the horizontal stabilizer. We are issuing this AD to detect and correct such cracks, which could propagate until the upper rear spar cap severs, and result in failure of the horizontal stabilizer upper center or aft skin panel and adversely affect the structural integrity of the airplane.

(f) Compliance

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

(g) Inspection

At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013, except as provided by paragraph (j) of this AD: Do a high frequency eddy current inspection (ETHF) for cracks in the areas around the two aft-most barrel nut holes of the upper rear spar cap; and do all applicable corrective actions; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013. Thereafter, repeat the ETHF inspection at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013. Do all corrective actions before further flight.

(h) Post-Repair/Replacement Actions

For airplanes on which a splice repair or replacement was done as specified in Boeing Alert Service Bulletin MD90–55A017: At the applicable compliance time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013, do an ETHF inspection for cracks at the two aft-most barrel nut holes of any repaired or replaced upper rear spar cap, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013. Thereafter, repeat the ETHF inspection at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013. If any cracking is found, before further flight, do the repair or replacement, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013.

(i) Post-Repair Inspections

The post-repair inspections of the upper rear spar cap of the aft flange that has been splice-repaired specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013, are not required by this AD.

Note 1 to paragraph (i) of this AD: The damage tolerance inspections (post-repair inspections of the upper rear spar cap aft flange) specified in Table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013, may be used in support of compliance with Section 121.1109(c)(2) or 129.109(b)(2) of the Federal Aviation Regulations (14 CFR 121.1109(c)(2) or 14 CFR 129.109(b)(2)). The corresponding actions specified in the Accomplishment Instructions of Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013, are not required by this AD.

(j) Exception to the Service Information

Where Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013, specifies a compliance time ''after the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles Aircraft Certification Office (ACO), FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the ACO, send it to the attention of the person identified in paragraph (l) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-REQUESTS@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and 14 CFR 25.571, Amendment 45, and the approval must specifically refer to this AD.

(l) Related Information

For more information about this AD, contact George Garrido, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5357; fax: 562–627–5210; email: *george.garrido@faa.gov.*

(m) Material Incorporated by Reference

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

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(i) Boeing Alert Service Bulletin MD90–55A017, dated September 27, 2013.

(ii) Reserved.

(3) For Boeing service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, 3855 Lakewood Boulevard, MC D800–0019, Long Beach, CA 90846–0001; telephone 206–544–5000, extension 2; fax 206–766–5683; Internet *https://www.myboeingfleet.com.*

(4) You may view this service information at FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425 227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on November 19, 2014.

Suzanne Masterson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2014–28145 Filed 12–8–14; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 117 and 121

[Docket No. FAA–2009–1093]

RIN 2120–AJ58

Flightcrew Member Duty and Rest Requirements

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notification of availability.

SUMMARY: The FAA is issuing a Final Supplemental Regulatory Impact Analysis (Final SRIA) of its final rule that amended its existing flight, duty and rest regulations applicable to certain certificate holders and their flightcrew members. A copy of the Final SRIA may be found in the docket for the rulemaking. The Final SRIA responds to comments that were made in response to the Initial Supplemental Regulatory Impact Analysis, and, where appropriate, incorporates new information provided by the commenters. In addition, the Final SRIA makes adjustments to the methodology used to estimate the costs and benefits of applying the final flight, duty, and rest rule to cargo-only operations, and includes additional sensitivity analyses. The results of the Final SRIA concludes that the base-case benefits of applying the flight, duty, and rest rule to cargo-only operations would be about $3 million, and the high-case benefits of doing so would be about $10 million. Conversely, the costs of applying the flight, duty, and rest rule to cargo-only operations would be about $452 million. Because the results of the analysis continue to indicate that the costs of mandating all-cargo operation compliance with the new flight, duty, and rest rule significantly outweigh the

benefits, the FAA has determined that no revisions to the final rule are warranted.

DATES: Effective December 9, 2014.

FOR FURTHER INFORMATION CONTACT: For technical issues: Nan Shellabarger, Aviation Policy and Plans (APO–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3274; email: *nan.shellabarger@faa.gov*. For legal issues: Alex Zektser, Office of the Chief Counsel, International Law, Legislation, and Regulations Division (AGC–200), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email: *alex.zektser@faa.gov*.

SUPPLEMENTARY INFORMATION: On January 4, 2012, the Federal Aviation Administration (FAA) issued a final rule that was published in the **Federal Register** as *Flight Crew Member Duty and Rest Requirements.* 77 FR 330–403. The regulations, which only apply to passenger operations conducted under 14 CFR 121 (part 121), became effective on January 4, 2014. On December 21, 2011, the FAA also issued a Regulatory Impact Analysis (original RIA) dated November 18, 2011 (FAA–2009–1093–2477). The original RIA provides the basis for the FAA's decision to (1) promulgate the final rule establishing new flight, duty, and rest requirements for flight crews in passenger operations; and (2) exclude flight crews in cargo-only operations from the new mandatory requirements. While cargo-only operations are not required to meet the new regulations, the rule permits these operators to opt in to the rule if they so choose.

On December 22, 2011 the Independent Pilots Association (IPA) filed a timely petition for review in the United States Court of Appeals for the District of Columbia Circuit. During the course of reviewing the administrative record for the purpose of preparing the government's brief, the FAA discovered errors in the original RIA that supports the final rule. The errors were associated with the scope of costs related to the implementation of the regulations for cargo-only operations. These errors appeared to be of a sufficient amount that the FAA concluded it was prudent to review the portion of the cost-benefit analysis related to cargo-only operations and allow interested parties an opportunity to comment on the corrected analysis.

On May 17, 2012, the FAA asked the Court to remand the record to the agency and to hold the case in abeyance while the agency corrected the inadvertent errors it had discovered. The court granted the FAA's motion on June 8, 2012. While the passenger operations rule is not at issue in the court proceedings, the FAA, in an abundance of caution, decided to have that portion of the original RIA reevaluated as well.

The FAA contracted with the John A. Volpe National Transportation Systems Center to review the original RIA for accuracy, correct any errors identified, and prepare a supplemental regulatory evaluation of the revised analysis. As a result of that review, the FAA issued an Initial Supplemental RIA (Initial SRIA), which provided an expanded discussion of the methodology and information sources used in the rulemaking analysis, corrected reporting and calculation errors identified in the original RIA, and presented a sensitivity analysis on key assumptions used in the analysis. The Initial SRIA invited public comment on: (1) Whether FAA was statutorily foreclosed from considering costs and benefits as part the flight, duty, and rest rulemaking; and (2) any other aspect of the initial SRIA.

In response to the Initial SRIA, the FAA received comments from the Independent Pilots Association (IPA); the Cargo Airline Association (CAA); the Air Line Pilots Association, International (ALPA); Airlines for America (A4A); the U.S. Airlines Pilots Association (USAPA); the Airline Professionals Association, Teamsters Local 1224 (Teamsters Local 1224); Atlas Air Worldwide Holdings, Inc. (Atlas Air); the NetJets Association of Shared Aircraft Pilots (NetJets); and the Coalition of Airline Pilots Associations (CAPA). The FAA has considered these comments, and now issues the Final SRIA as a product of that consideration.

The FAA's discussion of public comments is divided into two parts. Consideration of whether the FAA was statutorily foreclosed from considering costs and benefits is set out in the next section of this notice. Consideration of all other significant issues raised in the comments is set out in the Final SRIA in the section entitled *Disposition of Issues Raised by Comments Received Regarding the Initial Supplemental RIA.* Because the FAA concludes that it is permitted to consider costs and benefits and because the costs of mandating all-cargo-operation compliance with the new flight, duty, and rest rule significantly outweigh the benefits, the FAA has determined that no revisions to the final rule are warranted.

A. Whether the FAA Is Statutorily-Foreclosed From Considering Costs and Benefits

In their comments, IPA, ALPA, and Teamsters Local 1224 argue that section 212 of Public Law 111–216 [1] prohibits the FAA from considering costs as part of its flight, duty, and rest rulemaking. These commenters rely on *Whitman* v. *Am. Trucking Ass'n*, 531 U.S. 457 (2001) for the proposition that Congress' commitment of authority to consider costs must be express. Because Public Law 111–216 does not explicitly state that the FAA may consider the costs of a flight, duty, and rest rule, these commenters argue that the FAA is statutorily foreclosed from considering the costs and benefits of this rule. IPA and Teamsters Local 1224 also cite to unrelated statutory provisions that explicitly discuss costs for the proposition that Congress will explicitly specify when an agency must consider costs as part of rulemaking. The statutes that these commenters cite to are: (1) Two FAA statutes concerning airports (49 U.S.C. 44706(c) and (d)); and (2) a Federal Motor Carrier Safety Administration (FMCSA) statute concerning fatigue (49 U.S.C. 31136(c)(2)).

ALPA argues that Public Law 111–216 prohibits consideration of costs and benefits because it requires the FAA to issue a rule based upon the ''best available scientific information . . . to address problems related to pilot fatigue.'' [2] ALPA asserts that the FAA's decision to make compliance with the final rule voluntary for all-cargo operations was based solely on cost considerations, and as such, failed to satisfy these statutory mandates. ALPA and Teamsters Local 1224 also state that section 212 of Public Law 111–216 includes a list of factors that Congress wanted the FAA to consider and costs and benefits were not included as factors for consideration. With regard to the fact that this list included a statement directing the FAA to consider ''[a]ny other factor the [FAA] Administrator considers appropriate,'' [3] IPA argues that ''Congress would not have relied on such a modest phrase as 'other matters [FAA] considers appropriate' to allow cost considerations to cancel out the scientific information and safety issues it specified.'' [4]

[1] Airline Safety and Federal Aviation Administration Extension Act of 2010 (Public Law 111–216, 124 Stat. 2362 (49 U.S.C. 44701 note).

[2] ALPA Comment at 7.

[3] Public Law 111–216, sec. 212(a)(2)(M).

[4] IPA Comment at 74.

IPA argues that the legislative history also shows that Congress intended to foreclose the FAA from considering costs and benefits. In support of its argument, IPA cites to a sentence in the H.R. Report No. 111–284, which states that an '' 'updated rule will more adequately reflect the operating environment of today's pilots and will reflect scientific research on fatigue.' '' [5] IPA asserts that costs do not reflect the pilot's operating environment or scientific research on fatigue and thus, they cannot be considered.

Conversely, CAA, A4A, and Atlas Air argue that the FAA is not statutorily prohibited from considering the costs and benefits of the flight, duty, and rest rule. CAA asserts that the statutory direction for the FAA to issue regulations ''based on the best available scientific information'' includes a ''scientifically sound cost-benefit analysis,'' as benefits could not be calculated without the use of scientific information.[6] CAA, A4A, and Atlas Air, and A4A also point out that Public Law 111–216 explicitly authorizes the FAA to consider ''[a]ny other matter the Administrator considers appropriate.'' [7] These commenters assert that Congress would have considered it appropriate for the FAA to consider costs because: (1) The FAA has long used cost-benefit analysis in its rulemakings; and (2) Executive Order 13,563 explicitly requires the consideration of costs and benefits in rulemaking.

Finally, CAA, Atlas Air, and A4A argue that statutory silence as to the issue of costs and benefits does not prohibit an agency from considering costs and benefits because an analysis of costs and benefits must be specifically barred by statute. In support of this position, these commenters cite to *Entergy Corp.* v. *Riverkeeper, Inc.*, 556 U.S. 208 (2009) and *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000).

1. Overview of Cost-Benefit Analysis Legal Framework

The process used by a federal executive-branch agency to conduct a legislative rulemaking, such as the one at issue here, is governed by statutes and executive orders. This process includes, among other things, providing notice and an opportunity for the public to comment on the proposed rule [8] and considering the costs and benefits of rulemaking.[9] The requirement to consider the costs and benefits of a rulemaking has been a longstanding feature of administrative law. This requirement was first imposed on executive agencies in 1981 by President Reagan's Executive Order 12291, which stated that ''[r]egulatory action shall not be undertaken unless the potential benefits to society for the regulation outweigh the potential costs to society; [and] . . . each agency shall, in connection with every major rule, prepare, and to the extent permitted by law consider, a Regulatory Impact Analysis.'' [10] Each successive president after President Reagan has retained the requirement of cost-benefit analysis for significant rulemakings. Currently, this requirement is imposed by Executive Orders 12866 and 13563.

Executive Order 12866, issued on September 30, 1993, specifies that ''[i]n deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating.'' [11] The executive order first requires an agency to determine whether a problem exists and whether direct regulation is the best way of addressing that problem.[12] If an agency determines that a problem exists and that regulation is the best way of addressing the problem, then the agency must design regulations ''in the most cost-effective manner to achieve the regulatory objective.'' [13] As part of this process the agency must ''assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.'' [14]

Executive Order 13563 was issued in January 2011, and it reaffirms the cost-benefit analysis required by Executive Order 12866.[15] Specifically, Executive Order 13563 emphasizes that each agency must ''propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify).'' [16] The executive order further states that ''[i]n applying these principles, each agency is directed to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. Where appropriate and permitted by law, each agency may consider (and discuss qualitatively) values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.'' [17]

In short, cost benefit analysis, as imposed by executive order, has been a central feature of agency rulemaking. The FAA is no exception, and since 1981, it has consistently used cost-benefit analysis in its rulemakings.[18] For example, in its last flight, duty, and rest rulemaking, which took place in 1985, the FAA issued a final rule that included a cost-benefit analysis.[19] The FAA's cost benefit analysis in that instance showed that ''the benefits of the amendments [in the final rule] exceed any costs involved with showing compliance.'' [20]

2. Analysis of Public Law 111–216

Next, we turn to an examination of whether Congress intended the FAA to ignore its statutory and Executive Order rulemaking requirements and not consider a cost-benefit analysis in its decision-making process.

First, we consider IPA, ALPA, and Teamsters Local 1224's argument that the list of factors in Public Law 111–216 sec. 212(a)(2) was intended to be exhaustive. Subsections 212(a)(2)(A) through (L) list 12 specific factors that Congress wanted the FAA to consider as part of a flight, duty, and rest rulemaking.

(A) Time of day of flights in a duty period.

(B) Number of takeoff and landings in a duty period.

(C) Number of time zones crossed in a duty period.

(D) The impact of functioning in multiple time zones on different daily schedules.

(E) Research conducted on fatigue, sleep, and circadian rhythms.

(F) Sleep and rest requirements recommended by the National Transportation Safety Board and the National Aeronautics and Space Administration.

[5] IPA Comment at 71 (quoting H.R. Rep. No. 111–284, at 7).

[6] CAA Comment at 4.

[7] *Id.*; Atlas Air Comment at 6; A4A Comment at 2–3.

[8] 5 U.S.C. 553.

[9] Executive Orders 12866 and 13563.

[10] Executive Order 12291, 46 FR 13193 (February 17, 1981).

[11] Executive Order 12866, sec. 1(a).

[12] *Id.* sec.1(b)(1)–1(b)(3).

[13] *Id.* sec. 1(b)(5).

[14] *Id.* sec. 1(b)(6).

[15] *See* Executive Order 13563, sec. 1(b).

[16] *Id.*

[17] *Id.* sec. 1(c).

[18] *See, e.g., Commuter Operations and General Certification and Operations Requirements*, 60 FR 65832, 65911–12 (Dec. 20, 1995) (conducting a cost-benefit analysis); *Reduction of Fuel Tank Flammability in Transport Category Airplanes*, 73 FR 42444, 42486–88 (July 21, 2008) (same); *Safety Management Systems for Part 121 Certificate Holders Notice of Proposed Rulemaking*, 75 FR 68224 (Nov. 5, 2010). *See also Pilot Certification and Qualification Requirements Final Rule*, 78 FR 42324 (July 15, 2013); *Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers Final Rule*, 78 FR 67800 (Nov. 12, 2013).

[19] 50 FR 29306, 29319 (July 18, 1985).

[20] *Id.*

(G) International standards regarding flight schedules and duty periods.

(H) Alternative procedures to facilitate alertness in the cockpit.

(I) Scheduling and attendance policies and practices, including sick leave.

(J) The effects of commuting, the means of commuting, and the length of the commute.

(K) Medical screening and treatment.

(L) Rest environments.

However, in subsection 212(a)(2)(M), Congress stated that the FAA could also consider ''[a]ny other matters the [FAA] Administrator considers appropriate.'' Because in sec. 212(a)(2)(M) Congress expressly provided the FAA with the discretion to consider factors that were not explicitly listed in sec. 212(a)(2)(A)–(L), we conclude that Congress did not intend the list of factors in sec. 212(a)(2)(A)–(L) to be exhaustive.

We are also unpersuaded by IPA's argument that the language in sec. 212(a)(2)(M) does not include the consideration of costs. This statutory section allows the FAA to consider ''*[a]ny* other matters the Administrator considers appropriate.'' (emphasis added). Thus, by the plain language of the statute, the FAA can consider any other matter that the FAA Administrator considers appropriate for the flight, duty, and rest rulemaking. Here, in light of the requirements in Executive Orders 12866 and 13563, the FAA Administrator considered a cost-benefit analysis to be a necessary and appropriate consideration for the flight, duty, and rest rulemaking, thus making the analysis an acceptable consideration under sec. 212(a)(2)(M).

This means that, by the plain language of Public Law 111–216, sec. 212(a)(2)(M), the FAA was not foreclosed from satisfying its cost-benefit-analysis obligations under Executive Orders 12866 and 13563. Rather, by requiring the agency to ''conduct a rulemaking proceeding'' [21] and allowing the agency to consider other matters, it is clear, based on the plain language of the statute, that Congress intended that the FAA follow its long-standing rulemaking process and comply with its obligations under the Administrative Procedure Act and executive orders, including Executive Order 12866 and 13563.

Next, we turn to ALPA's argument that Public Law 111–216, sec. 212(a)(1) was intended to foreclose a cost-benefit analysis. That section states ''[i]n accordance with paragraph [(a)](3),[22] the Administrator of the Federal Aviation Administration shall issue regulations, based on the best available scientific information, to specify limitations on the hours of flight and duty time allowed for pilots to address problems relating to pilot fatigue.'' While sec. 212(a)(1) requires the FAA to conduct a flight, duty, and rest rulemaking, sec. 212(a)(1) is silent as to the scope of the final rule that must be issued under this statute. Because of this silence, a flight, duty, and rest rule, such as the one at issue here, that applies to a subset of pilots subject to FAA jurisdiction would not violate sec. 212(a)(1), as this statutory provision does not require the final flight, duty, and rest rule to apply to all pilots subject to FAA's jurisdiction.

We now turn to IPA, ALPA, and Teamsters Local 1224's argument that an agency may not consider costs and benefits unless that agency's statute explicitly instructs it to do so. We disagree with this assertion and agree with CAA, A4A, and Atlas Air that statutory silence as to costs means that an agency may consider costs and benefits.

In 2000, the Court of Appeals for the D.C. Circuit conducted an examination of the governing caselaw at that time, and concluded that an agency is barred from considering costs ''only where there is clear congressional intent to preclude consideration of cost.'' *Michigan* v. *EPA,* 213 F.3d 663, 678 (D.C. Cir. 2000). While the Supreme Court has issued several cases on this issue since that time, we do not believe that these cases changed this fundamental principle of statutory interpretation.

In the most recent case to address this issue, *Entergy Corp.* v. *Riverkeeper, Inc.,* 556 U.S. 208 (2009), the Supreme Court examined a statutory provision in the Clean Water Act. The statutory provision at issue in that case directed the EPA to set regulatory standards for cooling water intake structures that reflect '' 'the best technology available for minimizing adverse environmental impact.' '' *Id.* at 218 (quoting 33 U.S.C. 1326(b)). The statute made no explicit mention of a cost-benefit analysis. *Riverkeeper,* 556 U.S. at 222. The Supreme Court concluded that the statute's silence as to agency consideration of costs and benefits ''is meant to convey nothing more than a refusal to tie the agency's hands as to whether cost-benefit analysis should be used, and if so to what degree.'' *Id.*

In a case decided eight years prior to *Riverkeeper, Whitman* v. *Am. Trucking Ass'n,* 531 U.S. 457 (2001), the Supreme Court examined a different EPA statute. In *Whitman,* the court examined EPA's consideration of costs under the Clean Air Act. While the provisions of the Clean Air Act at issue in that case did not explicitly mandate cost considerations, there were other provisions of the Clean Air Act that did contain explicit cost-consideration requirements.[23] In that context, the fact that the Clean Air Act provisions at issue did not have explicit cost considerations meant that Congress did not want the agency to consider costs. Thus, as the Supreme Court subsequently pointed out, *Whitman* ''stands for the rather unremarkable proposition that sometimes statutory silence, *when viewed in context,* is best interpreted as limiting agency discretion.'' [24]

We agree with CAA, A4A, and Atlas Air that the situation in this case is more analogous to *Riverkeeper* than it is to *Whitman.* Unlike the Clean Air Act statute at issue in *Whitman,* there are no statutory provisions in Public Law 111–216 that contain explicit cost-benefit consideration requirements. Indeed, in addition to the flight, duty, and rest rulemaking provisions of section 212, Public Law 111–216 contains seven other mandates for the FAA to conduct rulemaking proceedings, none of which mention a cost benefit analysis.[25] Consequently, the fact that section 212 of Public Law 111–216 does not explicitly mention a cost-benefit analysis is meaningless, as this analysis also is not explicitly mentioned anywhere in Public Law 111–216. Thus, we conclude that, just like the statute in *Riverkeeper,* Congress' omission of an

[21] Public Law 111–216, sec. 212(a)(2).

[22] Section 212(a)(3) requires that the FAA issue a notice of proposed rulemaking within 180 days of enactment and issue a final rule within a year of enactment.

[23] *See Riverkeeper,* 556 U.S. at 223 (explaining the rationale for the *Whitman* decision).

[24] *Id.* (emphasis added).

[25] Those provisions are in Public Law 111–216, secs. 203(b)(2) (requiring the Administrator to issue regulations to carry out this subsection); 206(b)(1)–(2) (requiring the Administrator to issue an NPRM and final rule based on the recommendations of an aviation rulemaking committee regarding flight crewmember mentoring, professional development, and leadership); 208(a) (requiring ''the Administrator . . . [to] conduct a rulemaking proceeding to require'' air carriers to provide ground and flight training to flight crewmembers on aircraft stall recognition and recover, as well as recognition of aircraft upset and recovery); 209(a) (requiring the Administrator to issue a final rule with respect to the NPRM published on Jan. 12, 2009 relating to training programs for flight crewmembers and aircraft dispatchers); 215(a) (requiring the Administrator to ''conduct a rulemaking proceeding to require all part 121 air carriers to implement a safety management system''); 216(a)(1) (requiring the Administrator to ''conduct a rulemaking proceeding to develop and implement means and methods for ensuring that flight crew members have proper qualifications and experience''), and 217(a) (requiring the Administrator to ''conduct a rulemaking proceeding to amend part 61 of title 14, Code of Federal Regulations, to modify requirements for the issuance of an airline transport pilot certificate'').

explicit cost-benefit discussion in Public Law 111–216, sec. 212 was ''meant to convey nothing more than a refusal to tie the agency's hands as to whether cost-benefit analysis should be used, and if so to what degree.'' *Riverkeeper,* 556 U.S. at 222.

Furthermore, we do not find IPA and Teamsters Local 1224's citation to statutory language in unrelated statutes discussing cost considerations to be persuasive. These commenters cite to the cost considerations specified in the following statutes: (1) Two FAA statutes concerning airports (49 U.S.C. 44706(c) and (d)); and (2) a Federal Motor Carrier Safety Administration (FMCSA) statute concerning fatigue (49 U.S.C. 31136(c)(2)).

Here, the two airports statutes cited by IPA and Teamsters Local 1224 (49 U.S.C. 44706(c) and (d)) deal with the issuance of an airport operating certificate to a person desiring to operate an airport. Both of these statutes are completely unrelated to the flight, duty, and rest rulemaking at issue in this case, as the flight, duty, and rest rule is limited to 14 CFR part 121 air-carrier operations and does not affect airport operating certificates. In addition, neither 49 U.S.C. 44706(c) nor 49 U.S.C. 44706(d) was enacted or changed by Public Law 111–216, and thus fall outside the scope of the Supreme Court's holding in *Whitman.* Accordingly, the fact that Congress explicitly mentioned costs in 49 U.S.C. 44706(c) and (d) is irrelevant for the purposes of construing the meaning of Public Law 111–216, sec. 212(a).

Furthermore, the mere fact that both of these statutes are administered by the FAA is not dispositive. In *Whitman,* the Supreme Court analyzed a Clean Air Act statute administered by the EPA and concluded that the statute prohibited the consideration of costs. *Whitman,* 531 U.S. at 457. In *Riverkeeper,* the Supreme Court analyzed a Clean Water Act statute, also administered by the EPA, and reached a different result: That the statute's silence as to costs meant that the EPA could consider costs and benefits. *See Riverkeeper,* 556 U.S. at 222. If one cost-benefit statutory provision is carried over to all other statutes administered by an agency, regardless of whether the statutory provisions fall within the same Act or Public Law, then *Riverkeeper* would have been decided differently, as the EPA-administered Clean Air Act provisions would have controlled the statutory construction of the EPA-administered Clean Water Act provisions at issue in *Riverkeeper.*

Similarly, the FMCSA statute cited by the commenters (49 U.S.C. 31136(c)(2)) was not enacted or changed by Public Law 111–216 and does not apply to the FAA's flight, duty, and rest rulemaking. Section 31136 gives FMCSA the power to prescribe regulations for commercial motor vehicle safety. Because the FAA does not have jurisdiction to regulate in this area, this statute is not relevant for FAA purposes.

Finally, we are unpersuaded by IPA's legislative history argument. IPA points to a single sentence in the H.R. Report, which states that an '' 'updated rule will more adequately reflect the operating environment of today's pilots and will reflect scientific research on fatigue,' '' [26] to assert that the FAA was limited to considering scientific research on fatigue in its decision-making process. Neither this sentence, nor the legislative history, provide any indication that Congress intended for the FAA to ignore its statutory and executive order obligations and not consider cost-benefit analysis in conducting this rulemaking. Furthermore, the legislative history regarding all of the rulemaking mandates in Public Law 111–216 makes no mention of Congress's intent to foreclose FAA's consideration of costs and benefits.[27] To the contrary, as discussed earlier, Congress explicitly instructed the FAA in section 212(a)(2)(M) of Public Law 111–216 to consider ''[a]ny other matters the [FAA] Administrator considers appropriate.'' Accordingly, we find that Congress did not intend to statutorily foreclose the FAA from considering costs and benefits in the flight, duty, and rest rulemaking at issue here.

B. Summary of Final Supplemental RIA

Turning to the Final Supplemental RIA (Final SRIA), the Final SRIA responds to comments made in response to the Initial SRIA, and, where appropriate, the Final SRIA incorporates information and suggestions made by the commenters. The Final SRIA adjusts the methodology used to estimate the benefits of applying the final rule to cargo-only operations in the following ways (there are no changes to the benefits estimates for passenger operations):

- Adjusts the aircraft models used in the base and high case.
- Accounts for the possibility of non-crew passengers being involved in a catastrophic accident for the high case.
- Accounts for the possibility of ground fatalities resulting from a catastrophic accident for the high case.
- Accounts for additional medical costs of non-fatal injuries for the base case.
- Revises the effectiveness rating of the final rule for the sole cargo accident in the accident history analysis from 75 percent to 15 percent.[28]
- Includes a section describing the non-quantified benefits of the final rule.

This Final SRIA adjusts the methodology used to estimate the costs of applying the final rule in the following ways:

- Calculates the cost of the aircraft downtime separately for passenger and cargo operations.
- Incorporates new data on the number of primary lineholders relative to the number of flightcrew members for carriers in the freight industry groups.
- Includes the costs of employer provided benefits for airline employees in addition to wage costs when estimating labor costs associated with the final rule for both passenger and cargo-only operations.

Moreover, the Final SRIA includes an additional sensitivity analysis (found in Appendix B) to explore whether using a limited number of alternative assumptions suggested in comments to the Initial SRIA would impact the central conclusion that the costs of applying the final rule to cargo-only operations vastly outweigh the estimated benefits. The sensitivity analysis does not alter that central conclusion. Table 1 and Table 2 summarize the differences between the original RIA the Initial SRIA, and the Final SRIA.

[26] IPA Comment at 71 (quoting H.R. Rep. No. 111–284, at 7).

[27] *See* H.R. Report No. 111–284 (House committee report making no mention of a Congressional intent to foreclose a cost-benefit analysis or override Executive Orders 12866 and 13563).

[28] This change was made in response to CAA's comment concerning the single all-cargo accident that would have been mitigated by the provisions of this rule. As discussed more fully in the Final SRIA, CAA correctly pointed out that the schedules of the flightcrew members involved in the accident would have complied with the provisions of this rule if this rule had applied to those flightcrew members. Thus the FAA reduced the effectiveness rating to 15% in the final SRIA.

TABLE 1—NOMINAL COSTS AND BENEFITS (2012–2023), PASSENGER OPERATIONS

[2011 $Millions]

	Original RIA	Initial SRIA	Final SRIA
Total Benefits—Base Case	$376	$401	$401
Total Benefits—High Case	716	757	757
Total Costs	390	457	462

TABLE 2—NOMINAL COSTS AND BENEFITS (2012–2023), CARGO OPERATIONS

[2011 $Millions]

	Original RIA	Initial SRIA	Final SRIA
Total Benefits—Base Case	$20.35	$5	$3
Total Benefits—High Case	32.55	31	10
Total Costs	306	550	452

The Final SRIA results in data that provides justification for the exclusion of cargo operations from the final rule, and continues to provide justification for the final rule on passenger operations.[29] As discussed above, the FAA is not only required by Executive Orders 12866 and 13563 to consider the costs and benefits of making compliance with this flight, duty, and rest rule mandatory for all-cargo operations, but Congress specifically permitted FAA to consider ''[a]ny other matters the Administrator considers appropriate.'' [30] Because the costs of mandating all-cargo-operation compliance significantly exceed the benefits of doing so, the FAA has determined that no revisions to the final rule are warranted.

Issued on December 3, 2014.

Mark W. Bury,

Assistant Chief Counsel for International Law, Legislation and Regulations.

[FR Doc. 2014–28868 Filed 12–8–14; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2014–0978]

Drawbridge Operation Regulation; Upper Mississippi River, Dubuque, IA

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulations.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa. The deviation is necessary to allow the bridge owner time to perform preventive maintenance that is essential to the continued safe operation of the drawbridge. Maintenance is scheduled in the winter when there is less impact on navigation, instead of scheduling work in the summer when river traffic increases. This deviation allows the bridge to open on signal if at least 24-hours advance notice is given. It further allows the bridge to remain closed for up to 72 hours in duration occasionally to replace larger components as long as 72-hours notice is given to the USCG District Eight Western Rivers Bridge Branch.

DATES: This deviation is effective from 5 p.m., December 15, 2014 until 9 a.m., March 1, 2015.

ADDRESSES: The docket for this deviation, (USCG–2014–0978) is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. 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 temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Cheryl F. Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The Chicago, Central & Pacific Railroad requested a temporary deviation for the Illinois Central Railroad Drawbridge, across the Upper Mississippi River, mile 579.9, at Dubuque, Iowa to open on signal if at least 24-hours advance notice is given for 76 days from 5 p.m., December 15, 2014 until 9 a.m., March 1, 2015 for scheduled maintenance on the bridge. The deviation further allows the bridge to remain closed for up to 72 hours in duration occasionally to replace larger components as long as 72-hours notice is given to the USCG District Eight Western Rivers Bridge Branch.

The Illinois Central Railroad Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that the drawbridge shall open on signal.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

Winter conditions on the Upper Mississippi River coupled with the closure of Army Corps of Engineer's Lock No. 17 (Mile 437.1 UMR) and Lock No. 20 (Mile 343.2 UMR) from 7 a.m. January 5, 2015 until 12 p.m., March 6, 2015 will preclude any significant navigation demands for the drawspan opening. In addition, Army Corps Lock No. 12 (Mile 556.7 UMR) and Lock No. 13 (Mile 522.5 UMR) will be closed from 7:30 a.m. December 15, 2014 to 11:00 March 1, 2015.

The Illinois Central Railroad Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 19.9 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational

[29] The costs of the final rule for passenger operations are somewhat higher than the base case benefits estimate for those operations but well below the high case estimate.

We also note that saving just 85 lives in a 10 year period would cause this rule to be cost beneficial.

[30] Public Law 111–216, sec. 212(a)(2)(M).