacclimated is not synchronized to the theater in which they are operating. Consequently, in order to accurately take into account each flightcrew member's WOCL and general circadian rhythm, this section determines FDP limits based on the local time at the theater with which a flightcrew member's circadian rhythm is synchronized.

With regard to mid-pairing acclimation, the FAA has amended the language in section 117.13(b)(2) to state that an unacclimated flightcrew member's FDP limit is determined by the local time at the theater in which that flightcrew member was last acclimated. The reason for this change is that a flightcrew member may be away from his or her home base for a significant amount of time. If that happens, the flightcrew member's circadian clock will not be synchronized with his or her home base, but rather, with the theater in which he or she was last acclimated.

Turning to UPS' scenario, it is indeed possible that a flightcrew member who arrives in a new theater unexpectedly early will experience unanticipated acclimation. Depending on the local hours, this acclimation may reduce that flightcrew member's FDP limit for the return trip. The reason for this reduction is that the longer amount of time that this flightcrew member will spend in-theater will result in his or her body becoming synchronized with the local time in that theater. Once this synchronization takes place, the flightcrew member will experience the circadian penalties associated with working during non-peak local times. As such, this rule prevents acclimated flightcrew members from accepting longer FDPs during non-peak local times. This result is not ''patently absurd'' because the shorter FDPs that may stem from unexpected acclimation are not a result of longer rest, but rather, a result of more time that a flightcrew member spends in-theater.

NACA and NAA also stated, without elaboration, that when a pilot is unacclimated, the FDP in Table B should be decreased by one hour instead of half an hour. The 30-minute FDP-limit reduction for unacclimated flightcrew members was imposed to account for the additional fatigue experienced by these flightcrew members. However, at this time, the FAA is unaware of any reasons for increasing this reduction to one hour.

NJASAP sought clarification of how acclimation is determined when a flightcrew is made up of flightcrew members who are based in different time zones. In response, the FAA emphasizes that acclimation and FDP limits are specific to each flightcrew member. As such, the unacclimated flightcrew members on a flightcrew are subject to subsection (b) of this section. However, the acclimated flightcrew members on that flightcrew are only subject to subsection (a) of this section.

Drs. Belenky and Graeber criticized the maximum FDP limits for not taking into account onboard rest facilities, which, they argued, allowed a flightcrew to obtain rest onboard the aircraft prior to descent. Boeing also endorsed the concept of controlled napping. AMA stated that controlled in-cockpit naps should be ''vigorously encouraged,'' but should not be allowed to increase the maximum FDP. In response, the FAA notes that there is currently insufficient data about whether a controlled nap could safely be taken by a flightcrew member during an actual unaugmented flight. As such, the FAA is not prepared to regulate for controlled napping as a mitigation measure at this time. Once more data becomes available, the FAA may conduct a rulemaking to add controlled napping to the flight, duty, and rest regulations.

NACA and NAA stated that the time-of-day windows in Tables A and B are not synchronized. However, the reason that Tables A and B are not synchronized is that Table B uses many different FDP limits ranging from 9 to 14 hours, and multiple rows were necessary to clearly distinguish each different set of FDP limits. Table A, on the other hand, only uses 8 and 9 hours as flight time limits, and as such, fewer rows were necessary to clearly convey the flight time limits for each phase of the day.

G. Flight Time Limitations

As discussed above, studies indicate that if a person works for longer than 8 or 9 hours, the risk of an accident increases exponentially for each additional hour worked.[48] Given this data, the FAA was hesitant to eliminate current flight time regulations, which generally limit flightcrew members to 8 hours of flight time regardless of the time of day. Thus, instead of relying solely on FDP limits to regulate acute fatigue, the FAA proposed flight time limits ranging from 8 to 10 hours (depending on the time of day) for unaugmented flights. The FAA also proposed a 16-hour flight time limitation for augmented flights.

ATA, NACA, CAA, RAA, and multiple air carriers objected to including daily flight time limits in this rule. ATA, RAA, International Air Transport Association (IATA), and a number of other commenters argued that the daily flight time limits were arbitrary, not scientifically justified, inconsistent with leading international

[48] *See* Folkard, *supra* note 15, at 98.

standards, operationally unwieldy, unduly burdensome to carriers, and against the public interest.

The above commenters stated that the daily flight time limits were unnecessarily redundant. The commenters emphasized that this rule creates a large number of regulatory limitations, and an additional limitation on flight time limits only unnecessarily adds complexity to this rule. These commenters stated that flight time is considered to be part of an FDP, and thus, flight time is subject to the FDP limits. The commenters emphasized that being awake is what causes fatigue, and this fatigue factor is addressed through FDP limits better than through flight time limits.

ATA stated that this rule also indirectly regulates flight times through mandatory rest periods because a flightcrew member cannot fly an aircraft during a rest period. UPS stated that industry ARC members' acceptance of FDP limits was predicated on the abolition of flight-time limits.

In filed comments Drs. Belenky and Graeber stated that there was no justification for flight time limits in addition to FDP limits apart from regulating for ''differences in workload.'' Drs. Belenky and Graeber stated that the differences in workload are taken into account in the FDP limits through the different limitations on circadian timing and the number of flight segments. As such, Drs. Belenky and Graeber concluded that there was no remaining justification for retaining flight time limits in this rule. ATA, CAA, and a number of air carriers supported Drs. Belenky and Graeber's analysis.

ATA, IATA, CAA, and a number of air carriers noted that other regulatory regimes, such as CAP–371 and EU OPS subpart Q, have largely eliminated the concept of daily flight-time limits. These commenters argued that this demonstrates that a flight-time limit is unnecessary, and that imposing this limit on U.S. carriers will make them less competitive with carriers operating under other regulatory regimes. The commenters asked the FAA to eliminate the daily flight-time limit to make this rule more consistent with the other regulatory regimes.

Conversely, NJASAP, AAC, and a number of labor groups supported the flight time limits. NJASAP emphasized that ''[m]ultiple stressors are present in flight operations such as weather and [air traffic control] that take a cumulative toll on fatigue levels.''

In response, the FAA notes that existing regulations generally limit flight time to 8 hours. Studies have shown that fatigue accumulated by working longer than 8 or 9 hours significantly increases the risk of an accident.[49] Given this data, the FAA needs to ensure that flightcrew members are not permitted to fly an aircraft for longer than 8 or 9 hours. This rule accomplishes this goal by setting flight-time limits at 9 hours for peak circadian times, and 8 hours for all other times.

As the industry commenters correctly pointed out, the FDP limits in this rule also limit flight time. However, abolishing flight-time limits and relying solely on FDP limits to regulate flight time poses a significant problem. This problem arises from the fact that the FDP limits do not differentiate between flight time and non-flight activities. For example, if a flightcrew member spends 5 total hours flying an aircraft and 4 hours sitting in an airport on a layover, that flightcrew member's FDP is 9 hours. However, if another flightcrew member spends 8 total hours flying an aircraft and 1 hour sitting in an airport on a layover, that flightcrew member's FDP is also 9 hours. Thus, the FDP limits would treat the above two flightcrew members identically, even though one of them spent an additional 3 hours engaged in the more fatiguing activity of flying an aircraft.

To resolve the above problem and differentiate between flight time and less-fatiguing non-flight activity conducted on behalf of the certificate holder, the FAA has decided to impose flight-time limits in addition to FDP limits. Setting flight-time limits at 8 or 9 hours ensures that flightcrew members do not fly an aircraft for longer periods of time. This also allows the FAA to provide air carriers with more scheduling flexibility by setting higher FDP limits because with flight-time limits in place, longer FDPs will simply include more non-flight activities instead of longer flight times.

An alternative approach that the FAA considered was eliminating flight-time limits, and setting lower FDP limits to ensure that flightcrew members do not fly an aircraft for longer than 8 or 9 hours. However, the FAA ultimately rejected this approach because it would have resulted in peak-circadian-time FDP limits of approximately 10 or 11 hours, which would have greatly hampered the scheduling flexibility of air carriers. This approach also would have unnecessarily limited non-flight activities, which are generally not as fatiguing as flying an aircraft.

The FAA also considered ATA's comment that rest requirements indirectly limit flight time. However, the problem with relying solely on rest requirements to regulate flight time is the same as the problem with relying solely on FDP limits—neither provision differentiates between non-flight and flight activities. In addition, the proposed rest requirements do not even closely approximate levels that would effectively limit flight time to acceptable levels. As such, the FAA has chosen not to use the rest requirements in this rule as a replacement for flight-time limits.

Turning to UPS' comment that industry ARC members' acceptance of FDP limits was predicated on the abolition of flight-time limits, the FAA notes that the ARC's recommendations are advisory.[50] Thus, for example, in response to industry concerns that were raised in the comments, the FAA has increased some of the FDP limits in Table B beyond the levels suggested by the ARC members. Similarly, to address scientific data showing that the risk of an accident greatly increases after a person has worked for 8 or 9 hours,[51] the FAA has decided to set firm flight-time limits to ensure that flightcrew members do not fly an aircraft for longer than 8 or 9 hours.

As Drs. Belenky and Graeber correctly pointed out, the number of flight segments flown by a flightcrew member is taken into account by the FDP limits. However, while takeoffs and landings associated with multiple flight segments are the most task-intensive portions of a flight, they are not the only task-intensive portion of the flight. When flying an aircraft after takeoff, a flightcrew member must, among other things, keep track of weather patterns, communicate with air traffic control, and respond to unforeseen developments that may arise during the flight. All of these tasks (as well as the constant alertness needed to perform these tasks) increase fatigue, and they are not fully taken into account by the FDP limits, which do not distinguish between a flightcrew member flying an aircraft and a flightcrew member sitting at an airport during a layover. To account for these fatigue-inducing tasks, the FAA has decided to retain flight-time limits in this rule.

Turning to the foreign aviation standards cited by some of the commenters, the FAA notes that the

[49] *See id.;* John A. Caldwell, *Fatigue in aviation,* Travel Medicine and Infectious Disease, 3, at 88–90 (2005).

[50] The FAA also notes that the near-total lack of consensus among ARC members as to the appropriate levels to adopt indicates that the ARC members understood that the FAA could not assume either industry or labor support of all aspects of its proposal.

[51] *See supra* note 50.

Administrative Procedure Act requires the FAA to consider the specific operating environment that it is regulating instead of simply following the foreign standards. The FAA notes that while other regulatory regimes have eliminated daily flight-time limits, the elimination of these limits has resulted in more stringent requirements elsewhere. For example, EU OPS subpart Q sets the maximum FDP limit at 13 hours and requires 12 hours of rest between FDP periods.[52] This rule, on the other hand, sets a maximum FDP limit at 14 hours (for peak circadian times) and requires a rest period of only 10 hours between FDP periods. One of the reasons why some provisions of this rule are less stringent than their EU OPS counterparts is because this rule contains a daily flight-time limit that regulates how long flightcrew members can fly an aircraft.

The FAA also notes that the other regulatory regimes did not completely eliminate flight-time limits. While other regulations do not contain daily flight-time limits, many of them still retain cumulative flight-time limits.[53] These cumulative flight-time limits are significantly lower than the cumulative flight-time limits imposed by this rule.[54]

Over 1,300 individual commenters objected to the proposed 10-hour flight-time limit for the 0700–1259 timeframe. These commenters emphasized that the 10-hour limit constitutes a 25% flight time increase over existing limitations, and as such, will increase fatigue. A number of commenters stated that flight time limitations should not be greater than 8 hours. NJASAP emphasized that existing regulations limit flight time to 8 hours, and, given studies that show the risk of an accident increasing exponentially for each additional hour worked, there is no reason to increase the existing flight-time limits. The Families of Continental Connection Flight 3407, Captain Sullenberger, International Brotherhood of Teamsters (IBT) Local 1224, and multiple labor groups stated that there are no scientific findings supporting an increase in flight time to 10 hours, and that this type of increase should be permitted only if it is supported by FRMS-provided data. NTSB cautioned the FAA about increasing flight-time limits to 10 hours without first studying adverse consequences that could result from this increase. Many of the above commenters recommended reducing the 10-hour flight-time limit to 9 hours, emphasizing that this would still be a 12.5% increase over existing flight-time restrictions. A number of labor groups recommended that the early morning and late evening flight-time limits be reduced to 7 hours ''to reflect the unanimous view of the ARC.''

Conversely, RAA stated that there is no scientific evidence that a small increase in the current flight time limits would adversely affect safety. SkyWest objected to decreasing the flight time limits, arguing that it would impose additional hardships upon air carriers. Delta stated that increasing flight time limits beyond 8 hours is safe because the maximum FDP limits reduce the amount of time that flightcrew members spend at work.

The FAA agrees with the overwhelming number of commenters who stated that a 10-hour flight-time limit is not justified by current scientific data. A series of studies examining the national accident rate has shown that 10 hours spent at work pose a much greater risk of an accident than 8 or 9 hours spent at work.[55] A study examining the number of aviation accidents determined that ''[f]or 10–12 hours of duty time, the proportion of accident pilots with this length of duty period is 1.7 times as large as for all pilots.''[56] Another study found that ''20% of all U.S. commercial aviation mishaps appear to occur at the 10th hour [of pilot duty] and beyond.''[57] Because scientific data shows that the risk of an accident substantially increases when a person's time on task is 10 hours, the FAA has decided to limit flight-time that begins during 0700–1259 to 9 hours.

The FAA has also decided not to reduce any of the proposed 9-hour flight-time limits to 8 hours. The existing regulations impose an across-the-board 8-hour flight-time limit. However, that limit regulates to the lowest common denominator because it does not take into account the fact that people are capable of safely working longer hours during periods of peak circadian alertness. Accordingly, this rule retains the 8-hour flight-time limit for shifts encompassing non-peak circadian times, but increases the flight-time limit to 9 hours for shifts encompassing periods of peak circadian alertness.

Turning to comments about the ARC recommendations, the FAA notes that the ARC's recommendations are advisory and there was no consensus on the hourly limitations with industry generally supporting more generous limits and labor generally supporting more restrictive limits. The existing regulations impose an 8-hour flight-time limit, and the FAA has been administering this limit for over 50 years. Based on its operational experience, the FAA does not believe that an 8-hour flight-time limit for non-peak circadian times is unsafe, especially if that limit is based on actual and not scheduled flight time. As such, the FAA has decided not to decrease any of the flight-time limits below 8 hours.

ATA, IATA, UPS, United, and a number of other air carriers also objected to the lack of an extension for daily flight-time limits. These commenters stated that an inflexible daily flight time limit would severely restrict scheduling because air carriers would have to build in large scheduling buffers to account for unforeseen circumstances occurring after takeoff. IATA emphasized that the prohibition on continuing an FDP that exceeds the flight-time limits may result in flightcrew members unsafely rushing to complete preflight activities to avoid violating the flight time limits. UPS stated that, without a flight time extension, unforeseen delays could leave crews stranded in international destinations. United asserted that an inflexible flight-time limit may, as a result of unforeseen delays, result in cancellations of multi-leg itineraries after some of the legs have been completed. Southwest stated that large numbers of flights would be disrupted by an inflexible flight-time limit because small delays would eventually build up during the day, and these would require air carriers to cancel flights in order to comply with the rigid flight-time limits. The above commenters suggested that flight time limits be based on scheduled and not actual flight time.

Conversely, ALPA, FedEx ALPA, IBT Local 1224, and a number of other labor groups supported the lack of a flight-time extension, arguing that air carriers currently do not build sufficient buffers into their schedules. These commenters stated that air carriers currently schedule flights up to the last permissible limit of flight time, even when the air carriers know that a high possibility of a delay makes their schedules unrealistically optimistic. These commenters emphasized that an inflexible flight-time limit was particularly important in this case because this rule does not have a compensatory rest provision.

[52] EU Rules, Subpart Q, OPS 1.1100, section 1.3 and OPS 1.1110, section 1.1.

[53] *See, e.g.,* EU Rules, Subpart Q, OPS 1.1100, section 1.2.

[54] *See id.;* CAP–371, section 21.1.

[55] *See* Folkard, *supra* note 15, at 98.

[56] Jeffrey H. Goode, *Are pilots at risk of accidents due to fatigue?,* Journal of Safety Research, 34, at 311 (2003).

[57] Caldwell, *supra* note 50, at 90.

The flight-time limits apply to actual and not scheduled flight time because actual flight time is what impacts safety. Flight-time calculations are based on the en route times contained in the flight plan. Once a flightcrew member flies an aircraft for a certain amount of time, that flightcrew member's risk of being involved in an accident increases exponentially for each additional hour worked.[58] This exponential increase in risk is based on actual hours worked and not the hours that someone was scheduled to work. Thus, a flightcrew member who flies an aircraft for 11 hours does not have a lower risk of an accident simply because he or she was scheduled to fly the aircraft for only 9 hours. In order to account for the factors that control accident risk, the flight-time limits in this rule are based on actual and not scheduled flight time.

Turning to the concerns expressed by industry commenters, the FAA notes that air carriers currently utilize schedules that are unrealistically optimistic and do not include sufficient buffers for unforeseen circumstances. It has been the FAA's experience that an air carrier subject to an 8-hour scheduled flight-time limit will sometimes schedule a flight that, on paper, lasts 7 hours and 59 minutes when the air carrier knows that the actual flight will likely take well over 8 hours to complete. Because many current air carrier schedules are unreasonably optimistic, air carriers can prevent many of the pre-takeoff situations listed in their comments simply by incorporating reasonable buffers for unforeseen circumstances into their scheduling practices.

However, in evaluating the above comments, the FAA noted that different considerations apply after an aircraft has taken off. If unexpected circumstances significantly increase the length of the flight while an aircraft is in the air, the only way for a flightcrew member to comply with the flight-time limits imposed by this rule would be to conduct an emergency landing instead of piloting the aircraft to its intended destination. Because this is not the preferred method of complying with flight-time limits, the FAA has amended this section to provide a post-takeoff flight-time extension to the extent necessary to safely land the aircraft at its intended destination airport[59] if unexpected circumstances occur after takeoff. To monitor the use of this post-takeoff extension, the FAA is requiring certificate holders to report their flightcrew members who exceed the flight-time limits and describe the circumstances surrounding the exceeded flight time.[60]

The FAA emphasizes that this extension only applies to unexpected circumstances that arise after takeoff. If a flightcrew member becomes aware, before takeoff, that he or she will exceed the applicable flight-time limit, that flightcrew member may not take off, and must return to the gate.

One hundred sixty-seven individual commenters opposed increasing the augmented flight-time limit to 16 hours. AMA supported the 16-hour flight-time limit for augmented operations, stating that peer review studies and SAFTE/FAST modeling show that after 16 hours on duty crew performance falls off dramatically.[61] NJASAP stated that flight-time limitations are necessary for augmented operations, and that use of an FRMS to extend maximum flight times should be subject to high levels of scrutiny and oversight. Conversely, Continental asked that augmented FDPs be allowed to exceed the 16-hour flight-time limit. Atlas Air stated that, for some augmented FDPs, the 16-hour FDP flight time would exceed the applicable FDP limit.

Continental submitted supplemental comments objecting to the 16-hour flight time limit for augmented flights. Continental objected to this limitation on ultra long range (ULR) flights, and it submitted new studies, which it claimed showed that ULR flights do not pose additional fatigue risk. ALPA submitted a response to Continental's supplemental submission, pointing out that ''[f]lights over 16 hours block conducted by U.S. carriers are rare so there is only limited actual experience with the fatigue factors of such flights.'' ALPA also asserted that the studies submitted by Continental were actually a single study (based on the composition of the subjects), and that the study suffered from a number of biases, including an age, gender, and volunteer participation. ALPA also stated that the sample size that the study examined was too small to provide meaningful data for a system-wide standard.

A 16-hour flight-time limit was proposed for augmented operations because, for a four-pilot crew working in shifts of two, a 16-hour flight time supposes that each pilot will be at the duty station for about 8 hours. In response to industry comments, the FAA has concluded that a slight increase of the limit for four-pilot augmented FDPs would not impact safety. As such, the augmented flight-time limit for a four-pilot crew has been increased to 17 hours. Seventeen hours was selected as the limit because each member of a four-pilot crew that works on a 17-hour flight in shifts of two would only be at the duty station for 8.5 hours. Eight and a half hours of manning the duty station falls within the 8-to-9-hour flight-time range that, as discussed above, the FAA considers to be safe.

Upon reevaluation of the augmented flight-time limit, the FAA has also concluded that a separate flight-time limit is necessary for a three-pilot flightcrew. This is because if a three-pilot crew works in shifts of two on a 17-hour flight, each flightcrew member will be at the duty station for approximately 11 hours. Because this falls outside the 8-to-9-hour flight-time range that the FAA considers to be safe, the flight-time limit for three-pilot augmented flightcrews has been reduced to 13 hours. A 13-hour flight-time limit ensures that each member of a 3-pilot crew only needs to be at the duty station for approximately 8.5 hours.

Turning to Continental's supplemental comment, as ALPA correctly pointed out, there are currently very few flights that exceed 16 hours of flight time, and as such, there is little data concerning the safety issues presented by these very long flights. The studies put forward by Continental are not particularly helpful in this regard because they analyzed a small sample of flights. Due to the small size of this sample, the data provided by these studies is not sufficient to justify further increasing the augmented flight-time limits. However, the FAA may relax the limits for ULR flights (through either an FRMS or a future rulemaking) if more data is provided showing that longer flight times do not adversely affect safety.

H. Flight Duty Period—Augmented

In formulating this rule, the FAA considered the fact that augmentation is currently used by air carriers to mitigate fatigue. An augmented flight is staffed by more than the minimally-required number of flightcrew members, and the extra staffing allows the flightcrew members to work in shifts and rest during the flight. Existing regulations allow higher flight times for augmented flights, and this allows air carriers to conduct longer flights.

[58] *See* Folkard, *supra* note 15, at 98.

[59] If the destination is unavailable, the aircraft would land at the designated alternate airport.

[60] The ''FDP Extensions'' section contains a more detailed discussion of the reporting requirements that apply to flightcrew members who exceed the applicable FDP and/or flight-time limits.

[61] Citing Colquhoun, P., *Psychological and Psychophysiological Aspects of Work and Fatigue,* Activitas Nervosa Superior, 1976, 18:257–263.

Augmentation has three significant impacts on flight safety. First, flightcrew members on augmented flights work in shifts, and therefore, do not spend as much time engaged in the fatiguing task of piloting an aircraft. For example, on a 17-hour flight staffed by 4 flightcrew members working in shifts of 2, each flightcrew member will only be on the flight deck for approximately 8.5 hours. This is in contrast to unaugmented flights, in which each flightcrew member must be on the flight deck for the full length of the flight.

Second, when they are not on the flight deck, flightcrew members on an augmented flight have access to an onboard rest facility, which will allow them to sleep during the flight. This in-flight rest will, depending on the quality of the rest facility, help mitigate against some of the fatigue accumulated during the FDP. Third, the redundancy created by augmentation allows fatigued flightcrew members to ask for assistance from other flightcrew members. Thus, if a flightcrew member discovers, mid-flight, that he or she is unduly fatigued, that flightcrew member can ask one of the extra flightcrew members to take over his or her duties and safely land the aircraft at its intended destination.

Because augmentation significantly mitigates fatigue, the FAA has found that longer FDPs can safely be permitted for augmented flights. In determining the specific FDP limits, the FAA took note of the recommendations set out in the TNO Report. The TNO Report was created to provide science-based advice on the maximum permissible extension of the FDP related to the quality of the available onboard rest facility and the augmentation of the flightcrew with one or two pilots. The TNO Report recommended that: (1) An aircraft with a Class I rest facility provide an FDP extension equal to 75% of the duration of the rest period; (2) an aircraft with a Class II rest facility provide an FDP extension equal to 56% of the duration of the rest period; and (3) an aircraft with a Class III rest facility provide an FDP extension equal to 25% of the duration of the rest period.[62]

Based on the TNO Report, the FAA proposed Table C, which set out separate FDP limits for augmented flights. These limits were generally based on the unaugmented FDP limits, and then were increased in accordance with the available rest facility by the TNO–Report-recommended extension. If a flightcrew member was unacclimated, the augmented FDP limits were reduced by 30 minutes, and the applicable FDP limits were determined based on the local time at the flightcrew member's home base. Because augmented FDPs were generally intended to be used for longer flights, the proposal limited augmented FDPs to three flight segments. In addition, to ensure sufficient in-flight rest for augmented flightcrew members, the proposal would have required: (1) Two consecutive hours of in-flight rest during the last flight segment for flightcrew members who would be manipulating the controls during landing, and (2) ninety consecutive minutes of in-flight rest for all other flightcrew members. The proposal also would have required that at all times during flight, at least one flightcrew member with a PIC type-rating must be alert and on the flight deck.

Drs. Belenky and Graeber stated that ''there is no scientific basis for the different hours assigned as limits for different departure times.'' They asserted that ''[u]npublished alertness modeling data provided to the ATA (and presumably the ARC) demonstrated that a rest provided during the second half of a long-haul flight equal to (flight time minus two hours) divided by two produced roughly equivalent alertness regardless of time of departure.'' Drs. Belenky and Graeber concluded that, based on the modeling data, there is no need to differentiate between the different departure times so long as in-flight rest was provided during the second half of the flight. ATA added that augmented flights departing later in the day would provide in-flight sleep during the WOCL for flightcrew members who would be manipulating the controls during landing, and thus, that in-flight sleep would be more restful.

NACA and a number of air carriers who conduct supplemental operations submitted the following FDP limits as an alternative to the proposed Table C.

NACA PROPOSED TABLE C TO PART 117—FLIGHT DUTY PERIOD: AUGMENTED OPERATIONS

Acclimated	Maximum flight duty period (hours) based on rest facility and number of pilots					
	Class 1 rest facility		Class 2 rest facility		Class 3 rest facility	
	3 Pilots	4 Pilots	3 Pilots	4 Pilots	3 Pilots	4 Pilots
0000–2359	18	20	17	19	16	18

The above proposal for augmented operations extends the flight duty period limits for augmented operations by four to six hours, depending on the number of pilots used and the type of rest facilities available onboard the aircraft. Because in-flight rest is provided through onboard rest facilities, the proposal made by the air carriers who conduct supplemental operations does not decrease a flightcrew member's flight duty period limits when the pilot flies during the WOCL.

UPS suggested that ''four person augmented operations with a class one rest facility should provide a 16-hour FDP regardless of report time.'' UPS asserted that this type of augmented FDP limit ''would allow U.S.-based certificate holders to compete globally without an FRMS.''

Atlas Air asserted that most of its augmented flights have FDPs lasting between 18 and 20 hours, many of which are single-stop and nonstop flights in support of AMC missions. Atlas Air stated that it would not be able to keep operating those flights under the limits set out in Table C. As such, Atlas Air suggested that the FAA increase the FDP limits in Table C.

Conversely, ALPA, IPA, CAPA, Flight Time ARC, and other labor groups submitted the following alternative to the proposed Table C, arguing that, in applying the TNO Report, Table C utilized a rounding process ''that doesn't adequately represent the actual calculations used in the ARC process.''

[62] TNO Report at 19.

REVISED TABLE C—FLIGHT DUTY PERIOD: ACCLIMATED AUGMENTED FLIGHTCREW

Time of start (local time)	Maximum flight duty period (hours) based on rest facility and number of pilots					
	Class 1 rest facility		Class 2 rest facility		Class 3 rest facility	
	3 Pilots	4 Pilots	3 Pilots	4 Pilots	3 Pilots	4 Pilots
0000–0559	13:50	16:05	12:55	14:20	11:45	12:15
0600–0659	15:10	17:40	14:10	15:40	12:55	13:25
0700–1259	16	18	15:25	17:05	14	14:30
1300–1659	15:10	17:40	14:10	15:40	12:50	13:20
1700–2359	13:50	16:05	12:55	14:20	11:45	12:15

APA criticized the proposed Table C for not applying the TNO Report's rationale to the unaugmented FDP limits for the late evening and early morning hours. APA's alternative to Table C had significantly lower FDP limits for the late evening and early morning hours. APA also stated that the TNO Report has not been validated in the aviation context, and that consequently, the FAA should proceed more cautiously in increasing the existing limits for augmented operations.

Table C differentiates between different FDP departure times because of the type of rest that flightcrew members receive prior to beginning the FDP. As discussed in more detail below, section 117.25 requires a 10-hour rest period with a minimum 8-hour sleep opportunity immediately before a flightcrew member begins his or her FDP. Based on this requirement, flightcrew members who begin an FDP in the morning will obtain their pre-FDP sleep at night during the WOCL. Conversely, flightcrew members who begin an FDP later in the day or at night will obtain their pre-FDP sleep during the daytime. Because sleep taken at night during the WOCL is more restful than sleep taken during the day,[63] flightcrew members who begin their FDP in the morning will be better rested than flightcrew members who begin their FDP later in the day or at night. Accordingly, Table C sets higher FDP limits for augmented FDPs that begin in the morning and lower FDP limits for augmented FDPs that begin later in the day or at night.

In selecting the specific timeframes for Table C, the FAA was primarily concerned with the quality of pre-FDP rest obtained by the flightcrew members, and not with whether those flightcrew members' FDP required them to work during the WOCL. This is because the redundancy inherent in an augmented operation ensures that there are extra flightcrew member(s) available to take over the duties of someone who becomes unduly fatigued during the WOCL. Since the timeframes of the unaugmented FDP limits in Table B were calibrated to ensure that unaugmented flightcrew members with long FDPs do not work during the WOCL, the specific timeframes of the augmented FDP limits in Table C (which address a different concern) are different from the timeframes of Table B.

The FAA has considered Drs. Belenky and Graeber's suggestion that, based on unpublished modeling data studying long-haul flights, there is no need to differentiate between the different departure times so long as in-flight rest was provided during the second half of the flight. The FAA notes that the modeling data cited by Drs. Belenky and Graeber relies on in-flight rest being provided during the second half of the flight. However, in order to provide operational flexibility to air carriers, this rule requires that only the pilot who will be flying the aircraft during landing receive his or her in-flight rest during the second half of the FDP. As such, the FAA is unpersuaded by the fatigue modeling data cited by Drs. Belenky and Graeber because that data does not take into account the fatigue levels of all the members of the augmented flightcrew.

The FAA has also considered ATA's argument that augmented flights leaving later in the day would provide in-flight sleep during the WOCL for flightcrew members who would be manipulating the controls during landing. However, there is little real-world data concerning the extent of the mitigation provided by in-flight sleep during the WOCL. The FAA is particularly concerned about whether the benefits of in-flight WOCL sleep would outweigh the less-restful daytime sleep obtained by flightcrew members who begin FDPs later in the day. Consequently, the FAA has decided to retain the shorter FDP limits for augmented FDPs that begin later in the day, but this position may change if FRMS-provided real-world data addresses the FAA's concerns in this area.

The FAA has decided to retain the departure-time-based approach in Table C because, as discussed above, that approach is necessary to take into account the quality of rest that a flightcrew member receives immediately prior to beginning an FDP. However, in response to industry concerns, the FAA has determined that a slight upward adjustment to the FDP limits in Table C would not have an adverse effect on safety. This is because, as discussed in the Flight Time section, the flight-time limits for augmented operations effectively limit the time that each augmented flightcrew member spends flying an aircraft to approximately 8.5 hours. Accordingly, the FAA has increased each of the FDP limits in Table C by one hour. The FAA is also open to the possibility of further increasing the FDP limits in Table C if additional data is provided, as part of the FRMS process, showing that longer augmented FDPs do not have an adverse impact on safety.

The FAA has considered the labor groups' concern that the specific limits in Table C somewhat deviate from the TNO Report's rationale. However, the FAA believes that these deviations are justified in light of the fact that the flight-time limits in this rule curtail the time that flightcrew members spend engaged in the fatiguing activity of piloting an aircraft. As discussed above, each of the augmented flight-time limits has been calibrated so that each flightcrew member only spends approximately 8.5 hours flying the aircraft. Because the remainder of each flightcrew member's FDP is spent either resting or doing less-fatiguing activities, the FAA has determined that an upward deviation from the TNO Report is justified in this case.

The FAA agrees that the TNO Report has not yet been validated in the aviation context. However, the TNO

[63] *See, e.g.,* James K. Wyatt, *et al., Circadian temperature and melatonin rhythms, sleep, and neurobehavioral function in humans living on a 20-h day,* Am. J. Physiol. 277 (4), at R1160–62 (1999); Torbjorn Akerstedt & Mats Gillberg, *The Circadian Variation of Experimentally Displaced Sleep,* Sleep, Vol. 4, No. 2, at 159–69 (1981).

Report contains the latest scientific evaluation of onboard rest facilities, and the report also contains the most comprehensive evaluation of these facilities. Consequently, the FAA finds the TNO Report to be persuasive in this case.

The FAA understands the need to proceed cautiously with setting the limits for augmented operations. That is why this rule largely retains the existing flight-time limits for augmented flights. These flight-time limits curtail the time-on-task of each flightcrew member and serve as a crucial mitigation measure against fatigue. The specific flight-time limits are set at levels with which the FAA has significant operational experience and that have scientifically been shown to be relatively safe.[64] As discussed above, given the time-on-task mitigation provided by the flight-time limits, the FAA has determined that a slight increase to the proposed FDP limits would have no adverse impact on flight safety.

NACA stated that the proposed language was unclear as to whether the two-hour in-flight rest opportunity was required for each augmented flight segment. Drs. Belenky and Graeber criticized the proposed requirement that flightcrew members manipulating the controls during landing receive their in-flight rest during the last flight segment. They stated that the last flight segment on an augmented flight may be short, in which case the flightcrew members manipulating controls during landing would not receive their in-flight sleep during the most optimal FDP time. As an alternative, Drs. Belenky and Graeber suggested allowing in-flight rest to occur before the last flight segment, but then limiting the flightcrew members to only conducting one more landing after their in-flight rest. ATA and CAA endorsed Drs. Belenky and Graeber's analysis.

ATA, CAA, Atlas Air, Delta, and UPS criticized the proposed requirement that in-flight rest for flightcrew members manipulating the controls occur during the last flight segment. ATA stated that to accommodate this requirement, the last flight segment would have to be at least 3.5 hours long, which would not accommodate some current operations. ATA and UPS added that turbulence or other factors affecting the final leg—such as a diversion—may also prevent the landing pilot from receiving a full two hours' rest on the last leg. UPS stated that a customer in a supplemental operation may require a short final segment. Atlas Air stated that some of its customers request short flight segments as the last segments of an FDP.

ATA and Delta recommended that the in-flight rest for flightcrew members landing the aircraft be permitted to take place during the last six hours of the FDP. UPS recommended that the required in-flight rest for the landing flightcrew take place during the last eight hours of the FDP.

NACA recommended doing away with the two-hour and ninety-minute in-flight rest requirements altogether, arguing that shorter amounts of rest were also recuperative. In support, NACA cited a NASA study showing that a short in-cockpit nap mitigated short-term fatigue. NACA also stated that NTSB records do not reveal a single accident involving an augmented crew in which fatigue was a factor.

Drs. Belenky and Graeber also argued that the 2-hour required in-flight rest opportunity could be broken up and distributed over multiple flight segments. In support, they cited the 2003 Bonnet and Arand clinical review for the proposition that rest of less than 2 hours would be beneficial in the augmentation context. They also cited a NASA study showing that short cockpit naps could be used to mitigate short-term fatigue.

ALPA, IPA, CAPA, Flight Time ARC, and other labor groups suggested that the 2-hour sleep requirement for the flightcrew member manipulating the controls during landing apply to both flightcrew members who will be occupying a control seat during landing. These commenters emphasized that both flightcrew members manipulate the controls, *i.e.,* the non-flying pilot normally operates flaps, landing gear and radios and performs monitoring so he must be equally alert. The commenters added that there are also other high workload circumstances where both pilots are manipulating the controls such as when a landing must be rejected or decision-making is required for diversion. Conversely, Delta stated that only one flightcrew member actually manipulates the controls to land an aircraft while the other flightcrew member at the control station performs secondary functions.

NJASAP asked whether the 2-hour and 90-minute rest requirements for augmented operations were cumulative. Specifically, NJASAP asked whether flightcrew members who will be manipulating the controls during landing are required to have in-flight rest totaling 3.5 hours. NJASAP and North American Airlines also asked whether there was a minimum length for a flight segment in an augmented FDP. NJASAP suggested that each flight segment in an augmented FDP should be long enough for a flightcrew member to gain sufficient amounts of in-flight rest. North American Airlines suggested that subsections 117.19(c) and (d) be eliminated in order to prevent confusion. NJASAP also asked when the flightcrew member who will land the plane should end his or her in-flight nap and take his or her space at the flight controls.

The reason that the proposed rule required two hours of rest during the last flight segment for flightcrew members who will be manipulating the aircraft controls during landing was to ensure that the landing flightcrew members obtain fatigue-mitigating rest close to the time that they begin the landing. However, the FAA agrees with commenters that requiring the rest to take place during the last flight segment unnecessarily limits existing operations, some of which use a short flight segment as the last segment of an augmented operation. As such, this section has been amended to require that the flightcrew member who will be flying the aircraft during landing receive his or her in-flight rest during the second half of the FDP. This amendment allows air carriers flexibility with scheduling flight segments for augmented FDPs while at the same time ensuring that the landing flightcrew member receives at least two hours of continuous rest close to the time that he or she will be landing the aircraft.

The FAA has also considered the NASA study cited by NACA. This NASA study showed that a 40-minute sleep opportunity resulting in a 20–26 minute nap created a relative improvement in alertness for the 90-minute period following the nap. However, this study does not justify eliminating the requirement that the flightcrew member who will be flying the aircraft during landing receive two hours of rest during the second half of the FDP. This is because the NASA study did not establish whether the 20–26 minute nap mitigated fatigue for more than 90 minutes after the nap was taken. As such, if a landing flightcrew member takes his or her in-flight rest at the beginning of the FDP, it is unclear from the results of the NASA study whether the benefits from the short in-flight nap would still exist at the end of that flightcrew member's FDP when that flightcrew member is engaged in the safety and work-intensive task of landing an aircraft.

The FAA also notes that it is retaining the requirement that the 2 hours of rest be continuous. This is because there is an overhead cost associated with getting

[64] *See* Folkard, *supra* note 15, at 98 (showing an exponential increase in accident risk after the 8th and 9th hour of work).

to sleep, and a person waking up from a nap also does not immediately become fully alert upon waking up. Consequently, if a person takes only one continuous nap, the going-to-sleep/waking-up costs only have to be paid once. However, if a single nap is split up into multiple naps, those costs have to be paid each time a nap is taken. Because augmented flights will only be in the air for a limited amount of time, the additional going-to-sleep/waking-up costs would reduce the total amount of time available for recuperative in-flight rest. As such, to maximize the amount of recuperative rest obtained by augmented flightcrew members and minimize the costs associated with going to sleep and waking up, the minimum in-flight rest requirements in this section require that the rest be continuous.

As Delta pointed out, only one flightcrew member actually flies the aircraft during landing while the other flightcrew member on the flight deck performs secondary functions. While these secondary functions are important, they are not as task-intensive as landing an airplane. Therefore, this section only requires two hours of in-flight rest in the second half of the FDP for the pilot who will be flying the aircraft during landing. The regulatory language in this section has been clarified accordingly. The regulatory language in this section has also been amended to clarify that the ninety-consecutive-minute rest opportunity is only necessary for the pilot who will be performing the secondary monitoring duties on the flight deck during landing.

In addition, the 2-hour and 90-minute rest requirements for augmented operations are not cumulative. If a flightcrew member only performs secondary monitoring duties during landing, that flightcrew member is only required to have a minimum of 90-minutes of in-flight rest. If a flightcrew member flies an aircraft during landing, that flightcrew member is required to have a minimum of 2 hours of in-flight rest in the second half of his or her FDP.

Based on these rest requirements, at least one flight segment in the second half of the augmented FDP of a flightcrew member who will be flying an aircraft during landing must exceed two hours so that the flightcrew member can obtain his or her minimum continuous in-flight rest. This flight segment need not be the last flight segment of the FDP. The two hours of in-flight rest simply needs to take place in the second half of the FDP of the flightcrew member who will be flying the aircraft during landing.

The flightcrew member who will be flying the aircraft during landing should end his or her in-flight nap and assume control of his or her duty station before the top of the descent, which is about 45 minutes to 1 hour before landing. This is will allow the flightcrew member to take into account all of the surrounding circumstances before reducing the aircraft's altitude in preparation for an eventual landing.

NJASAP asked whether certificate holders could use augmentation on domestic operations. ATA asked that the FAA ''affirmatively state in the rule text that for the purposes of operational reliability and flexibility, carriers can augment any flight that would not otherwise require and/or qualify for augmentation.'' A number of air carriers stated that augmentation on domestic flights should be permitted because the science underlying domestic and international augmentation is the same.

Conversely, three individual commenters, APA, NJASAP, and Captain Sullenberger stated that augmented flightcrews should be used only on international and not domestic flights. NJASAP emphasized that ''[a]ugmented crews were intended to allow an aircraft to fly to a destination which was too far to reach under the flight rules governing two flightcrew members, meaning a flight route too long over a geographical region which prohibited the allowing of changing crews.'' APA stated that domestic flights are capable of replacing the crew between flight segments, and thus, they do not have the same need for augmentation as international flights.

This rule permits augmentation on domestic and international FDPs that meet the criteria set out in section 117.17. This is because, as the air carriers correctly pointed out, augmentation mitigates fatigue the same way on both domestic and international flights. Therefore, augmentation allows air carriers to safely schedule longer FDPs both domestically and internationally.

While augmentation was originally designed to allow air carriers to schedule longer flights, that is not a sufficient justification to limit augmentation to international flights. As an initial matter, some domestic flights are longer than some international flights. Thus, for example, a flight from Atlanta to Mexico City, which is an international flight, is shorter than a flight from Washington DC to Los Angeles, which is a domestic flight. In addition, augmentation provides safety benefits on shorter flights as well as longer flights. A flightcrew member working on an 8-hour augmented FDP will be able to obtain in-flight rest and all of the other benefits of augmentation. Consequently, the augmented flightcrew member will have a less-fatiguing FDP than an unaugmented flightcrew member working on a similar FDP.

The FAA has determined that the ability to replace flightcrew members between flight segments is also not a sufficient justification for prohibiting augmentation on domestic flights. Many of the air carriers that fly international routes have a substantial international presence and could easily replace flightcrew members between flight segments on international flights. Conversely, some air carriers do not have a substantial presence at some of the smaller domestic airports, and these air carriers may find it more difficult to replace flightcrew members between domestic flight segments involving those airports.

Because augmentation provides the same amount of fatigue mitigation on both domestic and international flights and because there is no meaningful justification for prohibiting augmentation on domestic flights, this rule permits augmentation on both domestic and international flights.

NACA, CAA, North American Airlines, and Capital Cargo objected to augmented flights being limited to three flight segments. Capital Cargo stated that multi-segment augmented FDPs are safe because flightcrew members on those FDPs receive in-flight rest. Conversely, ALPA, IPA, CAPA, NJASAP, Flight Time ARC, and other labor groups stated that the TNO report was only intended for one-segment flights, and as such, multi-leg augmentation should only be allowed when no crew change is possible. ALPA emphasized that ''[m]ulti-leg augmentation should never be allowed solely for the purpose of extending a flight duty period.'' NJASAP asserted that multi-leg domestic augmentation is counter to the intent behind augmentation. IPA, CAPA, and IBT Local 1224 suggested that only two flight segments should be permissible for an augmented FDP.

As discussed in the Unaugmented FDP section, there is evidence that additional flight segments increase flightcrew member fatigue. Because existing augmented operations generally do not exceed three flight segments, the FAA has little data concerning the effects of FDPs consisting of more than three flight segments on the fatigue levels of augmented flightcrew members. As such, the FAA has decided to permit augmented FDPs of three flight segments or less, which are used in existing operations, and to require

additional FRMS-provided data from air carriers wishing to exceed the three-flight-segment limit.

ATA and UPS stated that the FDP limits for four-pilot crews are counter to science because they permit longer FDPs for pilots who land during the WOCL than for pilots who do not land during the WOCL. As such, ATA suggested that the limits for four-pilot operations ''be adjusted to uniformly reflect the maximum values currently set forth in the table.'' ATA stated that such an adjustment would make this rule similar to other standards like CAP–371.

Conversely, IPA, CAPA, IBT Local 1224, and Flight Time ARC suggested that the FAA not allow four-pilot augmentation for flights with a Class 3 rest facility. These commenters argued that a Class 3 rest facility only provides marginal rest, and placing more pilots on board with this type of facility would just increase the likelihood that there will be more fatigued pilots.

As discussed above, the specific timeframes in Table C were calibrated to take into account only the quality of rest received by each flightcrew member before beginning an FDP. Because of the redundancy safeguards inherent in augmentation, the FAA determined that there was less of a safety concern associated with augmented pilots flying an aircraft during the WOCL.

Turning to the distinction between three- and four-pilot flightcrews, the reason that Table C sets lower limits for three-pilot crews than it does for four-pilot crews is that, in a three-pilot crew, each pilot spends more time piloting the aircraft. Take, for example, a 12-hour flight segment. Because two pilots are required to operate the aircraft, pilots in a four-pilot crew working in shifts of two would each spend 6 hours on the flight deck. Conversely, pilots in a three-pilot crew working in shifts of two would each spend 8 hours on the flight deck. Because pilots working as part of a three-pilot crew spend more time piloting the aircraft and less time resting, Table C sets lower FDP limits for three-pilot crews.

The FAA understands that this distinction makes this rule different from other regulatory rules, such as CAP–371, which do not distinguish between three and four-pilot augmented crews. Here, while CAP–371 does not distinguish between three- and four-pilot crews, it addresses the safety issues associated with augmentation flights in other ways by requiring three hours of in-flight rest during augmented operations[65] instead of the ninety minutes to two hours required by this rule.

The FAA has also decided to retain augmentation for four-pilot flightcrews on flights with a Class 3 rest facility because, even though these flights have a lower-quality rest facility, each of the pilots in the four-pilot flightcrew will spend less time piloting the aircraft than the pilots in a three-pilot flightcrew. Consequently, the members of the four-pilot augmented flightcrew will accumulate less fatigue during their flight than the members of the three-pilot augmented flightcrew. The lower quality of the Class 3 rest facility is instead reflected in the relatively-low FDP limits associated with that facility.

APA suggested amending subsection 117.19(e) to add a requirement that the PIC-type-rated flightcrew member be fully qualified and landing current. APA stated that the flightcrew member(s) flying the aircraft need to be capable of performing a landing because unforeseen circumstances during the flight may require the flightcrew member(s) in the cockpit to make a prompt emergency landing. NJASAP stated that all flightcrew members in an augmented operation should be type-rated.

In response to APA's concern, the language in section 117.19(e) has been amended to require that at least one flightcrew member on the flight deck must be qualified in accordance with 14 CFR 121.543(b)(3)(i). A flightcrew member qualified in accordance with section 121.543(b)(3)(i) will be both fully qualified and landing current.

Turning to NJASAP's concern about all flightcrew members being type-rated, the FAA notes that the existing regulations require the second in command (SIC) to be type-rated for all non-domestic flights. *See* 14 CFR 61.55(a)(3). While these regulations do not require the SIC to be type-rated on domestic flights, the FAA has determined that 14 CFR 121.543(b)(3)(i) requires a high degree of training, and having at least one flightcrew member on the flight deck who is qualified in accordance with this section provides sufficient staffing to safely operate the aircraft and respond to any unforeseen circumstances that may arise.

Boeing asked for clarification about whether FDPs consisting of a mix of augmented and unaugmented flights are subject to Table B or Table C.

The FDP and flight-time limits for augmented operations were set at higher levels based on the assumption that flightcrew members working on those operations would obtain the fatigue-mitigation benefits of augmentation. A flightcrew member who works on an unaugmented flight does not obtain these fatigue-mitigation benefits. As such, if an FDP contains both an augmented and an unaugmented flight, that FDP is subject to the unaugmented FDP-limits set out in Table B and the unaugmented flight-time limits set out in Table A.

IPA, CAPA, Flight Time ARC, and other labor groups also suggested that, to ensure proper in-flight rest, this rule require a Class I rest facility for any augmented FDP in which the flight time exceeds 12 hours.

As discussed in the Flight Time section, the flight-time limits for augmented FDPs have been set so that each flightcrew member flies the aircraft for approximately 8.5 hours. Because this flight-time restriction limits each flightcrew member's time-on-task to acceptable levels, there is no need to impose minimum rest facility limitations for sub-categories of augmented operations.

NACA suggested, without elaboration, that the FDP limits for unacclimated flightcrew members be decreased by 1 hour instead of the proposed 30 minutes. ALPA, IPA, IBT Local 1224, and Flight Time ARC argued that the proposed 30-minute reduction for unacclimated flightcrew members is too simplistic. As an alternative, these commenters proposed a Table D, containing FDP limits for unacclimated flightcrew members, which decreased unacclimated flightcrew member FDP times by values ranging from 20 to 50 minutes (depending on the time of day).

The 30-minute FDP-limit reduction for unacclimated flightcrew members was imposed to account for the additional fatigue experienced by these flightcrew members. The FAA is unaware of NACA's reasons for suggesting that the FDP reduction for unacclimated flightcrew members be increased to one hour.

Turning to the suggestions put forward by the labor groups, because the unacclimation reductions set out in the commenters' suggested Table D are relatively close to the FAA-proposed 30-minute reduction, the FAA has decided to retain the 30-minute reduction for the sake of regulatory simplicity. As commenters have pointed out elsewhere, parts of this rule are somewhat complex, and as such, the FAA has determined that adding another table solely for unacclimated flightcrew members would add undue complexity to this section.

ALPA, IPA, CAPA, and IBT Local 1224 recommended changing the label in Table C for ''Time of start'' to clarify that the timeframes specified in Table C are based on home base or acclimated

[65] CAP–371, section 15.3.

time. The FAA adopts this recommendation, and the label in Table C has been changed to clarify that the ''Time of start'' in Table C is based on home base or acclimated time.

I. Schedule Reliability

In the NPRM, the FAA proposed reporting requirements to facilitate realistic scheduling by the certificate holders. Proposed § 117.9, Schedule reliability, would have required the certificate holder to adjust (1) its system-wide FDPs if the total actual FDPs exceed the scheduled FDPs more than 5% of the time; and (2) a specific FDP if it is shown to exceed the schedule 20% of the time. The certificate holder would have to adjust its schedule within 60 days for any FDP(s) that exceeded the above-stated percentages.

The FAA also proposed that each certificate holder must submit a report every two months detailing the adjustments described above (the overall schedule reliability and pairing-specific reliability) and include the following information: (1) The carrier's entire crew pairing schedule for the previous two-month period, including the total anticipated length of each set of crew pairings and the regulatory limit on such pairings; (2) the actual length of each set of crew pairing; and (3) the percentage of discrepancy between the two data sets on both a cumulative, and pairing-specific basis.

No commenters supported the requirements for schedule reliability as proposed. Many commenters argued that the proposed requirements were unnecessary as they would not do anything to mitigate transient, cumulative or chronic fatigue. Others believe that the proposal was seriously flawed and that adjustments to the proposed requirements were necessary.

Pinnacle, RAA, ATA, Alaska Airlines, Continental, American Airlines and Capital Cargo International Airlines (CCIA) contend that the schedule reliability section should be deleted entirely. They argue that these proposed requirements do not advance fatigue mitigation and present unjustified costs and burdens on certificate holders. RAA stated that the NPRM did not set forth any discussion of a statistical basis/reality check for the selection of a 5% FDP ''late arrival'' rate for the certificate holder's operation as a whole, or as the trigger point for when the certificated holder must take action to ''adjust.'' Similarly, RAA states that there is no discussion to support the selection of 20% for a particular FDP that actually exceeds the scheduled time. RAA also commented that there is limited likelihood that the flightcrew member FDP reliability analysis under the NPRM would differ greatly from an airline's on-time arrival statistics even if the proposed regulatory text is changed to reflect a 14-minute ''grace period'' that DOT affords in its on-time reporting statistics.

Several commenters, including CAA, UPS, World Airways, American Eagle Airlines (AE), and ALPA, also objected to the schedule reliability provision and suggested that instead of reporting when actual FDPs exceed scheduled FDPs, certificate holders should only report FDPs that exceed the maximum limits under the regulations. They argue that as long as the flightcrew member's FDP falls within the parameters of the maximum permitted under the regulation, the certificate holder must have the operational flexibility to manage schedules as they determine. The commenters also stated that a reporting schedule which requires a certificate holder to detail occurrences that exceed the maximum limits provided in Tables B and C, and to adjust the schedules that consistently exceed those limits, is reasonable.

Commenters also submitted varying timeframes for the reporting. Some recommended 30 days, other suggested quarterly reporting. There were various comments on how long the certificate holder had before taking corrective action.

IBT Local 1224, IPA, the Flight Time ARC, and FedEx ALPA recommended that the schedule reliability section extend to flight segments as well.

IATA commented that any reporting requirements should relate directly to fatigue and not to compliance with published schedules. UPS stated that the reporting requirements should be seasonal to comport with schedule changes. UPS also argued that schedule reliability would actually increase fatigue because certificate holders would pad time spent on the ground during multi-segment FDPs, which would result in a corresponding reduction in restorative layover rest. UPS and NAC contend that this section addresses domestic scheduled operations and is illogical for others, particularly non-scheduled operators.

The FAA acknowledged in its Response to Clarifying Questions that the NPRM discussion on schedule reliability was confusing. The FAA also acknowledges that this section as proposed raised considerable concerns from virtually all commenters. After reviewing the comments, the FAA concludes that the concept of schedule reliability is better addressed by the simpler approach recommended by the group of commenters, who suggested reporting actual FDPs that exceed the maximum regulatory limits. This is discussed in detail in the next section.

J. Extensions of Flight Duty Periods

The FAA agrees that FDPs that exceed the maximum FDP permitted under Table B are the ones that directly impact fatigue and must be addressed by the certificate holder. Adopting this approach will make the certificate holder accountable for scheduling FDPs realistically. While a certificate holder can schedule FDPs up to the maximum presented in the tables, it is unlikely to do so because of the cumulative limits (weekly and monthly) on FDPs. This approach addresses a significant portion of the commenters' concerns. Proposed section 117.9 is deleted and the FAA adopts new § 117.19 Flight Duty Period Extensions.

This new section sets forth the limits on the number of FDPs that may be extended; implements reporting requirements for affected FDPs; and distinguishes extended FDPs due to unforeseen operational circumstances that occur prior to takeoff from those unforeseen operational circumstances that arise after takeoff. For purposes of maintaining all requirements for FDP extensions in a single section, the provisions permitting extended FDPs based on unforeseen circumstances proposed in § 117.15 FDP: Un-augmented operations and § 117.19 FDPs: Augmented flightcrew are now codified in § 117.19.

RAA, Southwest Airlines and World Airways object to the pilot in command being the decision maker on whether to extend an FDP. Continental, however, recommends that the decision to extend a FDP should be a joint decision between the pilot in command and the certificate holder. APA commented that the decision of the pilot in command is crucial in determining whether to extend an FDP.

The FAA agrees that the responsibility for determining whether a FDP needs to be extended rests jointly with the pilot in command and the certificate holder. This ensures that one party is not taking excessive action over another party, and that proper considerations are factored into the decision-making. Paragraph (a)(1) of this section permits, under unforeseen operational circumstances that arise prior to takeoff, the pilot in command and the certificate holder to extend the maximum FDP permitted in Table B and C by two hours.

In the NPRM, the FAA specifically questioned whether the proposed two-hour extension was appropriate.

SWAPA opposed any extension beyond the free 30-minute extension and argued that this would invite abuse. NJASAP supported one extension up to two hours, as long as compensatory rest was applied following the extension. IPA supported the two-hour extension as reasonable but opposed the three-hour extension for augmented operations because greater rest opportunities are not provided for those operations. APA supports the limits on extensions and argues in particular that the 12–13 hour period repeatedly has been cited as a point at which accident risk increased dramatically. APA also commented, however, that there are certain circumstances in which a FDP can be safely extended beyond the two hours contemplated in the NPRM. NACA supports a two-hour extension for both augmented and unaugmented operations.

The FAA agrees that an extension must be based on exceeding the maximum FDP permitted in Table B and C. It is unreasonable to limit extensions on FDPs that are less than what the certificate holder can legally schedule. In addition, there is a 30-minute buffer attached to each FDP to provide certificate holders with the flexibility to deal with delays that are minimal. However, after the 30-minute buffer, any time that the FDP needs to be extended, the requirements and limitations of this section apply. In the NPRM, the FAA proposed a two-hour FDP extension for unaugmented operations due to unforeseen operational circumstances and a three-hour FDP extension for augmented operations under similar situations. The FAA concludes that there is no distinction for FDP extension based on whether the operation is conducted by an augmented flightcrew. The difference between unaugmented and augmented operations is accounted for by the different hourly limits in Tables B and C. The hourly limits of Table C were developed in consideration of the extra flightcrew members and rest facilities onboard the aircraft for augmented operations that mitigate the effects of longer FDPs. There is no further mitigation that warrants an additional hour for an augmented crew. The FAA believes that two hours is reasonable and provides the certificate holder with sufficient operational flexibility to adjust for unforeseen operational circumstances. If an unforeseen operational circumstance occurs prior to takeoff, a flightcrew member cannot accept an extended FDP if the completion of that FDP would be more than two hours beyond the maximum FDP permitted under Table B and C for that flight.

In the NPRM, the FAA proposed that an extension of an FDP of more than 30 minutes may occur only once in any 168 consecutive hour period. Hawaiian Airlines, IPA, IBT Local 24, Alaska Airlines, Aloha Air Cargo and several individual commenters supported this proposal. One commenter suggested one extension in a 90-day period. SkyWest, United, FedEx Express, ATA, and CAA argue that one extension is too restrictive and does not allow any operational flexibility to recover a schedule after an event. SkyWest suggested up to three extensions per week with a total of eight per month. ATA argued that the once in 168 hours rule ''is another example of a requirement made unnecessary by other mitigations in the NPRM and which will result in unjustified adverse impacts.'' ATA and CAA support the statements submitted from Drs. Belenky and Graeber, who commented ''that clear science supports that extended work hours over consecutive work days reduces the opportunity for sleep, which can lead to cumulative sleep loss and fatigue. However, there is no scientific evidence to support limiting an extension to once in seven days.'' They further comment that extensions should not be permitted on consecutive days in order to allow for sleep recovery and no more than two extensions within any one 168 hour period. RAA, Continental, North American, Southwest and two individuals requested two extensions in a 168 consecutive hour period. Kalitta Air and North American Airlines support two non-consecutive extensions in 168 hours, with a 16-hour rest period required if the second extension actually occurs.

Lynden Air Cargo, Southern Air and NACA object to the limit on extensions. They argue that supplemental, non-scheduled operations require flexibility to schedule their operations that is not needed by the domestic scheduled community because they have crews on reserve for use in lieu of extensions.

The FAA is not persuaded by the commenters that more than one extension is appropriate within a 168 consecutive hour period with one exception, discussed below. The elements of the flight and duty requirements adopted in this rule present a conceptual departure from the practice that is in place under the current rules. Under the current rules, extensions of flight time were largely unrestricted as long as a flightcrew member was provided with compensatory rest. Under the requirements adopted today, rest is prospective and the certificate holders are responsible to schedule realistically so that FDP limits can be maintained. Permitting weekly extensions simply encourages scheduling to those extensions and undercuts the purposes of strict limits on FDPs.

In response to the commenters however, the FAA is modifying one aspect of this requirement. In the NPRM, an FDP extension was limited to once every 168 consecutive hour period. While this limited potential abuse of extensions, it did result in an illogical outcome based on certain facts. For example, a flightcrew member that has an FDP extended on Day 1 and then has two days off would be unable to accept another extended FDP on Day 4. After having 48 hours rest, that flightcrew member would not be subject to fatigue based on a two-hour extended FDP. Paragraph (a)(2) provides that an extension of the FDP of 30 minutes or more may occur only once prior to receiving a rest period described in § 117.25(b).[66] This provides certificate holders with one extended FDP but resets the clock for the 168 consecutive hours limit if a rest period of 30 hours or more has been received. Furthermore, the FAA is mindful of the daily tracking and recordkeeping/compliance burden placed on both individual flightcrew members and the certificate holders by a rolling 168 consecutive hour period. This modification will alleviate this tracking requirement.

The FAA has included, in paragraph (a)(3), that a flightcrew member's FDP may not be extended due to unforeseen operational circumstances that occur prior to takeoff if such extension could cause the flightcrew member to exceed the cumulative FDP limits specified in § 117.23(c). The basis for this provision is that prior to takeoff a flightcrew member will know whether the delay will result in the flightcrew member exceeding the cumulative limits. If so, the flightcrew member cannot continue the flight.

In lieu of the reporting requirements proposed under the schedule reliability, the FAA adopts a two-prong requirement for reporting extended FDPs. In addressing unforeseen operational circumstances, it is critical to distinguish those situations that arise prior to takeoff and those that arise after takeoff. Under both situations, the certificate holder must report to the FAA within 10 days any FDP that

[66] Section 117.25(b) provides that before beginning any reserve or FDP, a flightcrew member must be given at least 30 consecutive hours free from all duty in any 168 consecutive hour period, subject to certain limitations.

exceeded the maximum FDP permitted by Table B or C by more than 30 minutes. In this report, the certificate holder must describe the FDP and the circumstances surrounding the need for an extension. If the situation giving rise to the extension occurred prior to takeoff, the certificate holder must address in this report whether the circumstances giving rise to the extension were within its control. Since it is prior to takeoff, once the certificate holder becomes aware of such issue, the certificate holder and pilot-in-command have discretion to evaluate the situation and determine whether it is permissible and appropriate to extend the applicable FDPs and continue with the flight or whether it is more appropriate to replace the affected flightcrew member. Therefore, in situations where the circumstances were within the certificate holder's control, the certificate holder must include in its report the corrective actions that it intends to take to minimize the need for future extensions. The certificate holder then has 30 days to implement such corrective actions. For situations that are not within the certificate holder's control, it is unlikely that there is a corrective action that can be taken. Therefore, under these scenarios, the certificate holder must simply report the extension within 10 days and provide the details surrounding the need for the extended FDP.

Similarly for situations that arise after takeoff, the certificate holder and pilot in command have very little discretion concerning FDPs and flight time limits. Therefore, if an FDP or flight time needs to be extended due to unforeseen circumstances that occur after takeoff, the pilot-in-command and the certificate holder may extend the subject FDPs and flight time, to the extent necessary to safely land the aircraft at the next destination airport or alternate airport, if appropriate. In addition, the extended portion of the flightcrew member's FDP and flight time will be permitted in the flightcrew member's weekly and annual cumulative limits on FDP and flight time limitations. The certificate holder also must report the extension to the Administrator within 10 days of occurrence with the same level of detail as described above.

The reports for extended FDPs and flight time will be forwarded to the appropriate certificate-holding district office where the FAA will monitor all extensions filed. The FAA will review the circumstances surrounding the need for the extensions and if appropriate, whether the circumstances were, in fact, beyond the certificate holder's control. As explained in the NPRM, this determination is on a case-by-case basis. Certificate holders must be aware of scheduling operations into and out of chronically delayed airports. Similarly, certificate holders must be mindful of anticipated weather conditions, *e.g.,* predicted snow storms/blizzards affecting certain airports in the winter. Obviously, not all weather occurrences, ATC delays, or a variety of other situations can be anticipated and addressed by the certificate holder. However, situations that result from inadequate planning are within the certificate holder's control and will warrant corrective action.

The FAA believes that the above requirements will result in realistic scheduling of FDPs. The FAA selected 10 days for the time period to file a report because it is within the time period for retrieval of ATC and weather data in the event that data is necessary for an investigation. This information may be necessary in addressing extended FDPs so it is critical that the FAA receive the report within the same timeframe. In addition, when situations occur that require an extension, the certificate holder must look at the offending segment and identify whether adjustments are needed.

It must be noted that the FAA will investigate each filed report denoting an extended FDP and flight time. This investigation would be conducted by the certificate management office responsible for day-to-day oversight of the air carrier. If the circumstances are found to be within the certificate holder's control, the certificate holder has responsibility to determine the corrective action and to implement that corrective action within the time period required under the regulations. Failure to adhere to the adopted requirements may result in enforcement by the FAA.

K. Split Duty

Sleep studies show that sleep which takes place during the day is less restful than sleep that takes place at night.[67] Other studies indicate that working during the WOCL substantially degrades the ability of a flightcrew member to safely perform his or her duties.[68] One of the problems that this rule was intended to address is the performance degradation experienced by flightcrew members who conduct overnight FDPs and perform their duties during the WOCL after receiving less-restful daytime sleep. This rule addresses this problem by incentivizing fatigue mitigation measures.

One of these fatigue mitigation measures is split duty which is based on the premise that there are times during an unaugmented nighttime FDP when a certificate holder could reasonably provide a flightcrew member with an opportunity for rest. This rest opportunity (opportunity to sleep) would allow a flightcrew member to get some sleep during the night. The nighttime sleep could be used to mitigate the performance degradation created by working through the WOCL.

To incentivize split duty rest, the FAA proposed that a flightcrew member who received a split duty rest opportunity be allowed to extend his or her FDP by 50% of the available split duty rest opportunity. Under the FAA's proposal, the split duty rest opportunity had to be at least 4 hours long, and it could not be used to extend an FDP beyond 12 hours. The rest opportunity had to be calculated from the time that the flightcrew member actually reached the suitable accommodation (sleep facility).

NJASAP opposed the proposed split duty extension, but noted that the proposed rule presented an improvement over existing limitations on such operations. NJASAP argued that split duty sleep is a theoretical concept that may result in cumulative fatigue and circadian disruption. In support of its argument, NJASAP cited to a study showing that pilots who obtained 7 hours of sleep at night scored consistently worse than pilots who obtained 9 hours of sleep at night. Given this study and the theoretical nature of split duty, NJASAP cautioned the FAA against awarding an FDP extension based on split duty rest.

Conversely, ATA stated that ''science and operational experience supports the concept that a flightcrew member can recuperate because of the opportunity to sleep during a period of their FDP.'' CAA strongly supported the recognition of split duty as a fatigue mitigation measure. One individual commenter also supported the extension of FDPs through split duty schedules.

NJASAP also asked whether the four-hour threshold was mandatory or whether split duty credit could be obtained for split duty rest that was less than four hours. ATA and UPS argued that the four-hour split duty threshold is arbitrary and not science-based. ATA also criticized as unscientific the NPRM's assumption that there is increased overhead involved with falling asleep during a split duty rest. Conversely, FedEx ALPA supported the four-hour split duty threshold, stating

[67] *See, e.g.,* Wyatt, *supra* note 64, at R1160–62; Akerstedt, *supra* note 64 at 159–69.

[68] *See* NASA, *supra* note 22, at 19–34.

that the four-hour threshold is a valid conservative approach until more scientific data is collected.

Drs. Belenky and Graeber cited a 2003 Bonnet and Arand clinical review for the proposition that ''any sleep longer than 20 minutes provides full minute-by-minute recuperative value.'' Based on this review, Drs. Belenky and Graeber asserted that, for night operations, ''any time behind the door of more than 30 minutes would have recuperative value.'' As such, Drs. Belenky and Graeber argued that the four-hour split duty threshold is not supported by science. ATA, CAA, and FedEx supported this conclusion.

NACA, Kalitta Air, Atlas Air, and NAA cited a NASA study, which states that a 45-minute cockpit nap, including use of a jump seat, with a 20-minute recovery resulted in increased alertness for a minimum of 90 minutes of the flight. These commenters argued that, if this type of benefit could be achieved through a cockpit nap, it could definitely be achieved through a ground rest facility.

The FAA agrees with ATA and CAA that split duty is a valid fatigue mitigation measure. Science has shown that naps can serve to mitigate fatigue.[69] Consequently, split duty naps taken at night will permit a flightcrew member to obtain restful nighttime sleep in the middle of his or her FDP. This restful nighttime sleep will decrease that flightcrew member's fatigue level, and will allow him or her to safely work for a longer period of time. As such, the FAA has retained the split duty FDP extension in this rule.

In response to comments about specific split duty provisions, the FAA conducted further SAFTE/FAST modeling to examine the safety-relevant effects of changing the provisions of the split duty section. The SAFTE/FAST model works by predicting flightcrew member effectiveness on a 0 to 100 scale for each minute of that flightcrew member's FDP. Lower predicted flightcrew member effectiveness results in a lower SAFTE/FAST number. An effectiveness level of 77 is approximately equivalent to the effectiveness of someone with a blood alcohol concentration of 0.05.

With regard to the 4-hour threshold, that threshold was included in the proposal to ensure that all flightcrew members obtain a minimum amount of restful sleep during split duty. Upon further modeling, the SAFTE/FAST model showed that a split duty break of less than 3 hours with the corresponding FDP extension would, over a 5-night period, result in flightcrew member effectiveness dropping below 77 for a portion of the FDP. Conversely, a split duty break of at least 3 hours resulted in flightcrew member effectiveness consistently staying above 77 over a 5-night period. Accordingly, this section has been amended to reduce the threshold for the split duty extension to a 3-hour split duty break. In response to NJASAP's question, split duty rest that is less than 3 hours simply counts as part of a flightcrew member's FDP and does not serve to extend the maximum FDP limits.

The FAA disagrees with Drs. Belenky and Graeber's assessment of the Bonnet and Arand clinical review. The studies examined in this clinical review tested the impact that sleep fragmentation had on restfulness and the potential resultant daytime sleepiness. During the course of the studies, subjects would be allowed to fall asleep, and their sleep would then be intermittently disrupted. The studies found that if one's sleep is interrupted every 20 minutes following sleep onset during the night (when one is normally sleeping), that person's daytime sleepiness, as measured by the Mean Sleep Latency Test (MSLT), is the same as someone who has not had their sleep interrupted.

There are two problems with applying the Bonnet and Arand clinical review to split duty. The first problem is that the MSLT results measured by the studies analyzed in the clinical review do not necessarily mean that the performance capabilities of subjects who had their sleep interrupted at 20-minute intervals were equivalent to subjects who did not have their sleep interrupted. All the MSLT results mean is that, when MSLT measurements were taken of subjects who had their sleep interrupted, these subjects did not fall asleep within the MSLT's protocol termination at 20 minutes.

The second problem with applying these studies to split duty sleep is that split duty sleep does not involve sleep fragmentation, but rather a restriction on the total amount of sleep provided during the night. A flightcrew member engaging in split duty sleep will presumably not have his or her sleep cycle intermittently disrupted. Instead, that flightcrew member's total split duty sleep amount may be significantly lower than the 8-hour minimum necessary to recover from fatigue. Because the Bonnet and Arand clinical review did not analyze any studies that actually examined the ''recuperative value'' of receiving less than 8 hours of sleep, that review is not applicable to the minimum threshold necessary to ensure a sufficient amount of split duty sleep.[70]

As the commenters correctly pointed out, a NASA study showed that a 40-minute sleep opportunity resulting in a 20–26 minute nap created a relative improvement in alertness for the 90-minute period following the nap. However, there are three problems with using this study to justify extending a night FDP. First, the NASA study was conducted to see if alertness might be maintained or improved long enough to more safely complete a scheduled flight. The NASA study was not conducted to determine the conditions necessary to extend the flight duty period. Second, the study did not establish whether the 20–26 minute nap mitigated fatigue for more than 90 minutes after the nap was taken.

The third problem with using the above study to extend an FDP is that this study did not explore the full extent of the fatigue mitigation created by the 20–26 minute nap. For example, if a 20-minute split-duty nap was to be used to extend an FDP so that it infringes deeper into the WOCL, would the 20-minute rest provide sufficient mitigation to counter the extra fatigue created by the additional infringement on the WOCL? Because the study concerning the 20–26 minute nap did not provide an answer to the issues discussed above, the FAA has declined to utilize it in determining the threshold rest amount for the split duty FDP extension.

NJASAP asked whether the split duty rest must be scheduled in advance or whether it could be adjusted as necessary by the certificate holder. ATA stated that the 4-hour threshold is operationally unsound because split duty periods are ''calculated dynamically in real time, based upon the actual amount of rest opportunity afforded.'' ATA provided an example of ''split duty rest periods [that] may occur during breaks at a hub while cargo is loaded on an aircraft.'' In those cases, ''[c]rewmembers [would] receive rest in ground facilities during the aircraft loading process.'' UPS disagreed with the extension being based on the flightcrew member's actual rest time ''behind the door'' because it removes an air carrier's ability to shorten split

[69] *See* Daniel J. Mollicone, *et al., Optimizing sleep/wake schedules in space: Sleep during chronic nocturnal sleep restriction with and without diurnal naps,* Acta Astronautica 60, at 354–61 (2007) (examining the fatigue mitigation potential of naps taken during the day).

[70] In a previous Bonnet article, the author also states that ''* * * [i]t does appear that any repetitive stimulation of sufficient magnitude to precipitate any changes in ongoing EEG is sufficient to make sleep nonrestorative.'' Bonnet MH. *Sleep restoration as a function of periodic awakening, movement, or electroencephalographic change.* Sleep, Vol. 10, at 371 (1987).

duty rest in response to an unforeseen circumstance, such as a weather event. UPS stated that this is a significant change from current practice because, currently, split duty rest most often occurs during an unforeseen circumstance. To adjust for this change, UPS asserted that air carriers would have to delay outbound flights, which will increase pilot fatigue by delaying the onset of post-FDP rest.

The FAA has amended the split duty section to clarify that split duty rest must be scheduled in advance, and that the actual split duty rest break may not be less than the scheduled split duty break. The reason for the advance scheduling requirement is that section 117.5(b) requires flightcrew members to determine at the beginning of their FDP whether they are sufficiently rested to safely perform the assigned FDP. In order to accurately perform this assessment at the beginning of their FDP, flightcrew members need to know approximately when their FDP is going to end. Thus, flightcrew members must be notified of any planned split duty extensions before they begin their split duty FDP so that they can accurately self-assess, at the beginning of the FDP, whether they are capable of safely performing their duties throughout the entire FDP. Thus, for example, a flightcrew member who feels fit to accept an overnight FDP that contains five hours of split duty sleep may not feel fit to accept an overnight FDP that contains only three hours of split duty sleep.

In addition, knowing in advance about split duty rest allows a flightcrew member to prepare for, and to maximize, the rest opportunity. For example, a flightcrew member who does not know whether he or she will have a split duty break may drink a cup of coffee only to subsequently find out that he or she must take a three-hour split duty rest 20 minutes later. In contrast, a flightcrew member who knows in advance when he or she is taking a split duty break will not drink coffee shortly before the break. Because flightcrew members must determine their fitness for duty before beginning an FDP and because they must conduct themselves in a way that maximizes their rest opportunities, they must be informed prior to commencing an FDP, about the full extent of the split duty rest that they will receive during the FDP.

The FAA understands that this departs from the current air carrier practice of reducing split duty rest in order to recover a schedule during unforeseen circumstances. To mitigate the impact of this change and account for unforeseen circumstances, this rule provides air carriers with a two-hour FDP extension (discussed previously) that they can use to recover their schedules if unforeseen circumstances arise.

NJASAP asked whether an air carrier could obtain the split duty credit if its flightcrew members do not actually occupy the suitable accommodation during the split duty rest opportunity. UPS criticized the split duty regulation as not taking into account the actual amount of sleep that a pilot receives.

Split duty rest taken under this section does not begin to count until the flightcrew member reaches the suitable accommodation. If the flightcrew member never reaches the suitable accommodation, then that flightcrew member's split duty break will not qualify for a longer FDP. The FAA also emphasizes that, as discussed above, section 117.5(a) requires a flightcrew member to report for duty rested. By virtue of that requirement, flightcrew members must take advantage of any rest periods that are provided, and use them for their intended purpose, which is to sleep.

The FAA has considered UPS' suggestion of amending the split duty extension to track the actual amount of sleep that a flightcrew member receives instead of the length of the split duty break. However, this type of standard would be very difficult to implement because air carriers would need to track when each flightcrew member actually falls asleep. Because this would place a substantial burden on air carriers, the FAA ultimately decided to give credit for the length of the split duty rest opportunity instead of the amount of actual sleep received by the flightcrew members.

Drs. Belenky and Graeber asserted that the 50% split-duty credit was unreasonably conservative for split-duty rest that is taken during usual bedtime hours. However, Drs. Belenky and Graeber cautioned that the 50% credit ''may be warranted for split duties that require daytime sleep.'' ATA stated that the 50% credit was unjustified because a sleep opportunity longer than 20 minutes provides a full minute-by-minute recuperative value. ATA criticized the NPRM's underlying assumption that a four-hour sleep opportunity would only result in two hours of sleep, arguing that this assumption did not apply to ground-based suitable accommodations.

Northern Air Cargo asked for a more generous split duty credit. ATA proposed a split duty credit that increases in proportion to the length of the split duty rest. CAA and FedEx proposed a split duty credit ranging from 100 to 300%, based on the time of day in which the credit is given.

As stated above, in response to comments, the FAA conducted further SAFTE/FAST modeling to determine whether the split duty provision could be modified without decreasing safety. The modeling has revealed that a 100% credit for split duty rest would not result in flightcrew member effectiveness dropping below 77 for any portion of a series of 5-night FDPs. As such, the split duty credit has been increased to provide for an extension equal to 100% of the split duty rest. The FAA has considered CAA and FedEx's suggestion of providing more than a 100% credit, but, due to the concerns associated with nighttime flying, the FAA would need additional data to provide more than a 100% credit for split duty.

The FAA was also concerned with the fact that the above comments appear to show some misunderstanding of how the split duty section works. In order to clarify the meaning of the split duty section, the FAA has amended this section as follows.

First, the split duty framework, as set out in the NPRM, would count split duty rest as part of a flightcrew member's FDP, and then extend that FDP by the amount of the split duty credit. Now that the split duty credit has been increased to 100%, the FAA has determined that the NPRM's split duty framework is needlessly complicated. As such, this section has been amended so that split duty rest that meets the requirements of this section will simply not count as part of the FDP.

Second, split duty rest was intended to be taken at night so that it could provide flightcrew members with restful nighttime sleep. *See* 75 FR 55866. To ensure that the split duty rest credit is not awarded for rest taken during the day, this section has been amended to require that split duty rest only be taken between 22:00 and 05:00 local time.

Third, as the name implies, ''split duty'' rest should be provided in the middle of a flightcrew member's FDP. To ensure that split duty rest is not taken earlier, the FAA has added a condition that split duty rest cannot be provided before the completion of the first flight segment in an FDP. Finally, the FAA has moved all of the split duty conditions into subsections to improve their readability. These changes should provide additional clarity, and ensure that the split duty section is used in the intended manner.

UPS, Kalitta Air, and ATA stated that the credit given for split duty rest in ground-based suitable accommodations was less than the credit given for some

augmented flights, which provide a lower quality rest in aircraft-based rest facilities. UPS pointed out that, under the proposed rule, ''[a] 90-minute rest opportunity for a relief officer on an augmented flight in an aircraft with a Class I rest facility permits five additional hours of operation versus an un-augmented flight.'' UPS added that this disparity between augmented flights and split duty ''is even more illogical given that at a ground facility, all flightcrew members receive the same sleep opportunity, whereas while on board, only one pilot can sleep at a time.'' NACA proposed a split duty credit that is consistent with the credit given for Class 1, 2, and 3 rest facilities in augmented FDPs.

Augmented flights and split duty provide different amounts of credit because they pose different safety risks. An augmented flight contains more than the minimum number of flightcrew members, which allows the flightcrew members to work in shifts during a flight to safely fly the aircraft. If, during the flight, a flightcrew member realizes that he or she is too tired to safely perform his or her duties, the extra flightcrew member(s) can simply take over those duties and safely land the flight at its intended destination.

Split duty, on the other hand, applies only to unaugmented flights, which contain the minimum number of flightcrew members necessary to safely fly an aircraft. If, during an unaugmented flight, a flightcrew member realizes that he or she is too tired to safely perform his or her duties, there is no one there who could take over those duties. Instead, the fatigued flightcrew member must eventually land the aircraft to the best of his or her ability. Because a fatigued flightcrew member on an unaugmented flight presents a far greater safety risk than a fatigued augmented flightcrew member, the FAA used a more conservative approach in determining the split duty credit than it did in determining the limits for augmented operations. However, the FAA is open to the possibility of awarding greater credit for split duty within the scope of an FRMS if a certificate holder is able to provide data that shows that additional credit would not reduce safety.

ATA suggested that the FAA allow split duty FDPs to extend beyond the proposed limit on split duty extensions in order to consistently apply the principles that underlie augmented operations. RAA criticized the 12-hour split-duty FDP limit as arbitrary, arguing that it unnecessarily limits FDPs that contain a large amount of restful split duty sleep. RAA also pointed out that the 12-hour limit permits greater split duty extensions for less-safe overnight flights that have a shorter FDP limit. RAA proposed abolishing the limit on split duty extensions. SkyWest proposed setting the split duty FDP limit at 14 hours if the split duty rest is at least 4 hours long. CAA and FedEx stated that the split duty FDP limit should be set at 15 hours.

The SAFTE/FAST modeling that was conducted in response to comments shows that there are no safety concerns with increasing the split duty limit to 14 hours. This section has been amended accordingly. However, the FAA has reservations about a split duty limit that exceeds 14 hours. This is because section 117.25 now requires a 10-hour rest period, and if an FDP is longer than 14 hours, a flightcrew member's FDP/rest cycle will exceed 24 hours. This type of cycle, if done consecutively, will result in the beginning of a flightcrew member's FDP being pushed back each day by the number of hours that the previous day's FDP/rest cycle exceeded 24.

As an example, take an FDP that begins at 5 p.m. That FDP is normally 12 hours long, but with a 7-hour split duty break, that FDP would end at noon. The flightcrew member must then obtain 10 hours of rest, which means that he or she would start the next day's FDP at 10 p.m. The 10 p.m. FDP is normally 11 hours, but with 6 hours of split duty rest, it would end at 3 p.m. the next day. The flightcrew member would then receive 10 hours of rest, which would result in his or her next FDP starting at 1 a.m. Thus, with no limit on split duty FDPs, a flightcrew member could, in three days, go from a 5 p.m. to a 10 p.m. to a 1 a.m. FDP start time. This type of shifting of FDP start times could have serious adverse effects on cumulative fatigue, and without more data, the FAA has determined not to take the risk of allowing split duty FDPs to exceed 14 hours.

NACA, Atlas Air, and NAA stated that, because section 117.5 gives a flightcrew member the discretion to terminate an FDP, there is no need to further restate the flightcrew prerogative to accept or decline split duty accommodations or FDP extensions here.

The FAA agrees with the above commenters, and this section has been amended accordingly. The FAA once again emphasizes that, as discussed above, section 117.5(a) requires a flightcrew member to report for duty rested. By virtue of that requirement, flightcrew members must use their rest periods for the intended purpose which is to obtain sleep.

L. Consecutive Nights

As discussed above, one type of fatigue that this rule addresses is cumulative fatigue. In formulating this rule, the FAA was particularly concerned about cumulative fatigue caused by repeatedly flying at night. *See* 75 FR 55867. SAFTE/FAST modeling showed substantially deteriorating performance after the third consecutive nighttime FDP for flightcrew members who worked nightshifts during the WOCL and obtained sleep during the day. *Id.* However, the FAA noted that if a sleep opportunity is provided during each nighttime FDP, that sleep opportunity may sustain flightcrew member performance for five consecutive nights.

To account for the above factors, the FAA proposed to limit nighttime FDPs to three consecutive nights. However, the FAA proposal allowed a flightcrew member to exceed the three-night limit if that flightcrew member received at least four hours of split duty rest during each of his or her nighttime FDPs.

ATA, NACA, AAC, five individual commenters, and a number of air carriers objected to the consecutive-night limit, arguing that it was unreasonable and ignored operational experience. ATA stated that ''[t]he industry's substantial experience with nighttime operations shows that pilots who frequently perform night duty are well suited to consecutive night duties because they have training and experience specific to such operations.'' NACA, NAA, and Kalitta Air suggested completely removing the consecutive-night limit, arguing that restricted nighttime FDP limits made the consecutive-night limit redundant. AAC also suggested removing the consecutive nighttime limit, arguing that some pilots are capable of adjusting their circadian rhythm to effectively sleep during the day. AAC asserted that a three-consecutive-night limit would unfairly penalize those pilots.

Conversely, one individual commenter stated that consecutive nighttime operations lower alertness. NJASAP, IPA, and IBT Local 1224 supported the consecutive-nights limit. IPA and IBT Local 1224 indicated that, according to science and operational experience, a flight duty period encompassing the hours of 0200 and 0600 is challenging, as fatigue is more likely. These commenters stated that the additional fatigue is a result of working during the WOCL and having the rest period occur during the daytime.

Nighttime operations are particularly fatiguing because flightcrew members who work during these operations do so

during the WOCL after obtaining less-restful daytime sleep. Studies have shown that this type of work not only leads to transient fatigue, but also leads to cumulative fatigue if repeated over a series of consecutive nights.[71] SAFTE/FAST modeling also shows flightcrew member effectiveness decreasing after a flightcrew member works on consecutive nighttime FDPs. In addition, a study conducted by the Federal Motor Carrier Safety Administration (FMCSA) found in a laboratory setting that working five nights in a row while sleeping during the day leads to impaired continued performance even if a 34-hour ''restart'' rest period is provided at the conclusion of the five-night work period.[72] This study indicates that simply relying on the required 30 hour rest period in a rolling 168 hour (one week) period is insufficient to assure sustained performance for individuals working nighttime FDPs.

In order to address cumulative fatigue caused by consecutive nighttime FDPs, the FAA has decided to retain the consecutive-night limitation. This limitation is necessary because the restricted nighttime FDP limits in Table B only address the transient fatigue caused by working at night. The limits in Table B remain the same regardless of how many consecutive nighttime FDPs a flightcrew member works, and as such, they do not address the cumulative fatigue caused by repeatedly working through the nighttime hours. With regard to AAC's suggestion that some flightcrew members can effectively sleep during the day, this suggestion (which may be true for certain individuals) generally goes against scientific evidence showing that working on consecutive nighttime FDPs creates a sleep debt.[73] Since regulations are drafted to address the majority of the population, the FAA believes the approach adopted here is appropriate.

Drs. Belenky and Graeber cited the Mollicone 2007 and 2008 laboratory studies for the proposition that a sleep period that was split into two naps (one at night and one during the day) had the same effect as a single continuous block of sleep taken at night. Drs. Belenky and Graeber suggested that 2 hours of split duty rest ''should sustain performance across more than three consecutive nights'' as long as flightcrew members obtained at least 5 hours of sleep during the day. ATA, CAA, and UPS endorsed Drs. Belenky and Graeber's analysis and recommendation.

RAA, ATA, UPS, FedEx and a number of other air carriers added that requiring a 4-hour split duty break in order to exceed 3 consecutive nights would result in more first-night shifts and more day and night duty schedule switches because air carriers will schedule pilots for multiple 3-night series of FDPs rather than a single 5-night FDP series. SkyWest stated that a consecutive-night restriction may disrupt its continuous duty operations, which operate at night and provide flightcrew members with a 4–6 hour rest opportunity. UPS emphasized that the proposed consecutive-night restriction would significantly disrupt its existing business operations. Atlas Air added that cargo air carriers cannot reasonably provide a 4-hour mid-duty break under their current business models.

ATA and CAA emphasized that the consecutive-night limit would disproportionately impact the cargo industry because that industry relies heavily on night operations. UPS stated that, during a night shift, its ''flightcrew members typically enjoy, on average, at least a two hour rest in [its] state of the art sleep facilities.'' FedEx stated that its flightcrew members are typically provided mid-duty rest ranging from 2 to 4.5 hours while freight is offloaded, sorted, and reloaded. UPS asked the FAA to recognize the recuperative value of mid-duty sleep that exceeds 20 minutes.

The Mollicone studies cited by Drs. Belenky and Graeber have, at best, only a limited applicability to the consecutive-night limit because the subjects in those studies received a large block of anchor sleep at night and mid-duty rest breaks during the daytime. In contrast, flightcrew members working on night shifts receive their large block of anchor sleep during the daytime, which, as other studies have shown, provides them with sleep that is less restorative than nighttime sleep.[74]

The FAA was concerned, however, with comments indicating that the 4-hour-mid-duty rest threshold for exceeding the 3-consecutive-night limit was operationally unworkable. The FAA notes that, even though all-cargo operations are not required to abide by part 117, those all-cargo operations that opt into part 117 would be subject to the consecutive-night limit. In response to concerns raised by the commenters, the FAA conducted further SAFTE/FAST modeling to examine the safety ramifications of changing the length of the mid-duty rest break necessary to exceed the 3-consecutive-night limit. The SAFTE/FAST modeling showed that a 5-night FDP, in which a flightcrew member was provided with a 2-hour mid-duty rest break each night, was actually safer than a 3-night FDP with no rest break. The modeling also showed that breaks of less than 2 hours were insufficient to account for the cumulative fatigue of working on multiple consecutive nights.

In response to the data provided by the SAFTE/FAST modeling, the FAA has amended the consecutive-night limit to allow a flightcrew member to work for up to 5 consecutive nights if he or she receives a 2-hour mid-duty rest break each night. This amendment will greatly reduce the burden of the consecutive-night limit on cargo industry that opts into this rule because FedEx and UPS' comments indicate that these carriers already provide their crewmembers who work nightshifts with an average of 2 hours of mid-duty rest. This will allow continuous duty operations to be conducted 5 nights a week if these operations provide flightcrew members with at least 2 hours of mid-duty rest.

RAA, Kalitta Air, Kalitta Charters, Capital Cargo, and four individual commenters suggested amending the consecutive-night limit to permit four nights without any mid-duty rest breaks. ALPA, IPA, SWAPA, IBT Local 1224, and Flight Time ARC suggested allowing four consecutive nighttime FDPs if there is a 12-hour rest period after each FDP. UPS suggested that, if the FAA restricts consecutive nighttime operations, unaugmented flightcrews should be allowed to operate at Table C FDP limits so long as they have received a sleep opportunity in a rule-compliant ground-based facility.

This rule does not allow 4 consecutive nighttime FDPs without a mid-duty rest break because flightcrew member performance deteriorates after a third consecutive nighttime FDP. Increasing the length of the rest between FDP periods is not the preferred way of resolving the issue because nightshift workers get their between-FDP rest during the daytime. Because daytime sleep is less restful than nighttime sleep, the FAA has chosen to focus its regulatory efforts on nighttime mid-duty rest breaks instead of longer daytime

[71] *See* Philippa H. Gander, *et al., Flight Crew Fatigue IV: Overnight Cargo Operations,* Aviation, Space, and Environmental Medicine, Vol. 69, No. 9, Sec. II (Sep. 1998) (discussing sleep debt that builds up over successive nighttime work shifts); Philippa H. Gander, *et al., Crew Factors in Flight Operations VII: Psychophysiological Responses to Overnight Cargo Operations,* NASA Technical Memorandum 110380 (Feb. 1996) (discussing the impact of night shifts on flightcrew members).

[72] *See* Hans P.A. Van Dongen, Gregory Belenky, *Investigation Into Motor Carrier Practices to Achieve Optimal Commercial Motor Vehicle Driver Performance,* Report No: FMCSA–RRR–10–005.

[73] *Id.*

[74] *See* Wyatt, *supra* note 64; Akerstedt, *supra* note 64.

rest breaks. However, if air carriers provide the FAA with FRMS data showing that longer daytime breaks can sufficiently mitigate cumulative fatigue, the FAA may allow those air carriers to exceed the consecutive-night limit. In addition, as discussed in the preceding section, the FAA has reduced to 2 hours the mid-duty-break threshold necessary to work during 5 consecutive nights. This reduction will greatly reduce the burden of the consecutive-night limit on air carriers.

The FAA also declines UPS' proposal of allowing an unaugmented flightcrew working a nightshift to work at the FDP levels specified in Table C. As discussed above, the augmented FDP limits in Table C are higher than the unaugmented FDP limits in Table B because augmentation provides a number of fatigue-mitigation benefits. In contrast, the consecutive-night limit is simply intended to account for the cumulative fatigue caused by working at night and does not replicate the benefits provided by augmentation. Accordingly, imposition of the consecutive-night limit is not sufficient to allow unaugmented flightcrews to work on the longer FDPs that are permitted for augmented flightcrews.

A number of commenters asked the FAA to define ''nighttime FDP.'' Many of the commenters suggested that ''nighttime FDP'' be defined as an FDP that infringes on the WOCL. The consecutive-night limit is intended to apply to FDPs that infringe on the WOCL because operations conducted during the WOCL significantly increase cumulative fatigue. Consistent with the commenters' suggestion, the consecutive-nighttime-operations section has been amended to clarify that the consecutive-night limit only applies to FDPs that infringe on the WOCL. In addition, in light of the amendments that have been made to the split-duty section, the consecutive-nighttime-operations section has also been amended to clarify that an FDP whose split-duty rest infringes on the WOCL counts as a nighttime FDP for the purposes of this section.

NJASAP asked the FAA for clarification about how the rule determines whether two nighttime FDPs are ''consecutive.'' Consecutive nights are determined based on calendar nights. Thus, if a flightcrew member works on a WOCL-infringing FDP during one night, and then works during a WOCL-infringing FDP during the following night, that flightcrew member will have worked on two consecutive nights. If, however, the flightcrew member works one night, has the next night off, and then works the following night, these nighttime FDPs would not be considered ''consecutive'' for the purposes of this section.

ATA also objected to applying the consecutive-night limit to augmented operations. It stated that augmented flightcrew members receive significant inflight rest, and that the consecutive-night limit was redundant as applied to augmented FDPs.

Rest on the ground in a suitable accommodation is superior to rest onboard an aircraft while that aircraft is in flight. As such, any augmented operations that span more than three consecutive nights must mitigate the fatigue of these operations by providing flightcrew members with the two hours of mid-duty rest in a suitable accommodation required by this section.

ATA stated that, because simulator training is now considered part of an FDP, the consecutive-night limit would also limit training opportunities for flightcrew members. ATA argued that this is an unnecessary burden because flightcrew members would receive a full rest period after training.

Simulator training is only considered to be part of an FDP if it takes place before a flightcrew member flies an aircraft and there is no intervening rest period taken pursuant to section 117.25. This is because all duty after a legal rest and prior to flight is part of an FDP. If the simulator training does not take place before a flightcrew member flies an aircraft, the simulator training is not considered to be part of an FDP, and it is unaffected by the consecutive-night limit.

Two individual commenters asked the FAA to prohibit air carriers from switching pilots from night to day shifts. These commenters also asked that circadian rhythms not be shifted by more than two hours from the prior day. However, these suggestions are outside the scope of this rulemaking.

M. Reserve

As stated in the NPRM, the term ''reserve'' has not been addressed in the part 121 regulations; however this term has been the subject of several legal interpretations which include a determination of when a flightcrew member is on duty and whether the required rest associated with a duty period is impeded by a flightcrew member being in a reserve status. The FAA proposed that unless specifically designated otherwise, all reserve is considered long-call reserve. Additionally, the time that a flightcrew member spent on airport/stand-by reserve would be part of that flightcrew member's FDP. For short-call reserve, the NPRM proposed that all time spent within the reserve availability period is duty; the reserve availability period may not exceed 14 hours; no flightcrew member on short call reserve may accept and no certificate holder may schedule the flightcrew member's next reserve availability period unless that flightcrew member is given at least 14 hours rest; and the maximum reserve duty period for an unaugmented operation is the lesser of:

—16 hours, as measured from the beginning of the reserve availability period;
—The assigned FDP, as measured from the start of the FDP;
—The FDP in Table B of this part plus 4 hours, as measured from the beginning of the reserve availability period; or
—If all or a portion of a reserve flightcrew member's reserve availability period falls between 0000 and 0600, the certificate holder may increase the maximum reserve duty period by one-half of the length of the time during the reserve availability period in which the certificate holder did not contact the flightcrew member, not to exceed 3 hours.

For an augmented operation, the NPRM proposed that the maximum FDP is the lesser of the assigned FDP, as measured from the start of the FDP; the FDP in Table C plus 4 hours, as measured from the beginning of the reserve availability period; or if the reserve availability period falls between a portion of 0000–0600, the maximum reserve availability period may be increased by one-half the length of the time during which the certificate holder did not contact the flightcrew member but capped at 3 hours.

The FAA proposed that long-call reserve does not count as duty and that a flightcrew member would need to receive a 12-hour notice of report time from the certificate holder if the flightcrew member is being assigned an FDP that would begin before and operate into his or her WOCL.

Lastly, the NPRM proposed provisions that would permit a certificate holder to shift a flightcrew member's reserve availability period subject to meeting certain conditions.

Commenters stated overall that the entire section was overly complicated and complex, with some commenters stating that it also was confusing and illogical. Industry largely objected to the classification of short-call reserve as duty. ALPA, COPA, FedEx ALPA, SWAPA and APA all commented favorably on short-call reserve as part of duty. These comments were addressed

in the Definitions section, which removed short-call reserve from the definition of the term ''duty.''

NACA, Atlas, NAA, and Kalitta argue that limiting short call reserve to 14 hours is unwarranted for their operations. Kalitta separately recommended that the reserve availability period should be 16 hours followed by 8 hours off. Under Kalitta's recommendation, if a flightcrew member on short-call reserve is called out within the first six hours of that reserve availability period, he or she can utilize the entire maximum FDP, as described in Table B or C. If the flightcrew member is called out after the first six hours of the reserve availability period, then all the time in short-call reserve should be subtracted from the maximum FDP, unless the un-interrupted short-call reserve included the flightcrew member's WOCL. Then the full period of the WOCL should be considered rest. Kalitta argues that this will permit long-haul, non-scheduled operators the ability to continue current operations.

NACA, Atlas, and NAA also argue the proposal is too restrictive because the controlling limitation will always be the assigned FDP, which is a maximum of 13 hours. UPS and ATA state that there is no justification for limiting unaugmented short call reserve to assigned FDP. They contend that this restriction materially deviates from the ARC recommendation concerning this element of reserve.

ATA further comments that using the FDP to set the maximum reserve duty period directly contradicts the NPRM's definition of ''reserve duty period'' as the reserve availability period plus the flight duty period.

RAA proposed instead that for unaugmented operations, if a flightcrew member is given an FDP while on short-call reserve, the FDP, measured from the time for reporting for assignment, is limited to the Table B maximum FDP minus the full time spent on reserve during the Reserve Availability Period (RAP) up to the report time. Northern Air Cargo (NAC) contends that there is no logic in not allowing for the full FDP after callout. Delta argued that while on reserve, limiting reserve duty periods to scheduled FDP rather than maximum is overly restrictive.

ALPA, COPA, FedEx ALPA, SWAPA and APA submitted the chart below depicting the maximum FDP permissible based on the start of time of the reserve availability period:

Table E—Short Call Reserve Duty Period

Time of Start of RAP (Home Base or Acclimated Local Time)	Maximum Flight Reserve Duty Period (hours) Based on Number of Flight Segments						
	1	2	3	4	5	6	7+
0000-0359	13	13	13	13	13	13	13
0400-0459	14	14	13	13	13	13	13
0500-0559	15	15	15	15	14	13.5	13
0600-0659	16	16	16	16	15	15	14.5
0700-1259	16	16	16	16	16	16	15
1300-1659	16	16	16	16	15.5	15	14.5
1700-2159	15	15	14	14	13.5	13	13
2200-2259	14.5	14.5	13.5	13.5	13	13	13
2300-2359	13.5	13.5	13	13	13	13	13

They argue that the maximum reserve duty period, which would include phone availability and/or FDP assignments, is measured from the start of the RAP and ends at the earlier of the start of the RAP time plus the value in Table E or the FDP in Table B. The purpose of this process is to ensure that the reserve pilot does not have an allowable FDP limit that is greater than the FDP of the line holder whom that reserve flightcrew member is paired with and does not impact the certificate holder because the line holder and reserve flightcrew member end point will be the same.

Peninsula Airways questions whether under this section, a flightcrew member on short-call reserve must have had 14 hours of rest period at the beginning of the current reserve availability period.

The FAA agrees that the proposed reserve provisions were overly complicated and has made numerous changes to reduce the complexity. The ARC came to a number of conclusions during its discussion of reserve. The FAA has decided to rely on the expertise represented in the ARC to address the issue of reserve duty. The FAA does not support Kalitta's proposal described above, which would increase the permissible reserve availability period to 16 hours. Kalitta has not provided supporting rationale that warrants modifying the collective opinion of the ARC. Therefore, this rule adopts the proposal that limits the short-call reserve availability period, in which the flightcrew member is not called to report to work, to 14 hours.

The FAA has modified the regulatory provisions addressing the reserve duty period and unaugmented FDPs. Under the NPRM, the maximum reserve duty period would be the lesser of 16 hours, the assigned FDP, or the FDP under Table B plus four hours. The FAA agrees with the commenters that limiting the reserve duty period to the assigned FDP was overly restrictive and could result in situations where the reserve duty period was unnecessarily short, and would be unworkable for the certificate holders. The FAA has deleted that provision but retains the other two proposed limitations for unaugmented operations. Therefore, the adopted regulatory provisions addressing reserve and unaugmented operations provide that the total number of hours a flightcrew member may spend in a flight

duty period and reserve availability period may not exceed 16 hours or the maximum applicable flight duty period in Table B plus four hours, whichever is less. This will allow most FDPs to be accommodated by a flightcrew member on short-call reserve. Additionally, the proposed provisions for giving credit for not calling during the window of circadian low are complicated and unnecessary given the above adopted modifications. Therefore, the credit provisions have been dropped from this rule.

In response to the question posed by Peninsula Airways regarding whether the flightcrew member, who has concluded a reserve availability period, must have a 14 hour rest period before beginning the next reserve availability period, the FAA modified this provision in accordance with the amendments in § 117.25 Rest period. A flightcrew member must be given a 10 consecutive hour rest period immediately before beginning the reserve or flight duty period. The regulation governing reserve has been adjusted for consistency with the rest provisions. Therefore, if a flightcrew member completes a reserve availability period, he or she must receive a rest period, as required in § 117.25(e), prior to accepting a subsequent reserve availability period.

The FAA also does not agree with the comments from the labor organizations that another Table is necessary for the short-call reserve duty period. Those organizations argue that incorporating the above chart would ensure that the reserve flightcrew member would not have an allowable FDP that is greater than the line holder with whom he or she is paired. This argument is not persuasive. Each flightcrew member is subject to the maximum permissible FDP given that flightcrew member's recent assignments and rest requirements. Consequently, it isn't reasonable to artificially limit a reserve pilot to the FDP limit of the line holding pilot when no such limit applies to the line holding flightcrew members.

Kalitta and UPS questioned why a flightcrew member on long-call reserve and assigned an FDP that begins before and operates in the WOCL, would require a 12-hour rest. These commenters argue that a line holder may be scheduled for duty during the WOCL with 9 hours rest and that the long-call reserve flightcrew member should have similar treatment as the line holder.

This provision simply requires that the affected flightcrew member must receive 12 hours notice that he or she will be on duty during the WOCL and will need to plan his or her rest during the day. This way, the flightcrew member can structure the rest period in order to provide the best sleep opportunity. As daytime rest is not as restorative as nighttime rest, the flightcrew member may choose to take multiple naps rather than attempting to get a full consecutive 8 hours of sleep during the day. This is comparable to a lineholder who knows in advance that he or she is scheduled for duty during the WOCL, and adjusts his or her sleep opportunity accordingly.

NJASAP questions why the rule does not limit long-call reserve. APA also added that flightcrew members on long call reserve should receive a rest period that includes a physiological night prior to assignment. There is no reason to limit long-call reserve because, by definition, the certificate holder must notify the flightcrew member prior to receiving rest under 117.25(e). Similarly, as the flightcrew member is receiving a 10 hour rest period prior to the flight, it is not reasonable to limit that rest to only the hours between 0100 and 0700. This would unnecessarily restrict the certificate holder's ability to use long-call reserve.

Kalitta and UPS oppose the provisions limiting the shifting of reserve availability periods. RAA also opposes these provisions and argues that they actually hinder fatigue reduction by forcing more flightcrew schedule disruptions through delay or cancellations than would otherwise be necessary. NACA, Atlas, and NAA contend that the provisions addressing the shift of reserve availability periods are unworkable because it restricts forward shifts to a maximum of 12 hours, which can ultimately result in stranded flights. These commenters illustrate, as an example, if a flight is delayed for 13 hours, this rule would require the aircraft to sit on the ground for hours because the reserve flightcrew would be unable to operate the next flight until they have completed the required rest.

The organizations representing labor also seek to limit, to once in a rolling 168 hour period, the provision that would require a short call reserve flightcrew member coming off of a 14 hour reserve availability period to have a 14 hour rest before accepting an FDP that begins before the flightcrew member's next reserve availability period. The commenters contend that without this once per 168 hour limitation, a flightcrew member could be in a cycle of continuous reserve availability periods.

Since the rest requirements mandate a rest period prior to accepting any short-call reserve period and given the above modifications to the rule, the FAA concludes that the limits on shifting reserve availability periods are unnecessary and would have added a level of complication that is not warranted. This provision is not adopted.

N. Cumulative Limits

In formulating this rule, the FAA found that ''[s]cientific studies suggest that long periods of time on duty infringe upon an individual's opportunity to sleep, thus causing a 'sleep debt' which is also known as cumulative fatigue.'' [75] To limit the accumulation of cumulative fatigue by flightcrew members, the FAA proposed a cumulative duty-period limit of 65 hours in a 168-hour period (7 days) and a limit of 200 hours in a 672-hour period (28 days). These cumulative duty-period limits were slightly increased for short-call reserve and for deadhead transportation in a seat that allows for a flat or near flat sleeping position.

The FAA also proposed cumulative FDP limits based on the standards of other aviation authorities. The proposed cumulative FDP limits restricted FDP to 60 hours in a 168-hour period and 190 hours in a 672-hour period. In addition, the FAA proposed retaining the existing cumulative flight-time limits, which are 100 hours in a 28-day period and 1,000 hours in a 365-day period.

Alaska Airlines stated that the proposed subsection 117.23(a) concerning cumulative FDP limits was ambiguous and arguably made this section apply to flights that a flightcrew member conducted on his or her days off. Alaska Airlines and Delta argued that an air carrier should not be held responsible for flights that a flightcrew member performs on his or her days off that are not assigned by the air carrier. Conversely, SWAPA stated that, due to the complexity of the cumulative limits, the certificate holder should have the sole responsibility of determining whether flightcrew members are in compliance with the applicable cumulative limits.

The cumulative limits in section 117.23 include any flying performed by the flightcrew member on behalf of any certificate holder, or 91K Program Manager during the applicable periods. It does not include personal flying. Subsection 117.23(a) has been amended to clarify this point. The reason that this section includes all flights conducted for a certificate holder or program manager is because a flightcrew member accumulates fatigue on those flights. A

[75] 75 FR 55871 and n.42 (citing scientific studies).

flightcrew member accumulates fatigue whenever he or she flies an aircraft. The flightcrew member does not accumulate less cumulative fatigue simply because the flying is conducted for another operator.

The FAA has considered the air carriers' argument that the proposed subsection 117.23(a) may affect their scheduled flights as a result of flights that they do not assign to their flightcrew members. However, the FAA believes that its cumulative-limit approach is justified in light of the fact that compliance with this rule is a joint obligation that applies to flightcrew members as well as air carriers. Thus, the FAA expects flightcrew members to inform their employing air carriers of flying that they conduct on days off that would impact the cumulative limits set out in this rule, thus allowing all parties to abide by the applicable cumulative limits.

The FAA also declines SWAPA's suggestion that air carriers bear sole responsibility for determining compliance with the cumulative limits. As discussed in the preceding paragraph, without flightcrew member assistance, air carriers may not even know about some of the flying performed by flightcrew members. While the rolling time periods used in this section may not be as easy to keep track of as calendar periods, the FAA expects both flightcrew members and air carriers to be aware of how many hours the flightcrew members have worked and to abide by the cumulative limits of this section.

RAA opposed the cumulative duty-period limits, arguing that duty was a nebulous concept that was hard to define, and that cumulative duty-period limits are unnecessary in light of the cumulative FDP limits. NACA and NAA stated that an air carrier should be able to assign additional duty time if no further FDPs are contemplated because ''[t]here is no further risk of an aviation accident unless flight is involved.'' NACA, UPS, and a number of other air carriers added that the inclusion, in duty limitations, of administrative duties adversely affected flight-qualified management personnel and addressed work-life issues that had nothing to do with aviation safety. IPA disagreed, arguing that ''[j]ust as the certificate holder tracks flight time and flight duty periods, administrative duties should also be tracked.'' IPA stated that subordinate officials who work in an office all day and fly at night are more likely to be fatigued.

ATA and UPS stated that the proposed rule unfairly expands the concept of duty to ''circumstances beyond the carriers' control such as, random drug tests.'' RAA stated that the duty-period limits essentially limited the time that flightcrew members spend on non-flying tasks, but that this was not a significant factor in flightcrew scheduling. These commenters added that air carriers could not always control the types of seats available to deadheading flightcrew members, and that they should not be penalized for being unable to provide deadheading flightcrew members with flat or near flat seats.

The FAA agrees with industry comments that cumulative duty-period limits are unnecessary in this rule. Cumulative duty-period limits were intended to address the following: (1) Deadheading, (2) short-call reserve, and (3) air carrier directed non-flight activities that lead to fatigue during flight. As discussed in other portions of this preamble, the FAA has amended other parts of this rule to address fatigue-related concerns raised by deadheading and short-call reserve.

Turning to the fatigue-related issues of non-flight activities, on reevaluation, the FAA has determined that the FDP limits in this rule fully address the non-flight activities that could contribute to flightcrew member fatigue. This is because the only non-flight activities that have a significant impact on fatigue during flight are activities that occur immediately before the flight without an intervening rest period. Since there is no intervening rest between the non-flight activities and piloting an aircraft, the fatigue accumulated while performing these non-flight activities remains with the flightcrew member when that flightcrew member pilots an aircraft. Therefore, all non-flight activities that occur immediately before a flight without an intervening rest period are part of an FDP and are appropriately restricted by the FDP limits.

The other non-flight (non-FDP) activities do not significantly affect the fatigue experienced during flight because there is an intervening rest period between these activities and the beginning of an FDP. Consequently, the FAA has eliminated the cumulative duty period limits from this rule.

RAA, NACA, and a number of air carriers opposed the cumulative flight-time limits, arguing that FDPs were the actual source of flightcrew member fatigue. Because FDPs are limited by the proposed cumulative FDP limits, these commenters argued that the cumulative flight-time limits are unnecessary.

Existing regulations impose 30-day flight-time limits of 100 hours and calendar-year flight-time limits of 1,000 hours. The FAA has administered these cumulative flight-time limits for over four decades, and based on its operational experience, the FAA has found that cumulative flight-time that falls within these limits is safe. Because the FAA is unaware of any data showing that flight times exceeding these limits are safe, the FAA has decided to retain cumulative flightcrew member flight-time limitations within the existing limits.

As the commenters correctly point out, because FDPs include flight time, the FAA could have addressed the concern discussed in the preceding paragraph by calibrating the cumulative FDP limits. However, as discussed in the Flight Time Limits section of this preamble, the FAA chose to retain the concept of flight-time limits in order to set higher FDP limits and provide air carriers with more flexibility. If the FAA eliminated the cumulative flight-time limits from this rule, it would need to drastically reduce the cumulative FDP limits from the limits that were proposed. This is because without cumulative flight-time limits, the proposed cumulative FDP limits would allow flightcrew members to accumulate flight time that significantly exceeds the cumulative flight time permitted by existing regulations. To keep that from happening and provide air carriers with more scheduling flexibility, this rule largely retains the existing flight-time cumulative limits and sets higher cumulative FDP limits than would otherwise have been permissible.

ATA, RAA, and a number of air carriers stated that imposing cumulative limits for three different regulatory concepts (FDP, duty, and flight time) was unjustified and overly burdensome. ATA stated that cumulative limits would result in additional flight cancellations that inconvenience the general public. RAA stated that the multiple limits overlapped to a significant degree, and the numerous cumulative regulatory restrictions would be very difficult to keep track of in practice.

RAA stated that the standards of other authorities were not applicable to this rulemaking because, instead of simply being concerned with safety, ''CAP–371 and the EASA regulations envision a system of 'fair and equitable' crew scheduling that is justified in a European context by its intent of spreading more fatiguing assignments among the entire flightcrew member community.'' While RAA accepted the proposition that some cumulative restrictions were necessary, it believed that this proposal included too many cumulative restrictions.

As discussed above, the FAA has decided to eliminate the cumulative duty-period limits, which should greatly simplify compliance with this section. Thus, the only remaining cumulative limits are FDP and flight-time limits. The FAA has decided to retain both of these cumulative limits because (1) the FDP limits restrict the amount of cumulative fatigue that a flightcrew member accumulates before and during flights, and (2) the flight-time limits allow the FAA to provide air carriers with more scheduling flexibility by setting higher cumulative FDP limits in this rule. This additional scheduling flexibility justifies the added complexity of the cumulative flight-time limits, which can easily be tracked by scheduling programs currently in use throughout the industry. The FAA also notes that complying with the cumulative flight-time limits in addition to the FDP limits should not present a significant burden to many air carriers because they are already required to keep track of pilot flight time in order to comply with a statutory provision that limits flight time on interstate domestic flights to 85 hours per month.[76]

The FAA understands that standards such as CAP–371 and EASA were drafted to achieve goals that may be somewhat different from the safety goals of this rule. In light of this fact and the requirements of the Administrative Procedure Act, while the FAA has examined the provisions of the various standards of other authorities, the FAA ultimately made its own independent decisions based on the needs and concerns of the stakeholders and the FAA about how to structure this rule. That is why some of this rule's provisions are similar to other standards and other provisions are very different from the standards adopted by other aviation authorities.

RAA, NACA, AMA, Boeing, and a number of air carriers opposed the 365-day cumulative flight-time limit, arguing that there was no safety-based justification for this limit. These commenters stated that the 28-day flight-time limits, as well as the other proposed cumulative limits, restricted cumulative fatigue to acceptable levels on a continuing basis without the need for an annual flight-time limit. Four individual commenters and SWAPA suggested that the 365-day flight-time limit be increased to 1,200 hours. SWAPA noted that the proposed regulations allow a flightcrew member to have 100 flight-time hours in a month, and ''[i]f flying 100 hours per month for ten months in a row does not create a cumulative fatigue problem, we find it hard to imagine that there would be a cumulative fatigue issue in month 11 or 12.'' One individual commenter asserted that the individual monthly flight-time limits should add up to the annual limit.

The 1,000-hour 365-day flight-time limit comes from existing regulations, which limit yearly flight-time to 1,000 hours and monthly flight time to 100 hours. To meet the 1,000-hour limit, air carriers must restrict the average monthly flight times of flightcrew members to approximately 83 hours. However, because the 1,000-hour limit is a yearly limit, air carriers have the flexibility to exceed the 83-hour monthly average and fly up to 100 hours during peak months so long as they fly a reduced number of hours during off-peak months.

The FAA has significant operational experience with the 1,000-hour annual limit, and based on this experience, the FAA has determined that a flight-time average of approximately 83 hours per month is safe. For the sake of regulatory simplicity, the FAA has also considered eliminating the 1,000-hour annual flight-time limit and reducing the monthly flight-time limit to 83 hours. However, the FAA ultimately determined that such a reduction would unnecessarily limit air carriers by prohibiting them from scheduling extra flight-time hours during peak months. Thus, in order to preserve existing air carrier scheduling flexibility, this rule retains the 1,000-hour flight-time limit imposed by the existing regulations.

A number of commenters suggested using calendar periods for cumulative limits instead of rolling periods of hours and calendar days. Boeing, Allegiant, and a number of individual commenters suggested that the annual flight-time limit be based on calendar months instead of 365 days. Boeing and Allegiant stated that the existing regulations have a 12-calendar-month limit, and switching to a 365-day limit would: (1) Increase costs because air carriers would have to change their existing scheduling systems; and (2) make it more difficult for individual flightcrew members to keep track of the annual limit.

Boeing also argued that the cumulative FDP limits should, for the sake of regulatory simplicity, use 28 calendar days as a time-period measurement instead of 672 hours. SkyWest also suggested using calendar periods instead of hourly limits for the sake of simplicity. Conversely, NJASAP supported the use of hourly time periods instead of calendar days or months as a cumulative-limit measurement. IPA supported the use of hourly time periods for daily and weekly limits, but stated that the monthly and annual limits should be based on calendar days. AMA also supported the proposal's use of rolling calendar day and hourly cumulative time periods, asserting that the use of calendar periods would be subject to abuse.

The FAA has largely used consecutive hours to express time periods in this section in order to create a consistent and uniform enforcement standard. One problem with calendar periods is that different air carriers use calendar periods in different ways. Thus, for example, one air carrier's calendar day may start at midnight, while another air carrier's calendar day may start at 9am.

Another problem with calendar periods is that a single calendar period can cover different lengths of time. Thus, a calendar month could cover a time period ranging from 28 to 31 days. A calendar year would also present problems if it is measured in months instead of days because a 28–31-day monthly period would create lookback problems. To avoid these types of issues with calendar periods, this section expresses the cumulative time periods largely as a function of consecutive hours, which are an unchanging uniform standard that applies the same way to all air carriers. The FAA does not believe that this will create an undue burden for air carriers and flightcrew members because modern scheduling programs and spreadsheets can easily keep track of time periods consisting of consecutive hours.

In light of its preference for consecutive hours, the FAA has amended subsection 117.23(b)(1) so that it expresses the corresponding cumulative limit as a function of consecutive hours instead of calendar days. However, the FAA has decided to retain the flight-time limit in subsection 117.23(b)(2) as an expression of calendar days because expressing 365 days as a function of hours would result in a very high number of hours that would be difficult to apply in practice.

Boeing, Kalitta Air, and Omni Air objected to the FDP limits for the 672-hour (28-day) time period, arguing that cumulative fatigue is already taken into account by the 168-hour cumulative limits. Boeing stated that there is no scientific evidence ''proving that an event 672 hours ago has a predictable effect on alertness now.'' Conversely, NACA and a number of labor groups

[76] 49 U.S.C. 42112(b)(1). This statutory provision incorporates National Labor Board Decision number 83, which, among other things, limits monthly flight time to 85 hours.

supported the concept of cumulative limits for 28-day periods.

The different cumulative FDP limits work on the same flexibility principle as the 672-hour and 365-day cumulative flight-time limits. The cumulative FDP limit for the 672-hour period is 190 hours. To comply with this 190-hour limit, an air carrier has to average approximately 47.5 cumulative hours of FDP in each 168-hour period. However, the 60-hour cumulative FDP limit for each 168-hour period allows air carriers to exceed the 47.5-hour FDP average during peak weeks as long as they go below this average during off-peak weeks. Just like the different flight-time limits, this system provides air carriers with scheduling flexibility while keeping the average weekly cumulative FDP times within acceptable bounds.

APA asked that the FAA add in a cumulative flight-time limit for the 168-hour period, arguing that, without this limitation, air carriers could schedule a significant amount of flight time in this period of time.

The existing regulations for domestic and flag operations impose 30–32 hour cumulative flight-time limits for 7-day periods. However, the existing regulations for supplemental operations do not impose cumulative flight-time limits for 7-day periods. Based on its operational experience administering supplemental operations without a 7-day cumulative flight-time limit, the FAA has determined that there is no need to impose a 168-hour flight-time limit in addition to the other cumulative limits in this rule.

NACA, NAA, and Northern Air Cargo asked the FAA to increase the cumulative FDP limits to match the limits suggested for cumulative duty periods, arguing that the proposed limits did not take into account the needs of supplemental operations. Conversely, AAC, AFA–CWA, ALPA, and a number of other union groups asserted that the proposed cumulative limits were appropriate. ALPA stated that the proposed limits should neither be expanded nor reduced and AAC stated that the FAA should not impose additional cumulative limits.

The proposed cumulative-duty-period limits in this rule were higher than the proposed cumulative FDP limits because duty encompassed more non-flight activities than FDP. Since most of the additional non-flight activities covered by duty did not raise significant fatigue-related concerns, the FAA set the cumulative-duty-period limits at a higher level. As discussed above, because duty periods did not have a significant effect on aviation safety independent of FDPs, cumulative-duty-period limits have been eliminated from this rule.

The FAA has also decided against increasing the proposed cumulative FDP limits. Because this rule retains cumulative flight-time limits, the cumulative FDP limits in this section are set at sufficiently high levels that should allow air carriers full utilization of the cumulative flight-time limits in this section. Thus, for example, the cumulative FDP limit for the 672-hour period is 190 hours, which is almost double the cumulative flight-time limit of 100 hours for this time period. Because the proposed cumulative FDP limits were already set at relatively high levels, the FAA has decided against increasing these limits further without additional FRMS-provided data.

NJASAP asked whether the time spent on reserve will count towards the cumulative FDP limits of this section. Only the time that is spent on airport/standby reserve is considered to be FDP. As such, only the time that is spent on this type of reserve counts toward the cumulative FDP limits of this section.

O. Rest

Rest is a significant element of this rule because it is the most critical component of fatigue mitigation. In this rulemaking, the FAA has addressed the following concerns with the present regulatory scheme governing rest: (1) Part 121, subparts Q, R, and S provide rest limits within a 24-hour period, however certificate holders conducting operations with airplanes having a passenger seating configuration of 30 seats or fewer and a payload capacity of 7,500 pounds or less, may comply with the less stringent requirements of 14 CFR 135.261 and 135.273; (2) the lack of any mechanism to assure that rest is provided prior to flight; and (3) no clear requirement that the 9 hour rest period must provide for an 8 hour sleep opportunity. The FAA also sought to specifically articulate what it means for a flightcrew member to be free from duty, as this and other related issues under the current scheme have resulted in more than 55 legal interpretations issued by the FAA regarding rest.

Sleep science has settled on the following points: The most effective fatigue mitigation is sleep; an average individual needs to have an 8-hour sleep opportunity to be restored; 8 hours of sleep requires more than 8 hours of sleep opportunity; and daytime sleep is less restorative than nighttime sleep.[77] For most people, 8 hours of sleep in each 24 hours sustains performance indefinitely.[78] There is a continuous decrease in performance as sleep is lost. Examples of this reduction in performance include complacency, a loss of concentration, cognitive and communicative skills, and a decreased ability to perform calculations. All of these skills are critical for aviation safety.[79]

In the Flight Time ARC meetings, scientific presenters stated that during long pairings with significant time zone shifts, a minimum of 24 hours off would be necessary for flightcrew members to find an adequate sleep opportunity, and sufficient time free from duty.[80] A minimum of two nights of sleep might be necessary to acclimate to a different time zone.[81]

The scientific presenters also noted that an individual's circadian clock is sensitive to rapid time zone changes. They added that long trips present significant issues requiring mitigation strategies.[82] Twenty-four or 48 hours of rest may not be adequately restorative during a trip pairing where a flightcrew member is working 20 days separated by 24-hour layovers. In some cases, shorter rest periods, such as 18 hours or less,

[77] Akerstedt, T., & Gillberg, M. (1981). The circadian variation of experimentally displaced sleep. Sleep, 4 (2), 159–1659. Akerstedt, T., & Gillberg, M. (1990). Subjective and objective sleepiness in the active individual. International journal of neuroscience, 52 (1–2), 29–37. Gander, P.H., De Nguyen, B.E., Rosekind, M.R., & Connell, L.J. (1993). Age, circadian rhythms, and sleep loss in flight crews. Aviation, Space, and Environmental Medicine, 64 (3), 189–195.

[78] Rosekind, M.R., Gander, P.H., Gregory, K.B., Smith, R.M., Miller, D.L., Oyung, R., Webbon, L.L., & Johnson, J.M. (1996). Managing fatigue in operational settings 1: Physiological considerations and countermeasures. Behavioral Medicine, 21, 157–165.

[79] Caldwell, J.A., Mallis, M.M., Caldwell, J.L., Paul, M.A., Miller, J.C., & Neri, D.F. (2009). Fatigue countermeasures in aviation. Aviation, Space, and Environmental Medicine, 69 (1), 29–9.

[80] Gander, P.H., Myhre, G., Graeber, R.C., Anderson, H.T., and Lauber, J.K. (1985). Crew factors in flight operations: I. Effects of 9-hour time-zone changes on fatigue and the circadian rhythms of sleep/wake and core temperature (NASA/TMm 1985–88197). Moffett Field, CA. NASA Ames Research Center.

[81] Lamond, N., Petrilli, R.M., Dawson, D., and Roach, G.D. (2006). Do short international layovers allow sufficient opportunity for pilots to recover? Chronobiology International, 23(6), 1285–1294. Lamond, N., Petrilli, R.M., Dawson, D., and Roach, G.D. (2005). The impact of layover length on the fatigue and recovery of long-haul flight crew. Adelaide/Whyalla, Australia: University of South Australia, centre for Sleep Research.

[82] See also, Gander, P.H., Graeber, R.C., Connell, L.J., and Gregory, K.B. (1991). Crew factors in flight operations: VIII. Factors influencing sleep timing and subjective sleep quality in commercial long-haul flight crews (NASA/TMm 1991–103852). Moffett Field, CA: NASA Ames Research Center. Rosekind, M.R., Gander, P.H., Gregory, K.B., Smith, R.M., Miller, D.L., Oyung, R., Webbon, L.L. and Johnson, J.M. (1996). Managing fatigue in operational settings 2: An Integrated Approach. Behavioral medicine, 21, 166–170.

may be more restorative because of circadian issues.

In the NPRM, the FAA proposed requirements for FDP/reserve period rest, acclimation rest upon returning to home base, and reduced rest under limited conditions. For pre-FDP/reserve assignments, the FAA proposed that prior to accepting a reserve duty period or FDP, the flightcrew member must be given a rest period of at least 9 consecutive hours measured from the time the flightcrew member reaches the hotel or other suitable accommodation.

In addition, the FAA proposed that a flightcrew member must be given at least 30 consecutive hours free from all duty in any 168 consecutive hour period prior to beginning a reserve period or FDP. This provision included two exceptions. The first is that during an FDP or series of FDPs, if a flightcrew member crosses more than 4 time zones on FDPs that exceed 168 consecutive hours, that flightcrew member must be given a minimum of three physiological nights' rest upon return to home base. The second is if a flightcrew member is operating in a new theater, he or she must receive 36 consecutive hours of rest in any 168 consecutive hour period.

The proposal also would have permitted a one-time reduction in the pre-FDP/reserve rest period from 9 to 8 consecutive hours in any 168 consecutive hour period. Additionally and in the event of unforeseen circumstances, the pilot in command and the certificate holder could reduce the 9 hour rest period to 8 consecutive hours. Lastly, the FAA proposed that during a rest period, the certificate holder could not assign and no flightcrew member could accept any assignment for reserve or duty.

Commenters raised two issues concerning the proposed pre-FDP/reserve rest requirement. The first issue was the FAA's selection of the 9 hour rest period. The second issue was the beginning measurement of the rest period. As these two issues interrelate, the comments for both are summarized below.

In the NPRM, the FAA noted that the ARC members supported a domestic rest requirement of 10 hours that was comprised of an 8 hour sleep opportunity, with 30 minutes on each end for transportation and 30 minutes on each end for physiological needs such as eating, exercising and showering. The ARC members also discussed whether the rest requirement should be increased to 12 hours for international operations. The ARC members cited the following reasons for the two added hours for international operations: To provide a longer layover rest period for non-acclimated flightcrews; potential to address increased stress associated with communicating with air traffic control in countries where English is not the native language; and time to transit customs/immigration or travel a long distance to hotel accommodations in foreign destinations.

The FAA decided not to propose two different rest periods and instead put forth one standard rest period for all operations. The FAA was not persuaded that added rest was necessary to deal with air traffic control communications in a foreign airspace. Furthermore, acclimation for determining the length of an FDP was addressed by other provisions in the proposal. Lastly, the time to clear customs/immigration was addressed by refining the point where rest begins.

The FAA received over 2,500 comments from individuals who contend that the proposed 9 hour rest period was inadequate and did not allow sufficient time to eat, bathe, exercise or unwind, and still have an opportunity for 8 hours rest. The NTSB strongly encouraged the FAA to increase the duration of the required rest period to accommodate an opportunity for 8 hours of sleep. CAPA, APA, and SWAPA pointed to FAA Advisory Circular No. 120–FIT, which recognizes that 9 hours of rest typically does not yield 9 or 8 hours of sleep. Peninsula Airways, the Families of Continental Connection Flight 3407, APA, IPA, Southwest Airlines, SWAPA, AE and Delta Air Lines supported a 10 hour rest period for domestic operations.

Approximately 150 individual commenters believe that the rest period for international operations should be 12 hours. Other commenters suggested varying times of 13, 14, and 20 hours respectively for operations that travel across multiple time zones. Pinnacle Airlines suggested a rest period of 48 hours. ALPA advocated a minimum of 13 hours rest period for flightcrew members that fly to a new theater—once they become acclimated, they go back to 10 hours rest. ATA commented that the terminology should be changed from ''domestic'' and ''international'' to ''in theater'' and ''in new theater'' (and use the term ''theater'' as defined in the NPRM). ATA argues that the distinction of domestic/international in this context is not relevant and provides the following example. A pilot completing a north-south flight between the U.S. mainland and Canada or the Caribbean that crosses no time zones should not be treated differently than one that makes the same north-south trip within the continental U.S. APA, CAPA, SWAPA and Kalitta Air endorsed a 12 hour rest period for non-acclimated flights.

Conversely, Hawaiian Airlines supported the single hour rest requirement of 9 hours, and commented that this provision is not competitively disadvantageous for its operations. CCIA supported a longer rest period than that provided under the present regulations. American Airlines supported the proposed 9 hours and Alaska Airlines simply argued that the proposed rest provisions should be withdrawn, reevaluated, and republished for comment.

For the NPRM, the FAA chose to begin the rest period at the time that the flightcrew member reached the hotel or suitable accommodation. The basis for this tentative decision largely rested on the premise that transportation is not rest and therefore, cannot be factored into the rest period. In addition, the time spent in transportation may vary widely.

Commenters were divided with respect to the proposal's measurement of when the rest period begins. Most commenters representing industry did not support measuring the rest period from the time the flightcrew member reached the hotel or suitable accommodation. These commenters described this aspect as wholly unworkable, and open to too many variables that would be beyond the certificate holder's control, *e.g.* vehicular breakdowns, accidents, unexpectedly heavy traffic and lost or overbooked facility reservations. In addition, they state that the certificate holder would be responsible to account for the flightcrew member's whereabouts throughout the rest period. They argue that the certificate holder's responsibility is to control the scheduling of compliant rest periods, not to control an individual's private life and activities when off duty.

The labor organizations and the Families of Continental Connection Flight 3407 supported the proposed beginning measurement of the rest period. These entities were concerned with being able to ''get 9 hours behind the door,'' which would provide a better opportunity for a meaningful 8 hour sleep opportunity. APA also recommended, in addition to the proposal, that the FAA add language that to be compliant with this rest requirement, the hotel room must be available for immediate occupancy upon arrival. A number of pilot groups commented that rest time can be spent waiting for check-in or delay in getting room keys. Conversely, a number of certificate holders stated that check-in sometimes occurs in the vehicle on the

way to the hotel, or that hotels offer separate check-in counters for flightcrew members.

As discussed above, the FAA was not persuaded at the NPRM stage to pursue a separate rest period for international operations. The agency concluded that an additional two hours of rest was not warranted to address potential fatigue from communicating with air traffic controllers in foreign airspace, nor did it support added rest due to time to clear customs and immigration. A number of airports have custom and immigration queues devoted to processing flightcrew members quickly.

The adopted regulations providing FDP limits for augmented and unaugmented operations address acclimation. For an unacclimated flightcrew member, the maximum flight duty period in Table B is reduced by 30 minutes and the flightcrew member enters the applicable FDP table based on the local time at the theater in which the flightcrew member was last acclimated. Under these provisions, the determined FDP limits take into account the flightcrew member's WOCL and general circadian rhythm. As long as the flightcrew member is receiving an 8 hour sleep opportunity, the nature of whether the FDP was international is not relevant. The FAA has decided to retain a single standard rest period provision that applies to all FDPs and reserve periods.

Based on the comments received from the certificate holders, the FAA agrees that using the time when a flightcrew member reaches the hotel or other suitable accommodation would present more issues for implementation than it actually solved. The FAA's main objective with this provision was to ensure that flightcrew members have an 8 hour sleep opportunity. Building from that and mindful of the comments received, the FAA has decided to adopt a 10 consecutive hour rest requirement that immediately precedes the beginning of a reserve or FDP measured from the time the flightcrew member is released from duty. At this point, if the flightcrew member cannot have 8 uninterrupted hours of rest opportunity, the flightcrew member cannot report for the assigned FDP until he/she receives that rest. If the reason for the shortened rest opportunity is travel delays, reservation confusion, or the flightcrew member's actions, the certificate holder is free to address the root cause. However, it must provide the required 8-hour rest opportunity.

The FAA finds that the modifications adopted in this rule address concerns raised by the labor organizations, the NTSB and the Families of Continental Connection Flight 3407 concerning an actual 8 hour opportunity devoted to sleep. Furthermore, it provides reasonable time for travel to the hotel, check-in, and meals. The FAA acknowledges there will be unforeseen circumstances that are beyond the control of either the certificate holder or the flightcrew member and these situations are difficult to capture in a regulatory standard. In situations such as this, where the flightcrew member ultimately is not provided with the necessary rest period and/or sleep opportunity, the flightcrew member must notify the certificate holder that he/she will be unable to obtain the required rest. It is advisable that the flightcrew member alert the certificate holder as soon as possible in order for the certificate holder to make alternative arrangements that may include adjusting the next FDP or flight departure time, or calling in a reserve crew.

NACA, Kalitta Air, NAA and Atlas disagree with the proposed rest requirement for a flightcrew member that crosses more than four different time zones and is away from home base for more than 168 consecutive hours. These commenters specifically state that three physiological nights' rest is excessive, not based on science, and that only a 30 hour rest period is necessary because fatigue has been mitigated throughout the flightcrew member's trip. They also commented that there is no justification for a different standard for rest at home and that rest at home generally is more fatigue mitigating than rest at operating locations. UPS also objected to the use of three physiological nights' rest upon return to home base. UPS contends that rest at home should be treated the same as rest in layover cities and that off-duty time between pairings ''is traditionally, and correctly, addressed via the collective bargaining process.'' [83]

NACA and Kalitta Air also recommended a reduced rest period of 30 hours, instead of the proposed 36 consecutive hours of rest, in any 168 consecutive hours for flightcrew members operating in a new theater.

The FAA adopts as proposed the requirement that a flightcrew member must be given at least 30 consecutive hours free from duty in any 168 consecutive hour period. The NPRM included two exceptions to this requirement. The first exception was a longer rest period upon return to home base after a flightcrew member has been away for more than 168 consecutive hours and has crossed at least four time zones. The second exception was for flightcrew members operating in a new theater to receive 36 hours of rest.

In the NPRM, the FAA stated that it was ''proposing to require a greater rest opportunity when a flightcrew member has been away from his or her home base for more than 168 hours. In this instance, the FAA proposes to require a rest period that includes 3 physiological nights, rather than 36 hours free from duty or permitting the flightcrew member to fly during that approximately 72 hour period.'' 75 Fed. Reg. 55862. The corresponding regulatory text proposed three physiological nights' rest. By using three physiological nights' rest, the FAA intended this provision to provide for a minimum 56-hour rest period, as indicated in the NPRM preamble discussion. As proposed, the regulatory text would permit a flightcrew member, upon return to home base after 168 hours away from home and crossing numerous time zones, to be assigned to FDPs that would occur during the day only, but require the flightcrew member to sleep at home for three nights. The intention was for that flightcrew member to receive a minimum of 56 consecutive hours of rest.[84]

The FAA does not agree with the commenters that a 30 consecutive hour rest period is adequate for flightcrew members that have flown a schedule that has the flightcrew member crossing several time zones and is away from home for more than 168 hours. This longer rest period serves an important purpose. The longer rest period provides a recovery period that facilitates the restoration of the flightcrew member's circadian rhythms. Sleep loss or sleep disturbance can significantly deteriorate performance. Moreover, performance impairment can occur when the sleep-wake cycle has only been phase-advanced by 2–4 hours and maintaining a normal sleep period. These results suggest that performance deterioration can directly result from circadian rhythm disturbance and not only solely from sleep loss that would occur with time zone changes. The onset of sleep and the duration of that sleep can ''* * * depend upon the circadian body temperature phase and provides a physiological basis for the performance deterioration or circadian desynchronization.'' [85] Typically, flights

[83] The FAA notes that not all pilot groups are organized and therefore, do not have a collective bargaining process.

[84] If a flightcrew member begins this rest at 1 a.m. on day 1 and concludes this rest at 7 a.m. on day 3, this provides a minimum of 56 hours of rest.

[85] Winget CM, Deroshia CW, Markley CL, Holley DC. (1984). A review of human physiological and

Continued

across multiple time zones involve a differential restructuring in an internal circadian desynchronization and associated symptoms.[86]

Flightcrews routinely deal with multiple time zone adjustments and work schedule changes. Flight operations involve night and ''shift work'' in general and exposures to different social and environmental cues can vary after both the outbound and inbound segments of flights, which can make the prediction of an individual's resynchronization very difficult. ''Advances'' in rhythms occur with eastward travel and ''delays'' with westward travel. Flights of multiple time zones involve circadian adjustments that vary in length depending on the direction of travel. Physiological, performance, and subjective measures are also found to adjust at different rates to changes in time zones.[87]

Some studies also indicate that a complete adjustment following six time zone transitions was found to take up to 13 days after eastbound flights, and 10 days in westbound flights.[88] Other research indicates that there is considerable variation in the rates of resynchronization of individual rhythms. After a time shift, such as that experienced by pilots flying several days in a new theater, with all rhythms phase-adjusted, upon return to their domicile, a resynchronization process begins anew and is not complete until each rhythm has rephrased back to the home time zone. ''The different rates of rhythm readjustment lead to transient internal dissociation, in which the normal phase relationships between rhythms are disrupted.''[89]

Consequently, the FAA finds it critical to address the desynchronization/resynchronization of circadian rhythms that occurs when transiting multiple time zones. This recovery rest not only acclimates flightcrew members but also resets the circadian rhythms before the next assigned flight duty period. The FAA corrects the regulatory text to provide for a 56 consecutive hour rest instead of the three physiological nights' rest, as previously discussed. Depending upon when the rest period begins, this requirement provides for 2 to 3 physiological nights' rest.

With respect to the NACA and Kalitta's concern with using the higher value of 36 hours rest instead of 30 hours to acclimate, the FAA is not persuaded by the comment. The ARC members agreed that a flightcrew member should have at least 30 to 36 continuous hours free of duty (rest) in any 168 consecutive hours and that once a flightcrew member is given this rest, he or she is considered acclimated to the local time. As rest is critical, the FAA choose to propose the more conservative 36 hour rest period, given that adequate rest provides the most fatigue mitigation. NACA and Kalitta do not offer information supporting 30 hours instead of 36 hours. However, an approved FRMS may appropriately determine whether additional mitigations may permit the limited reduction in rest.

For clarity, the regulatory text in this section has been restructured. Paragraph (b) of this section adopts the 30 consecutive hour minimum rest requirement per week as proposed. Under paragraph (c), if a certificate holder gives a flightcrew member operating in a new theater 36 consecutive hours of rest, then that flightcrew member is acclimated and must enter the FDP Table for his/her next assignment as acclimated to the local time in that new theater. A certificate holder does not need to provide the 36 hour rest once a flightcrew member is in a new theater unless the carrier wants to acclimate that flightcrew member. The flightcrew member may be given a 10 hour rest period in accordance with paragraph (e) of this section and then be assigned a subsequent FDP based on the home base time. However, if the flightcrew member has received 36 consecutive hours of rest, that flightcrew member is acclimated at that point to the new theater, and subsequent FDP assignments must be made according to the acclimated time. The text also specifies that if a flightcrew member has received 36 consecutive hours of rest under this paragraph, then that rest meets the requirements of paragraph (b) for the required rest in any 168 hour period and that resets the 168 hour period. Paragraph (d) now contains that provision that requires at least 56 consecutive hours of rest if a flightcrew member traverses 60° longitude[90] during an FDP or a series of FDPs that require him or her to be away from home base more than 168 consecutive hours. This rest must encompass three physiological nights' rest based on local time.

ALPA, APA, CAPA, and SWAPA argued that where flightcrew members are not acclimated, a recovery period must be provided upon return to home base to ensure a flightcrew member's body clock has recovered home base local time before the start of the next day. They propose that Table F, provided below, be used to determine the number of nights required to re-acclimate. They also propose that Table F be used to provide ''recovery rest'' for time away from home when operating in a different theater for less than 168 consecutive hours away from home. They cite the current regulations[91] as providing this rest for international operations over a period less than 168 consecutive hours.

performance changes associated with desynchronosis of biological rhythms. Aviat. Space Envion. Med. 1984; 55:1085–96, p. 1090.

[86] *Id.* at p. 1085.

[87] Wegmann HM, Klein KE. Jet lag and aircrew scheduling. In: Folkard S, Monk TH, eds. Hours of work. Chichester; John Wiley & Sons Ltd., 1985; 263–76.

[88] Wegmann HM, Gundel A, Naumann M, Samel A, Schwartz E, Vejvoda M. Sleep, sleepiness, and circadian rhythmicity in aircrews operating on transatlantic routes. Aviat. Space Environ. Med. 1986; 57(12, Suppl.); B53–64.

[89] Winget *et al.* (1984) at page 1087.

[90] This change is consistent with the modification to the term theater in the definitions section, discussed earlier.

[91] *See* 14 CFR 121.483, 121.485, 121.523 and 121.525.

Table F – Number of Local Nights for Recovery on Return to Home Base

Elapsed Time Since Leaving Home base (h)	Maximum Time Difference from Home Base (h)					
	4	5	6	7	8-9	10-12+
60-84h	1*	2*	2*	2*	2*	3
84-108h	2*	2*	3	3	3	3
108-132h	3	3	3	3	3	3
132-156h	3	3	3	3	3	3
156+h	3	3	3	3	3	3

Note 1: The values in Table F refer to eastward transitions (eastward outbound/ westward homebound) only. * denotes that for westward transitions (westward outbound/eastward homebound) one extra day is required to be added to the value depicted.

Note 2 : When the elapsed time away from home base is less than 60 hours one full physiological night's recovery rest should be provided on return to base, except when the returning flight duty period encroaches the WOCL, then an additional physiological nights rest will be added.

The FAA cannot support the inclusion of Table F. First and as a practical matter, it is not clear that the Table could be accommodated given the rest period that was proposed without seriously constraining the certificate holder's ability to schedule operations. As discussed previously, the FAA agrees and adopts a provision that specifically addresses the resynchronization of circadian rhythms. That rest however, must also be balanced with the certificate holder's flexibility to schedule operations, particularly those carriers conducting supplemental operations. The FAA used 168 hours as the minimum trigger point for when this rest must be provided for flightcrews returning home after completing FDPs that crossed multiple time zones. Under Table F, flightcrew members would have to be provided a minimum of two nights' rest at home every week. This is an unrealistic constraint on the certificate holder's ability to set and maintain a schedule. Under the concept furthered by this rulemaking, the cumulative limits on FDP during the same 168 hour period, coupled with cumulative rest requirement, should adequately mitigate the effect of cumulative fatigue.

Not unexpectedly, the provisions proposed in the NPRM permitting a limited reduction in rest generally were opposed by the entities representing labor groups and either supported or expanded by the industry groups. ALPA accepted the proposal. SWAPA commented that reduced rest should never be permitted since science supporting reduced rest assumes that one is starting from a full sleep bank, which is not always the case. SWAPA further commented that reduced rest is likely to follow an extended FDP and that if the FAA retains a reduced rest provision it should never be permitted after an FDP has been extended past the maximum provided in Table B. APA only supports reduced rest if restorative rest is provided. In addition, APA argues that if the FAA allows a reduction in rest it should be limited to only once in a 168 consecutive hour period, due to unforeseen circumstances subject to pilot in command concurrence, and never if associated with an extended FDP. FedEx ALPA argued that only a one-hour reduction in rest be permitted and only in cases of unforeseen circumstances. AE supports a permitted one-hour reduction in rest. AA supports the one-hour reduction but never on consecutive nights. Delta commented that the once in 168 consecutive hour period be reset after a 30-hours rest is given.

Conversely, UPS supported multiple reductions in rest without concurrence by the pilot in command. UPS contends that one reduction in a 168 consecutive hour window simply is not feasible. UPS also argues that requiring PIC concurrence will complicate the certificate's holder ability to utilize the reduced rest provisions and its ability to return a disrupted system back to a more normal state.

In view of the comments, the FAA has decided to remove the provisions that would permit a reduction in rest. As one of the stated goals of this rulemaking was to ensure that flightcrew members had an eight hour sleep opportunity, the FAA has reconsidered incorporating criteria in the regulations to permit a reduction in this sleep opportunity. While it is reasonable to anticipate that unforeseen circumstances may warrant a limited extension of an FDP, particularly for situations that arise after takeoff, the flightcrew members at this point have already had the benefit of an eight hour rest opportunity. The FDPs limits implemented by this rule were derived under the premise that flightcrew members were reporting for duty with a full rest. Permitting reduced rest undercuts that premise. This rule includes provisions for extensions of FDPs and flight time, as necessary to accommodate the situations that cannot be planned. Otherwise, certificate holders should not be scheduling FDPs to the point that a rest period needs to be reduced.

P. Deadhead Transportation

In the NPRM, the FAA proposed that all time spent in deadhead transportation is duty. The FAA further proposed that time spent in deadhead transportation would be considered part of an FDP if it occurred before a flight segment without an intervening

required rest period. Lastly, the proposal provided a rest requirement for deadheading flightcrew members: the time spent in deadhead transportation during a duty period may not exceed the flight duty period in Table B for the applicable start time plus 2 hours unless the flightcrew member is given a rest period equal to the length of the deadhead transportation but not less than the required rest in § 117.25 upon completion of such transportation.

Several commenters contend that this proposed rest requirement should be deleted because it is punitive and not supported by science. They argue that this provision implies that the certificate holder should prevent a flightcrew member from deadheading home at the end of an FDP, even if the flightcrew member requests to do so.

The FAA has made changes to the section addressing deadhead transportation. Paragraphs (a) and (b) of proposed § 117.31 have been moved. Paragraph (a) provided that all time spent in deadhead transportation is duty and that statement is relocated to the definition for deadhead transportation. Paragraph (b), which provided that deadhead transportation is part of an FDP if it occurred before a flight segment without an intervening required rest period, is deleted as that information is already contained in the definition of the term ''flight duty period.''

The FAA agrees with the commenters that the proposed text for § 117.29(c), Deadhead transportation, does not correctly articulate the purpose of rest relative to deadhead transportation. The rest is appropriate if the deadhead transportation occurs prior to the FDP. The situation that FAA sought to address in the NPRM was a flightcrew member deadheading on a long flight and then going onto a FDP without the appropriate rest. The language as proposed would require a rest period for a flightcrew member who is deadheading home after completion of an FDP. The FAA has corrected the regulatory text to provide that before beginning a flight duty period, if a flightcrew member has engaged in deadhead transportation that exceeds the applicable flight duty period in Table B, the flightcrew member must be given a rest period equal to the length of the deadhead transportation but not less than 10 consecutive hours.

Q. Emergency and Government Sponsored Operations

This rulemaking also addresses various supplemental operations that require flying into or out of hostile areas, and politically sensitive, remote areas that do not have rest facilities. These operations range from moving armed troops for the U.S. military, conducting humanitarian relief, repatriation, Air Mobility Command (AMC), and State Department missions.[92] The discussions during the ARC recognized that these operations are unique and need to be specifically addressed in this rulemaking. Flights operated by a certificate holder under contract with a U.S. Government agency must comply with the flight and duty regulations in parts 121 and 135, as appropriate, unless the Administrator has granted a deviation under 14 CFR 119.55 or 14 CFR 112.57.

The FAA proposed that certificate holders may extend the applicable maximum FDPs to the extent necessary to allow flightcrew members to fly to a destination where they can safely be relieved from duty by another flightcrew or can receive the required rest before beginning the next FDP. Upon reaching the destination, the flightcrew members will receive the required rest, which would be equal to the length of the actual FDP or 24 hours, whichever is less. Furthermore, the proposal would not permit extensions of the cumulative FDP or cumulative flight time limits. In the event that an FDP was extended pursuant to this section, the NPRM provided reporting requirements.

A number of commenters disagreed with the FAA's use of the title ''Operations in unsafe areas'' as the title of this section. Commenters, including UPS, Atlas Air, NAA, NACA, and NAC recommended various terms instead such as ''Unique areas,'' ''Enhanced Security Consideration Area: Prescriptive Exemption,'' and ''Designated Areas.''

In addition, Atlas questioned the FAA's statement that under this section, the flightcrew members' FDP can be extended to permit them to continue the flight operation and land at the nearest suitable airport. *See* FAA Response to Clarifying Questions at page 24. Atlas commented that this airport may not be operationally feasible or economically viable.

RAA commented that operations may need to use this section to rapidly remove or recover aircraft and crews from an airport about to be impacted by a heavy storm, hurricane, or blizzard.

In the NPRM, the preamble discussion for this proposed section was titled ''Exception for Emergency and Government Sponsored Operations.'' The FAA regrets that the title was not carried over to regulatory text. Introducing the term ''unsafe areas'' could be subject to differing interpretations within the industry. Section 117.29 is now titled ''Emergency and government sponsored operations,'' which is an accurate depiction of the operations addressed in this section and is consistent with the discussion of the proposal.

The purpose of this section is to address true emergency situations and operations that are being conducted under contract with the U.S. Government that pose exceptional circumstances that would otherwise prevent a flightcrew member from being relieved from duty or safely provided with rest at the end of the FDP. This section is not meant to address self-induced emergencies that arise from inadequate planning. Certificate holders must be responsible for having appropriate onboard rest facilities or the proper number of flightcrew members available for the length of the duty day, if necessary.

The FAA reviewed the regulatory text and determined that this clarification warrants certain modifications. First, the applicability provision of this section now specifically articulates the two categories of operations that are affected. This section applies to operations conducted pursuant to contracts with the U.S. Government department and agencies. A number of these types of flights are conducted under contract with the Departments of Defense, State, Homeland Security, Justice, FEMA, and Customs and Immigration. This provision is not limited to operations conducted pursuant to § 119.55, which permits certificate holders to deviate from the requirements of parts 121 and 135, as authorized by the Administrator in order to conduct operations pursuant to a military contract. Rather, this provision could apply to multiple government agencies depending on the mission. The FAA also recognizes that there are operations in which the Department of Defense may need relief from the flight and duty regulations even though the circumstances do not meet the certification requirements of § 119.55.

This section also applies to operations conducted pursuant to a deviation issued by the Administrator under § 119.57 that authorizes an air carrier to deviate from the requirements of parts 121 and 135 to perform emergency operations. For example, under this section the FAA issued operations specifications for emergency operations

[92] This could also apply to the Civil Reserve Air Fleet (CRAF). However CRAF is only activated by presidential order in a time of war. The last time CRAF was activated was in 2003. Currently no operations are being conducted under the CRAF program.

during Hurricane Katrina to allow humanitarian flights into and out of New Orleans. This authority is issued on a case-by-case basis during an emergency situation as determined by the Administrator.

Upon review, the FAA concludes that these two categories are the only types of operations that warrant separate consideration because of the unique operating circumstances that otherwise limit a certificate holder's flexibility to deal with unusual circumstances. Therefore, unless a certificate holder's operations fall under either category, the ability to extend an FDP under this section does not apply.

In response to RAA's comment as to this section regarding moving aircraft and crews from an airport about to be impacted by a blizzard or hurricane, these certificate holders have recourse to extend an FDP as necessary under § 117.19. The FAA's modifications to this section are to allow for true emergency situations and to address the uniqueness of certain government contract operations.

Second, this section adopts the provision permitting the FDP and the flight time for a particular operation to be extended if deemed necessary by the pilot-in-command. This provision was slightly modified to allow for an extension to the flightcrew members' flight time limitations if necessary. In addition, the pilot-in command is given the authority to determine the closest destination to safely land the aircraft and allow for the flightcrew to be relieved and afforded the proper rest. The FAA does not expect the flightcrew to extend the FDP simply to complete the next commercially scheduled leg.[93]

Third, the FAA has addressed the reporting requirements for situations when a FDP is extended. Under the NPRM, the FAA proposed two different reporting requirements depending upon whether the operation was conducted pursuant to a U.S. government contract. This section has been modified to incorporate the reporting requirements listed in § 117.19 Flight Duty Period Extensions. Therefore, the certificate holder must file within 10 days any extended FDP and flight time that exceed the maximum permitted under the adopted regulations. The report must contain a description of the extended FDP and flight time limitations and the circumstances surrounding the situation requiring the extension. In addition, if the circumstances surrounding the situation were within the certificate holder's control, the report must contain information on the certificate holder's intended course of corrective action. This action must be implemented within 30 days from the date that the FDP was extended.

The reporting of FDP extensions in this manner can facilitate the certificate holder and the FAA's determination as to whether the certificate holder is properly planning its operations and mitigating the chances of its flightcrews exceeding the FDP limits. If a certificate holder cannot restructure its operations so that very few of these operations need to take advantage of this provision, the certificate holder is advised to develop an FRMS to address these operations.

Several commenters were concerned with the proposal's prohibition on any extension of the cumulative FDP and flight time limits if an extension to a daily FDP was triggered under this section. The FAA partially agrees with the commenters. For operations conducted pursuant to a deviation authorized under § 119.57, the FAA agrees that these circumstances may necessitate the flightcrew member's ability to exceed the cumulative flight time and FDP limitations respectively found in §§ 117.23(b) and (c). Therefore, this section permits an extension of the flightcrew member's FDP and flight time limitation even if it exceeds the cumulative requirements in 117.23 for operations that are conducted pursuant to a deviation authorized under § 119.57.

The FAA does not make such finding with respect to other operations conducted pursuant to a U.S. government contract. Even though these operations may fly into and out of hostile areas or areas that preclude the flightcrew members from proper rest facilities, the certificate holder is well aware of the operating environments where it is agreeing to conduct such operations. Therefore, these situations must be taken into account during the planning stages. A certificate holder needs to have considered and planned for whether the operations under contract will necessitate staging crews at other airports or installing rest facilities onboard the aircraft to enable augmentation, in order to ensure that flightcrews will not exceed FDP limit. For these operations, the cumulative limits on FDP and flight time apply.

R. Miscellaneous Issues

The FAA has also received a number of comments raising other significant issues. These comments, and the associated responses, are discussed below.

Statutory Authority

ATA stated that this rule exceeds the FAA's statutory authority and that this rule cannot be promulgated pursuant to the authority delegated to the FAA in 49 U.S.C. 44701(a)(5) because this rule does not increase aviation safety or national security.

As the NPRM indicated, the authority for this rulemaking stems from 49 U.S.C. 44701(a)(5), which requires the Administrator to promulgate ''regulations and minimum standards for other practices, methods, and procedure the Administrator finds necessary for safety in air commerce and national security.'' Subsection 44701(a)(5) ''grants the FAA 'broad authority to regulate civil aviation.''' *Gorman* v. *National Transp. Safety Bd.,* 558 F.3d 580, 590 (DC Cir. 2009) (quoting *Ass'n of Flight Attendants-CWA* v. *Chao,* 493 F.3d 155, 157 (D.C. Cir. 2007)).[94]

Here, the FAA finds that this rulemaking is necessary for safety in air commerce. As discussed in other portions of this preamble, the existing flight, duty, and rest regulations permit flightcrew members to accumulate unsafe amounts of fatigue. This unsafe accumulation of fatigue undermines aviation safety by increasing the risk of an accident.[95] This rulemaking addresses this issue by imposing limits that will ensure that flightcrew members' fatigue stays within safety-acceptable bounds. This will decrease the risk of an aviation accident, and thus, this rulemaking will increase safety in air commerce. Because this rulemaking will increase safety in air commerce, it is authorized by 49 U.S.C. 44701(a)(5).

As the NPRM also notes, additional authority for this rulemaking stems from 49 U.S.C. 44701(a)(4). Subsection 44701(a)(4) requires the Administrator to promulgate ''regulations in the interest of safety for the maximum hours or periods of service of airmen and other employees of air carriers.'' This rule reduces the fatigue experienced by flightcrew members during flight by limiting the maximum FDP and flight-time hours of airmen and other covered

[93] FAA Response to Clarifying Questions.

[94] *See Drake* v. *Laboratory Corp. of America Holdings,* 458 F.3d 48, 56 (2d Cir. 2006) (stating that ''Congress granted the FAA broad authority over aviation safety''); *Kraley* v. *National Transp. Safety Bd.,* 165 F.3d 27 (6th Cir. 1998) (unpublished opinion) (stating that ''Congress vested the Administrator of the FAA with broad power to prescribe regulations, standards, and procedures relating to aviation safety'').

[95] *See, e.g.,* Goode, *supra* note 17, at 311 (stating that 16-hour unaugmented FDPs, which are permissible under the existing regulations, result in an accident rate that is over five times higher than the accident rate for shorter FDPs).

employees of air carriers. Because this reduction in fatigue will increase aviation safety, the flight, duty, and rest limits that make up this rule are also authorized by subsection 44701(a)(4).

Constitutional Due Process

UPS argued that this rule is unconstitutional because its provisions substantially impair the collective bargaining agreement between UPS and IPA. Although UPS conceded that the Contracts Clause is not applicable to the federal government, UPS argued that ''similar principles apply [to the federal government] under the Due Process Clause.'' UPS concluded that this rule violates the Fifth Amendment's Due Process Clause because, UPS alleged, there is no justification for the contractual impairment imposed by this rule.

The FAA agrees with UPS that the Contracts Clause is not applicable to actions, such as this rulemaking, that are undertaken by the federal government. *Pension Ben. Guar. Corp.* v. *R.A. Gray & Co.,* 467 U.S. 717, 732 n.8 (1984). With regard to UPS' Fifth Amendment argument, the Supreme Court has explicitly rejected the premise that the Fifth Amendment's Due Process Clause is ''coextensive'' with the Contracts Clause. *Id.* at 733. The Court emphasized that ''to the extent that recent decisions of the Court have addressed the issue, we have contrasted the limitations imposed on States by the Contract Clause with the less searching standards imposed on economic legislation by the Due Process Clauses.'' *Id.* Thus, under the standard set out by the Supreme Court, a federal regulation does not offend the Due Process Clause so long as that regulation is not ''arbitrary and irrational.'' *Id.*

This rule is neither arbitrary nor irrational. While the FAA initiated this rulemaking by establishing an ARC, we subsequently received a Congressional directive, which came about because the existing flight, duty, and rest regulations allowed flightcrew members to accumulate dangerous levels of fatigue. To address this issue and keep flightcrew-member fatigue within reasonable bounds, this rule: (1) Limits daily FDP and flight-time hours based on a flightcrew member's circadian rhythm, (2) sets minimum rest requirements, and (3) encourages fatigue-mitigating measures such as split-duty rest and augmentation. This rule also contains a number of other provisions, which are based on specific fatigue and operational concerns and which are discussed in other parts of this preamble. In addition, each of the proposed provisions in this rule was amended, where possible, to respond to the specific concerns raised by the commenters. Because each provision in this rule has been carefully calibrated to mitigate flightcrew-member fatigue while providing air carriers with as much scheduling flexibility as possible, this rule is neither arbitrary nor irrational. Accordingly, this rule does not violate the Fifth Amendment's Due Process Clause.

Administrative Procedure Act

ATA and a number of other industry commenters criticized the timetable used for this rulemaking. These commenters stated that the ARC for this rulemaking met on an unreasonably compressed schedule that did not provide it with sufficient time to carefully consider the pertinent issues and come to a consensus as to the proper resolution of those issues. CAA stated that, rather than provide the ARC with sufficient time to come up with a comprehensive set of recommendations, ''the overwhelming majority of all regulatory activity has focused exclusively on reductions to the current limitations on hours of duty and flight time limits without ever determining whether such hours of service considerations are in fact the underlying cause of any fatigue.'' CAA concluded that ''[a]s a result, the proposals contained in the NPRM are, on the whole, simply designed to reduce the flightcrew hours of service.''

The industry commenters also stated that the NPRM was an ''incomplete and ambiguous document'' that did not provide them with sufficient detail to make meaningful comments. A number of commenters argued that the regulatory impact analysis used to develop the NPRM omitted important information, and thus, precluded the commenters from providing meaningful critique of this analysis.

CAA also stated that the FAA should have waited to publish an NPRM until the National Research Council's Committee on the Effects of Commuting on Pilot Fatigue provided a final report on the fatigue-related effects of pilot commuting. CAA stated that commuting is the primary cause of pilot fatigue, and that an understanding of pilot commuting is a necessary part of any flight, duty, and rest rule.

In addition, the industry commenters argued that the FAA did not provide them with sufficient time to evaluate the NPRM and submit their comments. They stated that the FAA unreasonably refused their requests to extend the 60-day comment period and provided responses to their numerous clarification questions with less than 30 days left in the comment period. Some commenters also stated that the FAA did not release a technical document that was used in the regulatory evaluation until there were only 23 days left in the comment period. The commenters pointed out that when the FAA conducted a similar rulemaking in 1995, it extended the comment period, citing ''the scope and complexity of the proposal.'' The commenters also stated that an analogous rulemaking conducted by the Department of Transportation Federal Motor Carrier Safety Administration to establish rules on hours of service for commercial motor vehicles permitted an extension of the comment period for that rulemaking. The industry commenters stated that the existence of the ARC was not a sufficient justification for the short comment period because this rule includes a number of provisions that the ARC never considered.

RAA suggested that the FAA issue a supplemental NPRM instead of finalizing this rule. RAA emphasized that the FAA received a large number of comments asking that substantial changes be made to this rule, and to account for the number and breadth of the comments, the FAA should issue a supplemental NPRM setting out its proposed resolution to the issues raised by the comments.

In response to the above comments, the FAA notes that while it began this rulemaking by establishing an ARC, we subsequently received a Congressional directive contained in the Airline Safety and Federal Aviation Extension Act (ASFAEA). Section 212 of ASFAEA required the FAA to issue new flight, duty, and rest regulations. This section, in subsection 212(a)(3), set a deadline of 180 days for the FAA to publish an NPRM and 1 year for the FAA to issue a final rule.

Under normal circumstances, the FAA has broad discretion to extend the timeframe for some parts of the rulemaking process. As the above commenters correctly pointed out, the FAA has used this discretion in the past to extend the timeframe for parts of other rulemakings. However, in this case, the FAA has recognized that implicit within the shortened statutory deadline that Congress set for completing this rulemaking was a presumption against extending the timeframe for any part of this rulemaking.

The FAA limited the ARC's schedule to approximately six weeks. The ARC actually met on a weekly basis for at least 2 days per week. The FAA recognizes the tremendous amount of effort expended by the ARC members

during this time. At the six-week point, the FAA found that the ARC had achieved its goal of highlighting issues for the FAA to consider as part of the FAA's subsequent rulemaking deliberations. Because most of these issues elicited strong divergent opinions from the labor and industry ARC members and because these divergent opinions could not be reasonably reconciled, the FAA concluded that extending the ARC's timeframe would not result in a consensus set of ARC recommendations.

The FAA disagrees with CAA's assertion that the ARC's timeframe was not extended because the FAA wanted to design a rule that ''reduce[s] the flightcrew hours of service.'' While some parts of this rule reduce flightcrew members' hours of service, other parts increase those hours in a way that is consistent with safety considerations. Thus, for example, this rule increases the existing 8-hour unaugmented daily flight-time limit to 9 hours for periods of peak circadian alertness.

Turning to the length of the comment period that was used for this rulemaking, the FAA chose not to extend this rule's comment period due to the detailed comments that it received and the implicit statutory presumption against extensions in this rulemaking. At the end of the 60-day comment period, the FAA examined the comments that were submitted in response to the NPRM, and determined it was unlikely that an extension of the comment period would have a significant effect on comment quality. During the 60-day comment period, thousands of comments were submitted in response to this rulemaking, and many of those comments contained lengthy comprehensive analyses of every single part of the NPRM, as well as a critique of the regulatory evaluation. A number of commenters hired their own experts to provide detailed substantive reports on the NPRM, and these reports were submitted to the FAA during the 60-day comment period. Based on the comprehensive and detailed comments received during the 60-day comment period, the FAA determined that it had received sufficient information to proceed with this rulemaking. In light of this fact and the need to comply with the statutory deadline for this rulemaking, the FAA chose not to extend the comment period.

The FAA also notes that, as the NPRM pointed out, the FAA has a policy of considering comments that are ''filed after the comment period has closed if it is possible to do so without incurring expense or delay.'' 75 FR 55884. Thus, for example, as part of its consideration of augmented FDPs, the FAA took into account Continental and ALPA's comments about ULR flights, even though those comments were filed four months after the comment period closed. Because the FAA has a very liberal late-filed-comments policy, if the affected parties had important new comments that they wanted to file after the 60-day comment period closed, those parties had ample opportunity to file their comments after the closure of the comment period.

As the commenters pointed out, about halfway through the comment period, the FAA provided answers to clarifying questions that the commenters submitted, as well as a technical report that was referred to by the regulatory evaluation. While this information, which was provided with over 23 days left in the comment period, was important, it was not a central component of the NPRM. Moreover, the commenters appear to have fully incorporated this information into their filed comments, as the comments contained a comprehensive analysis of both the clarifying answers and the regulatory evaluation.

Turning to the sufficiency of the NPRM, the FAA finds that the NPRM provided enough detail for the commenters to provide the FAA with meaningful comments. The NPRM set out the regulatory provisions that the FAA proposed for the new flight, duty, and rest regulations, and the NPRM also explained the rationale for each of those provisions. After reading the NPRM and the accompanying regulatory evaluation, the affected parties provided the FAA with thousands of comments, many of which analyzed in detail every provision of the NPRM and provided a critique of the FAA's rationale for each of those provisions. While many of the commenters disagreed with parts of the NPRM, most of them appear to have had a clear understanding of the NPRM. The affected parties also submitted very detailed critiques of the regulatory evaluation that accompanied the NPRM which showed an understanding of the regulatory evaluation.

As a result of the comprehensive and detailed analyses that were submitted by the commenters, the FAA incorporated many of the commenters' suggestions into the final rule and the final Regulatory Impact Analysis. This process improved the final rule and accomplished the requirements of the Administrative Procedure Act.

Turning to CAA's comment, the FAA notes that since commencing this rulemaking activity, the National Research Council has completed its report. The authors of the report independently determined that it is premature to initiate rulemaking related to commuting. See *The Effects of Commuting on Pilot Fatigue,* National Research Council, July 6, 2011.[96] While pilot commuting is an important fatigue-related issue, this rulemaking does not foreclose the FAA from conducting a rulemaking in the future to address pilot commuting issues should better and more complete information of the risks posed by commuting and methods to alleviate that risk become available.

The FAA has also decided not to issue a supplemental NPRM as part of this rulemaking. As discussed above, the FAA received numerous thorough and high-quality comments in response to the original NPRM. Many of the comments have been incorporated into the final rule. We have made no changes that were not either originally contemplated in the NPRM or a logical outgrowth of that document.

Information Quality Act and OMB Bulletin M–05–03

ATA asserted that the NPRM violated the Information Quality Act (IQA), as applied by the Department of Transportation's (DOT) Information Dissemination Quality Guidelines (Guidelines).[97] ATA argued that the Guidelines require FAA rulemakings to meet defined standards of quality, objectivity, utility and integrity. ATA then argued that ''[d]espite the IQA's clear mandate and DOT's guidance, however, the present NPRM contains no accurate, clear, objective and unbiased information supporting the FAA's proposed overhaul of the existing flightcrew member flight and duty time limitations and rest requirements.'' ATA stated that the scientific information used to support the provisions of the NPRM could not meet the standards set out in the Guidelines because it was not validated in the aviation context. CAA added that the FAA's failure to provide additional regulatory-impact information requested by CAA was also a violation of the IQA. UPS argued that the scientific information used in this rulemaking violated OMB Bulleting M–

[96] In addition to reviewing the possibility of regulating pilot commuting, the National Research Council determined that fatigue mitigation needed to take into account multiple factors, including the duration of work periods within a single day and over time; the time of day that work occurs; duration of sleep on work days and non-work days, the volume and intensity of the work; and the different vulnerabilities of individuals to these factors (among others). This assessment is consistent with the FAA's assessment of fatigue risk.

[97] Citing 67 FR 61719 (Oct. 1, 2002).

05–03 because it was not subjected to peer review.

The DOT Guidelines state that, in the context of a rulemaking, the method by which an agency should correct alleged violations of the IQA is by responding to the pertinent public comments in the preamble to the final rule. Guidelines section VIII. In this case, a number of commenters argued that certain provisions of the NPRM were not supported by scientific information. A significant number of scientific studies were referenced in the NPRM. However, in response to the commenters' scientific concerns, the FAA has included either additional scientific information supporting the studies cited in the NPRM or an explanation for why the scientific information and operational experience cited in the NPRM is sufficient to justify the pertinent regulatory provision.

The FAA notes that, while some of the studies used in the final rule have not been validated in the aviation context, the major provisions of this rule are based on uncontroversial scientific findings that apply to all human beings. As the NPRM pointed out, sleep science, while still evolving, is clear in several important respects:

> Most people need eight hours of sleep to function effectively, most people find it more difficult to sleep during the day than during the night, resulting in greater fatigue if working at night; the longer one has been awake and the longer one spends on task, the greater the likelihood of fatigue; and fatigue leads to an increased risk of making a mistake.

75 FR 55857. These uncontroversial scientific findings form the basis for almost all of the major provisions in this rule. The FAA has concluded that, even though some of these findings were not based on aviation data, flightcrew members have the same fatigue concerns as other human beings, and as such, there is no reason to believe that these findings would not apply to flightcrew members.

However, in the process of considering the comments, the FAA found that some of the provisions of the NPRM, such as portions of the proposed fitness-for-duty section and the cumulative duty-period limit, were not justified by scientific studies and operational experience. Consequently, these provisions were removed from the final rule. Because, in this preamble, the FAA responded to comments questioning the scientific basis for the NPRM and removed regulatory provisions that could not be justified through scientific findings or operational experience, this rule does not violate the IQA and the DOT Guidelines.[98]

Turning to OMB Bulletin M–05–03, this Bulletin requires that ''[t]o the extent permitted by law, each agency shall conduct a peer review on all influential scientific information that the agency intends to disseminate.'' OMB Bulletin M–05–03, section II(1). The studies cited in this document were not conducted on behalf of the FAA and only generally note trends in sleep science. As noted earlier in this document, sleep science does not now, and likely never will, reach the level of certainty that would allow an agency to make public policy decisions based solely on scientific studies. While the science is informative, final decisions will necessarily be based on a balancing of interests in the real world rather than on rigid adherence to scientific studies. This rule complies with this Bulletin because almost all of the scientific information cited in this preamble comes from peer-reviewed scientific journals. Two notable exceptions are the TNO Report and the SAFTE/FAST modeling that was used in parts of this rule. However, the FAA has determined that both the TNO Report and the SAFTE/FAST model have been evaluated sufficiently to provide useful information to the agency in making policy decisions on how best to balance the needs of carriers to maximize their operations while still providing sufficient and meaningful rest opportunities to mitigate the risk of fatigue to those operations. The TNO Report's findings were reviewed by the Scientific Review Board of the Netherlands Organization for Applied Scientific Research, Department of Behavioral and Social Sciences (which complies with ISO 9001:2000 certification standards) and the review board of the Directorate General Transport and Aviation of the Netherlands Ministry of Transport. Turning to the SAFTE/FAST model, as the NPRM pointed out ''[t]his model is widely used, with approximately 14 major carriers and sixteen governmental agencies world-wide having used the model to evaluate fatigue in aviation and other industrial settings.'' 75 FR 55867 n.35. The NPRM also noted that a copy of the technical report evaluating this model has been placed on the docket, and, in addition, the NPRM cited a number of studies that either evaluated or utilized the SAFTE/FAST model. *See id.* n.34.

Executive Order 12866

A number of industry commenters stated that this rulemaking does not comply with Executive Order 12866 because: (1) Its benefits do not justify its costs, (2) it is not based on scientific information, (3) the FAA has not assessed alternatives, and (4) the rule is unduly burdensome.

The commenters stated that the FAA admitted that sleep science has not been validated in the aviation context and portions of this rule, such as cumulative duty-period limits and lower unaugmented FDP limits for additional flight segments, are not based on scientific evidence. ATA and UPS argued that this rule also violated Section 212 of the Airline Safety and Federal Aviation Extension Act because, according to ATA and UPS, this rule is not based on the best science.

ATA and RAA criticized the FAA's approach to this rulemaking. RAA stated that the ARC members whose recommendations were used in this rulemaking have considerable operational experience, and that the less conservative, air carrier ARC recommendations were based on this experience and did not undermine safety. RAA added that some of the specific limits set out in this rule could have been increased due to the fact that this rule contains significant safety oversight provisions.

The industry commenters also stated that the FAA has not considered alternatives to this rule because its ''one-size fits all'' proposal does not take into account ''the unique needs of individual carriers or types of operations.'' ATA stated that this rule is unduly burdensome because the NPRM ''improperly treats passenger, cargo, short-haul, long-haul, domestic, and international carriers and operations the same despite their crucial, differing operational demands and crew scheduling requirements.''

NACA asserted that the FAA never considered the alternative proposals submitted by supplemental air carriers. NACA added that the FAA never explained why it excluded part 135 operators from this rule, but did not exclude other small business entities such as supplemental air carriers. ATA stated that the FAA did not carefully consider the impact that maintaining the status quo would have on small business entities, and that this violated the Regulatory Flexibility Act.

Executive Order 12866 requires, among other things, that a federal agency: (1) ''propose or adopt a

[98] The FAA also notes that the DOT Guidelines are simply the ''policy views of DOT.'' Guidelines section III. These Guidelines ''are not intended to be, and should not be construed as, legally binding regulations or mandates.'' *Id.*

regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs;'' (2) base its decision on the best available scientific information; (3) consider alternatives to the proposed regulation; and (4) ''tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes.''

The FAA has determined that the benefits of this rule justify its costs. A detailed discussion explaining the FAA's basis for this determination is contained in the Regulatory Impact Analysis. The FAA has also used the best available scientific information as the basis for this rule. As discussed in the preceding section, most of the provisions in this rule are supported by the latest peer-reviewed scientific studies. While some of these peer-reviewed studies have not been validated in the aviation context, as discussed above, the major provisions of this rule are based on uncontroversial scientific findings that apply to all human beings.

The FAA acknowledges that the proposed cumulative duty-period limits were largely unnecessary, which is why they have been removed from the final rule. With regard to lower unaugmented FDP limits for additional flight segments, as the pertinent section of this preamble points out, a number of scientific studies support the premise that an increase in the number of flight segments leads to an increase in flightcrew member fatigue.[99] The FAA also acknowledges that certain provisions of the NPRM were unduly conservative, and these provisions have been amended in response to concerns expressed by the commenters. For example, the unaugmented FDP limits, which were based on the most conservative ARC recommendation, have been amended in accordance with higher FDP-limit alternatives that were proposed by industry commenters.

The FAA has also considered alternatives to the provisions set out in the NPRM. As the NPRM stated, the FAA has considered the alternative of maintaining the status quo, but rejected that alternative because the status quo subjects society to an ''unacceptably high aviation accident risk.'' 75 FR 55882. For example, as discussed in the Applicability section of this preamble, some of the FDPs permitted by the existing regulations can result in a five-fold increase to accident risk.

The FAA has also considered the alternative of differentiating between different types of part 121 operations. As a result, the FAA has decided to make the provisions of this rule voluntary for all-cargo operations, as subjecting all-cargo operations to the same mandatory flight, duty, and rest regulations as passenger operations would result in costs that far outweigh the commensurate societal benefit.

The FAA also considered differentiating between the different types of part 121 passenger operations. However, the FAA ultimately decided against this approach because, as discussed in the Applicability section, the factors that lead to fatigue are universal and, unlike all-cargo operations, imposing this rule on passenger operations is cost-justified. A flightcrew member who is working on a 16-hour unaugmented FDP will feel the same level of fatigue regardless of the type of operation that he or she is participating in. Accordingly, this rule uniformly regulates the universal fatigue factors in passenger operations regardless of the specific part 121 passenger operation that is involved.

The FAA has also considered the impact that this rule would have on supplemental passenger operations, and it has incorporated a number of suggestions from carriers who conduct supplemental operations and organizations that represent those carriers, into the final rule. The reason that the FAA excluded part 135 businesses regardless of size, but did not exclude air carriers who conduct supplemental operations from this rule, is that the air carriers who conduct supplemental operations operate under part 121 which contains more stringent safety standards than those found in part 135. Pursuant to the Regulatory Flexibility Act, the FAA also considered the impact of this rule on small businesses, and the pertinent discussion can be found below.

Throughout this rulemaking, the FAA has attempted to impose the least possible burden on air carriers, consistent with the need to improve safety. As many commenters pointed out, some provisions of this rule are complex because the FAA has consistently decided against imposing across-the-board flight, duty, and rest limitations, which would have been more stringent than necessary. Instead, this rule imposes stringent limits in safety-critical areas, such as the WOCL, and less stringent limits in other areas, such as unaugmented FDPs that begin in the morning.

The FAA also notes that the uniform approach used in this rulemaking provides additional scheduling flexibility to air carriers. For example, because this rule does not differentiate between international and domestic flights (aside from acclimation and time-zone-crossing issues), this rule permits augmentation on domestic flights, which existing regulations do not allow. In addition, because this rule does not differentiate between supplemental passenger operations and other part 121 passenger flights, this rule does not require supplemental passenger operations to provide flightcrew members with additional compensatory rest that is mandated by existing regulations. Accordingly, this rule complies with Executive Order 12866 because it: (1) Has benefits that justify its costs, (2) is based on the best available scientific information, (3) was finalized after the FAA considered a number of other alternatives, and (4) is tailored to impose the least burden on society.

Voluntary Consensus

ATA argued that this rule should have used a voluntary consensus standard instead of a government-unique standard. ATA stated that OMB Circular A–119 requires agencies to use voluntary standards whenever possible, and that the short time span given to the ARC was not sufficient for the ARC to address the complex issues present in this rulemaking.

As an initial matter, the FAA notes that there is no voluntary consensus standard for the issues addressed by this rulemaking. The FAA disagrees with ATA's assertion that OMB Circular A–119 requires the FAA to use a voluntary consensus standard in this rulemaking. Subsection 6(c) of OMB Circular A–119 states that:

> This policy does not preempt or restrict agencies' authorities and responsibilities to make regulatory decisions authorized by statute. Such regulatory authorities and responsibilities include determining the level of acceptable risk; setting the level of protection; and balancing risk, cost, and availability of technology in establishing regulatory standards.

This rulemaking consists of the FAA exercising its regulatory responsibility and establishing the acceptable level of fatigue-related risk, setting the appropriate level of protection from fatigue, and balancing the risks of fatigue with the costs that will be borne by air carriers as a result of this rule. Because subsection 6(c) of OMB Circular A–119 excludes this type of agency action from the circular's requirements, OMB Circular A–119 does not preempt or restrict the FAA's statutory authority to conduct this rulemaking. *See id.*

[99] *See supra* notes 36–38.

Public Interest

ATA stated that this rule would also harm the public interest by: (1) Reducing the number of U.S. jobs by hurting the competitive nature of the U.S. air carrier industry; (2) harm the U.S. economy by imposing excessive costs on air carriers; (3) disrupt air travel and waste passengers' air time as a result of additional cancelled and delayed flights; and (4) disrupt critical air deliveries.

As discussed above, this rule does not hurt the competitive nature of the U.S. air carrier industry. This rule simply reflects a different conceptual approach that the FAA utilized in light of its significant operational experience with daily flight-time limits. With regard to the remaining concerns expressed in the comments, as discussed in the Regulatory Impact Analysis, the costs that are imposed by this rule are justified by the associated benefits of reducing the risk that passengers will be involved in an accident.

Two-Year Effective Date

RAA also stated that a two-year effective date for this rule may be too short given the magnitude of the changes being proposed, and the complex process, development, training, and system programming, testing and implementation that would be required to effect those changes cannot be properly accomplished in such a time period. RAA emphasized that the changes being proposed by this rule ''go to the very heart'' of an airline's operations.

The FAA understands that this rule imposes complex new requirements that go to the heart of an airline's operations. That is why this rule provides air carriers with two years to make changes to their existing flight schedules and operations and if necessary, to address any labor agreement issues. The FAA has determined that two years is a substantial period of time, and that a longer effective date is unwarranted in light of the fact that, as discussed above, existing regulations allow flightcrew members in passenger operations to accumulate unsafe amounts of fatigue.

Federal Motor Carrier Safety Administration Hours of Service Rulemaking

FMCSA has been engaged in long-term rulemaking related to its hours of service regulations for commercial truck drivers. Like the FAA, FMCSA is working to address the universality of factors that lead to fatigue. However, the FAA has taken a different approach in addressing fatigue risk among pilots than FMCSA has with respect to commercial truck drivers. This is because the two industries operate differently both in terms of the likely number of days the affected individuals work per month and the respective operating environments. For example, pilots regularly cross multiple time zones in a very short period of time—something that is simply not possible in other modes of transportation. Additionally, pilots may work several days that are very long, but then be off for an extended period of time, a practice that naturally imposes a non-regulatory restorative rest opportunity. Finally, the nature of commercial flying is such that under typical conditions, the actual operation is likely to require intense concentration primarily during take-offs and landings, with a constant, but generally predictable level of concentration required for other phases of flight.

In contrast, commercial truck drivers face an environment where they are required to share the highways with drivers who have not received specialized training and are not subject to any regulatory constraints that pilots are subject to. This environment could logically lead to a regulatory approach with different fatigue mitigators for daytime operations on congested highways, compared to nighttime operations, where the roads are less crowded but the risk of fatigue is greater.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements 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. The FAA suggests readers seeking greater detail read the full regulatory impact analysis, a copy of which the agency has placed in the docket for this rulemaking.

In conducting these analyses, the FAA has determined that this final rule: (1) Has benefits that justify its costs even though under the base case scenario the quantified costs are greater than the quantified benefits, (2) is not an economically ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, (3) is ''significant'' as defined in DOT's Regulatory Policies and Procedures; (4) will have a significant economic impact on a substantial number of small entities; (5) will not create unnecessary obstacles to the foreign commerce of the United States; and (6) will 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.

Total Benefits and Costs Over a 10 Year Period

We have analyzed the benefits and the costs associated with the requirements contained in this Final Rule over a 10 year period. We provide a range of estimates for our quantitative benefits. Our base estimate is $376 million ($247 million present value at 7% and $311 million present value at 3%) and our high case estimate is $716 million ($470 million present value at 7% and $593 million at 3%). The total estimated cost of the Final Rule is $390 million ($297 million present value at 7% and $338 million at 3%).

Additionally, the FAA believes there are substantial, non-quantified health benefits associated with the final rule. The agency has not evaluated the effect of fatigue on the overall, long-term health of the pilot community because those health impacts are unlikely to have an impact on aviation safety in a quantifiable manner. However, as ALPA noted in one of its meetings with OMB under its E.O. 12866 procedures, the societal cost associated with long-term fatigued-related health problems can be substantial.[100] Decreasing these costs

[100] See OMB submission from ALPA dated October 28, 2011. *http://www.whitehouse.gov/omb/oira_2120_meetings/.*

represents a societal benefit. While we have not quantified these potential benefits, they may well exceed the projected costs of the rule when added to our base case estimate.

The actual benefits of the final rule will depend upon the type and size of accident that the rule averts. We have provided a base case estimate, based on historical accidents and the regulatory structure in place at the time those accidents occurred, and a high estimate, based on a projection of future accidents that broadly reflect the historical accident profile. Neither estimate assumes a catastrophic accident aboard a large passenger aircraft. This is because no large passenger aircraft were represented in the historical accident analysis rather than because there is no fatigue-related risk to those operations. We note that preventing a single catastrophic accident with 61 people on board would cause this rule to be cost beneficial.

Total benefits over 10 years			
Estimate	Nominal (millions)	PV at 7% (millions)	PV at 3% (millions)
Base	$376	$247	$311
High	716	470	593
Total costs over 10 years			
Component	Nominal (millions)	PV at 7% (millions)	PV at 3% (millions)
Flight Operations	$236	$157	$191
Rest Facilities	138	129	134
Training	16	11	13
Total	390	297	338

Benefits of the Rule

The benefit analysis first examines the nature of fatigue, followed by its causes and how it relates to transportation. Second, it summarizes some recent findings on fatigue and occupational performance. Third, it looks at the magnitude of crew fatigue in Part 121 commercial aviation by briefly examining fatigue reports in the context of this final rule. We then re-analyze the likely effectiveness of the requirements contained in this final rule and the potential to decrease these types of accidents in the future. The FAA projects a likely number of preventable events that will occur in absence of this final rule. Finally, the agency estimates the benefits that will be derived from preventing such events and a range of benefits based upon likely scenarios.

Here the FAA provides a quantitative benefit estimate of historical-based accidents (base case), and a high case of expected benefits from future averted accidents once this rule is promulgated. Generally our benefit analysis begins using past history as an important reference from which to begin the benefit analysis. We believe the base case benefit estimate, which is based solely on the outcome of past accidents, may be low because today passenger load factors and aircraft size are already greater than they were in the past decade. We also note that this estimate may not fully take into account changes in regulatory requirements that postdate those accidents and that may mitigate the projected risk. As such, our base case estimate represents a snapshot of risk.

Airplane accidents are somewhat random both in terms of airplane size and the number of people on board. For these reasons, projections of future fatalities may be based on future risk exposure, and our projections are typically based on expected distributions around the mean. Our typical scenario incorporates increasing airplane size, expected load factors, and a breakeven analysis. However, our evaluation of the historical accidents showed a disproportionate risk among smaller, regional carriers. Accordingly, as we discuss below, the FAA has decided to base its high case estimate on preventing an accident in a regional jet airplane.

In response to comments, we have reduced the analysis period from the 20 years provided in the proposed regulatory analysis to 10 years here. We received comments disputing the use of a 20 year time frame for accidents stating the accident rate has declined over time. While noting the wide range of operations over the last 20 years, we shortened the accident history to the last ten years. A reduction in the length of the sample period introduces other problems, most importantly with less time there are fewer observations. Observations are important, as the nature of aviation accidents is that while they are rare events, very often these accidents result in severe, high consequences.

The FAA Office of Accident Investigation assessed the effectiveness of this rule to prevent the 6 fatigue-related accidents which occurred on passenger-carrying aircraft in a recent ten year period. This office used the Commercial Aviation Safety Team (CAST) methodology to assign a value to how effective the rule will be at preventing each accident. On average, we expect this rule would have been 52.5 percent effective in preventing the types of accidents had it been in effect over the last 10 years.

Base Case Estimate

The base case estimate only looks at the historical events as a specific reference point. In this estimate the exact number of fatalities for each past event is multiplied by the relative rule effectiveness score to obtain the historical number of deaths that would have been averted with the requirements contained in this final rule, had this rule been in effect at the time. The base case estimate supposes roughly six deaths will be averted annually. Multiplying six annual averted deaths by the $6.2 million value of statistical life equals $37 million annually. In addition, had the requirements been in place at the time of these historical accidents, $2 million in hull damage for each accident would have been averted, which equals $6 million for ten years or $0.6 million annually. When summed over the ten year period of analysis, the base case estimate is $376 million ($247 million present value at 7% and $311 million present value at 3%).

High Case Estimate

Because airplane accidents are relatively rare they are not necessarily representative of actual risk, especially with regard to airplane size and the number of people on-board. In addition, future conditions will be different than they were when the accident occurred. Thus, the base case represents a snapshot of the risk that fatigue introduces in the overall operating environment. It considers neither the forecasted increase in load factors nor the larger aircraft types. The future preventable events that this rule addresses will not exactly mirror the past events because the airplane types, utilization, and seating capacity have changed.

To quantify the expected benefits in the high case scenario, we narrowed the analysis to three of the six historic accidents which were catastrophic (all on board died). In this case the expected number of preventable catastrophic accidents equals the three accidents multiplied by the 52.5 percent effectiveness rate. Thus over a ten-year time period the expected number of preventable accidents is 1.575. Using the Poisson distribution there is roughly a 20 percent chance for no accident; however, there is also a 50 percent probability of two or more accidents.

While the 20 year accident history has a broader range of catastrophic accidents, in the shorter ten year historical period all the three catastrophic accidents were on regional airplanes. We recognize that as regional airplanes are smaller than the 'typical' passenger jet, assuming all future accidents would be on a regional jet may understate the relative risk across the fleet of aircraft affected by this rule. It does, however, represent historical accidents and may be somewhat representative actual future risk, since the mainline carriers typically have collective bargaining agreements that are already largely reflective of the requirements of this rule.[101]

The average size airplane in the forecast period is a B737/A320 with an expected number of passengers and crew of 123 given a forecasted 142 seat airplane and a load factor of 83 percent.[102] Even though there was a (relatively large) B757 passenger airplane accident in the 20 year history, if one looks at the past 10 years as truly representative of risk, the preventable accident would likely be on a regional airplane.

For the high case the FAA backed away from a benefit outcome based on mean fleet, flight hours, and occupant numbers because ultimately we were persuaded there was information which could not be ignored by the three regional passenger accidents occurring without a mainline passenger accident. For this reason, we selected an 88 seat regional jet (like an ERJ–175) to be the representative airplane for the high case. This size airplane is also consistent with the fact that regional operators are expected to fly somewhat larger airplanes in the future.

The expected benefit from this high case follows a simple methodology for estimating and then valuing the expected number of occupants in a prevented accident. With a total of 0.3 accidents per year over the ten year period multiplied by the 52.5 percent effectiveness rate, the analysis assumes 0.1575 average accidents per year. The estimated occupant value for each averted accident equals the average number of seats (88) multiplied by the load factor of 77% plus 4 crew members for a total of 72 averted fatalities. Each of these prevented fatalities is multiplied by a $6.2 million value of statistical life. The expected value of a preventable accident equals the sum of the averted fatalities at $446.4 million added to the value of the airplane hull loss ($8.15 million replacement value), for a prevented accident benefit of $454.6 million.[103] Over a ten year period the value of preventing the expected 1.575 accidents equals approximately $716 million ($470 million present value at 7% and $593 million present value at 3%).

Cost of the Rule

The total estimated cost of the Final Rule is $390 million ($297 million at 7% present value and $338 million at 3% present value). The FAA classified costs into three main components and estimated the costs for each component. Data was obtained from various industry sources; the sources of the data used in cost estimation are explained in each section. Flight operations cost accounts for 53 percent of the total present value cost of the rule. Rest facilities and fatigue training accounts for approximately 43 percent and 4 percent, respectively. Each of the main cost components is explained in-depth in the Regulatory Evaluation.

Cost component	Nominal cost (millions)	PV at 7% (millions)	PV at 3% (millions)
Flight Operations	$236	$157	$191
Rest Facilities	138	129	134
Training	16	11	13
Total	390	297	338

Alternatives Considered—The alternatives are shown in the section ''Final Regulatory Flexibility Analysis''

B. Final Regulatory Flexibility Analysis

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 would have a significant economic impact on a substantial number of small entities. If the determination is that it would, the agency must prepare a

[101] It is unusual that collective bargaining agreements would closely mirror regulatory requirements. However, flight and duty limitations are unique because they address both safety considerations, which are regulatory in nature, and lifestyle considerations, which are properly addressed in collective bargaining agreements. Because of the impact of collective bargaining agreements on the number of hours that pilots work, those agreements were considered by the FAA in calculating both the costs and benefits of this rule.

[102] Table 6, FAA Aerospace Forecasts Fiscal Years 2011.

[103] In contrast, the value of an averted all-cargo fatal accident would range between $20.35 million (loss of hull and 2 crewmembers) and $32.55 million (loss of hull and 4 crewmembers).

regulatory flexibility analysis as described in the RFA.

The FAA believes that this final rule will have a significant economic impact on a substantial number of small entities and therefore has performed final regulatory flexibility analysis in accordance with section 604(a)(1)–(5), highlighted below:

1. A succinct statement of the need for, and objectives of, the rule.

2. A summary of the significant issues raised by the public comments in response to the IRFA, a summary of the assessment of the agency of such issues, and a statement of any changes made in the proposed rule as a result of such comments.

3. A description and an estimate of the number of small entities to which the rule will apply or an explanation of why no such estimate is available.

4. A description of the projected reporting, recordkeeping, and other compliance requirements of the rule, including an estimate of the classes of small entities that will be subject to the requirement and the types of professional skills necessary for preparation of the report or record.

5. A description of the steps the agency has taken to minimize the significant adverse economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each of the other significant alternatives to the rule considered by the agency were rejected. We address each requirement.

1. A Succinct Statement of the Need for, and Objectives of, the Rule

This final rule amends the FAA's existing flight, duty and rest regulations applicable to certificate holders and their flightcrew members operating under 14 CFR Part 121. The rule recognizes the universality of factors that lead to fatigue in most individuals. Fatigue threatens aviation safety because it increases the risk of pilot error that could lead to an accident. The new requirements eliminate the current distinctions between domestic, flag and supplemental operations as they apply to passenger operations. The rule provides different requirements based on the time of day, whether an individual is acclimated to a new time zone, and the likelihood of being able to sleep under different circumstances. The objective of the proposed rule is to increase the margin of safety for passengers traveling on U.S. part 121 air carrier flights. Specifically, the FAA wants to decrease diminished flight crew performance associated with fatigue or lack of alertness brought on by the duty requirements for flightcrew members.

2. A Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA, a Summary of the Assessment of the Agency of Such Issues, and a Statement of Any Changes Made in the Proposed Rule as a Result of Such Comments

NAA, NJASAP, Southern Air, Lynden Air Cargo, NACA and U.S. Chamber of Commerce stated that RFA of the proposed rule failed to address the full burden to be borne by small entities, such as nonscheduled air carriers, and that the FAA did not follow RFA requirements in addressing alternative means of compliance that would lessen the economic burden on small entities.

Since the NPRM, the FAA has made substantial changes to the duty and rest requirements that will significantly reduce the cost to small entities.

3. A Description and an Estimate of the Number of Small Entities to Which the Rule Will Apply or an Explanation of Why No Such Estimate Is Available

The final rule applies to all certificate holders operating under part 121 who conduct passenger operations. There are 67 such operators, of which 55 operators have fewer than 1,500 employees.

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for Preparation of the Report or Record

As described in the Paperwork Reduction Analysis, there are additional compliance requirements for reporting and recordkeeping.

5. A Description of the Steps the Agency Has Taken To Minimize the Significant Adverse Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy, and Legal Reasons for Selecting the Alternative Adopted in the Final Rule and Why Each of the Other Significant Alternatives to the Rule Considered by the Agency was Rejected.

Current crew schedules vary by operator, labor contract, and size of pilot pools. As such, the impact to small entity operators will vary. The agency understands that many smaller operators have maximized their pilot time in the cockpit and may have little flexibility with potential new flight and duty regulations and we have taken steps to minimize the economic impact on small entities. In response to several comments from small entities, the FAA has made significant changes from the proposal in this final rule which will minimize the economic impact on small entities. In addition, the FAA has largely removed schedule reliability from this rule. The FAA has instead adopted provisions that limit extensions of the FDP and requires reporting of FDP extensions and activities that were not otherwise permitted by the provisions of § 117.11, § 117.19 and § 117.29 in the Final Rule. Under this amendment, costs to airline carriers are limited to reporting exceptional activities by sending electronic mails to the FAA.

Alternative—Require Four Hours' Mid-duty Rest To Work on Give Consecutive Nighttime FDPs

This final rule reduces (to two hours) the amount of mid-duty rest necessary to work on five consecutive nighttime FDPs. The FAA rejected the higher mid-duty rest requirement proposed in the NPRM because of the potential negative impact on small businesses and the safety risks that are discussed in the pertinent part of the preamble.

Alternative—Different Limitations on Supplemental Passenger Operations

The FAA has considered imposing different limitations on small supplemental passenger operations but has rejected this alternative. The FAA has decided to impose the same FDP limits on passenger supplemental operations as other part 121 operations. While there are relatively few supplemental passenger operations, the FAA has determined that these pilots should be as rested as those in scheduled service since the numbers of passengers onboard the aircraft are similar to those on board an aircraft operating as a scheduled service. Furthermore, a significant number of these operations involve the transport of troops. The United States government believes these passengers should not be exposed to a level of risk different from if they were transported via a scheduled service operation.

Alternative—Exclude/Exempt Supplemental Passenger Operations

The FAA has also considered excluding supplemental passenger operations from this rule but rejected this alternative for the same reasons that it rejected the alternative of imposing different limitations on supplemental passenger operations. In addition, the FAA has noted that its decision to include supplemental operations in this

rule was not specifically targeted at small businesses because many large air carriers also have supplemental authority.

Alternative—Require All-Cargo Operators To Comply With the Final Rule

The FAA has also considered requiring all-cargo operators to comply with part 117. However, the FAA decided to make compliance with this part voluntary for all-cargo operations because their compliance costs significantly exceed the quantified safety benefits.

C. International Trade Impact Assessment

A number of industry commenters argued that finalizing the NPRM as written would undermine the ability of U.S. air carriers to compete with foreign air carriers. These commenters stated that 49 U.S.C. 40101(a)(15) and (e)(1) require the Secretary of Transportation to ensure that U.S. air carriers compete on equal terms with foreign carriers. The commenters then pointed out that this rule contains provisions, such as daily flight-time limits, that are not a part of analogous foreign regulations, and that these provisions hurt the international competitive position of U.S. air carriers who are subject to this rule.

The industry commenters added that the imposition of daily flight-time limits, which are not contained in foreign aviation regulations, creates an unnecessary obstacle to the foreign commerce of the United States, and thus violates the Trade Agreements Act of 1979 (TAA) (codified at 19 U.S.C. sections 2531–2533). The commenters also argued that by imposing daily flight-time limits, the FAA did not properly consider other international standards, and thus violated the TAA, OMB Circular A–119, and Executive Order 12866, all of which require the FAA to consider international standards.

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub. L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.[104] The FAA has assessed the potential effect of this final rule and determined that it would enhance safety and is not considered an unnecessary obstacle to trade.

The flight-time limits in this rule do not undermine the international competitive position of U.S. air carriers. While this rule sets daily flight-time limits that many foreign aviation rules do not contain, the additional fatigue mitigation created by the daily flight-time limits permits the FAA to set less stringent requirements in other parts of this rule. For example, this rule only requires a 10-hour rest period between FDPs instead of the 12-hour rest period required by many foreign flight, duty, and rest regulations. This rule also permits 14-hour FDPs for periods of peak circadian alertness while some foreign regulations, such as EU Rules, Subpart Q, only permit FDPs that do not exceed 13 hours.[105]

As the above examples demonstrate, the imposition of daily flight-time limits is simply the result of a different conceptual approach that was utilized by the FAA. The FAA chose this approach because it has significant operational experience administering daily flight-time limits, and the FAA chose to employ this experience to better calibrate the specific provisions of this rule. This difference in approach does not undermine the competitive position of U.S. air carriers because the imposition of daily flight-time limits permitted the FAA to make other parts of this rule less stringent than the analogous provisions of foreign flight, duty, and rest regulations.

D. 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 final rule does not contain such a mandate; therefore, the requirements of Title II do not apply.

E. Paperwork Reduction Act

The paperwork burden comprises of five areas, fatigue risk management system § 117.7, fatigue training § 117.9, flight time limitation § 117.11, and flight duty period extension reporting § 117.19 and Emergency and government sponsored operations § 117.29. The following analyses were conducted under Paperwork Reduction Act of 1995 (44 U.S.C. 3501).

(1) PRA analysis for reporting fatigue risk management system (FRMS) § 117.7 provision

The final rule will allow each air carrier to develop a Fatigue Risk Management System (FRMS) if it wishes. FRMS is a voluntary program in the final rule. It will result in an annual recordkeeping and reporting burden if some of industry carriers eventually adopt the system so that they need to report the related activities to the FAA. Total FRMS annualized paperwork burden is determined by the numbers of FRMS to be developed and FRMS reporting cost per responders. FAA estimated that FRMS will incur the paperwork burden about $14,950 annually, $149,500 nominal cost for 10 years or $99,186 present value at 7%. FAA took steps to arrive the estimate as follows.

a. Number of respondents (air carriers): the FAA estimated approximately 20 carriers or respondents;

b. Estimated time of paperwork: about 11.5 hours per air carrier and 230 hours in total for data collection, annual FRMS record-keeping and reporting required by the FAA;

c. Average hourly wage rate of a FRMS information respondent (manager level): $65 per hour for reporting and analyzing FRMS data;

d. FRMS paperwork hour estimation: total 230 hours (11.5 hours × 20 estimated carriers);

e. Total annualized cost of FRMS paperwork is about $14,950 ($1,253.50 × 20) for the estimated 20 carriers.

f. The nominal cost for 10-year is $149,500 or $99,186 present value at 7%.

(2) PRA analysis for fatigue training § 117.9 provision

The fatigue training requirement in the final rule will also result in an annual recordkeeping and reporting burden. Total fatigue training annualized paperwork burden costs are determined by the numbers of responders and fatigue training reporting cost per responders. FAA

[104] As discussed in the International Compatibility section, there are no ''international standards'' to consider.

[105] *See* EU Rules, Subpart Q, OPS 1.1100, section 1.3 and OPS 1.1110, section 1.1.

estimated that the fatigue training will incur the paperwork burden approximately 2,345 hours, $152,425 for the first year, $1.5 million nominal cost for 10 years or $1 million present value at 7%. FAA took steps to arrive the estimate as follows.

a. Number of responders (dispatchers and managers): 67 operators;

b. Estimated time needed for each responder: 35 hours, or 2,345 hours incurred by 67 responders;

c. Average hourly wage rate of trainee: $65 per hour;

d. Fatigue training paperwork cost: $152,425 per annum ($65 hourly wage rate × 2,345 hours);

(3) PRA analysis for § 117.11, § 117.19 and § 117.29 provisions

The FAA combined the cost estimates in one PRA analysis for three provisions of the final rule (§ 117.11, § 117.19 and § 117.29), since paperwork burdens for carriers to report activities that were not otherwise permitted by § 117.11, § 117.19 and § 117.29 are the same. Reporting and recordkeeping by carriers can be done electronically by addressing the facts of events. Under the above provisions, carriers do not need to conduct complicated analyses, so that there will be no paperwork burden of analyses. In this analysis, the estimate of paperwork burden will be determined by the numbers of respondents, the frequencies of their reporting, hours required and the reporter's wage rate. The FAA estimated the final annual paperwork burden for three provisions is $92,250, and $0.9 million for the 10-years nominal cost, or the present value of $0.6 million at 7%, by taking steps to arrive the estimate as follows.

a. Number of respondents (air carriers): there are 67 carriers or respondents;

b. Estimated frequencies for reporting requirements under each provision: Although a definitive frequency is unknown and will decrease as certificate holders adapt the changes, the FAA assumes an average of 6 times per year for each provision;

c. Estimated total frequencies of annual responses: 18 times (6 × 3) per carrier and 1,206 times (67 × 18) by 67 carriers for these three provisions of the final rule;

d. Estimated time needed for each report for each occurrence: 30 minutes, one hundred percent of these responses will be collected electronically. The time needed for each carrier to report is about 9 hours (18 × 30 minutes), and 603 hours in total by 67 carriers for these three provisions of the final rule;

e. Estimated hourly wage rate of reporting staff: $65 per hour;

f. The estimated total annual cost of reporting is about $39,195 (603 hours × $65);

g. The nominal cost for 10-years is about $0.4 million or the present value of $0.24 million at 7%.

Summarizing the above, the annualized cost is approximately $194,950 and the total nominal cost for 10-years about $2.1 million ($0.15 million + $1.5 million + $0.4 million) or the present value of approximately $1.3 million at 7% ($0.1 + $1 million + $0.2 million). The public reporting burden is estimated to be an average of 47 hours for each Part 121 certificate holder and 3,178 hours, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total annual cost burden is approximately $204,950 in total for 67 carriers. There will be no additional annualized cost to the Federal Government, because FAA will not add additional staff or pay additional contractors for collecting, viewing and keeping electronic report-emails.

F. International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has determined that there are no ICAO Standards and Recommended Practices that directly correspond to these regulations.[106]

G. 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 rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

[106] Chapter 4 of ICAO 6, Amendment 33, section 4.2.10.2 states the following:

Fatigue management. An operator shall establish flight time and duty period limitations and a rest scheme that enable it to manage the fatigue of all its flight and cabin crew members. This scheme shall comply with the regulations established by the State of the Operator, or approved by that State and shall be included in the operations manual.

This provision of ICAO is not inconsistent with this rule. Moreover, because the ICAO provision defers to the regulations promulgated by the State of the Operator, it does not even directly correspond to this rule.

V. Executive Order Determinations

A. Executive Order 12866 and 13563

See the ''Regulatory Evaluation'' discussion in the ''Regulatory Notices and Analyses'' section elsewhere in this preamble.

B. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

C. Executive Order 13211, Regulations That Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The agency has determined that it is not a ''significant energy action'' under the executive order and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal (*http://www.regulations.gov*);

2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or

3. Access the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html.*

Copies may also be obtained by sending a request (identified by notice, amendment, or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680.

B. Comments Submitted to the Docket

Comments received may be viewed by going to *http://www.regulations.gov* and following the online instructions to search the docket number for this action. Anyone is able to search the electronic form of all comments received into any of the FAA's 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.*).

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 117

Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety.

14 CFR Part 119

Air carriers, Aircraft, Aviation safety, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations as follows:

■ 1. Part 117 is added to read as follows:

PART 117—FLIGHT AND DUTY LIMITATIONS AND REST REQUIREMENTS: FLIGHTCREW MEMBERS

Sec.

117.1 Applicability.
117.3 Definitions.
117.5 Fitness for duty.
117.7 Fatigue risk management system.
117.9 Fatigue education and awareness training program.
117.11 Flight time limitation.
117.13 Flight duty period: Unaugmented operations.
117.15 Flight duty period: Split duty.
117.17 Flight duty period: Augmented flightcrew.
117.19 Flight duty period extensions.
117.21 Reserve status.
117.23 Cumulative limitations.
117.25 Rest period.
117.27 Consecutive nighttime operations.
117.29 Emergency and government sponsored operations.
Table A to Part 117—Maximum Flight Time Limits for Unaugmented Operations
Table B to Part 117—Flight Duty Period: Unaugmented Operations
Table C to Part 117—Flight Duty Period: Augmented Operations

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46901, 44903–44904, 44912, 46105.

§ 117.1 Applicability.

(a) This part prescribes flight and duty limitations and rest requirements for all flightcrew members and certificate holders conducting passenger operations under part 121 of this chapter.

(b) This part applies to all operations directed by part 121 certificate holders under part 91, other than subpart K, of this chapter if any segment is conducted as a domestic passenger, flag passenger, or supplemental passenger operation.

(c) This part applies to all flightcrew members when participating in an operation under part 91, other than subpart K of this chapter, on behalf of the part 121 certificate holder if any flight segment is conducted as a domestic passenger, flag passenger, or supplemental passenger operation

(d) Notwithstanding paragraphs (a), (b) and (c) of this section, a certificate holder may conduct under part 117 its part 121 operations pursuant to 121.470, 121.480, or 121.500.

§ 117.3 Definitions.

In addition to the definitions in §§ 1.1 and 110.2 of this chapter, the following definitions apply to this part. In the event there is a conflict in definitions, the definitions in this part control.

Acclimated means a condition in which a flightcrew member has been in a theater for 72 hours or has been given at least 36 consecutive hours free from duty.

Airport/standby reserve means a defined duty period during which a flightcrew member is required by a certificate holder to be at an airport for a possible assignment.

Augmented flightcrew means a flightcrew that has more than the minimum number of flightcrew members required by the airplane type certificate to operate the aircraft to allow a flightcrew member to be replaced by another qualified flightcrew member for in-flight rest.

Calendar day means a 24-hour period from 0000 through 2359 using Coordinated Universal Time or local time.

Certificate holder means a person who holds or is required to hold an air carrier certificate or operating certificate issued under part 119 of this chapter.

Deadhead transportation means transportation of a flightcrew member as a passenger or non-operating flightcrew member, by any mode of transportation, as required by a certificate holder, excluding transportation to or from a suitable accommodation. All time spent in deadhead transportation is duty and is not rest. For purposes of determining the maximum flight duty period in Table B of this part, deadhead transportation is not considered a flight segment.

Duty means any task that a flightcrew member performs as required by the certificate holder, including but not limited to flight duty period, flight duty, pre- and post-flight duties, administrative work, training, deadhead transportation, aircraft positioning on the ground, aircraft loading, and aircraft servicing.

Fatigue means a physiological state of reduced mental or physical performance capability resulting from lack of sleep or increased physical activity that can reduce a flightcrew member's alertness and ability to safely operate an aircraft or perform safety-related duties.

Fatigue risk management system (FRMS) means a management system for a certificate holder to use to mitigate the effects of fatigue in its particular operations. It is a data-driven process and a systematic method used to continuously monitor and manage safety risks associated with fatigue-related error.

Fit for duty means physiologically and mentally prepared and capable of performing assigned duties at the highest degree of safety.

Flight duty period (FDP) means a period that begins when a flightcrew member is required to report for duty with the intention of conducting a flight, a series of flights, or positioning or ferrying flights, and ends when the aircraft is parked after the last flight and there is no intention for further aircraft movement by the same flightcrew member. A flight duty period includes the duties performed by the flightcrew member on behalf of the certificate holder that occur before a flight segment or between flight segments without a required intervening rest period. Examples of tasks that are part of the flight duty period include deadhead transportation, training conducted in an aircraft or flight simulator, and airport/standby reserve, if the above tasks occur before a flight segment or between flight segments without an intervening required rest period:

Home base means the location designated by a certificate holder where a flightcrew member normally begins and ends his or her duty periods.

Lineholder means a flightcrew member who has an assigned flight duty

period and is not acting as a reserve flightcrew member.

Long-call reserve means that, prior to beginning the rest period required by § 117.25, the flightcrew member is notified by the certificate holder to report for a flight duty period following the completion of the rest period.

Physiological night's rest means 10 hours of rest that encompasses the hours of 0100 and 0700 at the flightcrew member's home base, unless the individual has acclimated to a different theater. If the flightcrew member has acclimated to a different theater, the rest must encompass the hours of 0100 and 0700 at the acclimated location.

Report time means the time that the certificate holder requires a flightcrew member to report for an assignment.

Reserve availability period means a duty period during which a certificate holder requires a flightcrew member on short call reserve to be available to receive an assignment for a flight duty period.

Reserve flightcrew member means a flightcrew member who a certificate holder requires to be available to receive an assignment for duty.

Rest facility means a bunk or seat accommodation installed in an aircraft that provides a flightcrew member with a sleep opportunity.

(1) *Class 1 rest facility* means a bunk or other surface that allows for a flat sleeping position and is located separate from both the flight deck and passenger cabin in an area that is temperature-controlled, allows the flightcrew member to control light, and provides isolation from noise and disturbance.

(2) *Class 2 rest facility* means a seat in an aircraft cabin that allows for a flat or near flat sleeping position; is separated from passengers by a minimum of a curtain to provide darkness and some sound mitigation; and is reasonably free from disturbance by passengers or flightcrew members.

(3) *Class 3 rest facility* means a seat in an aircraft cabin or flight deck that reclines at least 40 degrees and provides leg and foot support.

Rest period means a continuous period determined prospectively during which the flightcrew member is free from all restraint by the certificate holder, including freedom from present responsibility for work should the occasion arise.

Scheduled means to appoint, assign, or designate for a fixed time.

Short-call reserve means a period of time in which a flightcrew member is assigned to a reserve availability period.

Split duty means a flight duty period that has a scheduled break in duty that is less than a required rest period.

Suitable accommodation means a temperature-controlled facility with sound mitigation and the ability to control light that provides a flightcrew member with the ability to sleep either in a bed, bunk or in a chair that allows for flat or near flat sleeping position. Suitable accommodation only applies to ground facilities and does not apply to aircraft onboard rest facilities.

Theater means a geographical area where local time at the flightcrew member's flight duty period departure point and arrival point differ by more than 60 degrees longitude.

Unforeseen operational circumstance means an unplanned event of insufficient duration to allow for adjustments to schedules, including unforecast weather, equipment malfunction, or air traffic delay that is not reasonably expected.

Window of circadian low means a period of maximum sleepiness that occurs between 0200 and 0559 during a physiological night.

§ 117.5 Fitness for duty.

(a) Each flightcrew member must report for any flight duty period rested and prepared to perform his or her assigned duties.

(b) No certificate holder may assign and no flightcrew member may accept assignment to a flight duty period if the flightcrew member has reported for a flight duty period too fatigued to safely perform his or her assigned duties.

(c) No certificate holder may permit a flightcrew member to continue a flight duty period if the flightcrew member has reported him or herself too fatigued to continue the assigned flight duty period.

(d) As part of the dispatch or flight release, as applicable, each flightcrew member must affirmatively state he or she is fit for duty prior to commencing flight.

§ 117.7 Fatigue risk management system.

(a) No certificate holder may exceed any provision of this part unless approved by the FAA under a Fatigue Risk Management System that provides at least an equivalent level of safety against fatigue-related accidents or incidents as the other provisions of this part.

(b) The Fatigue Risk Management System must include:

(1) A fatigue risk management policy.

(2) An education and awareness training program.

(3) A fatigue reporting system.

(4) A system for monitoring flightcrew fatigue.

(5) An incident reporting process.

(6) A performance evaluation.

§ 117.9 Fatigue education and awareness training program.

(a) Each certificate holder must develop and implement an education and awareness training program, approved by the Administrator. This program must provide annual education and awareness training to all employees of the certificate holder responsible for administering the provisions of this rule including flightcrew members, dispatchers, individuals directly involved in the scheduling of flightcrew members, individuals directly involved in operational control, and any employee providing direct management oversight of those areas.

(b) The fatigue education and awareness training program must be designed to increase awareness of:

(1) Fatigue;

(2) The effects of fatigue on pilots; and

(3) Fatigue countermeasures

(c) (1) Each certificate holder must update its fatigue education and awareness training program every two years and submit the update to the Administrator for review and acceptance.

(2) Not later than 12 months after the date of submission of the fatigue education and awareness training program required by (c)(1) of this section, the Administrator shall review and accept or reject the update. If the Administrator rejects an update, the Administrator shall provide suggested modifications for resubmission of the update.

§ 117.11 Flight time limitation.

(a) No certificate holder may schedule and no flightcrew member may accept an assignment or continue an assigned flight duty period if the total flight time:

(1) Will exceed the limits specified in Table A of this part if the operation is conducted with the minimum required flightcrew.

(2) Will exceed 13 hours if the operation is conducted with a 3-pilot flightcrew.

(3) Will exceed 17 hours if the operation is conducted with a 4-pilot flightcrew.

(b) If unforeseen operational circumstances arise after takeoff that are beyond the certificate holder's control, a flightcrew member may exceed the maximum flight time specified in paragraph (a) of this section and the cumulative flight time limits in 117.23(b) to the extent necessary to safely land the aircraft at the next destination airport or alternate, as appropriate.

(c) Each certificate holder must report to the Administrator within 10 days any flight time that exceeded the maximum

flight time limits permitted by this section. The report must contain the following:

(1) A description of the extended flight time limitation and the circumstances surrounding the need for the extension; and

(2) If the circumstances giving rise to the extension were within the certificate holder's control, the corrective action(s) that the certificate holder intends to take to minimize the need for future extensions.

(d) Each certificate holder must implement the corrective action(s) reported in paragraph (c)(2) of this section within 30 days from the date of the extended flight time limitation.

§ 117.13 Flight duty period: Unaugmented operations.

(a) Except as provided for in § 117.15, no certificate holder may assign and no flightcrew member may accept an assignment for an unaugmented flight operation if the scheduled flight duty period will exceed the limits in Table B of this part.

(b) If the flightcrew member is not acclimated:

(1) The maximum flight duty period in Table B of this part is reduced by 30 minutes.

(2) The applicable flight duty period is based on the local time at the theater in which the flightcrew member was last acclimated.

§ 117.15 Flight duty period: Split duty.

For an unaugmented operation only, if a flightcrew member is provided with a rest opportunity (an opportunity to sleep) in a suitable accommodation during his or her flight duty period, the time that the flightcrew member spends in the suitable accommodation is not part of that flightcrew member's flight duty period if all of the following conditions are met:

(a) The rest opportunity is provided between the hours of 22:00 and 05:00 local time.

(b) The time spent in the suitable accommodation is at least 3 hours, measured from the time that the flightcrew member reaches the suitable accommodation.

(c) The rest opportunity is scheduled before the beginning of the flight duty period in which that rest opportunity is taken.

(d) The rest opportunity that the flightcrew member is actually provided may not be less than the rest opportunity that was scheduled.

(e) The rest opportunity is not provided until the first segment of the flight duty period has been completed.

(f) The combined time of the flight duty period and the rest opportunity provided in this section does not exceed 14 hours.

§ 117.17 Flight duty period: Augmented flightcrew.

(a) For flight operations conducted with an acclimated augmented flightcrew, no certificate holder may assign and no flightcrew member may accept an assignment if the scheduled flight duty period will exceed the limits specified in Table C of this part.

(b) If the flightcrew member is not acclimated:

(1) The maximum flight duty period in Table C of this part is reduced by 30 minutes.

(2) The applicable flight duty period is based on the local time at the theater in which the flightcrew member was last acclimated.

(c) No certificate holder may assign and no flightcrew member may accept an assignment under this section unless during the flight duty period:

(1) Two consecutive hours in the second half of the flight duty period are available for in-flight rest for the pilot flying the aircraft during landing.

(2) Ninety consecutive minutes are available for in-flight rest for the pilot performing monitoring duties during landing.

(d) No certificate holder may assign and no flightcrew member may accept an assignment involving more than three flight segments under this section.

(e) At all times during flight, at least one flightcrew member qualified in accordance with § 121.543(b)(3)(i) of this chapter must be at the flight controls.

§ 117.19 Flight duty period extensions.

(a) For augmented and unaugmented operations, if unforeseen operational circumstances arise prior to takeoff:

(1) The pilot in command and the certificate holder may extend the maximum flight duty period permitted in Tables B or C of this part up to 2 hours.

(2) An extension in the flight duty period under paragraph (a)(1) of this section of more than 30 minutes may occur only once prior to receiving a rest period described in § 117.25(b).

(3) A flight duty period cannot be extended under paragraph (a)(1) of this section if it causes a flightcrew member to exceed the cumulative flight duty period limits specified in 117.23(c).

(4) Each certificate holder must report to the Administrator within 10 days any flight duty period that exceeded the maximum flight duty period permitted in Tables B or C of this part by more than 30 minutes. The report must contain the following:

(i) A description of the extended flight duty period and the circumstances surrounding the need for the extension; and

(ii) If the circumstances giving rise to the extension were within the certificate holder's control, the corrective action(s) that the certificate holder intends to take to minimize the need for future extensions.

(5) Each certificate holder must implement the corrective action(s) reported in paragraph (a)(4) of this section within 30 days from the date of the extended flight duty period.

(b) For augmented and unaugmented operations, if unforeseen operational circumstances arise after takeoff:

(1) The pilot in command and the certificate holder may extend maximum flight duty periods specified in Tables B or C of this part to the extent necessary to safely land the aircraft at the next destination airport or alternate airport, as appropriate.

(2) An extension of the flight duty period under paragraph (b)(1) of this section of more than 30 minutes may occur only once prior to receiving a rest period described in § 117.25(b).

(3) An extension taken under paragraph (b) of this section may exceed the cumulative flight duty period limits specified in 117.23(c).

(4) Each certificate holder must report to the Administrator within 10 days any flight duty period that exceeded the maximum flight duty period limits permitted by Tables B or C of this part. The report must contain a description of the circumstances surrounding the affected flight duty period.

§ 117.21 Reserve status.

(a) Unless specifically designated as airport/standby or short-call reserve by the certificate holder, all reserve is considered long-call reserve.

(b) Any reserve that meets the definition of airport/standby reserve must be designated as airport/standby reserve. For airport/standby reserve, all time spent in a reserve status is part of the flightcrew member's flight duty period.

(c) For short call reserve,

(1) The reserve availability period may not exceed 14 hours.

(2) For a flightcrew member who has completed a reserve availability period, no certificate holder may schedule and no flightcrew member may accept an assignment of a reserve availability period unless the flightcrew member receives the required rest in § 117.25(e).

(3) For an unaugmented operation, the total number of hours a flightcrew member may spend in a flight duty period and a reserve availability period

may not exceed the lesser of the maximum applicable flight duty period in Table B of this part plus 4 hours, or 16 hours, as measured from the beginning of the reserve availability period.

(4) For an augmented operation, the total number of hours a flightcrew member may spend in a flight duty period and a reserve availability period may not exceed the flight duty period in Table C of this part plus 4 hours, as measured from the beginning of the reserve availability period.

(d) For long call reserve, if a certificate holder contacts a flightcrew member to assign him or her to a flight duty period that will begin before and operate into the flightcrew member's window of circadian low, the flightcrew member must receive a 12 hour notice of report time from the certificate holder.

(e) A certificate holder may shift a reserve flightcrew member's reserve status from long-call to short-call only if the flightcrew member receives a rest period as provided in § 117.25(e).

§ 117.23 Cumulative limitations.

(a) The limitations of this section include all flying by flightcrew members on behalf of any certificate holder or 91K Program Manager during the applicable periods.

(b) No certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total flight time will exceed the following:

(1) 100 hours in any 672 consecutive hours and

(2) 1,000 hours in any 365 consecutive calendar day period.

(c) No certificate holder may schedule and no flightcrew member may accept an assignment if the flightcrew member's total Flight Duty Period will exceed:

(1) 60 flight duty period hours in any 168 consecutive hours and

(2) 190 flight duty period hours in any 672 consecutive hours.

§ 117.25 Rest period.

(a) No certificate holder may assign and no flightcrew member may accept assignment to any reserve or duty with the certificate holder during any required rest period.

(b) Before beginning any reserve or flight duty period a flightcrew member must be given at least 30 consecutive hours free from all duty in any 168 consecutive hour period.

(c) If a flightcrew member operating in a new theater has received 36 consecutive hours of rest, that flightcrew member is acclimated and the rest period meets the requirements of paragraph (b) of this section.

(d) If a flightcrew member travels more than 60° longitude during a flight duty period or a series of flight duty periods that require him or her to be away from home base for more than 168 consecutive hours, the flightcrew member must be given a minimum of 56 consecutive hours rest upon return to home base. This rest must encompass three physiological nights' rest based on local time.

(e) No certificate holder may schedule and no flightcrew member may accept an assignment for any reserve or flight duty period unless the flightcrew member is given a rest period of at least 10 consecutive hours immediately before beginning the reserve or flight duty period measured from the time the flightcrew member is released from duty. The 10 hour rest period must provide the flightcrew member with a minimum of 8 uninterrupted hours of sleep opportunity.

(f) If a flightcrew member determines that a rest period under paragraph (e) of this section will not provide eight uninterrupted hours of sleep opportunity, the flightcrew member must notify the certificate holder. The flightcrew member cannot report for the assigned flight duty period until he or she receives a rest period specified in paragraph (e) of this section.

(g) If a flightcrew member engaged in deadhead transportation exceeds the applicable flight duty period in Table B of this part, the flightcrew member must be given a rest period equal to the length of the deadhead transportation but not less than the required rest in paragraph (e) of this section before beginning a flight duty period.

§ 117.27 Consecutive nighttime operations.

A certificate holder may schedule and a flightcrew member may accept up to five consecutive flight duty periods that infringe on the window of circadian low if the certificate holder provides the flightcrew member with an opportunity to rest in a suitable accommodation during each of the consecutive nighttime flight duty periods. The rest opportunity must be at least 2 hours, measured from the time that the flightcrew member reaches the suitable accommodation, and must comply with the conditions specified in § 117.15(a), (c), (d), and (e). Otherwise, no certificate holder may schedule and no flightcrew member may accept more than three consecutive flight duty periods that infringe on the window of circadian low. For purposes of this section, any split duty rest that is provided in accordance with § 117.15 counts as part of a flight duty period.

§ 117.29 Emergency and government sponsored operations.

(a) This section applies to operations conducted pursuant to contracts with the U.S. Government and operations conducted pursuant to a deviation under § 119.57 of this chapter that cannot otherwise be conducted under this part because of circumstances that could prevent flightcrew members from being relieved by another crew or safely provided with the rest required under § 117.25 at the end of the applicable flight duty period.

(b) The pilot-in-command may determine that maximum applicable flight duty periods must be exceeded to the extent necessary to allow the flightcrew to fly to the closest destination where they can safely be relieved from duty by another flightcrew or can receive the requisite amount of rest prior to commencing their next flight duty period.

(c) A flight duty period may not be extended for an operation conducted pursuant to a contract with the U.S. Government if it causes a flightcrew member to exceed the cumulative flight time limits in § 117.23(b) and the cumulative flight duty period limits in § 117.23(c).

(d) The flightcrew shall be given a rest period immediately after reaching the destination described in paragraph (b) of this section equal to the length of the actual flight duty period or 24 hours, whichever is less.

(e) Each certificate holder must report within 10 days:

(1) Any flight duty period that exceeded the maximum flight duty period permitted in Tables B or C of this part, as applicable, by more than 30 minutes; and

(2) Any flight time that exceeded the maximum flight time limits permitted in Table A of this part and § 117.11, as applicable.

(f) The report must contain the following:

(1) A description of the extended flight duty period and flight time limitation, and the circumstances surrounding the need for the extension; and

(2) If the circumstances giving rise to the extension(s) were within the certificate holder's control, the corrective action(s) that the certificate holder intends to take to minimize the need for future extensions.

(g) Each certificate holder must implement the corrective action(s) reported pursuant to paragraph (e)(2) of

this section within 30 days from the date of the extended flight duty period.

TABLE A TO PART 117—MAXIMUM FLIGHT TIME LIMITS FOR UNAUGMENTED OPERATIONS TABLE

Time of report (acclimated)	Maximum flight time (hours)
0000–0459	8
0500–1959	9

TABLE A TO PART 117—MAXIMUM FLIGHT TIME LIMITS FOR UNAUGMENTED OPERATIONS TABLE—Continued

Time of report (acclimated)	Maximum flight time (hours)
2000–2359	8

TABLE B TO PART 117—FLIGHT DUTY PERIOD: UNAUGMENTED OPERATIONS

Scheduled time of start (acclimated time)	Maximum flight duty period (hours) for lineholders based on number of flight segments						
	1	2	3	4	5	6	7+
0000–0359	9	9	9	9	9	9	9
0400–0459	10	10	10	10	9	9	9
0500–0559	12	12	12	12	11.5	11	10.5
0600–0659	13	13	12	12	11.5	11	10.5
0700–1159	14	14	13	13	12.5	12	11.5
1200–1259	13	13	13	13	12.5	12	11.5
1300–1659	12	12	12	12	11.5	11	10.5
1700–2159	12	12	11	11	10	9	9
2200–2259	11	11	10	10	9	9	9
2300–2359	10	10	10	9	9	9	9

TABLE C TO PART 117—FLIGHT DUTY PERIOD: AUGMENTED OPERATIONS

Scheduled time of start (acclimated time)	Maximum flight duty period (hours) based on rest facility and number of pilots					
	Class 1 rest facility		Class 2 rest facility		Class 3 rest facility	
	3 pilots	4 pilots	3 pilots	4 pilots	3 pilots	4 pilots
0000–0559	15	17	14	15.5	13	13.5
0600–0659	16	18.5	15	16.5	14	14.5
0700–1259	17	19	16.5	18	15	15.5
1300–1659	16	18.5	15	16.5	14	14.5
1700–2359	15	17	14	15.5	13	13.5

PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS

■ 2. 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.

■ 3. In § 119.55, revise paragraph (a) to read as follows:

§ 119.55 Obtaining deviation authority to perform operations under a U.S. military contract.

(a) The Administrator may authorize a certificate holder that is authorized to conduct supplemental or on-demand operations to deviate from the applicable requirements of this part, part 117, part 121, or part 135 of this chapter in order to perform operations under a U.S. military contract.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 4. The authority section 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, 46901, 44903–44904, 44912, 46105.

■ 5. In § 121.467, revise paragraphs (c) introductory text and (c) (1) to read as follows:

§ 121.467 Flight attendant duty period limitations and rest requirements: Domestic, flag, and supplemental operations.

* * * * *

(c) Notwithstanding paragraph (b) of this section, a certificate holder conducting domestic, flag, or supplemental operations may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter to flight attendants for all operations conducted under this part provided that—

(1) The flightcrew is subject to part 117;

* * * * *

Subpart Q [Amended]

■ 6. Revise § 121.470 to read as follows:

§ 121.470 Applicability.

This subpart prescribes flight time limitations and rest requirements for domestic all-cargo operations, except that:

(a) Certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the

applicable requirements of §§ 135.261 through 135.273 of this chapter.

(b) Certificate holders conducting scheduled operations entirely within the States of Alaska or Hawaii with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of subpart R of this part for those operations.

(c) A certificate holder may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter. A certificate holder may choose to apply part 117 to its—

(1) Cargo operations conducted under contract to a U.S. government agency.

(2) All-cargo operations not conducted under contract to a U.S. Government agency,

(3) A certificate holder may elect to treat operations in paragraphs (c)(1) and (c)(2) of this section differently but, once having decided to conduct those operations under part 117, may not segregate those operations between this subpart and part 117.

■ 7. Add § 121.473 to read as follows:

§ 121.473 Fatigue risk management system.

(a) No certificate holder may exceed any provision of this subpart unless approved by the FAA under a Fatigue Risk Management System.

(b) The Fatigue Risk Management System must include:

(1) A fatigue risk management policy.

(2) An education and awareness training program.

(3) A fatigue reporting system.

(4) A system for monitoring flightcrew fatigue.

(5) An incident reporting process.

(6) A performance evaluation.

Subpart R—[Amended]

■ 8. Revise § 121.480 to read as follows:

§ 121.480 Applicability.

This subpart prescribes flight time limitations and rest requirements for flag all-cargo operations, except that:

(a) Certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pounds or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

(b) A certificate holder may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter. A certificate holder may choose to apply part 117 to its—

(1) All-cargo operations conducted under contract to a U.S. government agency.

(2) All-cargo operations not conducted under contract to a U.S. Government agency,

(3) A certificate holder may elect to treat operations in paragraphs (b)(1) and (b) (2) of this section differently but, once having decided to conduct those operations under part 117, may not segregate those operations between this subpart and part 117.

■ 9. Add § 121.495 to read as follows:

§ 121.495 Fatigue risk management system.

(a) No certificate holder may exceed any provision of this subpart unless approved by the FAA under a Fatigue Risk Management System.

(b) The Fatigue Risk Management System must include:

(1) A fatigue risk management policy.

(2) An education and awareness training program.

(3) A fatigue reporting system.

(4) A system for monitoring flightcrew fatigue.

(5) An incident reporting process.

(6) A performance evaluation.

Subpart S—[Amended]

■ 10. Revise § 121.500, to read as follows:

§ 121.500 Applicability.

This subpart prescribes flight time limitations and rest requirements for supplemental all-cargo operations, except that:

(a) Certificate holders conducting operations with airplanes having a passenger seat configuration of 30 seats or fewer, excluding each crewmember seat, and a payload capacity of 7,500 pound or less, may comply with the applicable requirements of §§ 135.261 through 135.273 of this chapter.

(b) A certificate holder may apply the flightcrew member flight time and duty limitations and requirements of part 117 of this chapter. A certificate holder may choose to apply part 117 to its—

(1) All-cargo operations conducted under contract to a U.S. Government agency.

(2) All-cargo operations not conducted under contract to a U.S. Government agency,

(3) A certificate holder may elect to treat operations in paragraphs (b)(1) and (b)(2) of this section differently but, once having decided to conduct those operations under part 117, may not segregate those operations between this subpart and part 117.

■ 11. Add § 121.527 to read as follows:

§ 121.527 Fatigue risk management system.

(a) No certificate holder may exceed any provision of this subpart unless approved by the FAA under a Fatigue Risk Management System.

(b) The Fatigue Risk Management System must include:

(1) A fatigue risk management policy.

(2) An education and awareness training program.

(3) A fatigue reporting system.

(4) A system for monitoring flightcrew fatigue.

(5) An incident reporting process.

(6) A performance evaluation.

12. In § 121.583, revise paragraph (a) introductory text to read as follows:

§ 121.583—Carriage of persons without compliance with the passenger-carrying requirements of this part and part 117.

(a) When authorized by the certificate holder, the following persons, but no others, may be carried aboard an airplane without complying with the passenger-carrying airplane requirements in §§ 121.309(f), 121.310, 121.391, 121.571, and 121.587; the passenger-carrying operation requirements in part 117 and §§ 121.157(c) and 121.291; and the requirements pertaining to passengers in §§ 121.285, 121.313(f), 121.317, 121.547, and 121.573:

* * * * *

Issued in Washington, DC, on December 21, 2011.

Michael P. Huerta,

Acting Administrator.

[FR Doc. 2011–33078 Filed 12–23–11; 4:15 pm]

BILLING CODE P

FEDERAL REGISTER

Vol. 77 Wednesday,

No. 2 January 4, 2012

Part III

The President

Proclamation 8770—To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

Proclamation 8771—To Modify the Harmonized Tariff Schedule of the United States and for Other Purposes

Federal Register
Vol. 77, No. 2
Wednesday, January 4, 2012

Presidential Documents

Title 3—

The President

Proclamation 8770 of December 29, 2012

To Modify Duty-Free Treatment Under the Generalized System of Preferences and for Other Purposes

By the President of the United States of America

A Proclamation

1. Pursuant to section 503(b)(1)(G) of the Trade Act of 1974, as amended (the ''1974 Act'') (19 U.S.C. 2463(b)(1)(G)), articles that the President determines to be import-sensitive in the context of the Generalized System of Preferences (GSP) are not eligible to receive benefits under the GSP.

2. Pursuant to section 503(b)(1)(G) of the 1974 Act, and after receiving advice from the United States International Trade Commission (the ''Commission''), I have determined that certain articles are import-sensitive in the context of the GSP.

3. On April 22, 1985, the United States and Israel entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (USIFTA), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the ''USIFTA Act'') (19 U.S.C. 2112 note).

4. Section 4(b) of the USIFTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the USIFTA.

5. In order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel, on July 27, 2004, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products during the period January 1, 2004, through December 31, 2008 (the ''2004 Agreement'').

6. In Proclamation 7826 of October 4, 2004, consistent with the 2004 Agreement, the President determined, pursuant to section 4(b) of the USIFTA Act, that it was necessary in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through December 31, 2008, for specified quantities of certain agricultural products of Israel.

7. In 2008, 2009, and 2010, the United States and Israel entered into agreements to extend the period that the 2004 Agreement was in force for 1-year periods to allow additional time for the two governments to conclude an agreement to replace the 2004 Agreement.

8. To carry out the extension agreements, the President in Proclamation 8334 of December 31, 2008; Proclamation 8467 of December 23, 2009; and Proclamation 8618 of December 21, 2010, modified the Harmonized Tariff Schedule (HTS) of the United States to provide duty-free access into the United States for specified quantities of certain agricultural products of Israel, each time for an additional 1-year period.

9. On December 6, 2011, the United States entered into an agreement with Israel to extend the period that the 2004 Agreement is in force through December 31, 2012, to allow for further negotiations on an agreement to replace the 2004 Agreement.

10. Pursuant to section 4(b) of the USIFTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the USIFTA, to provide duty-free access into the United States through the close of December 31, 2012, for specified quantities of certain agricultural products of Israel.

11. In Proclamation 8742 of October 31, 2011, I modified the HTS to promote the uniform application of the International Convention on the Harmonized Commodity Description and Coding System and to alleviate unnecessary administrative burdens. Those modifications became effective on December 3, 2011. Certain conforming changes to the HTS were inadvertently omitted from Annex I to that proclamation. I have determined that certain technical corrections to the HTS are necessary to provide the tariff treatment intended to certain products that were subject to the modifications made in Proclamation 8742.

12. Section 604 of the 1974 Act (19 U.S.C. 2483) authorizes the President to embody in the HTS the substance of the relevant provisions of that Act, and of other Acts affecting import treatment, and actions thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States of America, including but not limited to title V and section 604 of the 1974 Act, and section 4 of the USIFTA Act, do proclaim that:

(1) In order to provide that one or more articles should no longer be treated as eligible articles for purposes of the GSP, the Rates of Duty 1-Special subcolumn for the corresponding HTS subheading is modified as set forth in Annex I to this proclamation.

(2) The modification to the HTS set forth in Annex I to this proclamation shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2012.

(3) In order to implement U.S. tariff commitments under the 2004 Agreement through December 31, 2012, the HTS is modified as provided in Annex II to this proclamation.

(4)(a) The modifications to the HTS set forth in Annex II to this proclamation shall be effective with respect to eligible agricultural products of Israel that are entered, or withdrawn from warehouse for consumption, on or after January 1, 2012.

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by Annex II to this proclamation, shall continue in effect through December 31, 2012.

(5) In order to make the technical corrections necessary to provide the tariff treatment intended to certain footwear products, the HTS is modified as set forth in Annex III to this proclamation.

(6) The modifications to the HTS set forth in Annex III to this proclamation shall be effective with respect to goods that are entered, or withdrawn from warehouse for consumption, on or after December 3, 2011.

(7) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of December, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

Billing code 3295–F2–P

ANNEX I

MODIFICATIONS TO THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after January 1, 2012, the Harmonized Tariff Schedule of the United States (HTS) is modified as provided in this section. For the following subheadings, the Rates of Duty 1-Special subcolumn is modified by deleting the symbol "A":

9404.30.80

ANNEX II

TO EXTEND TEMPORARILY CERTAIN PROVISIONS OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to eligible agricultural products of Israel which are entered, or withdrawn from warehouse for consumption, on or after January 1, 2012 and before the close of December 31, 2012, subchapter VIII of chapter 99 of the Harmonized Tariff Schedule of the United States is hereby modified as follows:

1. U.S. note 1 to such subchapter is modified by deleting "December 31, 2011" and by inserting in lieu thereof "December 31, 2012".

2. U.S. note 3 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2012 466,000".

3. U.S. note 4 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2012 1,304,000".

4. U.S. note 5 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2012 1,534,000".

5. U.S. note 6 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2012 131,000".

6. U.S. note 7 to such subchapter is modified by adding at the end of the tabulation the following material, in the two columns specified in such note: "Calendar year 2012 707,000".

ANNEX III
TO MAKE TECHNICAL AND CONFORMING CHANGES IN SUBCHAPTER II OF CHAPTER 99 OF THE HARMONIZED TARIFF SCHEDULE OF THE UNITED STATES

Effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after December 3, 2011, headings 9902.13.91 and 9902.13.92 are each modified by deleting the word "subheading" from the article description of such headings and by inserting in lieu thereof the following expression:

> "subheadings 6404.11.41, 6404.11.51, 6404.11.61, 6404.11.71, 6404.11.81, 6404.19.36, 6404.19.42, 6404.19.52, 6404.19.72, 6404.19.82 and".

[FR Doc. 2012–19
Filed 1–3–12; 11:15 am]
Billing code 7020–02–C

Presidential Documents

Proclamation 8771 of December 29, 2011

To Modify the Harmonized Tariff Schedule of the United States and for Other Purposes

By the President of the United States of America

A Proclamation

1. Section 1205(a) of the Omnibus Trade and Competitiveness Act of 1988 (the ''1988 Act'') (19 U.S.C. 3005(a)) directs the United States International Trade Commission (the ''Commission'') to keep the Harmonized Tariff Schedule of the United States (HTS) under continuous review and periodically to recommend to the President such modifications to the HTS as the Commission considers necessary or appropriate to accomplish the purposes set forth in that subsection. The Commission has recommended modifications to the HTS pursuant to sections 1205(c) and (d) of the 1988 Act (19 U.S.C. 3005(c) and (d)) to conform the HTS to amendments made to the International Convention on the Harmonized Commodity Description and Coding System (the ''Convention'').

2. Section 1206(a) of the 1988 Act (19 U.S.C. 3006(a)) authorizes the President to proclaim modifications to the HTS based on the recommendations of the Commission under section 1205 of the 1988 Act, if he determines that the modifications are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States. I have determined that the modifications to the HTS proclaimed in this proclamation pursuant to section 1206(a) of the 1988 Act are in conformity with United States obligations under the Convention and do not run counter to the national economic interest of the United States.

3. Presidential Proclamation 6763 of December 23, 1994, implemented with respect to the United States, the trade agreements resulting from the Uruguay Round of multilateral trade negotiations, including Schedule XX-United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994 (Schedule XX), that were entered into pursuant to sections 1102(a) and (e) of the 1988 Act (19 U.S.C. 2902(a) and (e)), and approved in section 101(a) of the Uruguay Round Agreements Act (URAA) (19 U.S.C. 3511(a)).

4. Pursuant to the authority provided in section 111 of the URAA (19 U.S.C. 3521) and sections 1102(a) and (e) of the 1988 Act, Proclamation 6763 included the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out the terms of Schedule XX. In order to ensure the continuation of such rates of duty for imported goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed, including certain technical or conforming changes within the tariff schedule.

5. Presidential Proclamation 7747 of December 30, 2003, implemented the United States-Singapore Free Trade Agreement (USSFTA) with respect to the United States and, pursuant to section 201 of the United States-Singapore Free Trade Agreement Implementation Act (the ''USSFTA Act'') (19 U.S.C.

3805 note), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 2.2, 2.5, 2.6, and 2.12 of the USSFTA and the schedule of reductions with respect to the Republic of Singapore set forth in Annex 2B of the USSFTA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

6. Presidential Proclamation 7746 of December 30, 2003, implemented the United States-Chile Free Trade Agreement (USCFTA) with respect to the United States and, pursuant to section 201 of the United States-Chile Free Trade Agreement Implementation Act (the ''CFTA Act'') (19 U.S.C. 3805 note), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 3.3 (including the schedule of United States duty reductions with respect to originating goods set forth in Annex 3.3 to the USCFTA), 3.7, 3.9, and 3.20(8), (9), (10), and (11) of the USCFTA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

7. Presidential Proclamation 7857 of December 20, 2004, implemented the United States-Australia Free Trade Agreement (USAFTA) with respect to the United States and, pursuant to section 201 of the United States-Australia Free Trade Agreement Implementation Act (the ''USAFTA Act'') (19 U.S.C. 3805 note), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, and 2.6 of the USAFTA and the schedule of reductions with respect to Australia set forth in Annex 2B of the USAFTA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

8. Presidential Proclamation 7971 of December 22, 2005, implemented the United States-Morocco Free Trade Agreement (USMFTA) with respect to the United States and, pursuant to section 201 of the United States-Morocco Free Trade Agreement Implementation Act (the ''USMFTA Act'') (19 U.S.C. 3805 note), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 4.1, 4.3.9, 4.3.10, 4.3.11, 4.3.13, 4.3.14, and 4.3.15 of the USMFTA and the schedule of reductions with respect to Morocco set forth in Annex IV of the USMFTA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

9. Presidential Proclamations 7987 of February 28, 2006, 7991 of March 24, 2006, 7996 of March 31, 2006, 8034 of June 30, 2006, 8111 of February 28, 2007, 8331 of December 23, 2008, and 8536 of June 12, 2010, implemented the Dominican Republic-Central America-United States Free Trade Agreement (the ''CAFTA-DR Agreement'') with respect to the United States and, pursuant to section 201 of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (the ''CAFTA-DR Act'') (19 U.S.C. 4031), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 3.3, 3.5, 3.6, 3.21, 3.26, 3.27, and 3.28, and Annexes 3.3 (including the schedule of the United States duty reductions with respect to originating goods), 3.27, and 3.28 of the CAFTA-DR Agreement. In order to ensure the continuation

of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

10. Presidential Proclamation 8039 of July 27, 2006, implemented the United States-Bahrain Free Trade Agreement (USBFTA) with respect to the United States and, pursuant to section 201 of the United States-Bahrain Free Trade Agreement Implementation Act (the ''USBFTA Act'') (19 U.S.C. 3805 note), the staged reductions in rates of duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and the schedule of reductions with respect to Bahrain set forth in Annex 2–B of the USBFTA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

11. Presidential Proclamation 8332 of December 29, 2008, implemented the United States-Oman Free Trade Agreement (USOFTA) with respect to the United States and, pursuant to section 201 of the United States-Oman Free Trade Agreement Implementation Act (the ''USOFTA Act'') (19 U.S.C. 3805 note), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.2.8, and 3.2.9, and the schedule of duty reductions with respect to Oman set forth in Annex 2-B of the USOFTA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

12. Presidential Proclamation 8341 of January 16, 2009, implemented the United States-Peru Trade Promotion Agreement (USPTPA) with respect to the United States and, pursuant to section 201 of the United States-Peru Trade Promotion Agreement Implementation Act (the ''USPTPA Act'') (19 U.S.C. 3805 note), the staged reductions in duty that the President determined to be necessary or appropriate to carry out or apply articles 2.3, 2.5, 2.6, 3.3.13, and Annex 2.3 of the USPTPA. In order to ensure the continuation of such staged reductions in rates of duty for originating goods under tariff categories that are being modified to reflect the amendments to the Convention, I have determined that additional modifications to the HTS are necessary or appropriate to carry out the duty reductions previously proclaimed.

13. Section 604 of the Trade Act of 1974, as amended (the ''Trade Act'') (19 U.S.C. 2483), authorizes the President to embody in the HTS the substance of the provisions of that Act, or other acts affecting import treatment, and actions taken thereunder, including the removal, modification, continuance, or imposition of any rate of duty or other import restriction. Section 1206(c) of the 1988 Act (19 U.S.C. 3006(c)) provides that any modifications proclaimed by the President under section 1206(a) of that Act may not take effect before the thirtieth day after the date on which the text of the proclamation is published in the *Federal Register*.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, including but not limited to sections 1102 and 1206 of the 1988 Act, section 111 of the URAA, section 201 of the USSFTA Act, section 201 of the CFTA Act, section 201 of the USAFTA Act, section 201 of the USMFTA Act, section 201 of the CAFTA-DR Act, section 201 of the USBFTA Act, section 201 of the USOFTA Act, section 201 of the USPTPA Act, section 604 of the Trade Act, and section 301 of title 3, United States Code, do proclaim that:

(1) In order to modify the HTS to conform it to the Convention or any amendment thereto recommended for adoption, to promote the uniform

application of the Convention, to establish additional subordinate tariff categories, and to make technical and conforming changes to existing provisions, the HTS is modified as set forth in Annex I of Publication 4276 of the United States International Trade Commission, entitled, ''Modifications to the Harmonized Tariff Schedule of the United States Under Section 1206 of the Omnibus Trade and Competitiveness Act of 1988,'' which is incorporated by reference into this proclamation.

(2) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Singapore under the USSFTA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after the dates specified in subsections F1 and F2 of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in subsection F1 of Annex II shall be deleted and the rate of duty provided in such subsection followed by the symbol (''SG'') inserted in lieu thereof; and

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection F2 shall be modified as set forth in that subsection of Annex II.

(3) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Chile under the USCFTA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in subsections C1 and C2 of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in subsection C1 of Annex II shall be deleted and the rate of duty provided in such subsection followed by the symbol (''CL'') inserted in lieu thereof; and

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection C2 shall be modified as set forth in that subsection of Annex II.

(4) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Australia under the USAFTA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in subsections A1 through A4 of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in section A1 of Annex II shall be deleted and the rate of duty provided in such subsection followed by the symbol (''AU'') inserted in lieu thereof;

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsections A2 shall be modified as set forth in that subsection of Annex II;

(c) the Rates of Duty 1 Special subcolumn for the subheading enumerated in subsection A3 shall be modified as set forth in that subsection of Annex II; and

(d) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection A4 shall be modified as set forth in that subsection of Annex II.

(5) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Morocco under the USMFTA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in sections G1 through G4 of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in subsection section G1 of Annex II shall be deleted and the rate of duty provided in such section followed by the symbol (''MA'') inserted in lieu thereof;

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection G2 shall be modified as set forth in that subsection of Annex II;

(c) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection G3 shall be modified as set forth in that subsection of Annex II; and

(d) the Rates of Duty 1 Special subcolumn for the subheadings enumerated in subsection G4 shall be modified as set forth in that subsection of Annex II.

(6) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods under general note 29 to the HTS that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in sections D and I of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in section D of Annex II shall be deleted and the rate of duty provided in such section followed by the symbol (''P'') inserted in lieu thereof; and

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in section I shall be modified as set forth in that section of Annex II.

(7) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Bahrain under the USBFTA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in subsections B1 and B2 of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in section B1 of Annex II shall be deleted and the rate of duty provided in such section followed by the symbol (''BH'') inserted in lieu thereof; and

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection B2 shall be modified as set forth in that subsection of Annex II.

(8) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Oman under the USOFTA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in subsections E1 and E2 of Annex II of Publication 4276,

(a) the rate of duty in the HTS set forth in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in subsection E1 of Annex II shall be deleted and the rate of duty provided in such section followed by the symbol (''OM'') inserted in lieu thereof; and

(b) the Rates of Duty 1 Special subcolumn for each of the subheadings enumerated in subsection E2 shall be modified as set forth in that subsection of Annex II.

(9) In order to provide for the continuation of previously proclaimed staged duty reductions in the Rates of Duty 1 Special subcolumn for originating goods of Peru under the USPTPA that are classifiable in the provisions modified by Annex I of Publication 4276 and entered, or withdrawn from warehouse for consumption, on or after each of the dates specified in section H of Annex II of Publication 4276, the rate of duty in the HTS set forth

in the Rates of Duty 1 Special subcolumn for each of the HTS subheadings enumerated in section H of Annex II shall be deleted and the rate of duty provided in such section followed by the symbol (''PE'') inserted in lieu thereof.

(10) The United States Trade Representative is authorized to fulfill my obligations under section 103 of the USSFTA, section 103 of the USCFTA, section 104 of the USAFTA, section 104 of the USMFTA, section 104 of the USBFTA, and section 104 of the USOFTA to obtain advice from the appropriate advisory committees and the Commission on the proposed implementation of an action by presidential proclamation; to submit a report on such proposed action to the appropriate congressional committees; and to consult with those congressional committees regarding the proposed action.

(11) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of December, in the year of our Lord two thousand eleven, and of the Independence of the United States of America the two hundred and thirty-sixth.

[FR Doc. 2012–20
Filed 1–3–12; 11:15 am]
Billing code 3295–F2–P

Reader Aids

Federal Register

Vol. 77, No. 2

Wednesday, January 4, 2012

CUSTOMER SERVICE AND INFORMATION

Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–741–6000**
Laws	**741–6000**
Presidential Documents	
Executive orders and proclamations	**741–6000**
The United States Government Manual	**741–6000**
Other Services	
Electronic and on-line services (voice)	**741–6020**
Privacy Act Compilation	**741–6064**
Public Laws Update Service (numbers, dates, etc.)	**741–6043**
TTY for the deaf-and-hard-of-hearing	**741–6086**

ELECTRONIC RESEARCH

World Wide Web

Full text of the daily Federal Register, CFR and other publications is located at: **www.fdsys.gov.**

Federal Register information and research tools, including Public Inspection List, indexes, and links to GPO Access are located at: **www.ofr.gov.**

E-mail

FEDREGTOC-L (Federal Register Table of Contents LISTSERV) is an open e-mail service that provides subscribers with a digital form of the Federal Register Table of Contents. The digital form of the Federal Register Table of Contents includes HTML and PDF links to the full text of each document.

To join or leave, go to **http://listserv.access.gpo.gov** and select *Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings);* then follow the instructions.

PENS (Public Law Electronic Notification Service) is an e-mail service that notifies subscribers of recently enacted laws.

To subscribe, go to **http://listserv.gsa.gov/archives/publaws-l.html** and select *Join or leave the list (or change settings);* then follow the instructions.

FEDREGTOC-L and **PENS** are mailing lists only. We cannot respond to specific inquiries.

Reference questions. Send questions and comments about the Federal Register system to: **fedreg.info@nara.gov**

The Federal Register staff cannot interpret specific documents or regulations.

Reminders. Effective January 1, 2009, the Reminders, including Rules Going Into Effect and Comments Due Next Week, no longer appear in the Reader Aids section of the Federal Register. This information can be found online at **http://www.regulations.gov.**

CFR Checklist. Effective January 1, 2009, the CFR Checklist no longer appears in the Federal Register. This information can be found online at **http://bookstore.gpo.gov/.**

FEDERAL REGISTER PAGES AND DATE, JANUARY

1–212 3
213–418 4

CFR PARTS AFFECTED DURING JANUARY

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8768 209
8769 211
8770 407
8771 413

12 CFR

Proposed Rules:
44 23
248 23
351 23

14 CFR

39 ..... 1, 3
71 ..... 5, 6
117 330
119 330
121 330

16 CFR

Proposed Rules:
303 234
305 234

17 CFR

Proposed Rules:
230 24
255 23

21 CFR

606 7
610 7
640 7
Proposed Rules:
10 25

29 CFR

1915 18

31 CFR

351 213
359 213
363 213
Proposed Rules:
150 35

40 CFR

52 ..... 19, 214
Proposed Rules:
52 235
82 237

42 CFR

410 ..... 217, 227
411 217
414 227
415 227
416 217
419 217
489 217
495 ..... 217, 227

46 CFR

1 232
10 232
11 232
12 232
13 232
14 232
15 232

48 CFR

Ch. 1 ..... 182, 205
1 197
2 ..... 183, 187
4 ..... 183, 187, 204
5 189
6 189
7 ..... 183, 187
8 ..... 183, 189, 194, 204
9 ..... 183, 187, 197
11 189
12 ..... 194, 197
13 ..... 187, 189
15 204
16 ..... 189, 194
17 183
18 ..... 183, 187, 189
19 204
22 204
23 204
25 187
26 187
28 204
31 202
35 183
36 189
41 183
42 ..... 197, 204
52 ..... 187, 197, 202, 204

49 CFR

Proposed Rules:
238 154
239 154

50 CFR

Proposed Rules:
17 45
648 52
665 66

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 202–741–6043. This list is also available online at *http://www.archives.gov/federal-register/laws*.

The text of laws is not published in the **Federal Register** but may be ordered in "slip law" (individual pamphlet) form from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–1808). The text will also be made available on the Internet from GPO's Federal Digital System (FDsys) at *http://www.gpo.gov/fdsys*. Some laws may not yet be available.

H.R. 2055/P.L. 112–74
Consolidated Appropriations Act, 2012 (Dec. 23, 2011; 125 Stat. 786)

H.R. 2867/P.L. 112–75
United States Commission on International Religious Freedom Reform and Reauthorization Act of 2011 (Dec. 23, 2011; 125 Stat. 1272)

H.R. 3421/P.L. 112–76
Fallen Heroes of 9/11 Act (Dec. 23, 2011; 125 Stat. 1275)

H.R. 3672/P.L. 112–77
Disaster Relief Appropriations Act, 2012 (Dec. 23, 2011; 125 Stat. 1277)

H.R. 3765/P.L. 112–78
Temporary Payroll Tax Cut Continuation Act of 2011 (Dec. 23, 2011; 125 Stat. 1280)

S. 278/P.L. 112–79
Sugar Loaf Fire Protection District Land Exchange Act of 2011 (Dec. 23, 2011; 125 Stat. 1294)

S. 384/P.L. 112–80
To amend title 39, United States Code, to extend the authority of the United States Postal Service to issue a semipostal to raise funds for breast cancer research. (Dec. 23, 2011; 125 Stat. 1297)

Last List December 22, 2011

Public Laws Electronic Notification Service (PENS)

PENS is a free electronic mail notification service of newly enacted public laws. To subscribe, go to *http://listserv.gsa.gov/archives/publaws-l.html*

Note: This service is strictly for E-mail notification of new laws. The text of laws is not available through this service. **PENS** cannot respond to specific inquiries sent to this address.