

FAR 93-61
Corr.

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-323]

Certain Monoclonal Antibodies Used for Therapeutically Treating Humans Having Gram Negative Bacterial Infections; Investigation

Correction

In notice document 91-2168 beginning on page 3484, in the issue of Wednesday, January 30, 1991, make the following correction:

On page 3484, in the third column, in the heading, the Investigation Number was omitted and should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 90-054]

RIN 2115-AD64

Pollution-Prevention Requirements of Annex V of MARPOL 73/78

Correction

In proposed rule document 91-422 beginning on page 824 in the issue of Wednesday, January 9, 1991, make the following corrections:

1. On page 825, in the first column, in

the first paragraph under **Request for Comments**, in the sixth line "identity" should read "identify".

2. On the same page, in the third column:

- a. Under **Discussion of Proposed Amendments**, in the fourth line "151.51" should read "§§ 151.151".

- b. In the second paragraph under **Regulatory Evaluation**, in the third line, "implementing" should read "implementing".

- c. In the first paragraph under **Small Entities**, in the ninth line "tha" should read "that".

§ 151.53 [Corrected]

3. On page 826, in the second column, in § 151.53(f)(2), in the third line "57°44' N" should read "57°44.8' N".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. 26151; Amdt. No. 93-61]

High Density Traffic Airports Allocation of International Slots at O'Hare International Airport

Correction

In the issue of Thursday, January 10, 1991, on page 1059, in the second

column, in the correction of rule document 90-30160, the correction numbered 3 should read as follows:

"3. In the same paragraph, in the fourth line from the end, 'on' should read 'one'."

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8326]

RIN 1545-AP08

Disclosure of Tax Return Information for Purposes of Quality or Peer Reviews; Disclosure of Tax Return Information Due to Incapacity or Death of Tax Return Preparer

Correction

In rule document 91-30361 beginning on page 53295 in the issue of Friday, December 28, 1990, make the following corrections:

1. On page 53295, in the third column, in the second line, "issue" should read "issuance".

2. On the same page, in the same column, in the first full paragraph, in the third line "LR-3-84" should read "LR-3-85".

BILLING CODE 1505-01-D

93-61b

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 158**

[Notice No. 91-4; Docket No. 26385]

RIN 2120-AD87

Passenger Facility Charges**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes new regulations to implement a passenger facility charge program. This proposal is intended to implement the Aviation Safety and Capacity Expansion Act of 1990 which requires the Department of Transportation to issue regulations under which a public agency may be authorized to impose an airport passenger facility charge (PFC) at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance capacity, safety or security of the national air transportation system, reduce noise from an airport which is part of such system, or furnish opportunities for enhanced competition between or among air carriers. The proposed rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC.

DATES: Comments must be received on or before March 7, 1991. Because of the 180-day statutory deadline for completion of this rulemaking by May 3, 1991, the FAA will not be able to entertain requests for extensions of the comment period. However, late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments on this notice should be mailed in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 26385, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW.,

Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this proceeding by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impacts that might result from adopting the proposals in this notice are also invited. Comments should identify the docket or notice number and should be submitted in triplicate to the Rules Docket address specified above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rulemaking. The proposals contained in this notice may be changed in light of comments received. All comments will be available in the Rules Docket for examination by interested persons. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 26385." The postcard will be date stamped and mailed to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM.

Persons interested in being placed on a mailing list for future NPRM's should request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

The Aviation Safety and Capacity Expansion Act of 1990 (Pub. L. 101-508), enacted November 5, 1990, authorizes the Secretary of Transportation to approve locally imposed PFC's of up to \$3 per enplaned passenger. Section 9110 of the Act requires the Secretary to issue regulations necessary to implement this authority, "Not later than 180 days after the date of enactment."

The statute also directs the Secretary to: develop an application procedure; establish the terms and conditions for granting of PFC authority; set up a system to collect, handle, and remit PFC revenues to the appropriate public agency; and establish recordkeeping and audit requirements and procedures for termination. It also defines project eligibility, establishes user consultation procedures, prohibits PFC collection in certain circumstances and prohibits the treatment of PFC revenue as airport revenues for establishing rates, fees, or charges.

The FAA has had extensive experience in developing application requirements for various airport grant programs, dating from the initial Federal Aid to Airports Program in 1946 to the current Airport Improvement Program (AIP). Although PFC approval would not be subject to many Federal grant requirements associated with the AIP, the proposed rule would establish general application procedures, data requirements, procedures for compliance with environmental requirements and for obtaining airport layout plan approval that resemble current grant processes. Public agencies that would apply for approval of PFC authority would almost always be or have been participants in the Federal airport grant program. Adopting similar procedures would minimize the introduction of unfamiliar terms and requirements for FAA and public agency officials working on both PFC applications and on requests for grant assistance. The approach will be especially beneficial for projects funded by a combination of PFC revenue and airport grants.

The collection of fees by air carriers and foreign air carriers is another major section of this proposed regulation. Although these carriers currently collect the passenger taxes, customs and immigration fees, and an international departure tax, these fees are remitted to the U.S. Treasury. The FAA has no direct involvement with their handling, collection and remittance other than being advised as to the total amounts collected.

Because of this lack of extensive prior involvement, FAA published Notice No. 90-28 (55 FR 47483; November 14, 1990) requesting data and information on the collection of existing fees. The objective was to learn more about current practices to design a PFC collection system. In all, 13 commenters responded to this request for data and provided information useful in preparing the proposed rule. The comments are available for inspection in the FAA Rules Docket, No. 26385.

Discussion of Proposal

Many sections of the proposed rule are the direct result of specific statutory requirements; in others, where discretion has been given to the Secretary to develop procedures, several different approaches could be taken to satisfy a requirement of the Act.

These choices are discussed and comments invited in the preamble. The following is a summary of some of the questions or issues raised on which the FAA would particularly welcome comments. The numbers in parentheses refer to related sections of the proposed rule.

1. Definitions (§ 158.3).

Within this section particular attention is directed to the following three definitions:

Involuntary and voluntary change in itinerary. It is reasonable to try to distinguish between voluntary and involuntary changes in itinerary to determine which airports receive PFC revenue?

Long-term lease. Is 5 years an appropriate term for a long-term lease? Are additional safeguards needed in leases to ensure that the purpose of the Act is furthered with respect to enhancing air carrier competition?

One-way trip. Is the "4-hour rule" an acceptable way to define when a trip ends?

2. *Requirements prior to submission of application (§ 158.23).* How else might these requirements be satisfied? Can they be streamlined or made less burdensome?

3. *Consultation with air carriers and foreign air carriers (§ 158.25), remittance of PFC's (§ 158.49), and recordkeeping and auditing (§§ 158.67 and 158.69).* Should all air carriers (scheduled, domestic, commuter, foreign, charter, and air taxi) be subject to the same consultation, collection, handling, recordkeeping, and auditing requirements or should passengers of some category or categories of carriers be exempt from paying a PFC?

4. *Application (§ 158.27).* Are any of the proposed application requirements unnecessary or redundant? Are there ways to streamline the application? Is the AIP an appropriate model for the PFC application process?

5. *Amendment of approved PFC (§ 158.31).* Is the proposed amendment procedure adequate? Are there other more appropriate criteria to determine when consultation is needed?

6. *Use of excess PFC revenue (§ 158.35).* Are there other reasonable uses for PFC revenue collected in excess of project needs? What oversight by air carriers or the FAA is necessary?

7. *Remittance of PFC's (§ 158.49).* Should the transporting carrier, rather than the issuing carrier, be responsible for collection and remittance? Is the proposed twice-monthly remittance schedule satisfactory?

8. *Collection Compensation (§ 158.51).* Are there other manageable standard methods to determine a fair compensation for handling PFC revenue by the air carriers?

9. *Reporting requirements (§§ 158.63 and 158.65).* Are the level of detail and frequency of reports appropriate for public agencies and issuing carriers?

10. *Termination of authority to impose a PFC (§ 158.83).* Is there some appropriate additional safeguard in the termination process that would be necessary for a public agency to secure reasonable and stable financing for projects?

11. *Implementation of reduction (§ 158.95).* Is the timing for the reduction of apportionments reasonable? Are there other ways to project PFC revenue for a fiscal year?

12. *Application of departmental policy on price advertising (following section-by-section discussion of proposed rule).* Will the tentative decision on air carriers' price advertising provide consumers with adequate information about the total costs of planned and alternative air travel arrangements? Are there other effective ways to provide air travellers with cost comparison information for air travel via different routes or air carriers?

The following discussion provides more information about each section of the proposed rule and explores each of the above questions in greater depth.

Subpart A

This subpart proposes general provisions including definitions, the authority for imposing PFC's, limitations, use of PFC revenue, and project eligibility.

Section 158.3 Definitions

While developing the proposed rule, it became necessary to define a number of terms that either have not been used by the FAA and public agencies in airport-related programs, that have been used without a standard definition, or have been used differently in this context than previously. We highlight some of those terms here to focus the attention of commenters. Of course, the FAA will consider comments on all the proposed definitions.

Airport capital plan: The FAA recognizes that most municipalities and public agencies currently have agency-wide capital plans. Many agencies also have airport-specific capital plans to

more effectively implement and manage needed airport development. The NPRM proposes to require public agencies to submit airport capital plans to the FAA to help ensure that the proposed project is, in fact, part of a rational long-term development program. If a public agency has not formulated or adopted a formal capital plan for an airport, the agency would be required to submit the best available documentation of planned capital improvements at the airport.

Airport layout plan: This is the same airport layout plan (ALP) as is currently required by AIP grant assurances. It will aid in identifying the status of any environmental, air navigation, safety or airport design reviews.

Airport revenue: Passenger facility charges, like Federal grant funds, are not to be used in determining landing fees or other airport charges. However, the revenue generated by facilities built with PFC financing would be considered airport revenue under the AIP grant assurances and could not be used off-airport except for noise mitigation projects. We assume that virtually every public agency that would apply for approval to impose a PFC is or has been a grant recipient and is, therefore, subject to AIP assurances.

Allowable costs: Allowable costs would be defined as those that are the "reasonable and necessary" costs of accomplishing an eligible project. Some costs related to a PFC-financed project may not be allowable costs for the use of PFC revenue. However, the FAA will rely on the public agencies' local laws, procurement requirements, and procedures in determining what costs are reasonable and necessary. If a project is financed entirely with PFC revenue or other local funds, the statute does not appear to require the FAA to conduct the kind of detailed review of project cost normally associated with the AIP program. The statute does, however, require the FAA to determine that projected PFC revenues are sufficient to cover reasonable and necessary expenses of proposed projects. Therefore, the FAA would be prepared to undertake an independent review of costs in the case of disputes between interested parties and public agencies that cannot be resolved under local procedures. Even then, however, the review of allowable costs would not be at the same level of detail as review of AIP projects.

Involuntary change in itinerary: The FAA recognizes that at times an air carrier will change a passenger's flight itinerary for various reasons such as flight delays, overbooking, and equipment problems. This change may

result in routing the passenger through different airports with different PFC's. In fairness to the passenger, the FAA believes that the passenger should not be obligated to pay any additional PFC's due to involuntary changes in itinerary but rather would pay those associated with the original ticket. Conversely, the passenger should not be entitled to any PFC refunds as a result of such a change in itinerary. The PFC's collected would be distributed as shown on the passenger's original ticket. The FAA uses the term "involuntary change in itinerary" to describe changes in the itinerary that are beyond the passenger's control.

Voluntary change in itinerary: In contrast to involuntary changes in itinerary, the FAA recognizes that there will be times when the passenger requests a change in itinerary that may result in different PFC's. In cases where the change is requested by the passenger, rather than the air carrier, the passenger would be expected to pay any additional PFC's, as well as receive refunds of PFC's omitted as a result of the changed itinerary only if shown on a reissued air travel ticket. PFC's would be distributed to public agencies in accordance with such tickets. These types of changes are described as "voluntary changes in itinerary."

The FAA recognizes there may be some problems associated with designating changes in itinerary as "voluntary" or "involuntary." For example, it may be difficult for an issuing air carrier or an auditor to determine which type of change is applicable months after it occurred. In addition, if a ticket is reissued for an involuntary change in itinerary, there may be no record of which airports would be entitled to receive PFC revenue. Therefore, the FAA seeks specific comments on the concept of voluntary and involuntary changes in itinerary as well as any suggestions on how changes in itinerary should be handled. Additional information about the frequency of such changes in itinerary with respect to the number of air travel tickets sold and the costs of administering this proposal could be particularly useful.

Long-term lease or use agreement: The statute states that " * * * no project carried out through the use of a fee * * * may be subject to an exclusive long-term lease or use agreement of an air carrier * * *." The statute does not define a specific number of years as constituting a long-term lease or use agreement in connection with the PFC program. In connection with the program established by section 9109 of the Act to

designate certain current or former military airports for additional AIP funding eligibility, however, the statute contains an explicit prohibition on Federal funding of gates "subject to long-term leases for periods exceeding 10 years[.]" One interpretation of this phrase is that there is no prohibition on long-term leases which do not exceed 10 years. The 10-year timeframe applies only to a prohibition with respect to the military airport designation program and need not be construed to define the concept of "long term." In keeping with the statute's objective of promoting airline competition, the FAA is proposing that "long term" be defined as a period of 5 years or more. This is the same as is used for disadvantaged business enterprise programs under the AIP grant assurances. Inasmuch as there appears to be some discretion in this matter, however, the FAA solicits comments on whether a different timeframe should be used in connection with the PFC program.

Another aspect of the limitation on long-term leases as highlighted by the Government Accounting Office (GAO) in its recent report, *Passenger Facility Charges Represent a New Funding Source for Airports* (Report Number GAO/RCED-91-39). The GAO expressed concern regarding the extent to which PFC-financed facilities actually encourage greater competition among and between air carriers at an airport. It is possible, for example, that an incumbent air carrier having a long-term exclusive lease at an airport passenger terminal could lease new PFC-funded terminal facilities and, by underutilizing both its exclusive-use and new facilities, severely limit opportunities for enhanced competition.

The GAO also noted instances in which air carriers have used "carryover" lease provisions to extend their tenancy for several years following the expiration of the original lease. Under such an arrangement, an air carrier could operate under a short-term lease as if it were a long-term lease and effectively limit potential opportunities for enhanced competition.

The FAA is proposing three provisions to preclude these potentially anticompetitive situations. The first would be incorporated into an application for approval to impose a PFC to finance a project for terminal development, including gates and related areas. A public agency would be required, under § 158.27(g)(3), to describe what factors, if any, currently operate to limit competition at the airport, the steps it proposes to take to foster increased opportunities for air

carrier competition in the PFC-financed facilities, and the anticipated effects of the proposal.

The second and third would be incorporated into one of the assurances (Assurance number 8 in Appendix 2) agreed to by the public agency, also at the time of application. In Assurance 8a, the public agency would agree that it would not enter into any lease agreement for PFC-financed facilities if the agreement contains a "carryover" provision allowing an incumbent carrier to continue operating on year-to-year extensions after the original lease has expired in preference to any potentially competing air carrier that seeks to negotiate for access to the PFC-financed facilities.

Finally, in Assurance 8b, a public agency that, having previously entered into an exclusive lease or use agreement with an air carrier for existing facilities at the airport, now contemplates leasing PFC-financed facilities to that carrier would be required to incorporate a safeguard in that lease to ensure competitive access to the airport. This provision would prevent an incumbent air carrier from occupying new PFC-financed facilities while underutilizing exclusive-use facilities to which other, potentially competing, carriers cannot gain access.

The FAA is mindful of the concern expressed by the GAO and invites comments on the issue of ensuring that air carrier practices do not thwart progress toward the goal of using PFC-financed facilities to enhance air carrier competition. Commenters are encouraged to suggest specific measures that might be considered and any appropriate means by which such measures could be instituted.

One-way trip: The statute limits the number of times a PFC can be imposed on a passenger for a one-way trip (two PFC's) and for a round trip (two PFC's each on the outward-bound and return portion). However, the statute defines neither kind of trip.

For most journeys, it will be easy to classify a trip as one-way or round-trip. For complex itineraries, it may be difficult to properly classify the journey, and in the case of a round trip, identify where the outbound portion of the trip ends and the return portion begins. However, the FAA does not believe that Congress intended this difficulty to subject passengers on these journeys to pay an unlimited number of PFC's.

The proposed rule addresses this problem based on a suggestion by the Airport Operators Council International and American Association of Airport Executives in response to Notice No. 90-

28. The proposed rule would define a one-way trip as a flight from an originating airport to another airport, including intermediate airports and carriers where no scheduled layover between connecting flights exceeds 4 hours. According to the airport groups, this "4-hour rule" is one that the airlines use when pricing complex travel itineraries. The proposed rule would permit no more than two PFC's to be imposed and collected on each one-way trip shown on an air travel ticket.

Most readily identifiable one-way tickets will likely involve a single one-way trip as so defined, and only two PFC's could be imposed. The FAA anticipates that the instance in which a true one-way trip would be classified as two would be very few and would arise only in the case where infrequent service between two points produces scheduled layovers of more than 4 hours. Similarly, most "true" round trips would be classified as two one-way trips on an air travel ticket and, under the proposed rule, both the outbound and return portions would be subject to a maximum of two PFC's. Again, the FAA recognizes that some travelers (especially business travelers) may be able to complete their stay at a destination city and board a return flight in less than 4 hours.

The initial decision on how many one-way trips are included on a passenger's air travel ticket would be made at the time of ticket issuance. Any change in itinerary that affected the number of one-way trips would be subject to the rules on voluntary or involuntary changes.

The 4-hour rule may not perform perfectly in the case of all readily identifiable one-way and round trips. The alternative was to attempt 100 percent accuracy in these cases and to adopt a special rule for "unclassifiable" unusual itineraries. However, the FAA was unable to develop a workable generic rule for these special itineraries. The FAA solicits comments on whether a different approach to the limit on PFC's per trip should be used.

Public agency: This definition of public agency typically includes cities, counties, port authorities, States, and agencies of one or more States. These kinds of agencies are typically eligible to receive Federal airport grants. It does not include private owners of airports nor public entities that do not control commercial service airports.

Section 158.5 Authority for Imposition of PFC's

This section would state the authority of the Administrator to permit a public agency to impose a charge on each revenue passenger enplaned. The charge

can only be \$1, \$2, or \$3, and not fractional amounts such as \$1.50, or \$2.75 or an amount greater than \$3. This charge must be uniform among all of an airport's passengers. Public agencies, could not single out a type of operator, for instance, air taxis or charter operators, and charge their passengers a different amount.

Section 158.7 Exclusivity of Authority

Section 158.7(a) restates the statutory provision that "no State or political subdivision or agency thereof which is not a public agency controlling a commercial service airport shall prohibit, limit, or regulate the imposition of fees by the public agency pursuant to this subsection, collection of such fees, or use of revenues derived therefrom." Section 158.7(b) also restates a statutory limitation.

Section 158.9 Limitation Regarding Passengers of Air Carriers Receiving Essential Air Service Compensation

The Act specifically places a limitation on imposing a PFC on any passenger on a flight for which EAS compensation is being paid to an eligible point. The limitation would not apply to passengers on unsubsidized flights, if any, to an eligible point. Also, it would apply only on flights to the eligible point, so the public agency could impose a PFC on passengers enplaning at an eligible point.

The proposed rule would require the carrier receiving compensation to notify its agents and other issuing carriers so those carriers would know on which flights passengers were not to be charged a PFC. The FAA believes this would be the most efficient way to make this notification. The proposed rule does not prescribe a notification procedure. The FAA expects that this information would be provided by EAS carriers in the same way that they provide other information on ticketing and fares to their agents and interline partners.

Section 158.11 PFC Limitation Per One-Way Trip

The Act provides that a passenger cannot be charged " * * * on a one-way trip and on a trip in each direction of a round trip, after the second enplanement * * * ." This proposed section would allow PFC's to be collected for only the first two airports that impose a PFC for each one-way trip shown on the air travel ticket.

Section 158.13 Limitation Regarding Involuntary Change in Itinerary

This section would not allow an airport to impose a charge on a passenger who was routed through the airport because of some change in itinerary beyond the control of such

passenger. This could occur when an air carrier routes a flight through a different airport to avoid bad weather.

Section 158.15 Use of PFC Revenue

This section describes how all PFC revenue must be used for eligible projects. PFC revenue in this context would include interest earned on revenue while on deposit with the public agency. (Note that, under proposed § 158.67, public agencies would be required to hold PFC revenue in interest-bearing accounts until needed to pay project costs. PFC revenue remitted to public agencies by air carriers and interest earned on such revenue may be used only on eligible PFC-financed projects.) Such revenue can finance the entire allowable cost of a project or can service the debt incurred to carry out an eligible project. The financing costs associated with issuing a bond, such as legal fees, and other incidental expenses, are also eligible. Revenue could be used to service debt incurred before PFC authority is granted under this proposed regulation, but only if work on the project has not yet commenced. This limitation is proposed for two reasons. First, for approval to collect PFC revenue, the FAA must determine that the revenue will be used to finance an eligible project in accordance with the requirements of the Act and the proposed regulation. Second, the purpose of the Act is to finance new projects, not pay off debt from earlier completed projects.

As proposed, revenue could not be used to pay the local share of an AIP project, although the objectives of both programs are similar, because to do so would reduce the total funds potentially available for airport-related projects. The proposed regulation would, however, permit airports to combine PFC revenue and AIP grant funds to accomplish an eligible project. In such a case, the public agency would have to separately account for the funds so that the AIP work and funds used could be tracked independently for audit purposes. I should be noted, however, that PFC revenue spent on projects or portions of projects would not be reimbursable under a Federal airport grant.

The FAA seeks comment from interested parties on the proposed uses and limitations on the use of PFC revenue. Commenters are encouraged to submit qualitative or quantitative descriptions of the benefits or costs that may be associated with suggested changes in the allowable uses of PFC revenue.

Section 158.17 Project Eligibility

The Act clearly states what types of projects would be eligible for use of PFC revenue. The proposed regulation restates the statutory provisions with some additional explanation for noise compatibility projects and for projects to construct gates and related areas. Noise compatibility measures could be the recommendations contained in a program developed under 104(c) of the Aviation Safety and Noise Abatement Act (ASNA) of 1969 or could be the result of other analysis that demonstrates noise reduction or the mitigation, reduction, or prevention of noise impacts to the satisfaction of the Administrator. A public agency could demonstrate such effects as part of an airport master plan or an environmental study. In most instances some form of noise exposure map as described in 14 CFR part 150 would be necessary to establish the relationship of noise levels to the mitigation measure. Consistent with eligibility under the AIP, mitigation projects beyond the Ldn 65 noise contour would not be eligible without specific justification.

Gates and related areas are proposed to include both the revenue and nonrevenue portions of the terminal. The intent would be to permit PFC revenue to be used to build new terminals and gates and the necessary support facilities to move passengers and baggage, such as baggage handling and make-up areas. This would exclude facilities not directly related to the movement of passengers and baggage, such as restaurants, car rental facilities or other concessions. Eligible facilities could not be leased on a long-term basis.

Eligible projects would not include work outside the airport boundary, except noise compatibility projects. For instance, PFC revenue could not be used for highways leading to an airport unless such highways were on rights-of-way owned by the airport. However, other facilities on the airport such as road systems or intermodal transit stations primarily serving airport passengers could be eligible projects.

Subpart B

This subpart specifies the proposed procedures to be followed and the supporting documentation to be submitted to the FAA by public agencies applying for authority to impose a PFC. It also describes the procedures and criteria that would be used by the FAA in reviewing applications to impose a PFC.

An underlying assumption in proposing these procedures is that the public agencies submitting applications

for PFC's will, with rare exception, also be airport sponsors under the Airport Improvement Program (AIP). These public agencies are generally familiar with the features of the grant program, including sponsor and project eligibility, application procedures, FAA grant approval and project accomplishment. In addition, airport sponsors are accustomed to early and continued coordination with FAA Airports offices on a variety of airport-related matters.

The framework of this well-established process, therefore, has been adopted as the model for PFC application and approval. Because imposition of a PFC entails Federal approval, there are a number of requirements that must be satisfied by a public agency and the FAA prior to approval of an application. The procedure set forth in the proposed regulation is intended to minimize the burden on public agency applicants and to permit timely review and a decision within the statutory 120-day limit.

Nevertheless, the FAA does not wish to impose regulatory burdens that are unnecessary for the PFC program. Therefore, the FAA specifically invites comments on the assumption that PFC applicants will almost always be participants in the AIP program. Comments are also invited on the suitability of the AIP program as a model for the PFC application and approval process. The FAA is especially interested in comments concerning the utility, or lack thereof, of particular provisions adapted from the AIP program.

Section 158.23 Requirements Prior to Submission of Application

There are three independent but related actions that may be required with respect to a project or projects to be financed with PFC revenue before an application to impose the PFC can be approved: Environmental studies may be required for both airport-related and noise compatibility projects; airspace studies would have to be completed for airport-related projects and, potentially, for off-airport noise compatibility projects; and an airport layout plan (ALP) depicting the project or projects, if located on the airport, must be approved by the FAA. Planning projects, whether for airport development or noise compatibility purposes, are excluded from the requirement for environmental and airspace studies and an approved ALP.

These actions may require a substantial period of time to complete. If initiated concurrent with or subsequent to submission of an application to impose a PFC, there is little likelihood

that they would be completed within the 120-day time limit for an FAA decision with respect to the application.

Therefore, rather than be compelled to reject an application because critical actions are incomplete, or to give conditional approvals that may be essentially meaningless if environmental or airspace studies require a substantial modification to a project, the FAA proposes in § 158.23 that a public agency ensure that any required studies, findings or determinations related to the proposed project be complete prior to submission of an application.

There are two aspects of the environmental considerations related to this NPRM. One, the potential environmental impacts resulting from adoption of the rule itself, is discussed later in this preamble. The other, the potential impacts of individual projects implemented with PFC revenue, is discussed in the paragraphs immediately below.

The Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500-1508) which implement the National Environmental Policy Act of 1969 (NEPA) appear to cover the type of Federal approval contemplated in this proposed rule. For example, at 40 CFR 1508.18(a), a Federal action is defined to include programs that are approved by Federal agencies and implemented by others. In addition, the regulation requires, at 40 CFR 1508.7, that a Federal agency consider the cumulative effects of a proposed action and the consequences of any subsequent related actions, regardless of which party implements such actions. Finally, 40 CFR 1508.25 indicates that when considering the scope of a Federal action, connected actions must also be considered. A connected action is one that cannot or will not occur if another action has not occurred before or at the same time. Where a proposed project would not be implemented without further funding made possible by the Federal approval of a PFC, implementation of the PFC project would be a connected action under the CEQ regulation.

Consequently, with regard to decisions on individual applications to impose a PFC, the FAA has tentatively determined that such decisions are Federal actions subject to the requirements of NEPA. This determination is based on the explicit linkage between PFC approval and project implementation in the Act, including the necessary condition that PFC revenue be used for specified airport-related or noise compatibility projects. Approval of an application to

impose a PFC, therefore, is inseparably linked to implementation of a specific project.

It should be noted that detailed environmental analysis is not always required to satisfy the NEPA requirements. The FAA has previously determined that, barring any extraordinary circumstances, noise compatibility projects and several types of airport development projects are normally categorically excluded from the requirement for environmental study. Other airport development projects require an environmental assessment (EA) and either a finding of no significant impact (FONSI) or, if the EA indicates that impacts may be significant, an environmental impact statement (EIS).

It is also important to note that, for projects that require an EA, the FAA is required to make a finding of no significant impact or to prepare an EIS and record of decision. Under CEQ regulations, responsibility for these actions cannot be delegated to a local public agency. The procedure set out in § 158.23(a) describing this process applies to approval of PFC-financed projects for airport-related development or for noise compatibility projects off the airport.

The FAA does not anticipate that the NEPA requirements discussed above will be noticeably burdensome to public agencies seeking approval to impose a PFC. This is because States and local governments often require environmental review prior to approval of any locally-implemented project. In addition, several types of projects are categorically excluded from the NEPA requirements as discussed above. Finally, environmental review is often completed in conjunction with the FAA review of a new or revised airport layout plan. Such review and approval of an ALP is normally required before a public agency proceeds with any new construction on a public airport, whether or not Federal funds are involved. This is a well established procedure and, in the FAA's view, would entail no new requirements for public agencies seeking approval to impose a PFC. (The airport layout plan review procedure is more fully discussed below.)

Notwithstanding the FAA's preliminary determination that approval of an application to impose a PFC is a Federal action under NEPA, interested parties are invited to provide their opposing views. Any comments to consider PFC-related actions outside the scope of NEPA would be strengthened by a relevant legal analysis, including applicable court rulings. The FAA also

invites comments on the view that NEPA requirements can be satisfied without any noticeable additional burden on public agencies.

The FAA also conducts airspace studies of proposed projects on an airport and of other projects in the vicinity of an airport that exceed certain height limitations. The purpose of these studies is to determine the effects of the proposed projects on the safety and efficiency of the navigable airspace. The proposed procedures for ensuring completion of airspace studies for PFC-financed projects are set forth in § 158.23(b).

Preliminary airspace studies of planned projects on an airport are usually conducted in conjunction with review of an ALP as described below; more detailed airspace studies are often required when a project is imminent and its dimensions and orientation are known. The result of an on-airport airspace study is the approval of a revised ALP if the construction is acceptable, with or without a change in the original proposal, or the disapproval of the revised ALP if the proposed construction cannot be made acceptable.

Any party who proposes construction, including a noise compatibility project, in the vicinity of an airport is required under 14 CFR part 77 to file a notice of proposed construction with the FAA if the project would exceed certain height limits. The FAA conducts an obstruction evaluation study of any proposal that exceeds specified screening criteria and issues its determination of the effects of the project on the navigable airspace to the proponent. The determination may object to the proposal ("objectionable determination") as a hazard to air navigation, or it may state that the FAA does not object to the proposal.

The FAA determination is neither an approval nor disapproval of the proposal. If the proponent is a public agency, however, and the project is proposed to be financed with PFC revenue, an objectionable determination could serve as the basis for disapproval of an application to impose a PFC. It should be noted that a proposed PFC project off the airport for noise compatibility is unlikely to require an airspace study and even less likely to result in an objectionable determination by the FAA.

The FAA views the need for airspace studies to be a current requirement, whether or not a PFC program is established and that it imposes no new burden on public agencies. Interested parties are invited to comment on this view, however, and to offer suggestions for streamlining this process.

The third requirement under this proposed section is the FAA approval of an airport layout plan. An airport sponsor currently assures, as a condition of receiving AIP grant funds, that it will keep up to date an ALP approved by the FAA. The ALP depicts all existing improvements and facilities on the airport as well as those proposed to be constructed or installed. The depictions should be in sufficient detail to permit the FAA to evaluate the effect of any change or alteration in the airport or its facilities with respect to the safety, utility or efficiency of any Federal property or investment in the airport. Under the proposal, the ALP approval would extend to on-airport projects to be financed with PFC revenue, as it does to other locally financed projects, and all prerequisites would have to be met for FAA approval of an ALP depicting those projects before an application to impose a PFC could be approved.

Under existing procedures, an ALP that is submitted for FAA review is evaluated against several criteria, including the degree to which proposed improvements are in accordance with airport design standards, the environmental impacts of the proposal, and the effects of the construction on the safe and efficient use of navigable airspace and the airport. Additionally, the airport layout plan review process provides an early awareness of projects which may require relocation of FAA facilities. As directed by FAA Order 6030.1A, FAA Policy and Facility Relocations Occasioned by Airport Improvements or Changes, and pursuant to AIP grant assurances, the public agency is required to pay the costs of such relocation. Early coordination of PFC projects to assure consistency with the ALP could serve to minimize such costs for public agencies.

Environmental and airspace studies receive particular attention during the ALP review process, whether the proposed improvements are to be accomplished with Federal grant assistance or solely with nonfederal funds, including PFC revenue. An ALP may be approved unconditionally if these studies have been completed for all proposed development shown on the plan, or the ALP may be approved conditionally pending the completion of more detailed studies for specified projects as described in the preceding paragraphs.

In most cases, a conditional approval indicates the need for further environmental studies. The FAA, in its ALP approval letter, notifies the airport sponsor of the projects which cannot proceed until the additional studies are

complete. All projects not limited by the conditional approval may proceed at the will of the sponsor.

As with environmental and airspace studies, the FAA proposes that review and approval of an ALP be complete, with respect to proposed PFC-financed projects on the airport, prior to the submission of an application by a public agency to impose a PFC. The provisions of § 158.23(c) are intended to summarize the process for ensuring timely approval of an ALP when required.

The FAA believes that the requirements in § 158.23 are necessary for approval of an application to impose a PFC, and the procedures set forth therein are intended to minimize delays in the approval process. The FAA invites comments on the degree to which the proposed procedures would be a burden to public agencies, alternatives to the proposed procedures, and any alternative means by which the intent of this section could be achieved.

Section 158.25 Consultation With Air Carriers and Foreign Air Carriers

The Act states that " * * * a public agency shall provide reasonable notice to and an opportunity for consultation with air carriers operating at that airport * * *" and that, at a minimum, the public agency must provide written notice of the project to, and meet with, air carriers and foreign air carriers operating at the airport. The Act specifies that air carriers acknowledge receipt of notice not later than 30 days after the notice is issued and that the public agency conduct a meeting not later than 45 days after the notice. The statute further requires that air carriers certify agreement or disagreement with the project within 30 days after the meeting. The Act makes no specific provision exempting any carrier, foreign or domestic, from application of this section or the section regarding collection and remittance.

The procedures proposed by the FAA in § 158.25 would require that, to the extent practicable, all air carriers, including air taxis, operating at the airport be notified and consulted. Reasonable notice in this context is defined as written notice sent by registered mail to each air carrier and foreign air carrier regularly operating at the airport. This may be supplemented by a public notice in a local newspaper of general circulation, aviation trade journals, and local airport newsletters.

The FAA recognizes that public agencies may incur substantial costs and realize minimal benefits, and that small air taxi operators could also incur unreasonable costs, if the final rule were to extend this notification requirement

to all air carriers without exception. For example, there are over 6,000 on-demand air taxi firms that meet the technical definition of an air carrier, but that are not required to report revenue passenger enplanements to the Department of Transportation. Further, some charter air carriers operating under 14 CFR part 121 only provide service to sports teams or air travel clubs, and may serve many airports irregularly. Similarly, foreign charter operators may irregularly serve many airports.

While it is apparent that some of these carriers add significantly to the number of passengers enplaned at certain airports, it appears that a substantial number of small air carriers enplane far fewer than 1,000 passengers annually. In addition, an air taxi operator based at one airport may operate infrequently at another, making notification and meaningful consultation difficult.

The FAA, therefore, invites comments regarding the extent to which the notification and consultation requirements should be applied to all air carriers under the assumption that even the smallest air taxis are subject to the collection, remittance, and record keeping requirements, or whether there is some reasonable criterion for establishing a threshold for application of the proposed requirements to provide individual written notice. Commenters are particularly encouraged to provide estimates of the financial benefits and costs for public agencies to notify and consult with such carriers; suggestions for what constitutes "reasonable" notice and consultation for a potentially large number of small air carriers; and the means by which a public agency can notify and consult meaningfully with small air carriers located at other airports.

Section 158.27 Application

This proposed section specifies the information and documentation, including an application form depicted in appendix A and public assurances set forth in appendix B, that the FAA believes are reasonably necessary to evaluate an application to impose a PFC to finance a project. The process is similar to that already in place for AIP projects, although the application materials requested are substantially less than for a grant.

The FAA is proposing two provisions related to the timing of the imposition of a PFC. The first, in paragraph (c), would require that an application not be submitted more than a year in advance of when the PFC charge would begin. This is intended to ensure that the

conditions prevailing at the time of the application, and on which the FAA's evaluation would be based, accurately reflect the conditions which prevail when the PFC is actually imposed. The purpose of paragraph (d), which would require work to proceed no later than 2 years after the charge effective date, is to prevent the imposition of a PFC substantially ahead of the date by which the project is expected to begin. This would help ensure that the project for which the PFC was approved could proceed essentially as planned, and would avoid the build-up of excessive PFC revenue surpluses.

Other information and documents requested are self explanatory and should be readily available to public agencies. Note that an ALP, project sketch and airspace determination may not be required for some projects.

Public agency assurances are contained in the proposed appendix B. These are also modeled after sponsor grant assurances in the AIP, although the number of assurances has been reduced substantially. Because PFC revenue is considered to be nonfederal funds, a number of requirements related to the use of Federal funds are not needed.

The FAA invites comments on the extent to which these requirements may be redundant or unnecessary and suggestions for simplifying and streamlining the application package. Commenters are also encouraged to suggest other methods for ensuring that the record on which FAA bases its decision is adequate to satisfy the intent of the Act.

Section 158.29 Review and Approval Process

This section details the steps that would occur between the filing of an application and the Administrator's final decision. This level of detail is intended to ensure that all parties (public agencies, carriers and the traveling public) understand the procedures to be followed by the FAA and that they know what is expected of them and the FAA, including the time allowed for each step of the review and approval process.

The first step is to determine whether the application is substantially complete. This is needed to address the 120-day deadline for the Administrator's decision. If the rule does not provide for the Administrator to suspend processing of incomplete applications, operation of the statutory deadline could force the Administrator to rule on the merits of the application without adequate information.

The proposed rule would provide 30 days for the Administrator to decide whether or not the application is substantially complete. To be substantially complete, an application would not need to be "letter perfect." The FAA has no intention of using minor defects to justify unnecessary delay in review and approval of a PFC application. An application would be considered substantially complete if the information is sufficient to allow the Administrator to decide if a proposed project is eligible for PFC financing, that its environmental impacts, if any, are disclosed, that the project will not derogate the safety, efficiency, or capacity of the airport or the national airspace system; and that the projected PFC revenue does not exceed the amount necessary to finance the project.

If an application is substantially complete, the process for review would be straight-forward. The Administrator would publish a notice in the *Federal Register* that briefly outlines the project and requests public comment. The *Federal Register* notice procedure is intended to satisfy the statute's requirement that the Administrator provide notice and opportunity for comment before deciding an application.

The Administrator would provide a copy of the notice to the public agency, which would be required to make it, along with a copy of the application and supporting materials, available for public inspection upon request at the airport where the proposed PFC would be imposed. At the public agency's option, it may publish a copy of the notice in a local newspaper. Newspaper publication would not be required, but the FAA would encourage this form of notification to enhance local citizens' awareness of the application and of the opportunity to provide comments to the FAA.

Proposed § 158.29(e) would require comments to be filed not later than 30 days after the notice is published in the *Federal Register*. To avoid confusion, the proposed rule would also permit carriers to resubmit, as comments to the FAA, their written comments in the local consultation process. Carriers would not be required to do so, however.

Proposed § 158.29(f) would authorize the Administrator to request additional information if it is necessary. While the FAA does not expect this provision to be used often, it was included in the proposed rule to reduce the risk of uncertainty and of disputes between the FAA and public agencies as individual PFC applications are reviewed. A request for additional information under this paragraph would not change the

statutory deadline for the Administrator's decision.

After reviewing the application, comments, and any other information obtained as outlined above, the Administrator would issue a final decision within 120 days after the substantially complete application was filed. Proposed § 158.29(g) would specify the standards for approval of a PFC application, based on the requirements of the statute.

For an incomplete application, the decision process would involve more steps. The FAA, however, has tried to develop a process that minimizes the burden on local airport operators and that reduces the potential for delay in processing the application at the Federal level.

Under proposed § 158.29(c)(1), the Administrator would first notify the public agency that its application is not substantially complete and list the information necessary for a complete application. At this stage, the application would not be dismissed or rejected, but held in abeyance by the Administrator. The public agency would have 15 days to notify the Administrator that it intends to supplement the application or that it wishes the Administrator to make a decision based on the application as originally submitted.

The FAA considered the option of dismissing incomplete applications outright, but believes that it would be less burdensome on public agencies to file a supplement to their application than to refile an entirely new application. Also, the FAA determined that a public agency should have the option of seeking a decision on the merits of such incomplete applications without filing further supplements. In this regard, the 15-day time limit is not the time limit for a public agency to file a supplement. All that is required is that the public agency decide whether it will file a supplement and so advise the FAA. This 15-day time limit is necessary to allow the FAA to decide the merits of an unsupplemented application under the 120-day time limit.

If the public agency advises that it will not supplement an application, the *Federal Register* notice and comment procedures outlined in connection with substantially complete applications would be followed. After a review of the full record, the Administrator would issue a final decision within 120 days of the date the application was first received in the FAA Airports office.

Applications that are not substantially complete will be decided on their individual merits. However, only applications with significant substantive

omissions would be classified as not substantially complete. It is, therefore, anticipated that most such applications, if not supplemented, would be denied on the merits.

If the public agency decides to supplement its application, no further action would be taken until a supplement is filed. At that point, the Administrator would review the completeness of the application as supplemented within 30 days after receipt. If the supplemented application is substantially complete, the notice and comment procedures outlined earlier would be followed before the Administrator issued a final decision. The 120-day deadline would run from the day FAA Airports office received the supplement to the application. A request for further information after comments are received under paragraph § 158.29(f) would not change the statutory deadline.

If the supplemented application is still not substantially complete, the Administrator would advise the public agency and provide an opportunity for a further supplement, following the procedures outlined above. In theory, this process could be repeated a number of times until the public agency's application was substantially complete or the public agency chose not to file any further supplements. In practice, however, the FAA Airports office would work closely with the public agency to help assure that the first supplement produces a substantially complete application in most instances.

In any event, once the Administrator determined that no further supplements would be received, the notice and comment procedures would be followed. The Administrator's final decision would be due 120 days after receipt of the last supplement filed by the public agency under proposed § 158.29(c)(4), and a request for supplemental information under § 158.29(f) would not alter the statutory deadline for decision.

Section 158.31 Amendment of Approved PFC

The FAA expects that public agencies may from time to time need to revise a project's scope of work, its cost, or the PFC expiration date. This section proposes that such amendments be evaluated in an abbreviated procedure if the change is minimal, and that a more thorough procedure, including additional air carrier consultation, be followed if the change is substantial. One proposed criterion for separating requested amendments into the two categories is an increase of 15 percent or more in PFC revenue to be collected. Other changes in the project that would alter its

original scope or character would also require the more detailed procedure.

A decision regarding approval of a minor amendment would ordinarily be issued within 30 days of receipt by the Administrator. A significant amendment would be reviewed and a decision rendered within the 120-day limit applicable to original applications.

Interested parties are invited to comment on the adequacy of the proposed amendment procedures. The FAA is particularly interested in other criteria that could be used to categorize such requests. Commenters are encouraged to suggest alternatives that provide satisfactory notice and opportunity for comment to air carriers in the event of a major change in the project.

Section 158.33 Duration of Authority To Impose a PFC

The FAA believes that this proposed section is self-explanatory. Note, however, that the authority to impose a PFC would terminate if the public agency is found by the Administrator to have violated section 9304(e) of the Airport Noise and Capacity Act of 1990. This provision is required by the terms of section 9304(e). Future rulemaking pursuant to section 9304(e) will set forth the procedures for notice and termination of a PFC upon such a finding.

Section 158.35 Use of Excess PFC Revenue

Public agencies may, from time to time, complete PFC projects and terminate collection of the PFC as planned and find that excess funds have been collected or that interest accrued on the funds while on deposit have generated an unanticipated excess. Such an occurrence is to be distinguished from that in which the Administrator makes a determination under subpart E that revenue collected from a PFC is excessive or is not being used as approved.

The FAA has proposed that such funds be retained and accounted for by the public agency and be used on future projects that are eligible under § 158.17 after consultation with the Administrator. The proposed rule is designed to reduce the chance of inadvertent excess collections and to limit the amounts that would be accumulated before collection stops. Public agencies would not be allowed to use such funds for operating or maintenance costs.

Interested parties are invited to submit their views with respect to other allowable uses for excess PFC revenue that arises in these circumstances. Comments should address costs and

benefits that may accrue to the airport or airway systems as a result of such use.

Subpart C

Subpart C proposes requirements for providing notice of the imposition of PFC's, and for collecting, handling and remitting PFC's. This subpart was designed to allow as much flexibility as possible to the public agencies and the air carriers and foreign air carriers while still maintaining adequate protection for each party involved.

Section 158.43 Public Agency Notification to Air Carriers and Foreign Air Carriers

Each public agency authorized by the Administrator to impose a PFC would be required to give written notice to air carriers and foreign air carriers operating at its airport of the requirement to collect the PFC. Carriers would be responsible for notifying their agents, including other issuing carriers, of the PFC and of any requirements associated with the PFC. Public agencies are in the best position to communicate with the scheduled and unscheduled air carriers and foreign air carriers that operate at its airport.

The proposed effective date of the PFC would be no sooner than 30 days after notification to the air carriers and foreign air carriers. This would allow such carriers adequate time to notify agents, make appropriate adjustments in fare structuring, software and database programming and establish necessary accounting records. Because carriers are now able to make fare changes throughout the month, the FAA believes that public agencies should have flexibility to permit PFC collection to begin after appropriate notice to air carriers and foreign air carriers rather than only on specific days of the month, e.g., the first or fifteenth. Public agencies and carriers are encouraged to discuss and arrive at mutually convenient charge effective dates.

Section 158.45 Collection of PFC's

Once notified, an issuing carrier, or its agent, would be required to collect a PFC on all air travel tickets sold on or after the charge effective date for all passengers enplaned at the airport. Air travel tickets would be required to show the PFC imposed at each airport and the total PFC paid by the passenger. As required by statute, no PFC's would be collected after the passenger has paid two charges on a one-way trip. No PFC would be collected when the passenger is being provided air service for which essential air service (EAS) compensation is being paid and the passenger is flying to an EAS eligible

point, or if a passenger's travel to the airport charging a PFC is because a carrier or its agent has made an involuntary change in the passenger's itinerary. In the latter case, the PFC would be paid as originally specified on the ticket. The issuing carrier or its agent is responsible for collecting the PFC and may not issue tickets unless the appropriate PFC is collected.

Under the proposal, all PFC's would be collected and remitted by the issuing carrier as noted on the ticket. This would eliminate the need for interline settlement of PFC's. The FAA believes that interline settlements would be more cumbersome for the air carriers and foreign air carriers than requiring issuing carriers to account for charges collected from passengers other than their own. When the carrier identified as the issuing carrier on the ticket is not the carrier that enplanes the passenger at the airport imposing the PFC, the issuing carrier would be treated as the agent of the enplaning carrier. Travel agents would also be agents of the enplaning carrier.

Section 158.47 Handling of PFC's

Each air carrier and foreign air carrier responsible for collecting PFC's would be required to account for PFC charges separately in accordance with Generally Accepted Accounting Principles.

Section 158.49 Remittance of PFC's

The Act requires that PFC revenue be promptly paid to the public agency by air carriers and foreign air carriers, less a uniform amount determined by the Secretary as reflecting average necessary and reasonable expenses incurred in collection and handling of fees. The rule proposes that revenue collected by the issuing carrier or its agent within the first 15 days of a month would be remitted to the public agency by the 15th day of the following month. Revenue collected within the second half of the month would be remitted by the end of the following month. Air carriers would thus be allowed to retain PFC revenue for a maximum of 45 days. The FAA seeks comment on the frequency of remittance to public agencies.

Section 158.51 Collection Compensation

Under the proposal, the issuing carrier collecting the PFC would be entitled to retain any interest it may earn on PFC revenue from the time of collection to the time of disbursement as a service fee for collecting, handling, disbursing and auditing. Data on the administrative costs of collecting other existing fees submitted by air carriers in response to

Notice No. 90-28 was not sufficient to formulate a method of compensation based on such costs.

In lieu of a cost-based methodology for calculating air carrier compensation, the FAA is proposing to allow air carriers the use of the "float" as compensation to accomplish the statutory directive that air carriers receive compensation for collecting and handling PFC's. For instance, under the remittance schedule in the proposed rule, carriers would hold PFC revenue for an average of approximately 38 days. If interest were accrued at 10 percent per year and all revenue were collected in the form of \$3 PFC's, the interest earned by a carrier would be about 3 cents per PFC collected.

Allowing an issuing air carrier to retain the interest gained on the revenue between collection and disbursement appears to be the most straightforward, would provide a carrier with maximum flexibility in managing the funds and would minimize specific Federal regulation of the funds. The FAA seeks comments on this method of establishing the service fee and on the period of time the air carrier would retain the revenue before disbursement to the public agency. In particular, the FAA would need to know how it could determine what expenses are necessary and what fees are reasonable. Proponents of a specific fee level should be prepared to explain the costs (especially administrative costs) and benefits of such an approach to the carriers and to public agencies.

In addition, the FAA believes that there may be one-time startup costs for air carriers when a public agency first imposes a PFC. Interested parties are, therefore, invited to suggest other means of compensation to cover such startup costs for air carriers, consistent with the requirement in the statute that the compensation reflect the "average necessary and reasonable" costs of collection. It may be possible, for example, to authorize a longer float at each airport for a limited period of time after the public agency initiates the PFC. Commenters are encouraged to provide any actual or estimated cost data related to the collection, handling and remittance of similar charges.

Subpart D

This subpart proposes requirements for reporting, recordkeeping and auditing by the issuing carrier and the public agency.

Section 158.63 Reporting Requirements: Public Agency

The proposed reporting requirements are considered the minimum needed to

allow the Department of Transportation to fulfill its auditing responsibilities. None of the reports are of a recurring nature. Instead, they are reports of milestones indicating when a project begins, advance notice of project completion, and when PFC revenue totals 90 percent of the approved amounts. It is also proposed that notice be given when there are substantial deviations in the approved project. These particular reports are intended to minimize the likelihood that a public agency will collect excess PFC revenue. They could also signal that a public agency needs to amend its PFC collection and such reports could be submitted in conjunction with an amendment request.

Interested parties are invited to suggest alternative means to avoid the accumulation, by either collection or accrual of interest on deposits, of excess PFC revenue as well as suggestions for additional or less reporting requirements. Commenters are encouraged to provide any data on the cost or burden related to such suggestions.

Section 158.65 Reporting Requirements: Issuing Carrier

Issuing carriers collecting PFC's would be required to file quarterly reports to a public agency providing an accounting of funds collected and disbursed to the public agency, unless an alternative schedule is agreed to by the issuing carrier and the public agency. This is consistent with the required frequency of reporting collections of the passenger ticket tax collected by air carriers. As proposed, reports would include specific information, such as the total number of passengers enplaned for the period, the number enplaned who were exempt from collection under this regulation, the number who purchased tickets prior to the imposition of the PFC, and PFC revenue collected and remitted to the public agency but subsequently refunded to passengers by the air carrier or foreign air carrier. As proposed, the reports would be required to specify the enplaning carrier and to be filed by the last day of the month following the calendar quarter or other period agreed to by the issuing carrier and public agency for which funds were collected. For example, a report covering the months of January, February, and March would be due on or before April 30. The FAA seeks comment on these reporting requirements for both public agencies and issuing carriers and in particular whether the level of detail and frequency are appropriate. Comment is also invited on whether the information

that would be provided to public agencies by the proposed quarterly air carrier reports would be adequate if submitted only annually in conjunction with the report discussed below under § 158.69.

Section 158.67 Recordkeeping and Auditing: Public Agency

A public agency imposing a PFC would be required to establish and maintain an accounting record in accordance with Generally Accepted Accounting Principles for all approved projects from the time collection begins for the PFC until the time all funds are expended. Each public agency would be required to provide for an independent audit annually of each project financed with PFC revenue. A copy of the audit would be provided on request to each issuing carrier disbursing PFC revenue to the public agency and to the Administrator.

Section 158.69 Recordkeeping and Auditing: Issuing Carriers

Issuing carriers would also be required to establish and maintain an accounting record of PFC revenue collected in accordance with Generally Accepted Accounting Principles and to provide for an independent audit of all PFC accounts annually. A copy of the audit would be provided on request to the public agency for which the PFC revenue was collected and to the Administrator.

Section 158.71 Federal Recordkeeping and Auditing Oversight

Pursuant to the Act, in addition to the independent audits, the NPRM would also authorize the Administrator to periodically audit and review the use of revenue by a public agency to ensure compliance with the requirements of this regulation and the Act.

Under the terms of the statute, and as reflected in the NPRM, the collecting, handling, and reporting requirements apply to all air carriers including the smallest charter carriers and on-demand air taxis. The FAA seeks comment, and the basis for any proposals, on whether the proposed requirements for collecting, handling, disbursing and auditing should be applied equally to all air carriers, including non-scheduled carriers such as charter operators and on-demand air taxis, at an airport imposing a PFC. For example, an air carrier or foreign air carrier enplaning 10 passengers a month would collect a maximum of \$30 a month. Commenters are urged to focus on the cost to collect, disburse, and audit PFC revenue and the degree to which such costs may exceed the amount of funds collected.

If the final rule limits the issuing carriers required to collect PFC's, options could include: (1) Limiting collection to carriers carrying more than a specified number of passengers; (2) limiting collection to certain categories of carriers; (3) reducing the regulatory requirements for some carriers; or (4) allowing small non-scheduled carriers and the public agency to negotiate mutually agreeable requirements.

Based on the terms of the statute, the proposals for collecting, handling, disbursing and auditing in this NPRM would also apply equally to all foreign air carriers affected by the law. In response to Notice No. 90-28, the International Air Transport Association advised that several countries prohibit the collection within their territories of taxes or fees imposed by other countries. Foreign air carriers, however, are currently collecting and disbursing a number of taxes or fees, including the 8 percent ticket tax and \$6 international passenger departure tax, customs user fees and immigration user fees. At this point, therefore, we do not anticipate an exclusion of foreign air carriers from the requirement to collect PFC's.

Nevertheless, the FAA seeks comments on whether there should be different requirements for foreign carriers, or for those foreign carriers with limited U.S. sales. Alternative options with regard to foreign air carriers include, among others: (1) Limiting collection required to those carriers carrying more than a specified number of passengers; (2) reducing regulatory accounting, reporting, and remitting requirements; or (3) allowing foreign carriers and the public agency to agree to specific requirements.

Subpart E

Subpart E addresses termination for cause. The Act provides that, to the extent the Secretary determines that revenues are not being used in accordance with this regulation, the authority to impose a PFC may be terminated. The Act also provides that the Secretary may set off such amounts otherwise payable to the public agency under AIP as may be necessary to ensure compliance with this regulation.

Section 158.83 Termination of Authority To Impose PFC's

If a problem is discovered during the audit or review described in subpart D, the Administrator would first enter into an informal resolution with the public agency, and any other affected party. The FAA expects informal resolution to be sufficient in almost all cases.

If informal resolution is not reached, the Administrator would begin action to

terminate PFC authority by publishing a notice in the *Federal Register*. The notice would describe the reasons for the proposed termination, would ask for comments, and would offer the public agency the opportunity to request a hearing. The notice would also describe corrective actions to forestall termination and would give the public agency 30 days to take such action or agree to do so. The proposed period for any comments, including those from the public agency, is 30 days after the notice date. During this period, the public agency's authority to impose the PFC would continue. If the agency took corrective action, the termination action would be withdrawn.

Under the proposal, if the public agency requested a hearing, no final decision would be made by the Administrator until after the public hearing. The decision in a termination proceeding could be to terminate in whole or in part the authority to impose a PFC or to allow full continued authority. Authority would only be terminated if PFC revenue is not being used in accordance with this regulation or section 1113(e) of the FAA Act (49 U.S.C. App. 1513).

The Administrator would publish a notice in the *Federal Register* advising of the termination action and would also notify all air carriers and foreign air carriers operating at the airport. A copy of the notice would be provided to the public agency. The carriers that were notified would be responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA. To establish which carriers must be notified, the proposed rule would require public agencies, within 10 days of the date of the termination notice in the *Federal Register*, to provide the FAA a list of carriers operating at the airport. This would include air carriers, foreign air carriers, and all issuing carriers that have collected PFC revenue at the airport in the preceding 12 months.

The Administrator would terminate PFC authority only after all other recourse is considered. However, the possibility of such a termination could potentially affect the marketability of bonds and interest rates paid by public agencies when a PFC is a source of revenue to finance a bond issue. The FAA seeks comment on appropriate ways to minimize any potential disruption in the market for airport bonds.

Section 158.85 Loss of Federal Airport Grant Funds

Under the proposal, if the Administrator determines that a PFC

imposed by a public agency is excessive or that revenue derived from the PFC is not being used in accordance with this regulation or the Act, the Administrator may also reduce AIP funds by the amount collected in excess of approved amounts or not used in accordance with this regulation or the Act. This provision in the proposed rule implements section 9110(12)(c) of the Act.

Subpart F

Proposed subpart F explains the circumstances under which funds apportioned under the Airport Improvement Program would be reduced to public agencies that control certain airports and that impose a PFC, and the procedure for implementing such reductions.

Section 158.93 Public Agencies Subject to Reduction

Under section 9111 of the Act, funds apportioned under section 507(a)(1) of the Airport and Airway Improvement Act of 1982, as amended, based on passenger enplanements (not cargo landed weight) will be reduced at commercial service airports which impose a PFC and enplane 0.25 percent or more of total annual enplanements in the United States (large and medium hubs). There are currently 71 airports in this category. Apportionments for all other commercial service airports would not be reduced under this provision.

The proposed regulation would reduce the apportionment on an airport-by-airport basis rather than on the amount apportioned to a public agency for all airports controlled by the agency. If a public agency controls more than one airport, the reduction in apportionment would be calculated for each airport separately. The FAA is proposing the selected approach because apportionments are calculated based on passenger enplanements on an individual airport basis.

Section 158.95 Implementation of Reduction

The proposed rule would reduce apportionments at large and medium hubs in the fiscal year following the date of PFC application approval. The apportionment in the fiscal year of approval would not be reduced. This approach was chosen for ease of administration by public agencies and the FAA. Another approach would be to prorate the amount of reduction based on the percentage of days remaining in the fiscal year after application approval. This could require adjustment of AIP multi-year grants including changes in grant work scope, and produce a constantly fluctuating small

airport fund under section 9112(d) of the Act. However, the disadvantage to the selected approach is that public agencies could try to time PFC application approval early in the fiscal year, thus retaining all apportioned funds and receiving PFC revenue for most of the fiscal year. The FAA seeks comments on timing of apportionment reductions.

The amount of the reduction would equal 50 percent of the PFC revenue forecast for the fiscal year, except the maximum reduction would not exceed 50 percent of the amount otherwise apportioned based on passenger enplanements. A public agency would not lose more than one-half of its expected apportioned funds. The reduction in apportioned funds would be calculated at the beginning of each fiscal year based on projected PFC revenue for the year. Projected revenue could be based on an annual submission by the public agency or by simply multiplying the PFC level (\$1, \$2 or \$3) by the enplanements used for calculating AIP apportionments. The annual calculation of AIP apportioned amounts would reflect the reductions caused by PFC revenue. Comments are invited on this and other methods that may be used to calculate such reductions.

The proposed regulation would provide for adjustments in reductions to reflect actual results should forecasts prove inaccurate or should the charge expiration date change. The adjustment would occur in the apportionment calculation for the following year, except that the total reduction would not exceed 50 percent of the otherwise apportioned amounts.

Application of Department Policy on Price Advertising

Department of Transportation policy statements on airline economic activity specifically address airline price advertising. Under 14 CFR 399.84, the Department considers it to be an unfair or deceptive practice for any airline advertising to state a price for air transportation, unless the stated price is the entire price to be paid by the passenger. The advertising of prices for air travel that may be subject to PFC's appears to fall within the scope of this policy statement.

In 1985, the Department, by order, exempted carriers from the policy with respect to the 8 percent ticket tax and \$6 international passenger departure charge. The exemption permitted air carriers to advertise an air fare price net of these charges so long as the charges were separately stated in the advertising. As the number of Federal

user charges and locally imposed fees on airline passengers grew, the Department, through successive orders, expanded and clarified its 1985 exemption. The most recent order, Order 88-8-2, was declared invalid in *Alaska v. Department of Transportation*, 868 F.2d 441 (DC Cir. 1989), on the grounds that the Department had engaged in substantive rulemaking without providing notice and opportunity for comment. The Department has not finished its rulemaking proceeding to amend the policy statement.

Pending completion of that rulemaking, however, under the *Alaska* decision, *supra*, the policy statement appears to require that advertised airline prices include any PFC's that might be collected. Such a requirement would make price advertising very difficult and potentially costly and confusing. A round-trip between the same origin and destination points could have at least three different prices (and possibly more), depending on whether a carrier offered a choice of direct routings and routings over alternate intermediate connecting points with different PFC amounts. If a PFC varied with the time of day, the passenger's ultimate cost could also vary with the time of departure from an originating airport or, for that matter, from an intermediate point.

To alleviate this problem, the Department tentatively has decided to allow carriers to state separately that "up to \$12 per round trip in local airport charges may be collected in addition to the advertised price" in order to satisfy 14 CFR 399.84. Comments are invited on the Department's tentative resolution of this issue.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this proposal have been submitted to Office of Management and Budget for review. Comments on the requirements should be submitted to the Office of Information and Regulatory Affairs, New Executive Office Building, room 3208, Washington, DC 20503; Attention: FAA Desk Officer (Telephone (202) 395-7340). A copy should be submitted to the FAA docket.

Environmental Issues

Congress directed the Secretary to promulgate final rules for implementation of the PFC program within 180 days after enactment of the PFC legislation. The rule would have nationwide application and the environmental consequences of PFC funded projects could vary substantially from airport to airport. In FAA's view,

the 180-day time limit is far too short for the FAA to prepare an environmental assessment, obtain public comments, prepare a full environmental impact statement if adoption of the PFC rule were found to have a potential for significant impact on the quality of the human environment, and to engage in notice and comment rulemaking to produce a completed final rule.

In addition, it should be noted that the statute authorizes local imposition of PFC's, subject to Federal approval. The proposed regulations would not themselves authorize or cause any PFC to be collected or cause a PFC project to be started, let alone completed. Rather, they would merely establish procedures governing FAA approval and local implementation of approved PFC projects.

The environmental consequences, if any, from this regulation would seem to be those associated with specific projects and not with the adoption of procedural requirements for Federal approval and local implementation of projects. A PFC-financed project can be implemented only after FAA approval of an application to impose a PFC for a specific project. FAA approval of such applications, therefore, would include appropriate environmental review of individual projects under the provisions of proposed subpart B, as discussed above.

At this time, the FAA has tentatively concluded that Congress by setting a statutory limit on the length of the rulemaking process, did not intend the adoption of procedural regulations for implementing the PFC program to require the full environmental review procedures called for in the National Environmental Policy Act. Additionally, the FAA is of the view that the adoption of these procedural rules will not significantly affect the quality of the human environment or set in motion actions that would not otherwise be governed by the applicable environmental review requirements. Rather, it is believed that any potential environmental impacts resulting from projects financed with revenue derived from a PFC will be fully disclosed in connection with the review of an application to impose such PFC.

Nevertheless, the FAA wishes to fully consider the potential environmental consequences of the proposed regulation and invites public comment on any associated environmental issues. The FAA intends to prepare a final environmental assessment of the proposed PFC regulation and will consider all substantive comments before deciding whether to approve a

finding of no significant impact or to prepare an environmental impact statement.

Regulatory Evaluation Summary

This summary discusses the anticipated benefits and costs associated with implementing the Notice of Proposed Rulemaking (NPRM) which is based on section 9110 of the Airport Safety and Capacity Expansion Act of 1990 (the Act). The preliminary regulatory evaluation prepared by the FAA provides more detail on the economic consequences of this regulatory action. In addition to a summary of the preliminary regulatory evaluation, this summary also contains the initial regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. It is available for review in the docket.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of \$100 million or more; a major increase in costs or prices for consumers or for individual industries, government entities, or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.

Under the Act, the Administrator is authorized to approve applications by public agencies to impose PFC's. The Federal government has discretion only over the procedures governing the application for and approval of PFC authority and the collection, handling, and use of PFC revenue. In addition, PFC revenue will be generated only as a consequence of a State or local initiative to impose a PFC. Finally, all such revenue accrues to the public agencies, not the Federal government. Therefore, although the total annual revenue raised by passenger facility charges (PFC's) could easily exceed the \$100 million per year threshold, the FAA, for the reasons noted above has tentatively determined that this rule is not "major" as defined in the executive order. Consequently, the requirement of the Act is satisfied by a regulatory evaluation, rather than a full regulatory impact analysis.

There appears to be some discretion allowed in determining the categories of

air carriers that will be required to collect, handle, remit, and report PFC's. The FAA is soliciting comment on the appropriateness of requiring all categories of air carriers to handle PFC's. This issue will be resolved only after receipt of information from the public in response to this NPRM. Therefore, a more complete analysis will be prepared later.

Benefits and Costs of PFC-Funded Projects

This evaluation examines the impact of a notice of proposed rulemaking (NPRM) that provides rules under which the FAA would allow public agencies that control airports to impose PFC's. The proposed rule would require that the air carriers collect these charges and remit them to public agencies that control commercial service airports. PFC revenue may be used to fund investments in various types of eligible projects.

A recent survey of airports indicated that total public spending on capital improvements, including items not eligible for Federal aid, was \$4.5 billion in 1989. (The FAA and others have estimated that future investment needs for airport expansion, including work not eligible for Federal grants, will continue at that level or more for the next 5 to 10 years.) PFC revenue of \$1 billion per year could, therefore, finance 20 to 25 percent more in airport capital investment. The benefits and costs of these projects are discussed below.

Capacity expansion. A major purpose for which PFC revenue may be used is the expansion of airport capacity on both airside and landside. Such investments can be expected to reduce airport delays. Some indication of the magnitude of the potential savings can be derived by noting that, for 1987, the total airside delay costs associated with the 100 largest airports in the U.S. have been estimated to be on the order of \$11 billion. Landside delays, including those associated with on-airport roads and terminals would add significantly to the total of airport-related delays that were experienced.

A significant investment of PFC revenue for capacity expansion can be assumed to reduce airport-associated delay time. The benefits of capacity expansion vary with specific projects, but computer simulations for airport capacity planners have consistently shown very favorable benefit to cost ratios for major projects such as new runways. For example, if 20 percent of the estimated airport investments (about \$1 billion per year) were to reduce passenger airport delays by 10 percent, the value of time savings would be

about \$1.1 billion per year and the PFC-funded projects would yield benefits in excess of costs. Further, it is likely that the delay reductions from funding 20 percent of the desired investments would be in excess of 10 percent of current delays for two reasons. (1) Airport operators would have an incentive to make the best use of their new revenue by selecting as their investments the projects that have the greatest incremental benefits for the funds spent. (2) A large amount of this development will probably occur at the busiest airports, which are also the most congested and in greatest need of expansion.

Noise mitigation. The FAA estimates that approximately \$1.8 billion will be spent for noise mitigation or other environmental projects over the next 10 years. PFC revenue could be used to fund these noise mitigation projects. Like delays, noise impacts most often occur at the busiest airports. For example, 57 percent of the cost of noise mitigation projects planned over the next 10 years is concentrated at the 29 busiest primary airports.

When PFC's fund projects that benefit noise-impacted individuals, the investment (e.g., for soundproofing of existing structures or the purchase of impacted real estate) can be thought of as compensation to those individuals who have incurred an indirect cost of air travel. By financing these projects, travelers who pay PFC's are, in effect, reducing a subsidy that has been—or would otherwise be—involuntarily provided to them by noise-impacted individuals. Whether the avoided costs of noise pollution are less than the costs incurred for abatement can be estimated only on a case-by-case basis. To the extent that noise mitigation expenditures respond to expressed public concerns, there is an incentive to give priority to the projects that yield the greatest net benefits.

The availability of substantial PFC revenue is expected to facilitate investments in noise mitigation projects. Detailed benefit/cost analyses are problematical, however, because of the difficulty of fully expressing benefits in monetary terms. Individual projects, however, are carefully developed, analyzed, and discussed by public agencies and noise-impacted individuals to produce projects that address serious public concerns.

Enhanced competition among air carriers. Projects that furnish opportunities for enhanced competition between or among air carriers may be funded with PFC revenue. Benefits that may be conferred upon PFC payers as a

result of enhanced competition are likely to be in the form of lower air fares and/or improved service that arise from the construction of gates at an airport that allow new entrants/new competition in a travel market. Such benefits to travelers are highly dependent on the policy followed by any new entrant and the reactions of competing carriers. For instance, a new entrant may offer significantly lower fares but be so constrained by the limited amount of available airport space that it is unable to increase its operations to the extent that other carriers are induced to lower their fares in order to compete. In the limiting case of a single dominant carrier and a small new entrant carrier, the dominant carrier may perceive that there is little to be gained by lowering fares. As a result, a new entrant may substantially duplicate existing fares and service. Lower fares are believed to be more likely in cases where the new entrant is able to provide substantial competition with incumbent carriers. Potential gains to passengers could result from increased competition at airports that are largely dominated by single carriers.

In the event that the use of PFC revenue, for instance for the construction of gates, results in enhanced competition and lower air fares at an airport, air carriers may suffer a reduction in profits. However, if the resulting lower prices result in a reduction in profits, much of the loss in profits is likely to become a benefit that is transferred to passengers. In addition, there may be a higher level of travel service provided so that the combined consumers' and producers' surplus for the airport will be increased.

Funds shifted to smaller airports. Section 9111 of the Act requires that sponsors of airports that annually have more than 0.25 percent or more of total annual enplanements in the U.S. will have their Airport Improvement Program entitlement funds reduced by 50 percent of their projected PFC revenue—up to 50 percent of this entitlement. The funds released from entitlements to these large and medium hub airports are to be used under Section 9112 of the Act as follows: 25 percent for a discretionary fund of which half is for small hub airports and 75 percent for a Small Airports Fund for use by general aviation airports and nonhub commercial service airports. It may be argued that the overall national airspace system is improved by (1) The increased capacity at larger airports and (2) increased capacity at smaller airports that would be unlikely to occur in the absence of the diversion of entitlement funds from larger to smaller

airports. Sponsors of smaller airports may be unable to finance substantially improved facilities from funds raised at their airports in the absence of funds from outside sources. However, improvements at smaller airports may yield benefits through improved operations at nearby larger airports that the small airport operators are unable to fully capture through increased fees and charges. This can occur because reduced congestion at larger airports may result from the diversion of general aviation traffic to the smaller fields.

Handling of PFC revenue and compensation for these costs. The interest earnings allowed the carriers as compensation for collecting, handling, remitting, and reporting PFC's to the public agencies will vary directly with the revenue remitted and inversely with the frequency with which balances must be remitted to the airport(s). For example, with revenue of \$1 billion per year, remittance as specified in the NPRM, and an interest rate of 10 percent, total annual earnings would be on the order of \$10 million per year.

It should be noted that, should \$1 billion per year be collected in \$3 PFC's, 333 million PFC's would be handled. In order for the cost of handling, accounting for, and auditing these charges to be fully compensated for by interest earnings of \$10 million per year, costs would have to be on the order of 3 cents per PFC collected. If the costs of handling were found to be higher, it would be appropriate to specify a longer period during which air carriers may earn interest on the PFC float. For instance, if costs were 15 cents per PFC, the required interest earnings would be approximately \$50 million per year, which could require a float on the order of 6 months, if interest rates were near 10 percent.

Currently, cost data that would allow the determination of whether this is an appropriate level of compensation are not available to the FAA. It is believed that the handling of fees that are less than some cutoff level may result in costs that are greater than the revenue collected. Appropriate cutoff levels or rules have not been determined at this time. The FAA requests data on collection costs and comments on the availability of alternatives to minimize uneconomic PFC collections. It is believed likely that the monthly costs during the startup of the PFC collection and remittance system will be significantly higher than after the system is in operation.

Additional data are also needed to determine costs of startup in the PFC collection and remittance system, which

may be significantly higher than after the system is in operation. Although PFC administration may be simplified by having a single remittance schedule for all carriers and airports, it may be appropriate to allow less frequent remittances for carrier airport pairs that involve low levels of revenue.

During the course of this rulemaking, the FAA will continue efforts to identify and evaluate means of achieving maximum cost-effectiveness, consistent with the requirements of the Aviation Safety and Capacity Expansion Act.

The agency will continue to give particular attention to the costs of PFC administration and informational requirements in Parts C and D, in an effort to ensure that administrative and informational costs and burdens are not excessive (See also the discussion in the Regulatory Flexibility Act determination below.) The FAA strives to maximize the cost-effectiveness of PFC administration while minimizing unnecessary information collection burdens, as consistent with the requirements of the Aviation Safety and Capacity Expansion Act.

The FAA has attempted to structure the proposal so as to achieve maximum cost effectiveness in administration (i.e., in ticketing collection burdens, as well as reporting, recordkeeping and auditing requirements). For example, it is proposed in subpart C that all PFC's be collected and remitted by the issuing carrier, thus eliminating interline settlements. Comments on other means of reducing settlement and accounting burdens are invited.

The FAA also invites comments on implementation, such that the information collection, accounting, auditing and other administrative requirements will be as cost-effective as possible. As noted above with respect to subpart D requirements, the FAA seeks comments on options that could reduce regulatory burdens for carriers and public agencies.

Comments are also thus invited on ways to structure PFC implementation. To this end, the FAA requests information from carriers, public agencies, and other interested persons on relevant start-up costs, such as for software, database programming and establishment of necessary accounting records. The agency is interested in how the specific timing and implementation of the PFC program might affect these costs and ways to minimize them.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 was enacted by Congress to ensure that small entities are not unnecessarily or

disproportionately burdened by Government regulations. This Act requires a Regulatory Flexibility Analysis if a rule has a significant economic impact, either detrimental or beneficial, on a substantial number of small business entities. FAA Order 2100.14A, Regulatory Flexibility Criteria and Guidance, establishes threshold cost values and small entity size standards for operators of aircraft for hire for complying with review requirements in FAA rulemaking actions. The lowest of these categories is indicated to be \$3,300 per year in 1983 dollars for unscheduled operators of 9 or fewer aircraft. This level is approximately \$4,200 in 1990 dollars. Since provisions of the NPRM allow the earning of interest on PFC revenue held in order to compensate carriers for the costs of administering PFC's, the net cost of collecting, handling, remitting, and reporting PFC's for such operators of aircraft should be small. There are numerous charter and air taxi operators that are believed to have 9 or fewer aircraft. Size thresholds, if any, for the application of PFC's and associated remittance schedules will be determined after the receipt of comments on the NPRM. The tentative conclusion that the imposition of PFC's will not have a significant economic impact, either detrimental or beneficial, on a substantial number of small entities may be altered if data are received that clearly indicate such an impact.

The impact of PFC administration costs on small airports is not believed to be a problem, since PFC's are to be initiated by public agencies that control airports. These agencies are assumed to assess a PFC only if they have reason to expect that the revenue collected will be in excess of the cost of establishing the charge and managing the revenue that results.

Trade Impact Assessment

The provisions of this proposed rule are expected to have little or no impact on trade for both U.S. firms (including air carriers) doing business in foreign countries and foreign firms (including air carriers) doing business in the United States. PFC's are not likely to cause a significant increase in costs for most international travel. It is noted that the \$3 per airport limitation on PFC's per enplaned passenger and the generally higher cost per ticket for international travel to or from the United States than for domestic travel make PFC's imposed on international travel a smaller proportion of the cost of international travel than domestic travel. Even with the addition of PFC's, departure fees for international travelers at U.S. airports

will remain lower than those at many airports in other countries. Although PFC's will raise the amounts paid for tickets for international travel, in many cases, the airport capacity improvements financed with the resulting revenue may result in improvements in the amenities afforded travelers. These improvements may include reduced delay that is made possible by increased airport capacity that more than compensates passengers for the cost of the PFC.

Federalism Implications

The regulations proposed herein would 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. Therefore, in accordance with Executive Order 13612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The proposed regulations would implement a new statute that authorizes state and local public agencies that control commercial service airports to impose PFC's at their airports. While the imposition of PFC's would be a local decision, the statute imposes Federal requirements on the airport operator (e.g., the local consultation requirement) and requires Federal oversight (through the approval and audit provisions).

The provisions of the proposed rule are intended to impose on state and local agencies the minimum restrictions and requirements that are mandated by the statute, including the Federal oversight role contemplated by the PFC statute and other legislation or regulations that would pertain to a PFC-financed project (e.g., environmental requirements).

Conclusion

For reasons discussed in the preamble, and based on the findings in the Regulatory Flexibility Determination and the International Trade Impact Analysis, the FAA has determined that this proposed regulation is not major under Executive Order 12291. This proposal is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). An initial regulatory evaluation of the proposal, including a Regulatory Flexibility Determination and Trade Impact Analysis, has been placed in the docket. A copy may be obtained by contacting the person identified under "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 158

Administrative practice and procedure, Air carriers, Airport, Air transportation, Passenger facility charge, Reporting and recordkeeping requirements.

The Proposed Amendments

Accordingly, the FAA proposes to establish a new part 158 of the Federal Aviation Regulations, 14 CFR part 158, to read as follows:

PART 158—PASSENGER FACILITY CHARGES (PFC's)

Subpart A—General

- Sec.
- 158.1 Applicability.
 - 158.3 Definitions.
 - 158.5 Authority to impose PFC's.
 - 158.7 Exclusivity of authority.
 - 158.9 Limitation regarding passengers of air carriers receiving essential air service compensation.
 - 158.11 PFC limitation per one-way trip.
 - 158.13 Limitation regarding involuntary change in itinerary.
 - 158.15 Use of PFC revenue.
 - 158.17 Project Eligibility.

Subpart B—Application and Approval

- 158.21 General.
- 158.23 Requirements prior to submission of application.
- 158.25 Consultation with air carriers and foreign air carriers.
- 158.27 Application.
- 158.29 Review and approval process.
- 158.31 Amendment of approved PFC.
- 158.33 Duration of authority to impose a PFC.
- 158.35 Use of excess PFC Revenue.

Subpart C—Collection, Handling, and Remittance of PFC's

- 158.41 General.
- 158.43 Public agency notification to air carriers and foreign air carriers.
- 158.45 Collection of PFC's.
- 158.47 Handling of PFC's.
- 158.49 Remittance of PFC's.
- 158.51 Collection compensation.

Subpart D—Reporting, Recordkeeping and Audits

- 158.61 General.
- 158.63 Reporting requirements: public agency.
- 158.65 Reporting requirements: issuing carrier.
- 158.67 Recordkeeping and auditing: public agency.
- 158.69 Recordkeeping and auditing: issuing carriers.
- 158.71 Federal recordkeeping and auditing oversight.

Subpart E—Termination for Cause

- 158.81 General.
- 158.83 Termination of authority to impose PFC's.

Sec.

158.85 Loss of federal airport grant funds.

Subpart F—Reduction in Airport Improvement Program Apportionments

158.91 General.

158.93 Public agencies subject to reduction.

158.95 Implementation of reduction.

Appendix A to Part 158—Application Form

Appendix B to Part 158—Assurances

Authority: 49 U.S.C. App. 1513 (as amended by the Aviation Safety and Capacity Expansion Act of 1990, Pub. L. 101-508, title II, Subtitle B, November 5, 1990); 49 U.S.C. App. 2206 (as amended by the Aviation Safety and Capacity Expansion Act of 1990); 49 U.S.C. App. 2218; Section 9304(e) of the Airport Noise and Capacity Act of 1990, Pub. L. 101-508, Title IX, Subtitle D.

Subpart A—General

§ 158.1 Applicability.

This part applies to passenger facility charges (PFC) as may be approved by the Administrator of the Federal Aviation Administration (FAA) pursuant to section 1113(e) of the Federal Aviation Act of 1958 (49 U.S.C. App. 1513(e)) and imposed by a public agency that controls a commercial service airport. This part also describes the procedures for reducing funds apportioned under section 507(a) of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. App. 2206(a)) to a large or medium hub airport that imposes a PFC.

§ 158.3 Definitions.

The following definitions apply in this part:

Airport means any area of land or water, including any heliport, that is used or intended to be used for the landing and takeoff of aircraft, and any appurtenant areas that are used or intended to be used for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

Airport capital plan means a capital improvement program prepared and adopted by a public agency that lists airport-related planning, development or noise compatibility projects expected to be accomplished with anticipated available funds over a given period.

Airport layout plan means a plan showing the existing and proposed airport facilities and boundaries in a form prescribed by the Administrator.

Airport revenue means revenue generated by a public airport:

(1) Through any lease, rent, fee, or charge collected, directly or indirectly, in connection with any aeronautical activity conducted on an airport that it controls; or

(2) In connection with any activity conducted on airport land acquired with Federal financial assistance, or with PFC revenue under this part, or conveyed to such public agency under the provisions of any Federal surplus property program or any provision enacted to authorize the conveyance of Federal property to a public agency for airport purposes.

Air travel ticket means all documents pertaining to a passenger's complete itinerary necessary to transport a passenger by air.

Allowable cost means the reasonable and necessary costs of carrying out an eligible project, and includes both costs incurred subsequent to the approval to impose a PFC and project formulation costs incurred prior to such approval.

Charge effective date means the date on which a public agency begins to impose a PFC.

Charge expiration date means the date on which a public agency ceases to collect a PFC as agreed or as directed by the Administrator.

Collection means the acceptance of payment of a PFC by an issuing air carrier or its agent from a passenger.

Commercial service airport means a public airport determined by the Secretary to enplane annually 2,500 or more passengers and receive scheduled passenger service of aircraft.

FAA Airports office means a regional, district or field office of the Federal Aviation Administration that administers Federal airport-related matters.

Involuntary change in itinerary means a change in destination, intermediate stops, or scheduled layovers initiated by an air carrier and is beyond the ability of the passenger to control.

Issuing carrier means any air carrier or foreign air carrier that issues an air travel ticket or whose imprinted ticket stock is used in issuing such ticket by an agent.

Long term lease or use agreement means a lease or use agreement with a term of 5 years or more.

One-way trip means the itinerary shown on the air travel ticket of a passenger who travels from an originating airport to another airport, including any enroute change of aircraft or air carrier, where no scheduled layover exceeds 4 hours.

Passenger enplaned means a domestic, territorial or international revenue passenger enplaned in the United States, as defined in the Airport and Airway Improvement Act of 1982 (49 U.S.C. app. 2205(A)(23)) (AALA), in scheduled or nonscheduled service on aircraft in intrastate, interstate, and foreign commerce and includes

passengers on board international flights that transit an airport located in the 48 contiguous States for nontraffic purposes.

Passenger facility charge (PFC) means a charge covered by this part imposed by a public agency on passengers enplaned at a commercial service airport it controls.

Project means airport planning or development work (including gates and related areas at which passengers are enplaned or deplaned), or noise compatibility planning or measures, that are to be undertaken at an airport using PFC funds.

Public agency means a State or any agency of one or more States, a municipality or other political subdivision of a State, a tax-supported organization, or an Indian tribe or pueblo that:

(1) Controls a commercial service airport and

(2) Is legally, financially, and otherwise able to assume and carry out the assurance contained in an application for PFC authority and any condition imposed by the Administrator upon approval.

Voluntary change in itinerary means a change in destination, intermediate stops or scheduled layover initiated by a passenger that is shown on a reissued air travel ticket.

§ 158.5 Authority to impose PFC's.

Subject to the provisions of this part, the Administrator may grant authority to a public agency that controls a commercial service airport to impose a PFC of \$1.00, \$2.00, or \$3.00 on passengers enplaned at such airport. A public agency may not impose a PFC under this part unless authorized by the Administrator. No State or political subdivision or agency thereof that is not a public agency will be authorized to impose a PFC covered by this part.

§ 158.7 Exclusivity of authority.

(a) No State or political subdivision or agency thereof may impair the imposition of a PFC, collection of such PFC, or use of revenue derived therefrom by a public agency.

(b) No contract or agreement between an air carrier or foreign air carrier and a public agency may impair the authority of such public agency to impose a PFC under this section and to use the revenue derived therefrom in accordance with this part.

§ 158.9 Limitation regarding passengers of air carriers receiving essential air service compensation.

(a) No public agency may impose a PFC on any passenger on a flight to an

eligible point for which essential air service compensation is being paid under section 419 of the Federal Aviation Act (49 U.S.C. app. 1389).

(b) An air carrier that provides compensated air service under section 419 of the Federal Aviation Act to an eligible point shall ensure that notice of such compensated service is provided to all its agents and other issuing carriers with whom that air carrier has interline ticketing agreements.

§ 158.11 PFC limitation per one-way trip.

For each one-way trip shown on the complete itinerary of an air travel ticket, a PFC may be collected only for the first two airports where PFC's are imposed.

§ 158.13 Limitation regarding involuntary change in itinerary.

No public agency may impose a PFC on any passenger enplaned as a result of an involuntary change in itinerary.

§ 158.15 Use of PFC revenue.

PFC revenue, including any interest earned after such revenue has been remitted to a public agency, may be used only to finance the allowable costs of eligible projects contained in an application approved under this part as follows:

(a) *Total cost.* PFC's may be used to pay the entire cost of an eligible project.

(b) *Debt service.* PFC's may be used to pay debt service on bonds and related expenses and other indebtedness incurred to carry out eligible projects. Such debt service and related expenses may be incurred prior to the approval of the PFC only if the public agency has not yet commenced work on such project.

(c) *Combination of PFC and Federal grant funds.* A public agency may use a combination of PFC revenue and airport grant funds to accomplish an eligible project. Such projects shall be subject to the recordkeeping and auditing requirements set forth in subpart D of this part, in addition to the reporting, recordkeeping and auditing requirements imposed pursuant to the Airport and Airway Improvement Act of 1982 (AAIA).

§ 158.17 Project eligibility.

(a) To be eligible, a project must—

- (1) Preserve or enhance capacity, safety, or security of the national air transportation system;
- (2) Reduce noise or mitigate noise impacts resulting from an airport; or
- (3) Furnish opportunities for enhanced competition between or among air carriers.

(b) Eligible projects are—

- (1) Airport development, including land acquisition, eligible under the AAIA;
- (2) Airport planning eligible under the AAIA;
- (3) Terminal development as described in 49 U.S.C. App. 2212(b);
- (4) Airport noise compatibility planning as described in 49 U.S.C. App. 2103(b);
- (5) Noise compatibility measures that are eligible for Federal assistance under 49 U.S.C. App. 2104(c), or that are determined by the Administrator to reduce noise or to mitigate or prevent adverse aviation noise impacts; and
- (6) Construction of public use, revenue and non-revenue producing, areas where passengers are enplaned or deplaned. Such areas may include public-use loading gates, baggage handling and make-up areas, ticketing areas, security devices, holding areas, waiting rooms, and associated corridors. Construction not directly related to the movement of passengers and baggage in air commerce within the boundaries of the airport, such as restaurants, car rental facilities, or other concessions are not eligible for PFC funding.

Subpart B—Application and Approval

§ 158.21 General.

This subpart specifies the consultation and application requirements to impose a PFC to finance an eligible project. This subpart also establishes the procedure for the Administrator's review and approval of applications and amendments.

§ 158.23 Requirements prior to submission of application.

A public agency that intends to submit an application to impose a PFC, prior to submission of such application shall—

- (a) Comply with the requirements of the National Environmental Policy Act of 1969 (NEPA) by—
- (1) Consulting with the appropriate FAA Airports office to determine whether such approval shall be the subject of an environmental assessment, or whether approval of this application is an action that is categorically excluded from the requirements for an environmental assessment.
 - (2) If the project is one that is not categorically excluded, the public agency shall—
 - (i) Initiate such environmental studies as may be directed by the FAA Airports office pursuant to the provisions of 40 CFR 1500, *et seq.*;
 - (ii) Provide the FAA Airports office with an environmental assessment of the proposed project in sufficient detail

to determine whether a Federal finding of no significant impact or an environmental impact statement shall be prepared; and

(iii) Cooperate substantively with the FAA Airports office in the preparation of an environmental impact statement, if necessary.

(3) The public agency shall withhold submission of an application to impose a PFC until such time as the FAA Airports office has—

- (i) Concurred in a determination that the approval of such application is categorically excluded;
- (ii) Approved a Federal finding of no significant impact with respect to such application; or
- (iii) Approved a final environmental impact statement and a record of decision with respect to such application.

(b) Satisfy appropriate airspace analysis in order to determine the effect of the proposed project on the safe and efficient use of the national airspace system by—

- (1) Consulting with the appropriate FAA Airports office to determine whether an airport airspace analysis or obstruction evaluation is required.
- (2) If such an analysis is required, the public agency shall—
 - (i) Initiate a request for the appropriate airspace study of the proposed project; and
 - (ii) Obtain a completed airspace study determination of no objection from the FAA Airports office, or other FAA office if so directed.

(c) Ensure that the project to be financed with PFC revenue satisfies the requirement for an up-to-date ALP by—

- (1) Consulting with the appropriate FAA Airports office to determine whether the latest approved ALP includes the project to be financed with PFC revenue or whether an ALP is not required.
- (2) If the ALP has not been approved with respect to the proposed project, the public agency shall initiate a request for ALP review and approval at the appropriate FAA Airports office.

§ 158.25 Consultation with air carriers and foreign air carriers.

(a) Prior to submitting an application to the FAA, a public agency shall, to the extent practicable, provide written notice to air carriers and foreign air carriers currently operating at the airport, including—

- (1) Descriptions of individual projects being considered for funding by PFC's;
- (2) The date and location of a meeting to present such projects to air carriers

and foreign air carriers operating at the airport; and

(3) The PFC amount, proposed charge effective date, the proposed charge expiration date and estimated total PFC revenue.

(b) Not later than 30 days after the issuance of a written notice of such meeting, each air carrier and foreign air carrier notified and operating at the airport must provide a written acknowledgement of receipt of the notice. Failure of any such carrier to acknowledge receipt shall be deemed certification of agreement with the projects.

(c) Not sooner than 30 days nor later than 45 days after issuance of a written notice, the public agency must meet with air carriers and foreign air carriers to provide—

(1) A description of projects to be undertaken;

(2) An explanation of the need for the projects; and

(3) A detailed financial plan for the projects.

(d) Not later than 30 days after the date of such meeting each air carrier and foreign air carrier must provide the public agency with certification of agreement or disagreement with proposed projects. The failure of any such carrier to submit such certification shall be deemed certification of agreement with the projects. Any certification of disagreement shall contain the reasons for such disagreement. The absence of such reasons shall void a certification of disagreement.

§ 158.27 Application.

(a) This section specifies the information necessary for the Administrator to determine whether a proposed project is eligible for the use of PFC revenue, whether the environmental impacts, if any, of the project have been disclosed, and whether the proposed project will not derogate the safety, efficiency or capacity of the airport or the national airspace system.

(b) A public agency shall submit to the appropriate FAA Airports office, FAA Form _____, Application for Approval of Passenger Facility Charge (PFC) (see Appendix A) and Assurances (see Appendix B). An original and two (2) copies of the application and supporting documentation shall be submitted.

(c) A public agency shall not submit an application more than 1 year in advance of the proposed charge effective date.

(d) Applications shall be timed to ensure project work will proceed no

later than 2 years after the proposed charge effective date.

(e) A public agency may submit one application requesting approval to impose a PFC to finance one or more projects.

(f) No project work, except formulation costs including land acquisition, may commence until the application is approved.

(g) Unless otherwise authorized by the Administrator, the application must be accompanied by the following:

(1) An approved airport layout plan depicting the proposed project if located on the airport.

(2) A description and sketch of the proposed project.

(3) Justification for the project, including the extent to which the project achieves one or more of the objectives set forth in § 158.17(a). In its justification for any project for terminal development, including gates and related areas, the public agency shall discuss any existing conditions which limit competition between and among air carriers and foreign air carriers at the airport, any initiatives it proposes to foster opportunities for enhanced competition between and among such carriers, and the expected results of such initiatives.

(4) A certification that all requirements of § 158.23 have been satisfied.

(5) A copy of the FAA's final airspace determination with respect to the proposed project if an airspace study is required.

(6) A copy of the airport capital plan or other documentation of planned improvements for an airport-related project.

(7) A financial plan for the project, including—

(i) Estimated allowable project costs allocated to major project elements;

(ii) Projected passenger enplanements during the collection period;

(iii) PFC amount;

(iv) Anticipated PFC revenue to finance the project; and

(v) The source and amount of other funds needed to finance the project.

(8) Construction schedule or project staging plan.

(9) Summary of consultation with air carriers and foreign air carriers operating at the airport including—

(i) A listing of such carriers and those notified;

(ii) Acknowledgement of meeting notice (or lack thereof);

(iii) Certification of agreement or disagreement with projects (or lack thereof); and

(iv) In the event of carrier disagreement with the project, the public agency's reasons for proceeding; and

(10) Public agency assurances set forth in Appendix B to this part.

(h) The Administrator may request additional documentation as needed.

§ 158.29 Review and approval process.

(a) *Determination of completeness.* Within 30 days after receipt of an application by the FAA Airports office, the Administrator will determine whether the application substantially complies with the requirements of § 158.27.

(b) *Process for substantially complete application.* If the Administrator determines the application is substantially complete, the following procedures shall apply:

(1) The Administrator will advise the public agency by letter that its application is substantially complete.

(2) The Administrator will publish a notice in the **Federal Register** advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (d) of this section. A copy of the notice will also be provided to the public agency.

(3) The public agency—

(i) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(ii) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(4) Following review of the application, public comments and any other information obtained under paragraph (f) of this section, the Administrator will issue a final decision approving or disapproving the application no later than 120 days after the application was received by the FAA Airports office.

(c) *Process for substantially incomplete applications.* If the Administrator determines an application is not substantially complete, the following procedures shall apply:

(1) The Administrator will advise the public agency by letter that its application is not substantially complete. That letter shall list the information required to complete the application.

(2) Within 15 days after the Administrator sends such a letter, the public agency shall advise the Administrator by letter whether it intends to supplement its application.

(3) If the public agency declines to supplement the application, the following procedures shall apply:

(i) The Administrator will publish a notice in the *Federal Register* advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (d) of this section. A copy of the notice will also be provided to the public agency.

(ii) The public agency—

(A) Shall make available for inspection, upon request, a copy of the application, notice, and other documents germane to the application, and

(B) May publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located.

(iii) Following review of the application, public comments and any other information obtained under paragraph (f) of this section, the Administrator will issue a final decision approving or disapproving the application no later than 120 days after the application was received by the FAA Airports office.

(4) If the public agency chooses to supplement its application, the original application shall be deemed to be withdrawn for purposes of applying the statutory deadline for the Administrator's decision and the following procedures shall apply when a supplement is received:

(i) The Administrator will determine whether the application as supplemented is substantially complete as set forth in paragraph (a) of this section.

(ii) If the application is substantially complete, the procedures set forth in paragraph (b) of this section shall be followed.

(iii) If the application is still not substantially complete, the Administrator will so advise the public agency as set forth in paragraph (c)(1) of this section, and provide the public agency with an opportunity to further supplement its application as set forth in paragraph (c)(2) of this section.

(iv) The Administrator, upon determining an application as supplemented is substantially complete or will not be further supplemented, will publish a notice in the *Federal Register* advising that the Administrator intends to rule on the application and inviting public comment, as set forth in paragraph (d) of this section. A copy of the notice will also be provided to the public agency. The public agency may publish the notice in a newspaper of general circulation in the area where the airport covered by the application is located, and shall make available for inspection upon request, a copy of the application, notice, and other documents germane to the application.

(v) Following review of the application and supplements, public comments and any other information obtained under paragraph (f) of this section, the Administrator will issue a final decision approving or disapproving the application no later than 120 days after the last supplement to the application filed under paragraph (c)(4) was received by the FAA Airports office.

(d) The *Federal Register* notice. The *Federal Register* notice required above shall include the following information.

(1) The name of the public agency and the airport at which the PFC is to be imposed;

(2) A brief description of the PFC project, the level of the proposed PFC, the proposed charge effective date, the proposed charge expiration date and the total estimated PFC revenue;

(3) The address and telephone number of the FAA Airports office at which the application may be inspected;

(4) The Administrator's decision on whether the application is substantially complete;

(5) If the application is not substantially complete, a list of the information that would be necessary for a substantially complete application; and

(6) The due dates for any public comments.

(e) *Public comments.* (1) Interested persons may file comments on the application within 30 days after publication of the Administrator's notice in the *Federal Register*.

(2) Three copies of these comments shall be submitted to the FAA Airports office identified in the *Federal Register* notice.

(3) Commenters shall also provide one copy of their comments to the public agency.

(4) Comments from air carriers and foreign air carriers may be in the same form as provided to the public agency under § 158.25.

(f) The Administrator may request such additional information as may be necessary to decide any application within the 120-day statutory time limit.

(g) *The Administrator's decision.* (1) An application will be approved in whole or in part only after a determination that—

(i) The amount and duration of the PFC will result in revenue that does not exceed amounts necessary to finance the project;

(ii) The project will achieve the objectives set forth in § 158.17(a);

(iii) The project is eligible as set forth in § 158.17(b); and

(iv) The application satisfies § 158.27.

(2) The Administrator will notify the public agency in writing of the decision on the application. The notification will list the projects for which PFC financing is approved, PFC amount, and total approved PFC revenue.

§ 158.31 Amendment of approved PFC.

(a) After approval of an application to impose a PFC, a public agency may request that the approved PFC be amended.

(b) A public agency may request an amendment to decrease the total approved PFC revenue without submitting specific justification or further air carrier or foreign air carrier consultation. The request shall be in writing and shall specify the amount of decrease proposed and the means by which the reduction is to be achieved. The public agency will also assure that there is to be no appreciable change in the nature or scope of the PFC project.

(c) The following amendments may be requested, without further air carrier or foreign air carrier consultation, by letter outlining the reasons for the change when they would result in an increase of 15 percent or less of total approved PFC revenue:

(1) A change in the approved PFC (not to exceed \$3.00 per passenger); and

(2) A change in work scope which, in the opinion of the Administrator, is incidental to the project.

(d) A public agency must show evidence of air carrier and foreign air carrier consultation and provide such information as may be requested by the Administrator for the following requested amendments:

(1) A change requiring an increase of more than 15 percent in total approved PFC revenue;

(2) A change in the project work scope which, in the opinion of the Administrator, is not incidental to the project; or

(3) Any change which, in the opinion of the administrator, would substantially alter the character of the approved application.

(e) Approval of amendment.

(1) The Administrator may approve or disapprove the amendments under paragraphs (b) and (c) of this section without public notice or opportunity for comment as specified in § 158.29 (d) and (e).

(2) The Administrator will provide public notice and opportunity for comment pursuant to § 158.29 (d) and (e) before approving or disapproving amendments under paragraph (d) of this section.

§ 158.33 Duration of authority to impose a PFC.

A public agency that has been granted the authority to impose a PFC is authorized to impose such PFC until—

(a) It has received the total approved PFC revenue;

(b) The authority to collect the PFC is terminated by the Administrator under subpart E of this part; or

(c) The public agency is determined by the Administrator to be in violation of section 9304(e) of the Airport Noise and Capacity Act of 1990 (Pub. L. 101-508, title IX, subtitle D), and the authority to collect the PFC is terminated under subpart E of this part.

§ 158.35 Use of excess PFC revenue.

(a) Public agencies shall promptly notify all operating and all other issuing carriers to stop collection when total PFC revenue received equals the amount approved.

(b) If excess PFC revenue is collected, such funds shall be reserved for use on future eligible projects following consultation with the Administrator.

SUBPART C—COLLECTION, HANDLING, AND REMITTANCE OF PFC's**§ 158.41 General.**

This subpart contains the requirements for notification, collection, handling and remittance of PFC's.

§ 158.43 Public agency notification to air carriers and foreign air carriers.

(a) Each public agency that receives approval from the Administrator to impose a PFC shall notify the air carriers and foreign air carriers operating at its airport of the requirement to collect the PFC from passengers enplaned by such carrier at the airport. Each such carrier is responsible for notification of the collection requirement to its agents including other issuing carriers.

(b) The notification shall be in writing and contain as a minimum the following information:

- (1) The amount of the PFC.
- (2) The charge effective date.
- (3) The charge expiration date.
- (4) A copy of the Administrator's notice of approval.

(c) The charge effective date shall be no earlier than 30 days after the notification.

(d) The public agency shall provide a copy of the notification to the appropriate FAA Airports office.

§ 158.45 Collection of PFC's.

(a) Upon receipt of notification from the public agency, issuing carriers and their agents shall collect the required

PFC on all air travel tickets sold on or after the charge effective date for all passengers enplaned at the airport except as provided in paragraphs (c), (d), and (e) of this section. Issuing carriers shall be responsible for all funds from time of collection to disbursement.

(1) Issuing carriers and their agents shall not issue air travel tickets for enplanements from airports imposing PFC's unless the appropriate charge is collected. The appropriate charge is the PFC in effect at the time the ticket is purchased.

(2) Issuing carriers and their agents shall collect the PFC's based upon the itinerary at the time of purchase. Any voluntary changes in itinerary are subject to collection or refund of the PFC as appropriate.

(b) Issuing carriers and their agents shall note as a separate item on each air travel ticket upon which a PFC is shown, the total amount of PFC's paid by the passenger and an itemization of the PFC's imposed by each public agency.

(c) For each one-way trip on a complete air travel ticket, issuing air carriers and their agents shall collect a PFC from a passenger only for the first two airports where PFC's are imposed.

(d) Issuing carriers and their agents shall not collect PFC's from a passenger on a flight for which essential air service compensation is being paid to an eligible point under Section 419 of the Federal Aviation Act.

(e) Issuing carriers and their agents shall not collect or refund PFC's from a passenger for an involuntary change in itinerary. Collected PFC's shall be distributed as noted on the air travel ticket.

(f) Unless amended by subsequent notification by the public agency or the Administrator, issuing carriers and their agents shall stop collecting the PFC on the charge expiration date.

(g) Issuing carriers and their agents shall not collect PFC's from a passenger whose air travel ticket was issued prior to notification from the airport of the charge effective date, even for travel after the charge effective date.

§ 158.47 Handling of PFC's.

(a) Issuing carriers shall establish and maintain a financial management system to account for such PFC's in accordance with Generally Accepted Accounting Principles.

(b) Passenger facility charge revenue must be accounted for separately by issuing carriers.

§ 158.49 Remittance of PFC's.

Passenger facility charges collected by issuing carriers and their agents shall

be remitted to the public agency according to the following schedule:

(a) PFC revenue collected from the first day of any month through the fifteenth day of the month shall be remitted to the public agency no later than the fifteenth day of the calendar month (or if that date falls on a weekend or holiday, the first business day thereafter) immediately following the month of collection.

(b) PFC revenue collected from the sixteenth day of the month through the last day of the month shall be remitted to the public agency no later than the last day of the calendar month (or if that date falls on a weekend or holiday, the first business day thereafter) immediately following the month of collection.

§ 158.51 Collection compensation.

As compensation for collecting, handling, and remitting the PFC revenue, the issuing air carrier shall be entitled to retain any interest it may earn on this revenue from the time of collection to the time of disbursement.

SUBPART D—REPORTING, RECORDKEEPING AND AUDITS**§ 158.61 General.**

This subpart contains the requirements for reporting, recordkeeping and auditing of accounts maintained by issuing carriers and their agents and by public agencies.

§ 158.63 Reporting requirements: public agency.

(a) The public agency shall provide the appropriate FAA Airports office with written notice of the following:

(1) The date work on the project actually begins, within 30 days of such date;

(2) Any substantial deviation from the estimated project schedule or costs and the public agency's proposed corrective action;

(3) 60-day advance notice of physical project completion.

(4) Receipt of 90 percent of total approved PFC revenue, including interest accrued on any revenue held on deposit.

(b) The notices required under paragraph (a) of this section may be submitted in conjunction with a request for amendment of an approved PFC under § 158.31.

§ 158.65 Reporting requirement: Issuing carrier.

Each issuing carrier collecting PFC's for a public agency shall file quarterly reports to the public agency unless otherwise agreed by the issuing carrier

and public agency, providing an accounting of funds collected and funds disbursed.

(a) Unless otherwise agreed by the issuing carrier and public agency, reports shall identify, by airport and by air carrier and foreign air carrier operating at the airport, the total passengers enplaned, the passengers enplaned exempt from collection under §§ 158.9, 158.11, 158.13, and the number who were exempt due to purchase of tickets before the charge effective date. The report shall also identify any PFC's collected and disbursed but subsequently refunded to passengers due to voluntary changes in itinerary.

(b) The report shall be filed on or before the last day of the calendar month following the calendar quarter or other period agreed by the issuing carrier and public agency for which funds were collected.

§ 158.67 Recordkeeping and auditing: public agency.

(a) Each public agency shall keep on deposit in an interest bearing account any unliquidated PFC revenue remitted to it by air carriers and foreign air carriers. Interest earned on such revenue shall be used, in addition to the principal on deposit, to pay the allowable costs of PFC-funded projects.

(b) Each public agency shall establish and maintain for each approved application a separate accounting record in accordance with Generally Accepted Accounting principles. The accounting record shall identify the PFC revenue received from the issuing carriers and their agents and the amounts expended upon each project.

(c) During the period the PFC is collected each public agency shall provide for an independent audit at least annually of each project contained in the approved application. A copy of the audit shall be provided upon request to each issuing carrier that disbursed PFC revenue to the public agency in the period covered by the audit and to the Administrator.

§ 158.69 Recordkeeping and auditing: issuing carriers.

(a) Issuing carriers and their agents shall establish and maintain for each public agency for which it collects a PFC an accounting record of PFC revenue collected, disbursed, and refunded in accordance with Generally Accepted Accounting Principles. The accounting record shall identify the airport and air carrier or foreign air carrier on which the passengers were enplaned at the airport.

(b) Issuing carriers and their agents shall provide for an independent audit

of the PFC account annually. A copy of the audit shall be provided upon request to each public agency for which a PFC is collected, and to the Administrator.

§ 158.71 Federal recordkeeping and auditing oversight.

(a) The Administrator may periodically audit and/or review the use of PFC revenue by a public agency. The purpose of the audit or review is to ensure the public agency is in compliance with the requirements of this regulation and section 1113(e) of the Federal Aviation Act.

(b) The Administrator may periodically audit and/or review the collection and disbursement by the issuing carriers and their agents of PFC revenue. The purpose of the audit or review is to ensure issuing carriers and their agents are in compliance with the requirements of this regulation and section 1113(e) of the Federal Aviation Act.

(c) Public agencies and issuing carriers shall allow any authorized representative of the Administrator, the Secretary of Transportation, or the Comptroller General of the United States, access to any of its books, documents, papers, and records pertinent to PFC's.

SUBPART E—TERMINATION FOR CAUSE

§ 158.81 General.

This subpart contains the procedures for termination of PFC's for cause and loss of Federal airport grant funds.

§ 158.83 Termination of authority to impose PFC's.

(a) The Administrator may enter into informal resolution with the public agency or any other affected party if, after review under § 158.71, there are concerns that PFC revenue is not being used in accordance with this regulation or with section 1113(e) of the Federal Aviation Act.

(b) *Termination of authority.* If informal resolution is not successful, the Administrator will begin proceedings to terminate the public agency's authority to impose a PFC.

(1) The Administrator will publish a notice of proposed termination in the Federal Register and supply a copy to the public agency. This notice shall list the scope of the proposed termination, the basis for the proposed action and date for filing written comments or objections by all interested parties and requests for hearing by the public agency. This notice shall also identify the corrective actions the public agency can take to avoid further proceedings. The due date for comments and

corrective action shall be 30 days after publication of the notice.

(2) If requested by the public agency, a public hearing will be held prior to the Administrator's final decision.

(3) The Administrator will publish a notice in the Federal Register advising of the final decision to terminate in whole or in part the authority to impose a PFC or to continue the authority. A copy of the notice will also be provided to the public agency. The authority shall only be terminated upon the Administrator's decision that the PFC revenue is not being used in accordance with this regulation or section 1113(e) of the Federal Aviation Act.

(4) Within 10 days of the notice of the Administrator's decision, the public agency shall provide the FAA airports office with a listing of the air carriers and foreign air carriers operating at the airport and all other issuing carriers that have remitted PFC revenue to the public agency in the preceding 12 months.

(5) The FAA will provide a copy of the Federal Register notice to each of the air carriers and foreign air carriers identified in (4). Such carriers are responsible for terminating or modifying PFC collection no later than 30 days after the date of notification by the FAA.

§ 158.85 Loss of federal airport grant funds.

(a) If the Administrator determines, in accordance with § 158.83, or after review under § 158.71 that revenue derived from a PFC is excessive or is not being used as approved, the Administrator may reduce the amount of funds otherwise payable to the public agency under section 507 of the AAIA of 1982.

(b) The amount of the reduction under paragraph (a) of this section shall equal the excess collected, or the amount not used in accordance with this regulation.

(c) A reduction under paragraph (a) of this section shall not constitute a withholding of approval of a grant application or the payment of funds under an approved grant within the meaning of 49 U.S.C. app. 2218.

Subpart F—Reduction in Airport Improvement Program Apportionments

§ 158.91 General.

This subpart describes the reduction in funds apportioned to a large or medium hub airport that imposes a PFC.

§ 158.93 Public agencies subject to reduction.

The funds apportioned under section 507(a)(1) of the Airport and Airway

Improvement Act of 1982 to a public agency for a specific primary commercial service airport that it controls will be reduced if—

- (a) Such airport enplanes 0.25 percent or more of the total annual enplanements in the United States, and
- (b) The public agency imposes a PFC at such airport.

§ 158.95 Implementation to reduction.

(a) A reduction in apportioned funds will be applied beginning in the fiscal year immediately following the Administrator's approval and will be applied in each succeeding fiscal year in which the public agency imposes a PFC.

(b) A reduction in apportioned funds in a fiscal year shall be an amount equal to 50 percent of the PFC revenue forecast for the fiscal year, except that the maximum reduction in a fiscal year shall not exceed 50 percent of the funds that would otherwise be apportioned to the public agency based on passengers enplaning at the airport.

(c) The reduction in apportioned funds will be calculated at the beginning of each fiscal year based on the projected PFC revenue for such year.

(d) If the projection of PFC revenue in a fiscal year is inaccurate, the reduction in apportioned funds may be increased or decreased in the following fiscal year, except that any further reduction shall not cause the total reduction to exceed 50 percent of such apportioned amount as would otherwise be apportioned in any fiscal year.

Appendix A to Part 158—Application Form

APPLICATION FOR APPROVAL OF PASSENGER FACILITY CHARGE (PFC)

Date submitted: _____
Date received: _____
Agency use: _____
New _____
Amendment _____

1. Legal name and address of public agency
2. Name and phone no. of person to contact
3. Amount of PFC \$1.00 \$2.00 \$3.00
4. Proposed collection period
Charge effective date _____
Charge expiration date _____
5. Brief work description or change in project scope:
6. Estimated funding
 - a. Project costs
 - b. Anticipated revenue

PFC's	
Federal	
State	
Local	
Other	
Total	
7. To the best of my knowledge and belief, all data in this application is true and correct. The document has been duly authorized by the governing body of the public agency and the public agency will comply with the attached assurances if the application is approved.

Typed name of Authorized Representative
Title
Tle. No. _____

Signature of Authorized Representative
Date signed _____

Appendix B to Part 158—Assurances

A. General.

1. These assurances shall be complied with in the conduct of a project funded with a passenger facility charge (PFC).

2. These assurances are required to be submitted as part of the application for approval of authority to impose a PFC under the provisions of the Aviation Safety and Capacity Expansion Act of 1990.

3. Upon approval by the administrator of an application, the public agency is responsible for compliance with these assurances.

B. *Public agency certification.* The public agency hereby assures and certifies, with respect to this approval that:

1. It will comply with all provisions of 14 CFR part 158.

2. *Responsibility and authority of the public agency.* It has legal authority to impose a PFC and to finance and carry out the proposed project; that a resolution, motion or similar action has been duly adopted or passed as an official act of the public agency's governing body authorizing the filing of the application, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the public agency to act in connection with the application and to provide such additional information as may be required.

3. It has complied with all applicable local laws and regulations.

4. *Fund availability.* It has sufficient funds that that portion of the project costs not to be paid by PFC revenue. It has sufficient funds available to assure operation and maintenance of items funded in whole or in part by PFC revenue.

5. *Environmental requirements.* It will comply with the regulations of the Council on Environmental Quality, promulgated pursuant to the National Environmental Policy Act of 1969.

6. *Safety and security prerequisites.* Prior to imposing a PFC, all safety and security equipment required by regulation will be provided for at all airports under its control. If such equipment has not yet been installed, it will demonstrate to the satisfaction of the Administrator a plan and schedule for providing same, that may include the use of PFC revenue to satisfy the requirement.

7. *Nonexclusivity of contractual agreements.* It will not enter into an exclusive long-term lease or use agreement with an air carrier or foreign air carrier for projects funded by PFC revenue. Such leases or use agreements will not preclude the public agency from funding, developing, or assigning new capacity at the airport with PFC revenue.

8. *Competitive access.* It will not enter into any lease or use agreement with any air carrier or foreign air carrier for any facility financed in whole or in part with revenue

derived from a passenger facility charge unless such agreement for such facility—

a. Contains no carryover provision regarding a renewal option which, upon expiration of the original lease, would operate to automatically extend the term of such agreement with such carrier in preference to any potentially competing air carrier or foreign air carrier seeking to negotiate a lease or use agreement for such facilities; and

b. Contains a provision, applicable to any air carrier or foreign air carrier having an exclusive lease or use agreement for existing facilities at such airport, which operates to prevent such carrier from leasing PFC-financed facilities if any portion of its existing exclusive-use facilities is either not fully utilized or not made available for use by potentially competing air carriers or foreign air carriers.

9. *Rates, fees, and charges.* a. It will not treat PFC revenue as airport revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier and foreign air carrier.

b. It will not include in its rate base by means of depreciation, amortization, or any other method that portion of the capital costs of a project paid for by PFC revenue for the purpose of establishing a rate, fee, or charge pursuant to a contract with an air carrier or foreign air carrier.

c. With respect to a project for terminal development, gates and related areas, or a facility occupied or used by one or more air carriers and foreign air carriers on an exclusive or preferential basis, the rates, fees, and charges payable by such carriers that use such facilities will be no less than the rates, fees, and charges paid air carriers and foreign air carriers using similar facilities at the airport that were not financed by PFC revenue.

10. *Policies, standards, and specifications.* It will carry out the project in accordance with FAA airport design, construction and equipment standards and specifications contained in advisory circulars current on the date of application submission.

11. *Recordkeeping and audit.* It will maintain an accounting record for audit purposes for a period of 3 years after completion of the project or as long as PFC revenue is collected to finance the project, whichever is longer. All records will satisfy the requirements of 14 CFR part 158 and will contain documentary evidence for all items of project costs.

12. *Reports.* It will submit reports in accordance with the requirements of 14 CFR part 158, subpart D, and as the Administrator may reasonably request.

Issued in Washington, DC on January 31, 1991.

Paul L. Galis,

Director, Office of Airport Planning and Programming.

[FR Doc. 91-2670 filed 1-31-91; 3:02 pm]

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14 CFR Part 158

[Docket No. 26385]

RIN 2120-AD87

Passenger Facility Charges**AGENCY:** Federal Aviation Administration (FAA), DOT.**ACTION:** Notice of public meeting.

SUMMARY: This notice announces a meeting to provide an opportunity for public comment on proposed new regulations to implement a passenger facility charge program. The proposed regulations are intended to implement the Aviation Safety and Capacity Expansion Act of 1990 which requires the Department of Transportation to issue regulations within 180 days under which a public agency may be authorized to impose an airport passenger facility charge (PFC) at a commercial service airport it controls. The proceeds from such PFC's are to be used to finance eligible airport-related projects that preserve or enhance capacity, safety or security of the national air transportation system, reduce noise from an airport which is part of such system, or furnish opportunities for enhanced competition between or among air carriers. The proposed rule sets forth procedures for public agency applications for authority to impose PFC's, for FAA processing of such applications, for collection and remittance of PFC's by air carriers, for recordkeeping and auditing by air carriers and public agencies, for terminating PFC authority, and for reducing Federal grant funds apportioned to large and medium hub airports imposing a PFC. In addition to this public meeting, the FAA is soliciting written comments on the notice of proposed rulemaking published concurrently with this notice. The written and oral comments received at this meeting, together with written comments submitted in response to the notice of proposed rulemaking, will assist the FAA in its consideration of issuing a final rule.

DATES: The public meeting will be held on February 15, 1991, from 9 a.m. to 4 p.m. Registration will begin at 8 a.m. Due to security requirements, early

arrival is encouraged. Requests to make a presentation should be made by February 12, 1991.

ADDRESSES: The public meeting will be held in the FAA Auditorium, Federal Aviation Administration, 800 Independence Avenue, SW., 3rd Floor, Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meeting or questions about the logistics of the meeting should be directed to Ida Klepper, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-9688.

Questions concerning the subject matter of the meeting should be directed to Lowell H. Johnson, Office of Airport Planning and Programming, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3831.

SUPPLEMENTARY INFORMATION:**Participation at the Meeting**

Interested persons are invited to attend the meeting and to participate by making oral or written statements. Each person who wishes to present a statement at the meeting should direct the request to the first person listed in the section entitled "**FOR FURTHER INFORMATION CONTACT.**" Requests must be received on or before February 12, 1991. Late requests to present a statement will be honored if there is time available during the meeting; however, the names of those individuals may not appear on the written agenda. To the extent practicable, speakers are encouraged to submit a copy of any written material to be presented orally during the meeting, prior to the meeting. Written statements should be submitted in triplicate and will be made a part of the docket. Presentations will be scheduled on a first-come first-serve basis. In order to accommodate as many speakers as possible, we suggest commenters present summaries of their written material. The amount of time allocated to each speaker may be less than the amount of time requested.

Meeting Procedures

The following procedures are established by the FAA to facilitate the meeting:

1. There will be no admission fee or other charge to attend and to participate in the meeting. The meeting will be open to all persons who register on the day of the meeting subject to availability of space in the meeting room. If practicable, the meeting may be accelerated to enable adjournment in less time than currently is scheduled.

2. Representatives of the FAA will preside over the meeting. A panel of DOT/FAA personnel involved in the rulemaking process will be present at the meeting.

3. The meeting will be recorded by a court reporter. A transcript of the meeting will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly.

4. The FAA will review and consider all material presented by a participant at the meeting. All comments, position papers, and material presenting views or arguments related to the discussion topics will be accepted and entered into the public docket.

5. Statements may be made by members of the meeting panel to facilitate discussion of the issues or to clarify issues. Any statement made during the meeting by a member of the meeting panel is not intended to be, and should not be construed as, a position of the FAA on the final rulemaking.

6. The meeting is designed to solicit public views and information on passenger facility charges. Therefore, the meeting will be conducted in an informal and nonadversarial manner. An individual will not be subject to cross-examination by any other participant; however, any member of the meeting panel is entitled to ask questions in order to clarify a statement made at the meeting or a statement contained in material submitted by a meeting participant.

Issued in Washington, DC on January 31, 1991.

Paul L. Galis,
Director, Office of Airport Planning and Programming.

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